

SYMPOSIUM
LIBERALISM AND SOCIAL JUSTICE



LIBERALISM AND DISTRIBUTIVE JUSTICE

A PRÉCIS

BY
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Liberalism and Distributive Justice A Précis*

Samuel Freeman

I

Liberalism

Liberalism is the predominant social and political doctrine, in theory and in practice, in the Western world. Given liberals' penchant for disagreement, it is not surprising that liberalism is such a contested idea, standing for different principles and values depending upon one's political point of view. In American public political culture, "liberal" is often used as a term of abuse and is rarely embraced by the persons and political party to whom it refers: those moderately left of center, mostly Democrats, who advocate a broad interpretation of personal and civil liberties, the regulation of business, and the generous provision of public goods, including social insurance, anti-poverty, health and education, and other programs designed to improve people's lives. "Conservatives" in the United States reject most if not all of these ideas and advocate expansive economic liberties, robust rights of property, free enterprise with unregulated markets, low taxes, the privatization of public functions, and minimal redistribution of income and wealth

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except for national defense and domestic security of persons and their property.

The irony is that American conservatism strongly resembles nineteenth-century classical liberalism, which provided the theoretical background for laissez-faire capitalism. Liberalism in Europe is still regarded in this way. The term “neo-liberalism” lately has been applied to the resurgence of laissez-faire economic liberalism and its extension to international trade and the increasing globalization of capitalism. This resurgence is due in part to the influence that the economists Friedrich Hayek and Milton Friedman respectively had on Margaret Thatcher and Ronald Reagan and their political parties in the last quarter of the twentieth century.

Left-of-center American liberalism is sometimes compared with social democracy, but it really has no close parallel in European politics, largely because those left of center in the United States who survived McCarthyism and anti-communism were never seriously influenced by socialism, unlike social democrats in Europe and the Labour Party in the United Kingdom. The established liberal Left in the United States has long embraced economic markets with private ownership of means of production, conjoining their support for capitalism with the regulatory welfare state. The division between neo-liberal conservatives and left-of-center liberals in the United States thus parallels the division between laissez-faire and welfare-state capitalism.

Here I understand liberalism more broadly, in a philosophical sense that encompasses a group of related political, social, and economic doctrines and institutions encompassing both classical and left liberalism, and including liberal market socialism. Liberalism in this more general sense is associated in political thought with non-authoritarianism, the rule of law, limited constitutional government, and the guarantee of civil and political

liberties. A liberal society is tolerant of different religious, philosophical, and ethical views, and its citizens are free to express their views and their conflicting opinions on all subjects, as well as to live their lives according to their freely chosen life plans. In economic thought, liberalism is associated with a predominantly unplanned economy with free and competitive markets and, normally, private ownership and control of productive resources. In international relations, liberalism advocates freedom of trade and cultural relations, idealism instead of realism, international cooperation and institutions rather than isolationism, and the use of soft power instead of power politics. This is not to say that liberal governments are consistent in realizing these ideas in practice.

Certain values, principles, and ideals are also connected with social, political, and economic liberalism: liberty, of course, but also equality – of liberties, as well as opportunities and the civic status of citizens. Other liberal values commonly cited include tolerance, impartiality, fairness, consensus, non-interference, non-discrimination, free choice, entrepreneurship, and private property. To justify their position, liberals appeal to such abstract values and ideals as human dignity, equal respect, the moral equality of persons, autonomy, the public good, the general welfare, consent of the governed, diversity, human progress, and individuality. Liberals interpret some if not all of these values in different ways.

Liberalism is also a debate about how to interpret and structure certain basic social and political institutions that all liberals normally endorse: constitutionalism and the rule of law; equal basic rights and liberties; equality of opportunity; free competitive markets and private property; public goods and a social minimum; and the public nature of political power and (since the twentieth century) democratic government. In chapter 1, “Capitalism in the

Classical and High Liberal Traditions”,¹ I distinguish classical liberalism from liberalism to its left, which was called “new” or “modern liberalism” in the twentieth century but which I call the “high liberal tradition” – both because the resurgence of classical liberalism renders its neighbor to the left neither new nor modern and because high liberalism is, I contend, the natural development of fundamental liberal values of the freedom and moral equality of persons in a democratic society. I discuss the two liberalisms’ competing interpretations of these basic social and political institutions, and especially their attitudes toward capitalism. The chapter compares the two liberalisms’ different positions regarding the rights and liberties each regards as most basic, as well as their positions regarding equality of opportunity and the distributive role of markets in establishing distributive justice, the other major theme of this book.

Classical liberals characteristically consider economic liberties and robust rights of property to be as important as, if not more important than, basic personal liberties such as freedom of conscience, expression, association, and freedom of the person. For example, Hayek said that the most important rights and liberties for a person are freedom from involuntary servitude, immunity from arbitrary arrest, the right to “work at whatever he desires to do,” freedom of movement, and the right to own property. The liberties on this list were regarded as “the essential conditions of freedom” in the eighteenth and nineteenth centuries, and the list still “contains all the elements required to protect an individual against coercion.”² Notably absent from Hayek’s list of essential freedoms are the personal freedoms that J. S. Mill said were essential to individuality and the principle of liberty: freedoms

¹ This chapter is a revised and somewhat expanded version of the original article.

² Hayek 2011, 70-71.

of conscience, expression, association, and “tastes and pursuits”.³ Most contemporary classical liberals emphasize these important personal liberties too, along with economic liberties and rights of property, which together constitute what the nineteenth-century classical liberal Benjamin Constant called “the liberties of the moderns.” Classical liberals, though they now accept constitutional democracy as the safest form of government, characteristically assign less importance to equal political rights to participate in government and in public life – Constant’s “liberties of the ancients” – regarding political democracy as jeopardizing robust economic and personal liberties, but still preferable to other forms of government. Since high liberals assign greater priority to personal and political liberties than economic liberties, the priority that classical liberals assign to the economic liberties accounts for most of the differences between contemporary classical and high liberalism, including their conflicting positions regarding the justice of market distributions.

I introduce in this chapter the idea of distributive justice that was raised to prominence within the high liberal tradition in the twentieth century. Here I critically assess the classical liberal distributive principle that economic agents deserve to be rewarded according to their (marginal) contributions to economic product. The chapter concludes with some reflections upon the essential role that dissimilar conceptions of persons and society play in grounding the different positions on economic liberties and distributive justice that classical and high liberals advocate.

Chapter 2, “Illiberal Libertarians: Why Libertarianism Is Not a Liberal View,” examines a third political conception that is often regarded as liberal, since it appears to have much in common with classical liberalism, including the prominence assigned to property

³ Mill 1991, chap. 1, final paragraphs.

rights and economic liberties. I argue that the resemblance between liberalism and libertarianism is superficial: upon close examination, it becomes apparent that libertarianism rejects the most basic liberal institutions discussed in chapter 1 and here in greater detail.

A clarification: the term “libertarian” refers most often to those who fervidly defend robust laissez-faire economic rights and liberties and have full confidence in capitalist markets’ capacity to address social problems. The classical liberals Milton Friedman and Friedrich Hayek are sometimes called “libertarians,” as is Ayn Rand. The term is also used for liberals mostly on the left, called “civil libertarians,” who ardently defend personal and civil liberties, though not strong property rights and economic liberties.⁴ I use the term “libertarian” in a philosophical sense, to refer to economic and personal libertarianism in its purest form, which is grounded in a doctrine of absolute property rights in one’s person (“self-ownership”) and in one’s possessions. Libertarianism so construed is associated with its major philosophical spokesperson, Robert Nozick, and others who advocate similar social and political arrangements (e.g., Murray Rothbard and Jan Narveson).

One of the essential features of liberalism, I argue, is that it holds that legitimate political power is not simply limited: it is a public power that is to be impartially exercised and only for the public good. Libertarianism rejects each of these liberal ideas, conceiving of legitimate political power as a private power that is based in a network of economic contracts and that is to be sold and distributed, not impartially, but, like any other private good,

⁴ The position known as “left libertarianism” has been defended relatively recently and is still waiting to be more fully developed. It seeks to combine redistributive egalitarianism with self-ownership and near-absolute personal, civil, and economic liberties. I do not address that position here. See the essays in Vallentyne and Steiner 2000; Otsuka 2005, and my review of Otsuka’s book in Freeman 2008; and Steiner 1994.

according to individuals' willingness and ability to pay. Correctly understood, libertarianism resembles a view that liberalism historically defined itself against, the doctrine of private political power that underlies feudalism. Moreover, the primary institutions typical of the liberal political tradition – including inalienable basic rights and liberties, equality of opportunity, and government's role in maintaining fair and efficient markets, public goods, and a social minimum – are also rejected, I contend, by orthodox libertarianism.

The term “orthodox” suggests that there are other, more moderate accounts of libertarianism that do not reject all the basic liberal institutions I discuss and that regard themselves as versions of classical liberalism.⁵ I do not discuss these here, but do so elsewhere in more recent work.⁶ Characteristically, those who adhere to these non-orthodox positions, endorse, as liberals do, the inalienability of certain basic rights and liberties, especially freedom of the person, and reject the enforcement of contracts for involuntary servitude. But as libertarians they also usually reject the social safety net that is typical of modern classical liberal views and seek to privatize the provision of most public goods accepted by classical liberals. I regard these positions, including the minimization of government's role, which currently have a great deal of popular support in the Republican Party, as hybrid views, impoverished forms of liberalism that surrender consistency for the sake of certain fixed moral intuitions, especially moral revulsion to slavery and other morally repugnant practices even if voluntarily contracted into. Orthodox libertarians, such as Nozick, by contrast, take the idea of absolute property in one's person and possessions and absolute freedom of contract to the limit, and have no theoretical misgivings (whatever personal reservations they may

⁵ See the helpful Brennan 2012 and Id., van der Vossen and Schmitz 2017.

⁶ See Freeman 2017.

feel) about the complete alienation of all one's rights and liberties. This is what makes orthodox libertarianism a distinct philosophical conception of justice and ultimately distinguishes it from liberalism.

II

Distributive Justice

In the three chapters in part II of the book, "Distributive Justice and the Difference Principle," I analyze and apply to economic systems and the private law John Rawls's, conception of justice, which embodies the major account of distributive justice set forth in the twentieth-century high liberal tradition. "Distributive justice," when used to refer to the just or fair distribution of income and wealth produced by economic cooperation, is a relatively modern idea that gained considerable prominence only with the socialist criticism of capitalism starting in the nineteenth century. But before that, David Hume addressed the subject when he said that it would be irrational to organize the economy so that income and wealth were distributed either equally or to reward individuals according to their virtue. Both proposals would soon meet with failure, reducing all to poverty. Instead, Hume said, the conventions of property, markets, and other consensual transfers, and contracts and similar agreements, are and should be organized to promote public utility⁷. Individuals should be permitted to sell what they produce, retain economic gains from their efforts and contributions, and pass their property to their offspring, because these conventions are useful to society. Adam Smith's doctrine of the invisible hand provided the economic framework for Hume's utilitarian account of justice. These ideas have long been developed

⁷ Hume 1970, section III, 183-204.

by classical and neo-classical economists and have provided classical liberalism with the primary justification of market distributions in a capitalist economy.

Rawls presents his difference principle as an alternative to utilitarianism in order to structure economic institutions and productive relations and to distribute income and wealth. The difference principle requires that property and the economic system be organized so that income and wealth are distributed in a way that maximizes, not the welfare of society, but the economic position of the least advantaged members of society, making them economically better off than they would be in any alternative economic arrangement. Chapter 3, “Rawls on Distributive Justice and the Difference Principle,” provides a thorough discussion of Rawls’s account of distributive justice with particular focus on the difference principle. It begins with the requirements of distributive justice implicit in Rawls’s principle of equal basic liberties and fair equality of opportunity. Rawls argues that economic inequalities should not become so large that they undermine either the fair value of citizens’ equal political liberties or the fair equality of their opportunities to develop their capacities so they can compete for open occupational positions and enjoy the benefits of culture.

G. A. Cohen argued that the inequalities allowed by the difference principle are compatible with the vast inequalities typical of capitalism.⁸ For example, the difference principle might be used to justify tax reductions for the wealthiest, on the assumption that they will invest in new jobs that marginally benefit the least advantaged. Leaving aside the fact that the great inequalities in our capitalist economy violate the fair value of equal political liberties and also fair equality of opportunity, Cohen’s objection raises a problem in non-ideal theory that Rawls does not address. As I

⁸ Cohen 2008, chaps. 3-4; see e.g. 138

discuss here and in chapter 8 on ideal and non-ideal theory, Rawls's difference principle is chosen by the parties in the original position for an ideal well-ordered society where everyone accepts the same principles of justice and these principles are fully enacted into law. The difference principle can be narrowly applied in a well-ordered society in order to put in place measures that maximally benefit the least advantaged in those ideal circumstances. But in non-ideal circumstances that do not comply with the difference principle, such as a capitalist society with huge inequalities like those in the United States, the application of the difference principle is not as straightforward. If the best among the narrow measures currently available to maximally benefit the least advantaged only increase and permanently reinforce the gross inequalities that already exist, then, I argue, a society should forgo those maximin measures and instead adopt alternative measures which promote the eventual realization of just economic institutions that do not yet exist. This means that an unjust society has a duty to enact alternative measures that, even if they benefit the least advantaged less than the maximin measures currently available, reform unjust institutions in the direction of an economic system that eventually satisfies the difference principle. The difference principle must presuppose in non-ideal conditions a broad requirement that imposes on a society a duty of justice to reform its economic system so that eventually it makes the least advantaged class better off than does any alternative economic system. This may frequently require a society to enact measures in non-ideal conditions that, while they benefit the least advantaged, are nonetheless suboptimal for them in the short run. This is the appropriate response, I argue, to classical liberal trickle-down policies that increase and permanently solidify great inequalities in a capitalist society.

J. S. Mill was a fairly orthodox classical liberal when he first wrote *The Principles of Political Economy*, which Marx regarded

as the testament of capitalism. But Mill had made the transition to high liberalism by the seventh edition of his treatise. He argued for the redistribution of large estates, large taxes on profits from rentier income on land, and most notably workers' private ownership and control of the firms they labored in within a market economy. His proposal was an early version of what has since come to be called "property-owning democracy."

In chapter 4, "Property-Owning Democracy and the Difference Principle," I take up where the preceding chapter leaves off and address the question, what social and economic system is capable of best realizing the principles of justice and maximizing the prospects of the least advantaged? Rawls says the main problem of distributive justice is the choice of a social system. Property-owning democracy is the social system that Rawls thought best realizes the requirements of his principles of justice, including the difference principle (though he leaves open the possibility that liberal market socialism might do so as well under some circumstances). This chapter discusses Rawls's conception of property-owning democracy and how it differs from welfare-state capitalism and other economic arrangements. I explain why Rawls thought that welfare-state capitalism could not fulfill his principles of justice and discuss the connection between welfare-state capitalism and utilitarianism. I also discuss the crucial role of democratic reciprocity and the social bases of self-respect in Rawls's argument for both the difference principle and property-owning democracy.

Chapter 5, "Private Law and Rawls's Principles of Justice," which has not been previously published, continues the discussion of the application of Rawls's principles of justice to liberal institutions, in this case to what is known as "private law" – the law of legal relationships between individuals – including primarily property, contract, and tort law. It has been argued that Rawls's

principles of justice apply only to public law – laws affecting government’s relationships to individuals, and the benefits government provides and the burdens it imposes. Public law includes constitutional law, taxation, and redistribution to pay for public goods, social insurance, and welfare programs, also criminal law, administrative law, and procedural law. I contend that, in addition to public law, the first principle plays a crucial role in assessing and determining the private law of property, contract, and tort; moreover, fair equality of opportunity and the difference principle are to be applied to the assessment of rules of property and contract law. But the role of the difference principle in tort law and its determinations of fault and liability are more limited. The reason for this difference is that the difference principle addresses the question of how a society is to fairly design and efficiently organize the institutions that make economic cooperation possible among free and equal persons actively engaged in productive activity, including the fair and efficient allocation of resources and the production, transfer, and fair distribution of goods and services that enable individuals to freely pursue their life plans. Certain core legal institutions, including property, economic contract, and other laws enabling the sale and transfer of goods, are necessary for economic cooperation and are among the institutions covered by the second principle of justice. Other bodies of law, including criminal law and the private law of torts, restitution, and family law are not directly concerned with matters of economic justice, and so are not regulated by the difference principle. In this respect, the role of the difference principle differs from the role assigned to the principle of efficiency in law and economics, which by its terms applies to all of private law, including the law of torts and compensation for accidents.

III

Institutions

The four chapters in part III, “Liberal Institutions and Distributive Justice,” focus on the crucial role of liberal institutions and procedures in determinations of distributive justice. Social institutions in general and their laws and procedures play a fundamental role in defining a liberal government and society. We take for granted the rule of law and adherence to the rules and procedures of liberal social institutions – the constitution, the legal system, property, markets, and the economic system – since they provide background structure that affects nearly every aspect of social life. The importance of the rule of law and adherence to the procedures of a liberal constitution are especially palpable now that they are threatened by an administration in the U.S. that has no respect for them.

In chapters 6, 7, and 8, I discuss the central role that basic social institutions play in determining the scope and requirements of distributive justice. Chapter 6, “The Social and Institutional Bases of Distributive Justice,” addresses the question of whether distributive justice is “relational” and based in cooperative social institutions or whether it is non-relational and global in the reach of its requirements. Many so-called luck egalitarians contend that it is morally arbitrary whether a person is born into a wealthy or a poor society, just as it is morally arbitrary whether a person is born to wealthy or poor parents or with more or less intelligence or physical prowess. Liberal social egalitarians such as Rawls and Ronald Dworkin, who seek to neutralize the effects of social class, natural talents, and misfortune, should also neutralize, many claim, the effects of national boundaries and extend the scope of their distributive principles to the world at large. Distributive justice knows no boundaries, cosmopolitan egalitarians contend.

Chapter 6 argues that distributive justice is institutionally based. Certain cooperative institutions are basic: they are essential to economic production and the division of labor, trade and exchange, and distribution and consumption. These background institutions require principles to specify their terms and determine the justice of their distributions. Primary among these basic institutions are the legal institution of property; laws and conventions such as markets enabling transfers and distribution of goods and services; and the legal system of contracts and related transactions that make production, transfers, and distribution possible and productive. Political institutions are necessary to specify, interpret, enforce, and make effective the terms of these basic economic institutions. I conclude that the basic institutions that make economic cooperation possible are thus social in nature; they are realizable only within the context of social and political cooperation—this is a fixed empirical fact about cooperation among free and equal persons. Given the nature of social cooperation as a kind of reciprocity, distributive justice, I conclude, is primarily a question of social justice too.

The institutional account of distributive justice recognizes that many requirements of justice apply to international relations and institutions as well and to people the world over regardless of our relations with them. These requirements include not only respect for human rights and the law of peoples, and procedural and fairness requirements in our dealings with other societies, but also substantive requirements of economic justice. Societies have a duty to maintain fair trade relations with each other, for example, which means that wealthier societies should not exercise their economic power to take unfair advantage of or exploit others. This is a requirement of global economic justice. Distributive justice, however, I regard as a distinct form of economic justice; it originates with participants who are engaged in social cooperation doing their fair share to sustain basic social institutions and

contribute to economic cooperation, and addresses the question of the fair distribution of the social product among those who contribute to its production. We cannot address the question of whether there are demands of distributive justice that stem from international/global institutions without investigating the particular nature and complexity of these institutions and their role in economic production and commerce. I do not rule out a global distribution requirement of economic justice that is in addition to societies' duties of assistance to burdened societies that are unable to provide for all their citizens' basic needs. But if there are international or global distribution requirements, they would not replace, but would supplement and remain dependent upon, the social and institutional bases of distributive justice.

Chapter 7, "The Basic Structure of Society as the Primary Subject of Justice," discusses the reasons Rawls assigns such a central role to social institutions and procedures in his liberal account of distributive justice. Rawls's liberal conception of free and equal moral persons, and of the social conditions necessary to realize fair reciprocity and citizens' fundamental interests, is integral to understanding why Rawls assigns such importance to principles of justice for the institutions of the basic structure of society. Rawls himself mentions two reasons for this primacy: the profound effects of basic social institutions on individuals' purposes and life prospects, and the need to maintain background justice in a liberal system that relies on pure procedural justice. In this chapter, I discuss the main reasons for the primacy Rawls assigns to principles of justice for the basic structure. First, it is necessary to apply the principles of justice to the basic structure instead of directly to individuals' conduct in order to maintain the freedom, equality, and independence of moral persons. Individuals are then left free to devote themselves to their special commitments and the pursuit of their conceptions of the good, secure in the knowledge that the achievement of the fair

distribution of income and wealth will take place without their having to sacrifice their purposes, plans, and special commitments.

Second, Rawls's focus on the basic structure is a condition of economic reciprocity and fair distribution in a competitive market among free and equal citizens, each of whom contributes his or her fair share to economic product. In addition to legitimate distributive inequalities based on differences in individuals' efforts and other substantial contributions, markets tend toward inequalities based on arbitrary factors, such as differences in natural talent and social position, life's accidents and misfortunes, and good and bad market luck due to myriad factors beyond anyone's control (natural and man-made catastrophes, fluctuations in the labor supply, a surfeit or shortage of particular labor skills, etc.). In a liberal society that seeks to take advantage of economic markets' productive efficiency and to distribute income and wealth on grounds of pure procedural justice, it is necessary to maintain background justice by correcting the arbitrary distributions of markets so that individuals are rewarded their fair share on grounds of fair reciprocity and mutual respect. This is the role of the difference principle in structuring the basic institutions that make economic cooperation possible and productive.

Third, priority is assigned to the basic structure because it is required by moral pluralism to maintain the plurality of values and the diversity of reasonable conceptions of the good among free and equal persons. The values of justice clearly are not the only values worth pursuing, even if their requirements constrain and regulate the means individuals can adopt to pursue their valuable as well as merely permissible purposes. There are a plurality of values, moral principles, and reasons for acting in addition to those required by distributive justice. To morally require individuals themselves to directly apply principles of distributive justice, such as the difference principle, to their conduct and conform their

actions to its direct demands, would not just severely limit their freedom and independence to pursue their conceptions of the good; it also would severely interfere with and in effect diminish the importance of equally important values that constitute individuals' reasonable conceptions of the good. By applying the principles of justice to the basic structure and requiring individuals to comply with rules for individuals that are based on these principles but that leave them free to pursue a wide range of reasonable conceptions of the good, Rawls's theory enables what Samuel Scheffler has called "the division of moral labor," including individuals' realization of a plurality of values as they freely pursue their purposes and commitments.⁹

Liberal social contract doctrine characteristically seeks to discover principles that free and equal persons in society can all reasonably agree on and accept as a matter of justice. Its method assumes an ideal society that is well ordered in that everyone agrees to and accepts the same principles of justice and everyone generally complies with these principles. Given such "full compliance," the question Kantian contract doctrine asks is, which public principles of justice could or would free and equal rational and reasonable persons all agree to as the basis for social cooperation in such a well-ordered society? The general thought is that free, equal, and independent persons ought to be able to publicly recognize and freely accept and endorse the fundamental principles of their society that structure their relations and determine their future prospects and the kinds of persons they are and can come to be. In chapter 8, "Ideal Theory and the Justice of Institutions",¹⁰ I address Amartya Sen's argument against Rawls's reliance on such an ideal theory of "a perfectly just society." I argue that the principles of justice chosen for such an ideal society are not

⁹ See Scheffler 2010, chap. 4.

¹⁰ This chapter is a shortened version of the original article.

redundant or irrelevant as Sen contends. The principles of justice that would be agreed to and fully complied with in a well-ordered society of free and equal persons are needed to determine the just distribution of equal basic rights and liberties, powers and opportunities, and income and wealth in our non-ideal society.

I also address Sen's rejection of Rawls's primary focus on the basic institutions of society in favor of an account of "consequence-sensitive" evaluation of "comprehensive outcomes." I argue that Rawls's institutional approach, without being consequentialist, is also consequence-sensitive in that the principles of justice are designed to realize an ideal of persons and society. I discuss some potential problems with a consequentialist interpretation of Sen's own comparative method of evaluating comprehensive outcomes and suggest that a pluralist interpretation of his account (one that combines deontological with consequentialist principles) is not as different from Rawls's approach as Sen intends it to be.

Finally, Rawls relies upon social and psychological facts about humans to argue for his principles of justice, especially the difference principle. Some of his main arguments against utilitarianism are that, given natural human propensities and our moral sense of justice, the principles of justice realize our rational and moral nature; by contrast, the principle of utility imposes unreasonable demands on human beings, requiring the less advantaged to sacrifice their well-being for the sake of those already more advantaged by nature and circumstance. Aggregate or average utility cannot be widely embraced by all members of a liberal society, especially the least advantaged, as a dominant social end; as a result a utilitarian society will always be unstable. Chapter 9, "Constructivism, Facts, and Moral Justification," responds to G. A. Cohen's criticisms of Rawls's reliance upon empirical facts about human psychological and social tendencies to justify the

difference principle. Cohen contends that empirical facts are irrelevant to the justification of fundamental principles of justice and that Rawls's difference principle is not a fundamental principle but a principle of regulation designed to accommodate injustice due to human selfishness. I deny this interpretation and discuss three reasons why the first principles of a moral conception of justice should be "fact-sensitive," or presuppose general facts in their justification. First, a conception of justice should be compatible with our moral and psychological capacities. It should respond to basic human needs and our distinctly human capacities. Moreover, conscientious moral agents should be capable of developing appropriate attitudes enabling them to normally act upon and affirm the requirements of the principles of justice that structure society and determine their prospects. Second, a conception of justice should provide principles for practical reasoning and fulfil a social role in supplying a public basis for justification among persons with different conceptions of their good and diverse comprehensive religious, philosophical, and moral views. Third, a moral conception should not frustrate but rather affirm the pursuit of the human good, including the exercise and development of our moral capacities and sense of justice.

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References

- Brennan, Jason. 2012. *Libertarianism: What Everyone Needs to Know*. Oxford: Oxford University Press.
- Brennan, Jason, van der Vossen, Bas, and Schmidtz, David (eds.). 2017. *The Routledge Handbook of Libertarianism*. London: Routledge.
- Cohen, Gerald Allan. 2008. *Rescuing Justice and Equality*. Cambridge (Mass.): Harvard University Press.
- Freeman, Samuel. 2008. "Review: Michael Otsuka: *Libertarianism without Inequality*," *Mind* 117: 709-15 .
- _____. 2017. "Liberal and Illiberal Libertarianism," in Brennan et al., *The Routledge Handbook of Libertarianism*, London: Routledge, 108-124.
- Hayek, Friedrich. 2011. *The Constitution of Liberty*. Chicago: University of Chicago Press.
- Hume, David. 1970. *An Enquiry Concerning the Principles of Morals* (originally published in 1751). 2nd ed. Oxford: Clarendon Press.
- Mill, John Stuart. 1991. *"On Liberty" and Other Essays*. Edited by John Gray. Oxford: Oxford University Press.
- Otsuka, Michael. 2005. *Libertarianism without Inequality*. Oxford: Clarendon Press.
- Scheffler, Samuel. 2010. *Equality and Tradition*. New York: Oxford University Press.
- Steiner, Hillel. 1994. *An Essay on Rights*. Oxford: Wiley-Blackwell.
- Vallentyne, Peter and Steiner, Hillel (eds.). 2000. *Left-Libertarianism and Its Critics*. New York: Palgrave MacMillan.

SYMPOSIUM
LIBERALISM AND SOCIAL JUSTICE



THE CHOICE OF A SOCIAL SYSTEM
REFLECTIONS ON A “PROPERTY-OWNING
DEMOCRACY AND THE DIFFERENCE PRINCIPLE”

BY
WILLIAM A. EDMUNDSON

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The Choice of a Social System: Reflections on a “property-owning democracy and the difference principle”

William A. Edmundson

Sam Freeman makes a novel argument for property-owning democracy over welfare-state capitalism. It is presented in chapter four of his *Liberalism and Distributive Justice* (Freeman 2018 = *LDJ*), “Property Owning Democracy and the Difference Principle” (*LDJ* 137-66). My main focus is the central element of this case, which is a proposed friendly amendment to Rawls’s conception of fair equality of opportunity. The bedrock of John Rawls’s theory of political justice is his commitment to a principle of reciprocity between citizens conceived as free equals. Society itself is conceived as a cooperative productive enterprise, and so reciprocity requires that the institutions of the basic structure be designed to distribute as equally as can be the benefits that cooperation makes possible, unless an unequal division would benefit all. Because of the nature of wealth and income, an unequal division of these goods can result in a greater absolute share for all. Because of the nature of politics, an unequal division of political influence cannot lead to a greater absolute share of political influence for all. Therefore, on Rawls’s view, justice requires that

each citizen's political influence be equal, varying only according to motivation to participate in politics and ability to articulate publicly recognized reasons. Rawls gave only glancing attention to the possibility that an unequal division of political influence might benefit all in terms of the total bundle of primary goods enjoyed by all, including the least advantaged representative person. Mill's proposal for plural votes for the educated was based on this possibility, and Rawls says it is "of the required form" though it rests on an implicit appeal to "the general conception of justice as fairness" (*TJ* 204), that is to say, to the difference principle regarded as the sole requirement of justice. Rawls rejects the difference principle in its general form. Thus, it could be misleading to suggest that the difference principle expresses "democratic reciprocity" and "reciprocity at the deepest level," (*LDJ* 148) as Freeman states. Rawls says that the difference principle owes what appeal it has to its setting in a background in which prior principles are satisfied, as Freeman clearly acknowledges. This matters when orientating one's thinking in the choice of a social system, a task that Rawls framed as a matter of choosing between ideal regime-types. Welfare-state capitalist regimes, as Rawls defined them, do not aim to secure the fair value of the equal political liberties. Consequently, he suggested, they cannot effectively secure fair equality of opportunity. For this reason, Rawls concluded that capitalist regimes, whether of the laissez-faire or the welfare-state variety, cannot realize justice-as-fairness. Welfare-state capitalist regimes are *liberal* in the sense that they guarantee the formally equal basic liberties: and in that sense such regimes can be said to aim to realize *some* liberal conception of justice. But a conception of justice cannot stably realize justice-as-fairness unless it manifests its commitment to a principle of reciprocity in the institutions of the basic structure. Lacking any such commitment, capitalist regimes do not secure fair-valued political equality, their commitment to fair equality of opportunity

is feeble, and the aggregative, maximizing principle that regulates inequalities of wealth and income does not express reciprocity. Freeman rightly reminds us that, for Rawls, “The main problem of distributive justice is the choice of a social system” (*TJ* 242). Recently, a number of writers, including Martin O’Neill, Ben Jackson, John Tomasi, and Jeppe von Platz, have argued that Rawls was too quick to dismiss welfare-state capitalism. In particular, they (and others) argue that welfare-state capitalism need not exclude the institutional measures Rawls recited as possibly sufficient to achieve the fair value of equal political liberty and fair equality of opportunity. Freeman challenges this line of defense of capitalism. Although Freeman’s challenge is framed as a defense of property-owning democracy, what he says could equally well be said in defense of liberal democratic socialism: in fact, I will argue that the issues he raises tend to favor liberal democratic socialism rather than property-owning democracy —as will be apparent once the difference between these latter two ideal regime-types is carefully stated.

I

Preliminary: What Conceptions of Justice Might Capitalism Realize?

Freeman’s defense of property-owning democracy involves construing welfare-state capitalism as a regime that expresses a restricted-utilitarian conception of justice (*LDJ* 146). This conception protects the formally equal basic liberties, formal equality of opportunity, and a social minimum set to assure basic needs (*LDJ* 147). In place of the difference principle, Freeman’s restricted utilitarianism maximizes welfare, as welfare is understood in welfare economics. Why focus on comparing property-owning democracy with this “utilitarian welfare state”

(*ibid.*)? Freeman acknowledges that welfare-state capitalism might be defended as the expression of a non-utilitarian or other conception of (restricted) utilitarianism. He justifies going ahead on the plausible ground that, historically, many of the most influential advocates of the capitalist welfare state have been utilitarian welfare-economists. I agree that the exercise is instructive and worthwhile, and not to be dismissed as merely setting up a straw opponent for Rawls's preferred ideal regime-types. It must be noted, however, that non-welfarist conceptions of utilitarianism exist, which avoid certain key Rawlsian objections. A utilitarian might borrow the concept of primary goods, and restate the utilitarian principle as calling for maximizing a weighted average of holdings of primary goods. Freeman says, "Rawls seems to regard welfare-state capitalism, in its pure form, as embodying the 'aims and principles' characteristic of some form of utilitarianism" (*LDJ* 144). It is a short step from that observation to this: "To see capitalism as grounded in utilitarianism, or some form of welfarism that extolls economic efficiency, is not unreasonable" (*LDJ* 146). One can agree with this while wondering whether imputing utilitarianism to welfare-state capitalism presents it in its best light. Freeman adds,

Rawls's contrast between POD and WSC is *intended* to be a comparison of the institutional embodiments of two different kinds of philosophical conceptions of justice. POD and WSC may have many of the same elements, but there remains an important difference in the way these rights and benefits are interpreted and determined by the "aims and principles" implicit in the different conceptions of justice underlying these political and economic systems. (*ibid.*; my emphasis).

I disagree. I take Rawls to be primarily concerned with the question, "When a regime works in accordance with its ideal

institutional description, *which of the five regimes satisfy the two principles of justice?*” (JF 137; my emphasis).¹ I think this is likely what Rawls’s critics, O’Neill, et al., have thought, too, which is why it is pertinent for them to suggest that the two principles might be realized by an ideal-regime type by indirection, as though by the operation of an invisible hand.

Of course, if despite its other attractions, a certain ideal regime-type *X* proves, upon reflection, to be less apt to realize aspect *A* of the two principles than ideal regime-type *Y*, we reach a fork in the road. Should we conclude that regime-type *Y* ought to be favored over type *X*; or should we adjust our conception of justice by de-emphasizing aspect *A*? This back-and-forth is in fact how Rawls indicates we are to proceed to reach wide reflective equilibrium. To do this systematically, I suggest, instead, that welfare-state capitalism be understood as informed by a conception of justice we could call *justice-without-fair-value*. Justice-without-fair-value is exactly like justice-as-fairness, but without the first-principle guarantee of the fair value of the political liberties. A principle of responsibility governs the worth of the political liberties, in precisely the same way it does the worth of the other first-principle liberties. This is not an illiberal conception of justice—in fact, it closely resembles the position once defended by Ronald Dworkin (1987; cf. Dworkin 1996). Thus, capitalism in its welfare-state version need not be portrayed as welfarist or consumerist.

Other “aims and principles” could equally well be imputed to welfare-state capitalism. If the difference principle indeed expresses “reciprocity at its deepest level” (LDJ 148), as Freeman indicates, then why not give it full scope? Despite the historical

¹ Freeman says that Rawls wrote the *Restatement* “in the early 1990s” (LDJ 149). In fact, as early as 1989 the *Restatement* was circulating in photocopy in substantially the same form as it would appear when published in 2001.

kinship between welfare-state capitalism and utilitarianism, I suspect that the tenacity of capitalism as an ideology owes as much or more to its apparent capability of realizing the difference principle in its general form.² In its general form, the difference principle treats all primary goods as fungible. A lesser (formal) political liberty, or a more constrained liberty of conscience, for example, might be acceptable to a rational and reasonable chooser in the original position if in return for a greater overall package of primary goods. Freeman says “reciprocity is not a ‘guiding aim’” (*LDJ* 158) of welfare-state capitalism. The difference principle in its general form expresses reciprocity, does it not, at the deepest (*too deep*) level: why could it not be the kind of reciprocity welfare-state capitalism has as its aim?

Thus, I worry that Freeman may dwell overmuch on the tendencies of welfare-state capitalism *qua* institutional realization of restricted utility. The important issue is what parties committed to the two principles of justice-as-fairness would do at the constitutional stage of the four-stage sequence, where they find out the territory, culture, and other general facts about their society. Would the parties elect to continue a welfare-state capitalist regime that was already established? Were they to find that their society was on the brink of industrialization, would they ignore the risk that welfare-state capitalism’s insouciance about fair-valued political equality could lead to a condition of neo-feudalism? (Freeman brilliantly exposes libertarianism’s and laissez-faire capitalism’s affinities to feudalism in chapter two.) Clearly, parties whose choice was informed by restricted utility or the difference principle in its general form would be *pro tanto* likelier to choose capitalism in some form. The more pertinent question is whether

² See Reiff 2012.

parties committed to justice-as-fairness would find capitalism acceptable in any form at the constitutional stage.

II

Capitalism, Socialism and Property-owning Democracy: Meade, Rawls and Freeman

In the revised edition of *A Theory of Justice*, Rawls expressed his regret at not having carefully distinguished property-owning democracy (mentioned five times in the first edition, by Freeman's count) and capitalism (never named). We, now, might wish Rawls had said still more. Freeman says, "capitalism is not the only economic system that relies upon markets and private property in the means of production. An alternative will be discussed later (namely, property-owning democracy)" (*LDJ* 20). I think it is a misunderstanding of Rawls to regard property-owning democracy as *relying upon* private ownership of the means of production. (As for markets, both liberal democratic socialism and property-owning democracy feature them.) Rawls's stated view is that property-owning democracy *permits* private ownership of the means of production but he does not regard such ownership as enjoying the same dignity as the other first-principle liberties pertaining to property, such as the right to bodily integrity and the right to acquire ownership of residential property (*JF* 177-78). By contrast, socialism does not allow private ownership of the means of production. It is tempting—but confusing—to read the socialist stricture as amounting to an equal, individual right to participate in the governance of one's workplace.

Rawls credited James Meade with the term "property-owning democracy." Foreseeing that returns to capital would outpace overall growth, Meade believed that "traditional forms of

redistribution through the welfare state” were not enough to avoid a reversion to de facto feudalism. O’Neill explains:

Meade’s view was that attacking fundamental inequalities of wealth had therefore to involve an additional double-barrelled strategy, consisting in the creation of a range of private and public institutions and policies, which he brought under the headings of (i) a property-owning democracy and (ii) a socialist state (O’Neill 2017, 363).

O’Neill proposes to call what falls under these two headings forms of “capital predistribution.” They, together with redistributive policies, were contemplated by Meade as available as policy tools at the disposal of a democratic polity. As O’Neill explains, property-owning democracy and “the Socialist State” are complementary halves of Meade’s predistribution strategy.

Rawls’s view is different. Rawls insists upon a treating property-owning democracy and democratic socialism as *alternatives* in a way that Meade did not. Although these regime types share a common set of policy options and aims, they crucially differ in their treatment of the means of production. As Freeman observes, “In defining socialism institutionally, in terms of public ownership, Rawls differs from others who associate socialism with economic egalitarianism (G. A. Cohen, John Roemer, et al.)” (*LDJ* 141). The socialism that Rawls wants us to think about has a more precise content, which is defined with reference to these *means of production*. Property-owning democracy strives legislatively to right-size the proportion of the means of production in private hands, and to break up private concentrations. Socialism keeps the means of production in the hands of the public, all of them, all of the time.

What are “the means of production”? In company with many others, Rawls used this term loosely, but not so loosely that it

would encompass every tool or resource put to productive use. The capital assets deployed in petty production would not count among the means of production. What he meant – or can best be understood to have meant – was major infrastructure of the kind that cannot practically be parcelled out to each and all as personal property, in the way that, for example, everyone might own a set of hand tools (cf. Edmundson 2020). A socialist stance toward the means of production falls right out of a determination to regard society itself as a cooperative venture. In an initial situation, we would be aware that our joint endeavor will facilitate discoveries and inventions that will transform our productive lives, but will be wasted if treated as a commons, and which – though needed by all – cannot not be usefully distributed to each and all. Hobbes anticipated this: in *Leviathan* 78, he wrote of “things which cannot be enjoyed in common, nor divided.” Surely, if we are ready to regard “the distribution of native endowments as a common asset” (*JF* 124), we will similarly regard the means of production –with this vital difference: our native endowments are distributed to each of us, as individuals. Unlike native endowments, and unlike other primary goods, the means of production, by their very nature, are not capable of being held by each as her exclusive, still-usable parcel.

Overlooking the distinctiveness of the means of production in this sense can lead to trivializing the difference between property-owning democracy and liberal democratic socialism as ideal regime-types. For example, O’Neill writes:

Given that Rawls describes liberal socialism as involving “a property system establishing a widespread and a more or less even distribution of the means of production and natural resources” one may speculate that there would be, in effect, little real difference (other than in the specification of *formal* property relations) between a liberal socialist

regime and some variant of [property-owning democracy] (O'Neill and Williamson 2014, 76; citing *LHPP* 323).

This speculation is misguided. The thing about the means of production (properly understood) is that their ownership *cannot* be “widespread and more or less even” in the same way that, for example, the ownership of hand tools or personal computers can. Rawls made little effort to clarify what he meant by “the means of production,” but it would be uncharitable to portray him as having nothing more consequential in mind than a difference “in the specification of formal property relations.”

III

Assuming Fair Value of Political Liberty under Capitalism...

As Freeman agrees, Rawls would rightly have rejected the suggestion that the occasional enactment of campaign regulation by a welfare-state capitalist regime would suffice to satisfy the demands of stability. Rawls wrote, seemingly in anguish:

Historically one of the main defects of constitutional government has been the failure to insure the fair value of political liberty. *The necessary corrective steps have not been taken, indeed, they never seem to have been seriously entertained.* Disparities in the distribution of property and wealth that far exceed what is compatible with political equality have generally been tolerated by the legal system. Public resources have not been devoted to maintaining the institutions required for the fair value of political liberty (*TJ* 198-199, emphasis added).

When he says “never seem to have been seriously maintained” he is not guilty of overlooking the prevalence of campaign regulations in constitutional democracies, circa 1971. He is talking about the failure to take seriously the changes needed in the very structure of the political economy (see Thomas 2012, 115-20).

It is true that welfare-state capitalism is not committed in principle to *opposing* the institutional measures Rawls itemized as means of insulating the political process from the influence of those with greater wealth. It is also true that one might combine a principled hostility to Rawls’s fair-value guarantee with a principled advocacy of these insulation devices. Lastly, it must be admitted that a welfare-state capitalist regime might enact legislation that installs a firewall of insulation between the political process and unequal accumulation of wealth. These three concessions, taken together, appear to support the idea that a welfare-state capitalist regime might realize the two principles of justice as fairness.

Rawls was emphatic that this would not suffice. The key flaw is the unreasonableness of supposing that fair value could be guaranteed to the satisfaction of a reasonable chooser merely by appeal to the possibility of an insulation strategy coming to pass. Freeman makes the curious concession that “O’Neill correctly says that these are complicated issues of political sociology that philosophers cannot answer” (*LDJ* 144), and then details what seem to be good and sufficient grounds for Rawls’s position (*LDJ* 144-46). Nonetheless, it is worth exploring a Rawlsian defense that emphasizes fair equality of opportunity rather than fair value. Following Freeman’s suggestion, “let’s assume that there are forms of welfare-state capitalism that can effectively incorporate many of the institutional measures Rawls associates with property-owning democracy” (*LDJ* 146). Fighting with one hand tied behind his back, as it were, how might Rawls answer the criticism that capitalism hasn’t been given a fair hearing?

Without relying on the fair value of political liberties (or its implications), Freeman constructs a distinctive defense of Rawlsian anti-capitalism, involving several steps. The first is to construe welfare-state capitalism as incorporating (restricted) utilitarian “public aims and principles of design” (*LDJ* 146). I have already criticized this approach: it does not take welfare-state capitalism seriously as a candidate realizer of justice-as-fairness. The second step is to transpose Rawls’s “second fundamental comparison” between justice-as-fairness and restricted utility, as competitor conceptions of justice, to the comparison of property-owning democracy (as a realizer of justice-as-fairness) with welfare-state capitalism (as a realizer of restricted utility).

In the second fundamental comparison, which was introduced in the *Restatement*, the two conceptions of justice are compared with respect to three factors: their reciprocity, their stability, and their promotion of self-respect. The comparison is intended as a defense of the difference principle in its secondary position in Rawls’s second principle of justice: accordingly, the comparison is between the two principles and a mixed conception that differs only in substituting a principle of average utility for the difference principle, in the subordinate position in the second principle.

The second step of Freeman’s argument against capitalism is executed in section four of chapter four. Property-owning democracy rates above welfare-state capitalism on each of three scores: reciprocity, stability, and promotion of self-respect. Except as already noted, I have no quarrel with the set-up or the execution: in fact, I think a similar strategy reveals the superiority of liberal-democratic socialism to property-owning democracy (Edmundson 2017).

IV

Closing a Gap in the Argument Against Capitalism

In the remainder of these comments I will focus on a third step in Freeman's Rawlsian critique of capitalism. This is the step that focuses on fair equality of opportunity. The concept of fair equality of opportunity is, Rawls says, "not altogether clear," which turns out to be fortunate, in Freeman's view, because a broadened interpretation of it "is needed to fill a gap in Rawls's arguments for property-owning democracy" (*LDJ* 159). What, precisely, is this gap? Freeman explains,

the problem is this: we might conjecture the feasibility of a capitalist welfare state like Liberal Equality that enacts measures to promote to some degree fair value of the political liberties and fair equality of opportunity but without constraining inequalities of wealth. Because of wealth inequalities and incentives for the more advantaged, this capitalist welfare state is able to supply the least advantaged with income supplements and other welfare benefits that exceed the index of primary goods achievable within a property-owning democracy that provides the least advantaged with less income but a share of real capital and greater economic powers (*ibid.*).

The gap is, in short, that parties at the constitutional stage are free to prefer a social system, like welfare-state capitalism, that promises them less power in the workplace in exchange for greater wealth and income. And what is to fill the gap?

Rawls says there is no basic liberty for individuals to exercise control over means of production. So, unlike the rights of political agency, economic powers necessary for economic agency cannot be guaranteed by Rawls's first principle. *The only alternative* is to see

economic agency as part of the fair equality of opportunity principle (*ibid.*; my emphasis).

So, Freeman proposes a “friendly amendment” to Rawls. The amendment imports an idea of “economic agency” (*LDJ* 159) into the fair equality of opportunity component of the second principle. Once enriched in this way, trade-offs between economic agency and income are disallowed, according to the lexical priority of fair equality of opportunity over the difference principle. Freeman calls this the “democratic interpretation of Rawls’s fair equality of opportunity principle” (*LDJ* 160).

Even if workers might receive greater income in WSC and many prefer it to the combined index of primary goods that includes economic powers and positions of responsibility they would have in a POD, still the priority of fair equality of opportunity over the difference principle requires that they not alienate their fair opportunities to exercise economic powers and responsibilities. Like the rights and powers of political agency, free and equal citizens do not have a right to alienate the powers and responsibilities of economic agency (*ibid.*).

The democratic interpretation of fair equality of opportunity fits nicely with Freeman’s understanding of property-owning democracy. On Freeman’s account, a property-owning democracy not only widely distributes productive capital, “at the beginning of each period, so to speak” (*JF* 139), it also assures that citizens have an ownership share in the firms for which they work, and have a say in the running of their workplaces.

POD provides for both worker-managed firms and greater democracy within capitalist firms, it addresses Marx's concern for democracy in the workplace and in shaping the general course of the economy (*LDJ* 139; citing *JF* 177-78).

What Rawls says in the passage cited is this:

in a well-designed property owning democracy... while a right to property in productive assets is permitted, that right is not a basic right but subject to the requirement that, in existing conditions, it is the most effective way to meet the principles of justice.... Mill's idea of worker-managed firms is fully compatible with property-owning democracy (*JF* 177-78).

So, Rawls is pointing to options open in a property-owning democracy, rather than to essentials. Rawls also acknowledges that history has not been kind to Mill's optimism that worker-owned firms would supplant capitalism.

Since this has not happened, nor does it show many signs of doing so, the question arises whether Mill was wrong about what people prefer, or whether worker-managed firms have not had a fair chance to establish themselves.... certainly these questions call for careful examination. The long-run prospects of a just constitutional regime may depend upon them (*JF* 178-79).

Freeman also ekes out Rawls's remarks in another direction. Freeman says that a property-owning democracy "provides workers a share of productive capital in firms, as well" as a say in management (*LDJ* 151). This could mean some sort of legally

mandated reallocation of capital shares *à la* the (abortive) Swedish Meidner Plan. One might call Freeman's a "syndicalist interpretation of property-owning democracy." Because it has rather scant textual support in Rawls, it too has to be seen as a "friendly amendment." Where Rawls speaks of such things, it is often in contexts involving what he in one passage calls "associational socialism" (CP 277), as contrasted to property-owning democracy.

The two amendments go together well. If fair equality of opportunity assures inalienable powers of economic agency, then a property-owning democracy – or a liberal democratic socialism – that features not only share ownership but codetermination and workplace democracy can realize it, while welfare-state capitalism cannot.

Observations

I will make three points: One, there is an alternative answer to "the problem" that does not involve restricting the permissible forms of business association. It is socialism. Two, restricting the forms of business association hinders the "externalization function" of a political conception of justice, as Chiara Cordelli has argued with regard to private non-profits to which public functions have been devolved. Three, demoralization of the least-advantaged members of society is significantly less likely in a society in which the means of production are publicly held.

One. The fact that Rawls does not include a right of social ownership of the means of production in the first principle does not mean that at the constitutional stage there is no such right. At the constitutional stage, society's level of economic development is revealed to the parties. They then will, or will not, be confronted with the reality that there are important, non-distributable assets

that are practically necessary for full participation as a productive member of society, conceived as a fair cooperative. Hobbes thought the sovereign should let first possession or lottery determine “the entire right,” but Hobbes’s was a pre-industrial world, and the private power he was anxious about was military and religiously motivated, not economic. Rawls’s parties would not allow the means of production to be privately held or to be subject to legislative privatization, especially not in exchange for hoped-for efficiencies. Why would they chance it?

Two. Rawls systematically distinguished the institutions of the basic structure from associations formed within that structure. One reason to do so, as Cordelli has pointed out, is to respect the first-principle liberties in conditions of reasonable pluralism. She identifies an “externalization function” to be performed by political institutions

one of the fundamental roles of liberal political institutions is to preserve a condition of value pluralism by externalizing responsibilities that would otherwise prevent individuals and their associations from forming and pursuing their diverse sets of values and purposes (Cordelli 2019, 119).

This is her way of characterizing the division of labor Rawls intended to free private persons and associations “secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made” (*PL* 269). Freeman is fully on board with this, as evident in chapter seven, where he defends the primacy of the basic structure by appealing to pluralism and the division of moral labor. Ironically, Freeman’s democratic interpretation of fair equality of opportunity might significantly impair this externalization function.

Productive enterprises within a market economy are not all of a piece. Co-determination at the level of the firm and profit-sharing cannot be imposed across all firms in an economy without significantly curtailing the rights of both entrepreneurs and those who would like to work for them.³ As for those firms that stand upon the commanding heights of the economy, there will be additional reasons for control and revenue to reside in the public rather than the firm itself.

Three. One factor motivating Freeman's amendments is Waheed Hussain's (2012) concern that political activity is too episodic and scarce to school citizens' sense of justice and to secure stability "for the right reasons." A well-ordered society must somehow cultivate a morality of principle in a populace many of whose members will be immersed in moralities of association. Hussain therefore advocates a "democratic corporatist" rather than a "liberal market" interpretation of property-owning democracy. Freeman's syndicalist interpretation reflects this concern back upon the interpretation of fair equality of opportunity. This is all in the Rawlsian spirit: Rawls having endorsed the idea that the two principles might be fine tuned in light of lessons learned in the effort to work out how they might be institutionally realized.

My worry is that exercises of workplace citizenship might be equally too episodic and scarce to serve the educative function that needs to be done. I share Cordelli's thought that what is needed to realize justice-as-fairness is a basic structure that educates citizens by fulfilling an *expressive* function:

³ Freedom of occupational choice does not of course entail freedom to be free of licensure requirements, and in non-ideal conditions, such as chronic shortages and emergencies, further restrictions – even conscription – may be justly imposed. See Stanczyk 2012.

Political institutions and arrangements must be designed so as to not only satisfy obligations of reciprocity through a just distribution of benefits and burdens, but also to visibly and publicly express this egalitarian idea of reciprocity to all citizens (Cordelli 2019, 122).

The reasons that drive Hussain's democratic corporatist, and Freeman's syndicalist, interpretations of property-owning democracy are, I think, a fortiori compelling reasons to favor public ownership of the means of production. A property-owning democracy aspires to express reciprocity by visibly and publicly placing productive capital at the disposal of all. A successful liberal democratic socialist society does this too, and one more thing. The means of production, which cannot be distributed to each and all as exclusive parcels, must be held as the joint property of all. Public institutions, such as the UK's National Health Service, perform an expressive function that secures an important social basis of self-respect. If there is a self-respect deficit in capitalist societies (as indeed evidence shows to be the case) then public ownership of the means of production shows how to mitigate it without conscripting business firms, wholesale, into service as schoolrooms in democracy.

In conclusion, I welcome the syndicalist interpretation of property-owning democracy for a somewhat other reason than that for which Freeman proposes it. I welcome it for its potential to contribute to an answer to a different critique of Rawls, which is that his alternatives to capitalism must, in practice, endow a managerial class with disproportionate influence, political and economic. Working this out is a project for another day, however.

References

Cordelli, Chiara. 2019. “Privatization without profit?,” In *Privatization: Nomos LX*, ed. Jack Knight and Melissa Schwartzberg: 113-44. New York: New York University Press.

Dworkin, Ronald. 1987. “What is equality? Part IV: Political equality.” *University of San Francisco Law Review* 22: 1-30.

_____. 1996. “The Curse of American Politics.” *The New York Review of Books* (October 17): 19-24.

Edmundson, William A. 2017. *John Rawls: Reticent Socialist*. Cambridge: Cambridge University Press.

_____. 2020. “What are ‘the means of production?’” *The Journal of Political Philosophy*. DOI:10.1111/jopp.12211 (early view Dec. 23, 2019).

Freeman, Samuel. 2018. *Liberalism and Distributive Justice*. Oxford: Oxford University Press [cited as *LDJ*].

Hussain, Waheed. 2012. “Nurturing the sense of justice: The Rawlsian argument for democratic corporatism.” In *Property Owning Democracy: Rawls and Beyond*, ed. Martin O’Neill and Thad Williamson. Oxford: Wiley-Blackwell, 180-200.

O’Neill, Martin. 2017. “Survey article: Philosophy and public policy after Piketty.” *The Journal of Political Philosophy* 25 (3): 343-75.

Rawls, John. 1996. *Political Liberalism*, paperback ed. New York: Columbia University Press [cited as *PL*].

_____. 1999a. *A Theory of Justice*, revised ed. Cambridge MA: Harvard University Press [cited as *TJ*].

_____. 1999b. *Collected Papers*. Edited by Samuel Freeman-Cambridge, MA: Harvard University Press [cited as *CP*].

_____. 2001. *Justice as Fairness: A Restatement*. Edited by Erin Kelly. Cambridge MA: Belknap/Harvard University Press. [cited as *JF*].

Reiff, Mark R. 2012. “The Difference Principle, rising inequality, and supply-side economics: How Rawls got hijacked by the Right,” *Revue de Philosophie Economique* 13: 119-73.

Stanczyk, Lucas. 2012. “Productive justice,” *Philosophy & Public Affairs* 40 (2): 144-64.

Thomas, Alan. 2012. “Liberal republicanism and the idea of an egalitarian ethos.” In *Property Owning Democracy: Rawls and Beyond*. Edited by Martin O’Neill and Thad Williamson. Oxford: Wiley-Blackwell, 101-28.

SYMPOSIUM
LIBERALISM AND SOCIAL JUSTICE



FREEMAN ON
PROPERTY-OWNING DEMOCRACY

BY
ALAN THOMAS

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Freeman on Property-Owning Democracy

Alan Thomas

The papers in *Liberalism and Distributive Justice* usually begin from an interpretative question about Rawls; but that is rarely where they end up (Freeman 2018). The core of the book takes forward the Rawlsian project by seriously engaging with its aim: the development of a realistically utopian private property system that is not capitalist. In particular, Freeman has been at the forefront of a specific development from Rawls's work that takes its lead from *Justice as Fairness: A Re-Statement* (Rawls 2001). That is the issue of the specification of Rawlsian justice in terms of overall "social systems", comparable to Weberian ideal types. As Rawls put it in *A Theory of Justice*, "the main problem of distributive justice is the choice of a social system" (Rawls 1971, 242, quoted in Freeman 2018, 137). Given the extent of the secondary literature on Rawls the comparative neglect of this topic has been surprising. In this short paper my aims are two-fold: first, to mine the resources of Freeman's book to explain his deep influence on how we answer this question of our choice of a social system. Secondly, to draw

on his ideas to explain the distinctiveness of pre-distributive, as opposed to re-distributive, egalitarianism.

I

The Choice of a Social System

Rawls's solution to this choice took a disjunctive form: justice as reciprocal fairness is expressed either in the form of liberal market socialism or a property-owning democracy. (Rawls 2001; Thomas 2017, 2020a). However, Rawls believed that determining which of those choices is correct lies beyond the scope of the political philosopher. Working at her level of abstraction, she ought not to resolve the highly contested question of whether the major means of production ought to be publicly or privately owned or in any other way resolve "the property question." That is for individual societies to decide, at the legislative phase of Rawls's four stage sequence, in the light of their knowledge of their own society's traditions and history. Negatively, then, the political philosopher can tell us that *laissez-faire* and welfare state capitalism are unjust, as is command socialism. But no single option can be positively ruled in.¹

Paul Weithman has expressed scepticism as to how Rawls proceeds here: he notes that Rawls works in his typically "internal" way by examining candidate social systems from a relatively brief list (Weithman, 2013). Yet one item on the list stands out. We can point to historical precedents for *laissez-faire* or welfare state capitalisms or for command socialism. There is even some sketchy

¹ I argue that Rawls is mistaken and that only a property-owning democracy is expressive of justice as fairness in Thomas 2017. Chapter eight of that book also argues that, with a property-owning democracy in place, that which we ought to value in liberal market socialism will arise from the spontaneous free choice of citizens.

evidence for large-scale market socialist experiments. However, there seems to be no empirical backing for the existence of a property-owning democracy which is not “worked up” from historical examples. This seems problematic to Weithman, because it seems as though Rawls buys the disjunctive answer to his question cheaply: one disjunct is merely stipulated. It is hardly accidental that this disjunct realises justice as reciprocal fairness as it could not fail to do so.

I think Weithman’s point could actually be expanded to Rawls’s other disjunct: that which Rawls seems to have in mind when he discussed liberal market socialism was Mill’s conception. Mill proposed a society whose economy is dominated by large scale cooperatives of two kinds: producers’ and consumers’ cooperatives (Mill 1871) (This is, in turn, Mill’s interpretation of the utopian socialism of the Saint-Simonians.) The only historical exemplars we can point to here are examples like Tito’s Yugoslavia, where large-scale producer cooperatives were embedded in a command socialism. So here, too, the empirical backing for the historical feasibility of Rawls’ other disjunct is thin.

The best response, in my view, is openly to acknowledge Weithman’s point: Rawls’s aims are avowedly utopian. The only question is whether either disjunct realises a realistic utopia as Rawls understands that phrase. That which both of Rawls’s options have in common is sensitivity to the question of who controls capital (Thomas 2017, 2020a; Freeman 2018, 139) Taking his understanding of capitalism from Marx, Rawls assumes that a capitalist society is one in which a minority of citizens have monopoly (private) ownership of the major means of production. This monopoly allows them to dictate the terms on which others labour – or whether they work at all.

A property-owning democracy is, then, a non-capitalist society because every citizen is a capitalist: each has her own share of a

society's productive capital that is not in the hands of a factional minority. A liberal market socialist society achieves the same end via collective democratic control of a society's total capital stock. For example, in one sophisticated proposal, all capital is owned by the state and leased out to productive enterprises for a fee (Schweickart 2011).

Freeman has not, thus far, devoted much theoretical attention to liberal market socialism. He has, however, been a pioneer in our understanding of what a property-owning democracy would have to be. While the idea has recently received more attention, Freeman's contribution is distinctive in the depth of its understanding of how it is rooted in Rawls's commitment to "deep" reciprocity and also in how we might envisage the ideal being further articulated and expanded.

II

Three Interpretations of Property-Owning Democracy

In a brief exercise in intellectual cartography, the current map seems to me this: like Freeman, I take a property-owning democracy to be a specification of justice as reciprocal fairness. (Freeman, 2018, chapters three, four). It is one solution to the problem of identifying our choice of a social system. However, I differ from him in two respects: my proposal is constitutional, not legislative, and I think only a property-owning democracy specifies justice. The market socialist alternative, to remain liberal, can be implemented only after we have implemented a property-owning

democracy.² (It matters here, of course, that my aims are not interpretative and that I take myself to be a revisionist reader of Rawls).³

My position is, then, an ironic mirror image of that defended by William Edmundson in his recent book, *John Rawls: Reluctant Socialist* (Edmundson 2017) (Once again, Edmundson takes himself to be interpreting Rawls – to have established what Rawls’s position ought to have been had he drawn out all the implications of his commitments). Like Edmundson, I think the basic motivation for addressing the question of our choice of a social system is a concern with stability: whatever conception of justice we choose, it must prove itself to be robust in the face of that which Rawls called the “destabilising special attitudes” (Rawls, 2001). One specific guise of those attitudes is the will to dominate. I follow Edmundson, once again, in believing that a friendly revision to Rawls would have been to include what Edmundson calls the “fact of domination” in the circumstances of justice. This is a sociological fact – that which Rawls elsewhere calls a law and tendency of our social world – that political history tells us that in the competitive space of the political, those with financial, social and political advantage seek to leverage that power to pressurise the political process in their own interests. Critics of this line of thinking are sceptical that the historical and sociological evidence

² Thomas, [2017] chapter 8. I have since revised my view in one respect: I think I neglected the importance of Rawls’s claim that justice as fairness required full employment and also the state to act as the final guarantor of full employment. [Rawls, 1993, p. ivii] See Thomas [2020b]

³ I do not mean to imply that Freeman’s account of a property-owning democracy is not also significantly revisionary of Rawls’s version in some key respects; see, for example, Freeman 2018, 160-161. For an alternative approach to the same issue see Thomas 2020b.

is firm enough to justify this inclusion of the fact of domination in the circumstances of justice; I am drawn to the republican strand of Rawls's thinking because I think that it is – and here I follow Freeman who has expressed similar concerns (Freeman 2018, 144-5). But that is why I share Edmundson's belief that, when we guarantee the fair value of the political liberties, only a constitutional guarantee will prove sufficiently robust. This merely frames the ironic reversal of my own position compared to that of Edmundson's: he believes that a property-owning democracy exacerbates the socially divisive destabilising special attitudes.⁴ (In his view, it may be compatible with justice, if it is relegated to the sphere of petty production, while not being just itself.) By contrast, Edmundson's constitutional proposal is for state ownership of the major means of production – those “commanding heights” of the economy that produce goods anyone needs for a flourishing life and which create the opportunity for private rent seeking (Thomas, 2020a).

Edmundson's proposal is not, then, to disjoin liberal market socialism from a property-owning democracy. The former view, from his perspective, attaches too much importance to workplace democracy and his own version of liberal democratic socialism takes public ownership as its central commitment. I certainly have my doubts about Edmundson's proposal, but more important for current purposes is that his proposal to protect the fair value of the political liberties by placing egalitarian protections in the constitution of a just society is a commitment we share. This is where we both differ from Freeman (Thomas 2020a). But the bases of our disagreement are not the same: Edmundson is, like Freeman, attempting to answer the difficult question of what

⁴ Freeman, I think correctly, takes the opposite view to Edmundson – that an argument from stability is central to the case for a property-owning democracy (Freeman 2018, 152-4).

Rawls actually thought. I certainly detect some strain in Edmundson’s claim that Rawls ought to have been a socialist – however “reticent”.

III

Making Sense of Pre-Distribution

The first major divergence, then, between Rawlsian revisionists and Freeman is over the issue of constitutionalisation. Relatedly, there is further issue of the extent to which a property-owning democracy can be a distinctively predistributive form of egalitarianism. Freeman’s book is replete with examples of why Rawls’s conception of justice is pre-distributive and not re-distributive even if this is not an emphasis of his work. Here I draw his various remarks together to strengthen the case that justice as reciprocal fairness is a pre-distributive view.

Why does this issue matter? Because I have repeatedly claimed that the distinctiveness of Rawls’s proposal has been eroded even by sympathetic commentators (but not by Freeman) (Freeman 2018, 144-5)] This distinctiveness is undermined in two, related, ways. The first way is to claim that a property-owning democracy is, in practice, a hybrid social system: the institutions characteristic of welfare state capitalism with some ad hoc, asset based, extensions (O’Neill 2012, 2017, 2020). A sympathetic exponent of the view, such as Martin O’Neill, can hold this view in order to defend it, while a critic of the view, such as Kevin Vallier, understands the view this way in order to critique it (Vallier 2015).⁵

⁵ Vallier’s thought, simply, is that if the view is a hybrid then it contains all the interferences with freedom characteristic of welfare state capitalism plus the further interferences with freedom extended to assets (thereby interfering with

The mirror image of this view is that a property-owning democracy can only be wholly disjoined from welfare state capitalism: they can have nothing in common. So it becomes the starting gate egalitarianism of the Reagan/Thatcher revolution. Citizens receive “predistributed” capital to level the playing field, and to secure fair of equality of opportunity, but then free market outcomes fall where they may – there can be no further egalitarian complaints about the upshot of the distribution that results. (Schemmel 2015). This somewhat unflattering account of a property-owning democracy as a form of individualism also plays a role in Edmundson’s doubts about its capacity to contain the destabilising special attitudes (Edmundson 2017).

It is this second interpretation of property-owning democracy that is my primary focus here: I would like to draw on Freeman’s subtle discussion, and a complementary paper by Katrina Meshelski, to respond to it (Meshelski 2020).

Let me begin with Freeman’s account: given the Rousseauvian and Hegelian influences on Rawls, it is not surprising that after gaining insight into our concept of justice, we collectively face a practical task of creating a social world to which the full expression of our two moral powers can be “reconciled” (to use Rawls’s avowedly Hegelian language).⁶ Relating to each other in the light of an overall model conception of free and equal citizenship is both to draw on an idea that we find in our public political culture, and yet something we also jointly construct. To put it in Hegelian

the price signals that determine patterns of capital investment) (Vallier 2015). The republican component of my liberal-republican view argues, by contrast, that a just regime of law is freedom enabling and no restriction on freedom at all.

6

language, we re-make our social world so that reason finds a home in it.

At various points in this book Freeman draws out the consequences of this dimension of Rawls's proposals as a project of practical reason. It places substantive constraints on Rawls's principles: they must be tailored to a public role – and to an “educative” one – if this conception of justice is to entrench itself over time and become stable. The principles must be capable of engaging with our natural sentiments, so they are convergent with the class of “moderate moralities”, and able to function as a presupposition of an agent's more specific ethical projects.⁷ We can describe both of these functional constraints as “developmental”: part of the dynamic perspective in which the individual regulates her personal ethical projects, and the social context in which they are embedded, by justice.

Further, this orientation to practice explains how we can act in the light of a fiction: the central fiction is that involved in accepting the difference principle itself. The libertarian need not fear that the talents of the talented are going to be sequestered by the collective agency of society a whole. (The basic liberties principle offers reassurance that, if the metaphor of ownership has any traction here, is it the individual who owns her talents.) But to accept the difference principle is to treat the pool of talents across society as a whole as a collective asset, when they are literally not, such that any market entitlement traceable to talent must benefit the representative worst off person (Rawls 2001, 124; Freeman, 2018, pp. 148-149).

Most importantly for present purposes, this orientation to practice also explains why reciprocal justice is not merely allocative. Freeman has always emphasised the distinctive narrowness of

⁷ I take the phrase “moderate moralities” from Shelley Kagan (Kagan, 1989).

Rawls's conception of distributive justice. It is not an issue of how to allocate a productive surplus that is, as it were, a prior given. We are dealing here with constitutive rules for an activity: game constituting rules that determine whether there will be a productive surplus at all⁸. To play that role, Rawlsian "productive reciprocity" (Freeman 2018, 253; fn 38, 256) involves an active engagement in productive activity where each makes a (handicap weighted) productive contribution.⁹ Principles to regulate an activity must have an open-ended character: this is the procedural aspect of Rawls's view that seemed to exempt him from Hayek's strictures on "end state" conceptions of distributive justice. (But, as I will shortly explain, Hayek's endorsement is in one respect also misleading (Meshelski, 2019). All of this, I will argue, supplies backing for a robust distinction between Rawls's predistributive egalitarianism and the re-distributive form that he associates with welfare state capitalism. But it is to challenges to this distinction that I now turn.

⁸ This assumption plays an important role in rebutting Philippe van Parijs's claim that Rawls's preference for meaningful work is a Protestant moralistic principle that violates his avowed liberal neutrality (van Parijs 1995). Following Michael Schefczyk, I argue that the constitutive principle of an activity cannot also be a substantive principle with it (Schefczyk 2013, 207; Thomas 2017, 196). (The apposite analogy is Wittgenstein's remark about the role played in the "game" of measurement by the standard meter rule.) See also Thomas 2020/2021. The importance of the point is emphasised in Freeman 2018, 150.

⁹ Footnote 38, p. 256 notes that the phrase "economic reciprocity" is owed to Stuart White as, indeed is my use of the expression "handicap weighted." See, for example: "Each person is entitled to a share of the economic benefits of social cooperation conferring equal opportunity (or real freedom) in return for the performance of an equal handicap-weighted quantum of contributive activity" (White, 1997, 318).

IV

Scepticism about the Distinction

The distinction remains controversial: sceptics are unconvinced that a hard and fast line can be drawn between “pre-” and “re-” distribution. To them, this seems at best to be a relatively shallow distinction of degree as opposed to a distinction of kind. I will set out the main grounds for this scepticism towards the distinction before suggesting four lines of reply.

The first sceptical objection is that the most obvious reading of the prefixes “pre-“ and “re-“ are temporal, but that reading obviously has little to recommend it. Yet a temporal reading seems the interpretation most clearly implied in the original texts by Rawls. For example, it seems to figure in this justification for his interest in a property-owning democracy whose aim he describes as:

[t]o prevent a small part of society from controlling the economy and indirectly, political life as well.... Property owning democracy avoids this, not by the redistribution of income to those with less at the end of each period.... but rather by ensuring the widespread ownership of productive assets and human capital (that is, education and trained skills) at the beginning of each period, all of this against a background of fair equality of opportunity (Rawls 2001, 139).

Rawls here speaks of “periods” – so it looks as if the temporal reading is mandated. Unfortunately, that interpretation of the distinction could only yield a weak distinction of degree and not one of kind. This is because predistributing and redistributing are both continual processes – they both go on all the time with very short intervals — nanoseconds in the case of a financial transactions tax.

Taxes of estates and assets are on-going and continual as are the various tax and transfer schemes that make up redistributive policies. If these two processes are temporally intertwined, how can there be a distinction of kind here?

Furthermore, assets and income are clearly related: those with high incomes build up assets and returns on assets form part of income (loosely speaking) (Kerr, 2017). These two facts seem to point to a relatively shallow distinction of degree between pre- and re-distributive egalitarianism.

How might one respond? In four ways: the first is the most direct and closest to Rawls's own position. Justice as fair reciprocity is one, narrow (but stringent) conception of the concept of justice, but there are others. (This is a point that Freeman emphasises repeatedly in this book to address numerous of Rawls's putative critics.) Rawls uses his narrow conception for a specific purpose; but we can say at least that it is never a conception of justice as a form of redress. So, simply, tax and transfer policies that are grounded on the rationale of redressing inequalities – in a way characteristic of welfare state capitalism – do not fall under it. That may be true, but it is too direct a response and too closely tied to Rawls's reasons for rejecting welfare state capitalism. For more purchase on the sceptic's position I think further arguments would be welcome.

Thus a second framing of the distinction looks at Rawls contrast between his principles and the background conditions that enable them. The distinction between reasons and enablers has become familiar from Jonathan Dancy's pioneering work (Dancy 2004). We can explain pre-distributive egalitarians as primarily concerned with these background conditions and their on-going adjustment to maintain background fairness – as Freeman, once again, does so.

I think Dancy's distinction is helpful, as it explains why attention to what Rawls called "adjusted procedural justice" is not a concern with redistributive reasons. Some considerations, as Dancy explains, enable other considerations to be reasons without themselves being reasons. So, correctly interpreted, the idea is not that the pre-distributivist keeps her conception of justice on track by implicitly being committed to an on-going process of redistribution, but hidden in the "background". To adjust the background conditions for justice is to focus on enabling conditions, not reasons. What matters is not whether or not this process of adjustment is temporally continual or not, but whether there is still point to a contrast between the principles that form justice as fairness and the background against which they operate construed as a set of Dancyan "enablers".

Freeman's focus on how principles of justice must meet a publicity condition helps to reinforce this distinction between their justificatory role and the role of background adjustment to their enabling conditions. As he emphasises, Rawlsian principles are public, reflexive and commonly known so that they can act as a salient focal point for multiple agents seeking to co-ordinate their actions in a mutually assured way that secures reasonable expectations about the future. The correct conception of justice non-accidentally stabilizes social co-operation and the basis of expectations when it comes to future interactions between distinct agents by being commonly known.

This takes us immediately to a third defence of the distinction from Christopher Bertram:

Rawls has an idea of a feasible utopia, a well-ordered society, taking the form of a property-owning democracy in which distributive outcomes are programmed into the basic institutions via incentives attached to rules such that citizen, pursuing their own good within

those rules, are led to bring about those outcomes ... the system as a whole is designed such that the invisible hand brings about just (or at least tolerably just) outcomes. A Rawlsian feasible utopia therefore satisfies someone like Hayek's understanding of the rule of law: the government isn't constantly intervening, trying to realise some antecedently decided upon distributive pattern; rather the preferred distributive pattern emerges automatically from the normal operation of the system. (Bertram 2012, quoted also in Thomas 2017, 409, fn. 12).

Yet, at this point, the mention of an "invisible hand" – and Hayek – begin to raise a couple of red flags. This defence of a distinction between predistribution and redistribution seems to reinforce Schemmel's interpretation of the former as concerned purely with a "starting gate" of equal basic liberties, and fair equality of opportunity, and not with the upshot of market activity. What is it about Rawls's view that appealed to Hayek – and was his endorsement based on the correct understanding of Rawls?

The appeal of Rawls's view to Hayek can be explained as follows: the latter's extended polemic against the "mirage of social justice" (the title of volume 2 of *Law, Legislation and Liberty*) specifically exempts Rawls from its scope. Hayek singles out a sentence from Rawls's "Constitutional Liberty and the Concept of Justice" (*Nomos*, IV, 1963): "It is the system of institutions that has to be judged and judged from a general point of view". [Hayek 2013, 335, fn. 44) Rawls's sentence is followed by:

[t]he principles of justice define the crucial constraints which institutions and joint activities must satisfy if persons engaging in them are to have no complaints against them. If these constraints are satisfied, the resulting distribution, whatever it is, may be accepted as just (or at least not unjust) (Rawls 1963).

Hayek comments approvingly: “This is more or less what I have been trying to argue in this chapter”. This seems to be a convergence between Hayek’s claim and Rawls’s claim that in a society well ordered by justice, with “background justice” in place – “the distribution of wealth that results is just whatever it is”. (Rawls 1971, 249, emphasis added). Yet, in an insightful recent paper, Kristina Meshelski points out that this superficial alignment between the two views is a misunderstanding on Hayek’s part. (Meshelski, 2019) (Good news, then, for the predistributionist.).

She points out that, to understand Rawls, we need to attend to a pair of distinctions: Rawls’s ideal of pure procedural justice contrasts both with perfect procedural justice and imperfect procedural justice (Meshelski 2019). As an example of perfect procedural justice, consider two parties who must fairly divide up a cake. We implement the rule: first cuts, the second chooses. As Rawls points out, we know what a fair outcome would look like – strict equal division. Derivatively, we can assess the procedures that lead up to that fair outcome: their value is instrumental to the outcome.

By contrast, an example of imperfect procedural justice is our system of criminal trials where we have two independent vectors of assessment: both outcomes and procedures can be held to a standard of fairness. We want to prosecute and convict all and only guilty people. But that standard cannot be met, so we have two aims: to put in place a fair procedure and to bring about a fair outcome (if we can).

Meshelski, like Freeman, emphasises that it is because Rawls’s conception of justice is non-allocative that it is correctly to be modelled as a case of pure procedural justice (Meshelski 2019, 344) We do not have a group of people who have come together to allocate a pre-existing quantum of goods: it is by deciding to enter into this set of mutually productive relations that we create the

reasonable expectations that the benefits and burdens of social cooperation will be shared between us on reasonable terms that all accept:

[I]t seems as if Rawls is saying that we do not know independently what a fair procedure would be, so we simply apply this [procedure], and then accept the results whatever they are. (Meshelski 2019, 345)

But Meshelski persuasively argues that this appearance is incorrect (this error lies behind Hayek's endorsement of Rawls). It is only one contrast: pure procedural justice would here function as the opposite of perfect procedural justice. But this makes it too like imperfect procedural justice: it would be unclear, on this reading, why Rawls is operating with two contrasts, not one.

In perfect procedural justice (cutting the cake) we begin with the independently specified just outcome; fair procedures are those that bring that about. Suppose now pure procedural justice is interpreted as: put in place the fair procedure and you have to accept whatever it produces as fair. That now looks too close to imperfect procedural justice (the criminal trial): both process and product are fair. (Commit yourself to the process and you have to accept the product: both are fair.) Meshelski thinks we only interpret Rawls's pure procedural justice correctly, and respect its distinctiveness, when we note that "both the justice of the outcome and the justice of the procedure are intertwined" (Meshelski 2019, 345). (If it did not invite confusion with the term 'reciprocity', you might characterise their value as 'reciprocal').

In drawing out the consequences of this interpretation, it is striking how similar Meshelki's interpretation of Rawls fits Freeman's account of how the operationalisation of a model conception of free and equal citizenship via our collective agency

both secures mutual recognition of our status, and derivatively determines a fair distribution. We must engage in the productive activity to determine whether the outcome is just. But we need both dimensions of appraisal: the process is not instrumentally valued as a way of getting to the outcome; nor do we intrinsically value both process and product. We need to play the game to produce its upshot: we implement an ideal of free and equal citizenship to produce an outcome justifiable to each one of us engaged in the collective project. So neither the process, nor the product, has value in itself without consideration of the (reciprocal) value of its complement.

In creating a republic of equals we engage in the practical task of securing for each, in a compossible way, the status of free and equal citizenship. That produces a material distribution, but the point of the distribution is to secure this mutual standing, not the distribution. (That is, as Meshelski points out, exactly what the relational egalitarian should say.) The aim is to distribute the material basis of each citizen's self-respect, where "the social basis of self-respect is a primary justification for POD (property-owning democracy) over WSC (welfare state capitalism)" (Freeman 2018, 155).

The determination of an individual's fair share requires nothing less than an appraisal of the system as a whole:

[O]ne's 'rightful' share can only be considered in the context of a particular system of production. Within such a system, people are justified in expecting to get what the system entitled them to, but that system is no better than its outcome... Pure procedural justice requires that economic systems and distributions are evaluated as a whole. Rather than taking pure procedural justice to require that we must consider the result of the procedure just whatever it is, we should understand this as a strict requirement on both procedures

and outcomes such that any injustice in either will taint the other. (Meshelski, 2019, p. 346, emphasis added).

Meshelski's aim, which I believe she achieves, is to spare Rawls's embarrassment at having been endorsed by Hayek. Hayek's proceduralism is not Rawls's; Hayek values the free market for its own sake, and once you are committed to its procedures no further complaint can be entertained about its outcomes – you have to follow the procedures wherever they take you. (In that respect it resembles Nozick's "Ideal Historical Process View"). (Rawls 2001, 52-55).

But in Rawlsian contractualism, there is no normative endorsement of market processes for their own sake, and reasonable complaints can be entered if a market process produces an unfair outcome. If this is true then we can address Schemmel's (and Edmundson's) concern that the property-owning democrat merely endorses starting gate principles. The outcomes of the free market are not endorsed "come what may". Instead, adjusted background procedural justice reflects this two-way, reciprocal, interdependence of process and product:

The role of the institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and adjusted, an initially just social process will cease to be just, however fair and free particular transactions may look when viewed by themselves. (Rawls 1993, 266).

I take these three rejoinders to culminate in the final defense of a robust redistributive versus re-distributive distinction: that this is wholly a question of how we model agency on a market.

It is not, in my view, a temporal distinction – except coincidentally. The question is this: how do we model what agents bring to the market? The predistributivist argues that if we are developing a conception of a fair market, then we need to focus on the equalisation of the bargaining power of the agents represented in it. “Pre” here means: prior to market transactions where we are not restricted to temporal priority. This is a distinction in the way in which we model investment, or endowments, in agents that they bring to the transactions that they enter into with other agents. We are interested solely on those forms of market power that we can track through from these endowments.

The re-distributionist will object that this is merely evasive: an economy is a dynamic system. I have, following Freeman, emphasised that the operationalisation of an ideal of free and equal citizenship is a practical project. How can these processes avoid being embedded in time? This objection rests on a misunderstanding: the pre-distributionist models agency on a market so that it will result in a stable equilibrium. But not any equilibrium – that is Freeman’s and Meshelski’s insight – reasonable complaints can be made about unfair outcomes. However, the model itself contains no redistributive elements – this depends on the Dancyan distinction between the implementation of the principles and adjustments to the background conditions that enable them.

I think this focus on initial endowments allows one to address Martin O’Neill’s scepticism about the depth of the pre- versus redistributive distinction in the paper to which I have adverted and to which he has returned in more recent work (O’Neill 2017, 2020) O’Neill points out that any predistributive change to the market power of agents will have further effects that are, *de facto*, redistributive: examples might be expanding the power of trade

unions or introducing a minimum wage. An existing actor on the market (a trade union) becomes more powerful, or more agents are attracted on to the market by the elimination of poverty traps (in the minimum wage case). All of this is, I think, true; but the predistributivist does not have to deny any of it.

The predistributivist is specifically focused on those agency effects that depend on initial endowments. “Initial” endowments sounds as though it introduces temporality again, but as we are simply modelling agency on the market it need not carry that implication. Therefore we can draw a more fine-grained distinction than O’Neill’s: the predistributivist does not focus on all changes in the market power of agents or, for that matter, expansions or contractions in either the number of agents or the scope of the market. His or her focus is on enhancing the power of agency by modelling initial endowments prior to transactions with other agents – again, not limited to “temporally prior”. The aim is a stable, just and efficient equilibrium that has no re-distributive components. That which O’Neill treats as axioms, the predistributionist treats as theorems. Those engaged in what van Parijs memorably calls “social justice guided constitutional engineering” can draw a distinction between the intended consequences of their engineered project and further reasonably foreseeable effects (van Parijs 2011, 38, fn. 19).

Conclusion

Throughout this book, time after time Freeman engages with Rawls’s critics by pointing out that they are simply engaged in different projects wholly orthogonal to Rawls’s concerns. Whatever their independent merits, these critics equivocate between the different conceptions of justice that Rawls distinguishes. Freeman isolates Rawls’s core concern with justice

as “deep reciprocity” and it is in the specification of that conception of justice in a fully specified system that we can, I have argued, wholly dispense with re-distribution. The argument requires further defence and development but any such development will, as always, be indebted to the clarity and originality of Freeman’s pioneering contribution to this debate.¹⁰

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References

Bertram, Christopher. 2012. “The Problem of Rawlsian Transition,” Crooked Timber blog, August 7th. URL: <http://crookedtimber.org/2012/08/07/the-problem-of-rawlsian-transition/>

Dancy, Jonathan. 2014. *Ethics Without Principles*. Oxford: Oxford University Press.

DiQuattro, Arthur. 1983. “Rawls and Left Criticism,” *Political Theory* 11 (1), 53-78.

¹⁰ I am grateful to have this opportunity to express my appreciation for Samuel Freeman’s work, which has a deep influence on my own, and for his personal kindness and encouragement. For comments on some of the material in this chapter I am grateful to Bill Edmundson, Kristina Meshelski, and Martin O’Neill.

Edmundson, William. 2017. *John Rawls: Reticent Socialist*. New York: Cambridge University Press.

Freeman, Samuel. 2018. *Liberalism and Distributive Justice*. Oxford: Oxford University Press.

Hayek, Friedrich. 2013. *Law, Legislation and Liberty*, London: Routledge.

Kerr, Gavin. 2017. *The Property-Owning Democracy*, London: Routledge.

Meshelski, Kristina. 2019. “Rawls’s Socialism and Pure Procedural Justice,” *Ethical Perspectives*, June Issue, 343–347. URL: http://ethical-perspectives.be/page.php?FILE=ep_detail&ID=295&TID=2560

Mill, John Stuart. 2008. *Principles of Political Economy and Chapters on Socialism* (1871). Edited by John Riley. Oxford: Oxford University Press.

O’Neill, Martin & Williamson, Thad [2012] *Property-Owning Democracy: Rawls and Beyond*, Malden (MA): Wiley-Blackwell.

O’Neill, Martin. 2012. “Free (and Fair) Markets Without Capitalism: Political Values, Principles of Justice and Property-Owning Democracy,” in O’Neill and Williamson 2012

O’Neill, Martin. 2017. “Predistribution: the Very Idea,” seminar paper.

_____. 2020. “Power, Predistribution and Social Justice,” *Philosophy* 95 (1), 63-91.

Rawls, John. 1963. “Constitutional Liberty and the Concept of Justice,” in Carl J. Friedrich & John W. Chapman (eds.), *Nomos VI: Justice, Yearbook of the American Society for Political and Legal Philosophy*. New York: Atherton Press, 98-125.

_____. 1971 (2nd edition: 1999). *A Theory of Justice*, Cambridge (MA): Harvard University Press.

_____. 1993. *Political Liberalism*, New York: Columbia University Press.

_____. 1999. *The Law of Peoples*. Cambridge (MA): Harvard University Press.

_____. 2001. *Justice as Fairness: a Restatement*. Cambridge (MA): Harvard University Press.

Schemmel, Christian. 2015. “How (Not) to Criticise the Welfare State,” *Journal of Applied Philosophy* 32 (4), 393-409.

Schefczyk, Michael. 2013. “Background Justice Over Time: Property-Owning Democracy versus a Realistically Utopian Welfare State,” *Analyse & Kritik* 35 (1): 193-212.

Schweickart, David. 2011. *After Capitalism*. Second edition (1st edition 2002), Lanham (Maryland): Rowman & Littlefield.

Thomas, Alan. 2017. *Republic of Equals: Predistribution and Property-Owning Democracy*, Oxford: Oxford University Press.

_____. 2019. “Property-Owning Democracy, Rentier Capitalism, and Minsky’s Realistic Utopianism,” seminar presentation, Hamilton University.

_____. 2020a. “Rawls on Economic Liberty and the Choice of ‘Systems of Social Cooperation’,” in Sarah Roberts-Cady, & Jon Mandle (eds.) *Rawls and his Critics*. Oxford: Oxford University Press.

_____. 2020b. “Market Socialism: Macro-, Meso- and Micro-Perspectives,” seminar presentation, University of Frankfurt.

_____. 2020/21. “Full Employment, Unconditional Basic Income and the Keynesian Critique of Rentier Capitalism,” forthcoming, *Basic Income Studies*.

Vallier, Kevin. 2015. “A Moral and Economic Critique of the New Property-Owning Democrats: On behalf of a Rawlsian Welfare State,” *Philosophical Studies* 172 (2), 283-304.

van Parijs, Philippe. 1995. *Real Freedom for All: What, If Anything, Can Justify Capitalism?*, Oxford: Oxford University Press.

_____. 2011. *Just Democracy: the Rawls-Machiavelli Project*. Colchester: ECPR Press.

Weithman, Paul. 2013. *Review of O’Neill, M & Williamson, T, Property-Owning Democracy: Rawls and Beyond?*, *Notre Dame Philosophical Reviews*, 7th August. URL: <https://ndpr.nd.edu/news/property-owning-democracy-rawls-and-beyond/>

White, Stuart. 1997. “Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income,” *Political Studies* 45 (2), 312-326.

SYMPOSIUM
LIBERALISM AND SOCIAL JUSTICE



THE RAWLSIAN MIRROR OF JUSTICE

BY
JESSICA FLANIGAN

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The Rawlsian Mirror of Justice

Jessica Flanigan

Libertarians (like me) generally disagree with orthodox Rawlsians (like Samuel Freeman) about whether Rawlsian principles of distributive justice are compatible with libertarianism.¹ In this essay, I set out to explain why. In section 1, I describe the problem, which is essentially that libertarians think the Rawlsian framework does not rule out anti-statist, capitalist, and broadly libertarian approaches to distributive justice and orthodox Rawlsians think that it does. I propose that this problem arises because the Rawlsian framework is underspecified in two ways. First, the Rawlsian framework has a lot of moving parts, so people with different pre-theoretical intuitions can use Rawls's theory, without error, to arrive at very different conclusions. I make this point in section 2. Second, orthodox Rawlsians advance justice as fairness at an intermediate level of idealization. In section 3, I argue that pitching the theory at this level inherits many of the problems with

¹ I'm using the term libertarian to refer to libertarians but also people who are classical liberals, and anarchists. I realize these terms are imperfect. Basically, I'm referring to political philosophers who are especially pro-market and anti-state. This term contrasts with what I'm calling Orthodox Rawlsians, who are comparatively less friendly to markets and more statist.

a non-ideal approach that addresses specific problems with the status quo as well as the problems with a purely ideal approach that addresses the motivating ideals and values. This approach also obscures more than it illuminates to the extent that it is often unclear whether arguments at this level of analysis are justified on principled or pragmatic grounds.

Together, these two kinds of under-specification result in a theory that is indeterminate between competing conceptions of distributive justice. Since the theory cannot specify which conception of distributive justice is preferable, then proponents of competing conceptions must either defend a more determinate interpretation of the theory or defend their conception of distributive justice on the grounds that do not rely on Rawlsian premises. In section 4, I argue that proponents of competing conceptions of distributive justice should defend their views without reference to the Rawlsian framework. I favor this approach because attempts at defending more determinate interpretations of the Rawlsian theory shift the terms of debate from a discussion about distributive justice to a discussion about Rawlsian exegesis and interpretation. But exegetical disputes often reflect substantive disagreements about what distributive justice requires, rather than the other way around. Since Rawlsian interpretation supervenes on underlying disagreements about distributive justice, Rawlsian scholars who disagree about Rawlsian distributive justice are more likely to identify the crux of their disagreement by talking about distributive justice than by talking about Rawls.

It is for these reasons that I view Rawlsian distributive justice as a mirror. When libertarians look at the framework, they can see their own values staring back at them. Liberal egalitarians take a look and assert that the picture they see is quite different. Both sides report what they see in the mirror without error. Yet, it would

be an error to suggest that the image in the mirror is fixed. And it is an even greater mistake to think that the image in the mirror can show us anything more than the world that it reflects.

I

The Disagreement

In *Liberalism and Distributive Justice*, Samuel Freeman situates the disagreement between libertarians and liberal egalitarians as primarily a disagreement about three things – the value of equality, the status of economic freedom, and the legitimacy of public power.² Yet most libertarians, classical liberals, and anarchists are as committed to equality as Rawlsians (if not more so), but they believe in a different interpretation of what equality requires. Libertarians reply that the same reasons for the non-basic status of economic freedom would also weigh against the basic status of core liberal freedoms, such as freedom of speech and association.³ In response to Freeman’s concerns about private power, libertarians reply that the reasons Freeman gives for the illegitimacy of private law enforcement weigh with equal force against public power as it operates in most contexts.⁴

These debates are well-worn within the libertarian/orthodox Rawlsian egalitarian discourse. I am not the first to point out that

² By this I mean that Freeman argues against libertarianism, or a more general laissez-faire economic approach on the grounds that it does not account for distributional equality (Freeman 2018, 180-184) that it recognizes economic freedom as a basic liberty (*ibid.*, 170), and that it denies the legitimacy of public exercises of power while viewing private contracts as presumptively legitimate (*ibid.* 62-89).

³ Cf. Flanigan 2018.

⁴ Cf. Freiman 2017.

a great deal of the Rawlsian architecture does not necessarily rule out libertarianism, despite the claims of most orthodox Rawlsians. Tomasi's argument that economic liberties should be considered basic liberties is perhaps the most influential entry in this genre. Tomasi argues that economic liberties, like other basic liberties, are important for the development of citizens' moral powers. The moral powers refer to the capacity for citizens to develop and pursue a conception of the good and to recognize others' entitlements to do the same.⁵ Jason Brennan argues that, empirically, societies with high levels of economic freedom also seem to promote Rawlsian aims better than societies that restrict economic freedom.⁶ In policy circles, many libertarians make the case capitalism is generally to the benefit of the least advantaged relative to other economic systems, and that restrictions on economic freedom are counter-productive.⁷ Chris Freiman argues that Rawlsians should either be more skeptical of political liberty or more open to economic freedom because, in non-ideal contexts, both fail to promote justice for similar reasons.⁸ Loren Lomaski re-imagines to the Rawlsian framework to show that it could plausibly support fairly Nozickian conclusions.⁹ And I've argued elsewhere that orthodox Rawlsians should uphold seemingly illiberal unconscionable for egalitarian reasons—to avoid black markets and governmental paternalism.¹⁰

Whatever one thinks of the merits of these arguments, they are clearly granting the premises of Rawlsian liberalism. So why do proponents Rawlsian accounts of distributive justice, like Freeman,

⁵ Cf. Tomasi 2013.

⁶ Cf. Brennan 2012.

⁷ See e.g. humanprogress.org, which describes the benefits of economic liberalism.

⁸ Cf. Freiman 2017.

⁹ Cf. Lomasky 2005.

¹⁰ Cf. Flanigan 2017.

persist in rejecting libertarianism as an admissible theory of justice? And why have libertarians, like me, failed to see why the Rawlsian account of distributive justice rules out their views? The answer to both questions is that the Rawlsian framework is under-specified and intractable, despite Rawls and Rawlsian's considerable efforts at clarifying, defining, and defending the view. Actually, the fact that clarifying, defining, and defending the view has occupied so much of the twentieth, and now twenty-first-century political philosophy is further evidence of the under-specification and intractability of the framework.

II

Extensional Adequacy, Parsimony, and Specification

Justice as fairness, like all philosophical models of justice, is a model.¹¹ Models make it easier to understand complex processes by representing the world in a simpler way. For example, models in science and social science help people understand why things happen the way they do, or they predict what might happen under certain conditions.¹² In philosophy, a good model can help people

¹¹ Rawls 1971, 52.

¹² For example, good separation-of-powers models are similar to the governmental institutions they represent. They include the most relevant participants in policymaking but not all stakeholders or influencers. They represent participants' preferences over policy outcomes as convex preferences for an ideal point on a scale of possible policies, even though such scales rarely represent any actual policy, and participants' preferences over alternatives may not be symmetrical or convex. They describe the rules that participants must follow to pass policy but fail to capture informal social norms. Yet even though these models do not include all the information about policymaking that could be relevant, they are very informative at predicting policy outcomes and

understand how concepts hang together and how different views have different tradeoffs.¹³ As Williamson writes, models are especially helpful in branches of philosophy that deal with “the human world in all its complexity and mess,” where we are unlikely to discover exceptionless general principles but where we can still learn about underlying human phenomena by developing better models.¹⁴ Since political philosophy is exceptionally focused on the human world in all its complexity, model building is an especially promising approach for political philosophers. Rawls, who was very influenced by economic modeling, models justice through the mechanism of the original position.¹⁵

Principles of good modeling provide several methodological desiderata for political philosophers who are interested in building models to discover the truth about justice.¹⁶ For our purposes, let’s focus on three—extensional adequacy, parsimony, and specification. Consider first extensional adequacy or intuitive plausibility. Intuitions play a central role in ethical theorizing.¹⁷ Some philosophers suggest that people cannot avoid using intuitions about cases when answering questions about

understanding why public officials make the choices they do. Cf. Krehbiel 1998; Cameron 2000.

¹³ Cf. Sellars 1963.

¹⁴ Cf. Williamson forthcoming.

¹⁵ Cf. Forrester 2019, Wolff 2015.

¹⁶ For a more comprehensive discussion of theoretical virtues in explanatory models, see Schindler 2018.

¹⁷ For example, Rawls’s influential method of reflective equilibrium is generally applied in a way that gives a great deal of weight to whether a premise of an argument or its conclusion is intuitively plausible. I discuss this method in more detail in section 4.

ethics.¹⁸ According to Rawls, intuitions that represent earnest and stable *considered judgments* are of central importance when evaluating a theory of justice.¹⁹ If a coherent theory, such as utilitarianism, clashes with people’s case-based intuitions about what justice requires, Rawls views this class of intuitions as a reason to reject the theory, despite its other theoretical virtues.²⁰

A model of justice is extensionally adequate if it brings people’s theoretical intuitions into coherence with their specific intuitions about how just distribution would look. Rawls claims his model of justice as fairness is “a better match with our considered judgments on reflection” than competing models.²¹ He then writes, “Thus, justice as fairness moves us closer to the philosophical ideal; it does not, of course, achieve it” (Rawls 1971, 50). After all, Rawls acknowledges, it is unclear whether reflective equilibrium converges on a unique answer. “It would be useless, however, to speculate about these matters,” Rawls writes, going on to say that if nothing else “if we should be able to characterize one (educated) person’s sense of justice, we should have a good beginning toward a theory of justice” in the same way that understanding one person’s sense of grammar is likely to reveal the general structure of a language (*ibid.*).

Another desideratum for models is parsimony. Parsimonious models are more useful because it is easier to see how the model

¹⁸ See, e.g., Kagan 2001, Harman 2014. Other philosophers question whether there is a single thing that we could call ‘intuitions,’ and if so, if they can be considered as evidence in conceptual analysis or moral theorizing.

¹⁹ For a further discussion of the distinction (if any) between intuitions and considered judgments see Daniels 2003.

²⁰ Freeman 2007, 33. Cf. Rawls 1971, 47-53

²¹ For Rawls, these “traditional doctrines” were utilitarianism and what he called perfectionism. Rawls 1971, 123.

generates predictions, explanations, or justifications and to identify points of disagreement. And as Williamson writes,

the more adjustable parts a model has, the more opportunities it offers the model-builder to rig the results, to gerrymander the model by setting parameters and arranging structure in *ad hoc* ways to fit preconceived prejudices. Simplicity, elegance, symmetry, naturalness, and similar virtues are indications that the results have not been so rigged. Such virtues may thus ease us into making unexpected discoveries and alert us to our errors.²²

The temptation to rig the results is strong in political philosophy, where people have very strong normative intuitions about justice, and there is reason to suspect that those intuitions may be unreliable, driven by identitarian or partisan biases.²³ A model of justice is parsimonious if it is simple and precise. A model of justice is simple if it does not contain so many parameters that it becomes unclear which considerations explain the models' implications about a just distribution of resources. A model of justice is precise if each parameter is described in a way that is clear and observable. For example, anyone adapting or applying the model should be able to easily know what each parameter entails and what it would mean for that parameter to change.

The temptation to rig the results is *even stronger* in political philosophy where people evaluate theories partly based on whether they get the "right" results. For this reason, the value of parsimony weighs against the value of extensional adequacy. More parsimonious models present fewer opportunities for the theorist to deliver her preferred conclusions about particular cases. A very parsimonious model is more likely to deliver results that are

²² Cf. Williamson, forthcoming.

²³ Cf. Ivengar and Westwood 2015.

extensionally inadequate because it is unlikely to offer many opportunities for adjustment and accommodation to people's intuitions. In contrast, a perfectly extensionally adequate model would simply be a report of the modeler's observations and intuitions, and it would not have independent explanatory or predictive power.

A third virtue is specification. A model is under-specified if it does not generate a determinate, specific outcome. A model of distributive justice is under-specified if people can use it to support a very broad range of distributive principles. On the face of it, Rawls's theory doesn't appear under-specified because the theory supports two fairly explicit principles, and Rawls defends a specific interpretation of those principles. Yet the same theory, in other hands, has deployed Rawls's two principles to support greatly divergent principles. If the purpose of a theory of distributive justice is to represent or explain the conditions when some distribution of resources is just, then the model is under-specified if it marks out a range of conditions that could be just, even if Rawls and Rawlsians don't see it that way. Under-specification for models of distributive justice is especially objectionable if it marks out conditions that are inconsistent with each other. Sometimes, libertarians argue that their interpretation of justice as fairness is entirely with the standard account (e.g., when they argue that, empirically, libertarian policies are the best route to Rawlsian justice).

If a model is under-specified, it may seem more likely to be extensionally adequate to the extent that people can adapt it to fit with their considered judgments. But if a model is under-specified, it is extensionally inadequate in a different sense—when people disagree about which adaptation or interpretation of the model is the correct one. In these cases, the model itself cannot adjudicate these disputes because people could deploy the model and get

different results without misinterpreting the model in any way.²⁴ And then, if people must appeal to other values to defend the version of the model that yields their favored specification, the model is less informative and, therefore, less functional.

III

Moving Parts

Justice as fairness has a lot of moving parts. Rawls's view of reflective equilibrium allows 'extensional adequacy' to outweigh theoretical parsimony.²⁵ Justice as fairness is not parsimonious. So Rawlsians can pull the levers and turn the gears of the theory at many different points, which creates problems of specification. For this reason, the model can support a range of different conclusions, which reflect the different dispositions of the people who deploy it. This feature of Rawls's model makes it difficult to make progress in debates about distributive justice because theorists who take on the theory from different starting points can use the same Rawlsian premises to deliver conclusions from democratic socialism to market democracy.

²⁴ Rawls makes a similar point, not about justice as fairness, but about metaphysical views of the self, epistemology, and scientific knowledge. As I am using the term, Rawls thought these theories were underspecified in that they did not mark out a specific moral theory or conception of justice as the right one. For example, against Hare, Rawls argued that a conceptual analysis of moral terms could not itself justify utilitarianism on the grounds that moral terms contain certain formal properties. My claim is that Rawls's view is underspecified in a similar way, in that a range of views are, in principle, compatible with the principles Rawls defends (Freeman 2007, 312).

²⁵ Freeman 2007, 32.

This point is related to, but distinct, from more general critiques of reflective equilibrium that suggest that the method is too conservative because it privileges widely shared judgments over revisionary claims.²⁶ A substantial challenge to reflective equilibrium in political philosophy is that it is especially sensitive to the speaker or audience's pre-philosophical intuitions about cases or theories, and people using the method could arrive at different conclusions without misapplying the method in any way.²⁷ An added challenge for arguments about justice as fairness is that they not only rely on reflective equilibrium, but the Rawlsian theoretical architecture presents so many opportunities for good faith interpretive disagreements that the theory rules out very few conclusions at the outset.

Here is an example of how justice as fairness is unable to adjudicate disputes between competing interpretations of the model. Rawlsians claim that justice as fairness requires protecting basic liberties and promoting distributive justice. Libertarians grant these principles but interpret the first principle of justice in a way that includes economic liberty is one of the basic liberties worth protecting. Orthodox Rawlsians reject this interpretation of the basic liberties.

Here is another example. Freeman argues that public officials should enforce limits on freedom of contract because unlimited freedom of contract would entail that people could voluntarily sell themselves into slavery, and officials would be required to uphold those contracts.²⁸ Presumably, Freeman presents the fact that

²⁶ Cf. Cath 2016.

²⁷ Cf. Kelly and McGrath 2010.

²⁸ It is also worth noting that many libertarians, including Murray Rothbard, endorse a conception of freedom of contract that is very similar to Freeman's. So endorsement of voluntary servitude agreements is surely not essential to libertarianism. For an overview of these arguments see Block 2003.

protecting economic liberty as basic would, in practice, make people complicit in upholding voluntary servitude agreements as a *reductio* of libertarianism. At the same time, I imagine that the fact that protecting freedom of expression as basic would make people at public universities complicit in protecting illiberal and offensive speech is not a *reductio* of liberalism. This aspect of the argument illustrates the earlier point about reflective equilibrium. The outcome of Rawls's theory of justice is very sensitive to people's pre-theoretic intuitions people view a counterintuitive implication of freedom of contract as disqualifying for economic liberty but do not take a similarly counterintuitive implication of freedom of speech as disqualifying that liberty.

More generally, Rawlsians agree that public officials should tolerate some illiberal behavior, such as illiberal speech in public spaces. And they agree that officials should accommodate some illiberal acts, such as hierarchical and illiberal marriages, or illiberal religious practices that require public accommodation. Libertarians may interpret this case for accommodation to support accommodation for some illiberal economic arrangements as well.²⁹ On behalf of orthodox Rawlsians, Freeman rejects this interpretation, on the grounds that economic contracts are importantly different from private social and cultural agreements.³⁰ On this point, Freeman introduces a distinction between economic and non-economic contracts and then deploys that distinction to justify limits on economic contracts. Similarly, Rawls and Freeman distinguish personal property from productive property. Libertarians deny the assertion that these distinctions track qualitatively difficult activities. They argue that to the extent that

²⁹ Flanigan 2017.

³⁰ As an aside, it's unclear why educational contracts and nonprofits would be non-economic here. Freeman 2018, 182.

institutions uphold freedom of association, religious liberty, occupational freedom, and the right to personal property, they should also uphold economic liberty that includes the right to own productive property and make contracts.³¹ So Libertarians arrive at substantially different conclusions by denying a single distinction while accepting the rest of the view. Or, they could deny a different part of the model, such as Freeman’s suggestion that freedom of contract and the right to own productive property is not essential to the development of the moral powers. Because the model has so many moving parts, motivated reasoners in all corners can adjust and interpret various distinctions to arrive very divergent conclusions about justice.

Another example. Rawlsians support the difference principle, which requires that social and economic inequalities should be arranged to the benefit of the least advantaged. Libertarians argue that the difference principle supports welfare state capitalism, which requires protections for freedom of contract and property rights because this system is the most likely to support long-run growth, which maximally benefits the least advantaged.³² Proponents of property-owning democracy argue that this claim results from a misinterpretation of the difference principle, which “should not be interpreted to require maximizing *long-run* income growth” but should focus instead on those who are currently the least advantaged.³³ Or they argue that the institution of freedom of contract should ensure that economic contracts are to the benefit of the least advantaged, in addition to a broadly progressive approach to taxation and property.³⁴

³¹ Freiman and Thrasher 2019, 33.

³² Tomasi 2013; Brennan 2007.

³³ Lister 2018.

³⁴ Freeman 2018, 167-194.

One last example-- this time with socialists. Cohen argues that the difference principle should apply to individual attitudes and choices as well as institutions. Freeman replies that “these arguments misinterpret the nature and role of Rawls’s principles of justice, especially the difference principle,” because the difference principle is correctly understood as a non-consequentialist representation of what “democratic reciprocity at the deepest level” would look like in a society. A proponent of Cohen’s position may reply that this either begs the question against his view by defining the difference principle in a way that only applies to institutions, or that the “democratic reciprocity at the deepest level” would inform individual attitudes as well as the structure of institutions. And so on.

Many of these debates take a similar form. Orthodox Rawlsians claim that the correct interpretation of some aspect of the Rawlsian model (M) rules out libertarianism, or socialism, or whatever. Proponents of these views reply that such an interpretation M either begs the question against their view by ruling it out via definition, or they offer an alternative interpretation of M. Orthodox Rawlsians come back with the claim that the unorthodox interpretation of M conflicts with their considered judgments, and so they reject that the best version of the theory supports unorthodox conclusions. The unorthodox reply that the orthodox interpretation conflicts with *their* considered judgments, and so they reject the orthodox interpretation.³⁵

The Rawlsian framework is flexible enough for libertarians to agree with orthodox Rawlsian premises while adapting them to deliver libertarian conclusions. This aspect of the view is only a limitation to the extent that justice as fairness aspires to give general, determinate guidance about how the basic structure of

³⁵ Some press a parallel claim in the philosophy of religion. See Draper and Nichols 2013.

society should look. It's not clear that it must, though. In the original version of *A Theory of Justice*, Rawls writes, “reflective equilibrium . . . is a notion characteristic of the study of principles which govern actions shaped by self-examination” (Rawls 1971, 48). But Rawls’s framework aspires to more than self-reflection. Orthodox Rawlsians present justice as fairness as a framework that can tell us all how to live together. This is why they assert that libertarians are mistaken, rather than just different, when they read the Rawlsian project to have different implications than the standard interpretation.

IV

Intermediate Idealization

Just as models must make tradeoffs between parsimony and extensional adequacy, models also must make tradeoffs between degrees of idealization and degrees of realism. All models are, to varying degrees, idealizations. In moral and political philosophy, all models of justice make tradeoffs between realism and idealism. Justice as fairness is a model of a “realistic utopia” that aims to take people as they are by assuming that people respond to incentives and act in their self-interest (realism) while also telling what they should aim for (idealism).³⁶ The best case for this intermediate level of idealization is that the theory can be psychologically convincing

³⁶ This is why, on the one hand, Freeman responds to Sen's argument that the Rawlsian project is excessively idealized, by pointing out that political communities need ideals by which they can judge current policies. But on the other hand, Freeman also rejects the utopianism of anarchists like GA Cohen and libertarians like Jason Brennan on the grounds that principles of justice must be psychologically realistic and engaged with public concerns.

without entrenching injustice.³⁷ The best case against this intermediate level of idealization is that it describes a conception of citizens that is idealized in a way that makes the theory inapplicable to existing people and institutions while also failing to describe a vision of society that really is morally best.³⁸

David Enoch makes a similar point about idealization in arguing against public reason liberalism. Enoch's point generalizes to other aspects of Rawls's framework that appeal to an intermediate level of idealization. Enoch begins with a theory of when idealization is appropriate. He argues that it is appropriate to idealize when the reason for idealization is consistent with the

³⁷ In a way, this problem is similar to three other criticisms of the Rawlsian project – criticisms of the concept of legitimacy, the original position, and public reason. Against the concept of legitimacy, critics ask why a society should tolerate unjust policies (entrenching injustice) simply because they meet some procedural criterion, which is, by stipulation, not a criterion related to justice but some other value? On the other hand, rejecting procedural constraints seemingly undermines the stability of the liberal project because people are unlikely to support or comply with political decisions they didn't have any opportunity to influence (failing to take people as they are). Or, against the original position, critics argue that Rawls's model idealizes away most of what matters for political disagreement (failing to take people as they are) or that it entrenches too many of people's unjust dispositions (entrenching injustice). Against public reason, critics allege that orthodox Rawlsians cannot defend an intermediate level of idealization about who counts as 'reasonable' because the reasons in favor of excluding the unreasonable are also seemingly reasons to exclude the reasonable but unjust (failing to take people as they are). Yet any reason to include unjust or illiberal views is also a reason to include unreasonable views (entrenching injustice). Freeman 2018.

³⁸ Note that this objection is distinct from the worry that ideal theory does not deliver achievable and desirable solutions to institutional failures. (See Stemplowska 2008) I grant that a theory can be valuable even if it does not deliver these results. My claim is that any reason to idealize to the point that Rawls does is a reason to idealize further or to favor a theory that does deliver an achievable and desirable solution.

underlying motivation for the view and not introduced as an ad-hoc way of avoiding obvious counterexamples.³⁹ There must be a rationale for idealization that explains why *this kind* and *this level* of idealization is informative for explaining the underlying phenomenon.

As an example of intermediate idealization, consider Enoch's case of public reason theories of legitimacy. If legitimacy requires justifying state power to the actual people who are subject to them, then no actual states are legitimate. Rawlsians are not anarchists. They seek a theory that can explain how states can be legitimate while accounting for the idea that legitimacy does require some kind of justification. Rawlsians then argue that states are legitimate if they can be justified to people under some idealized conditions—either if they can be justified to everyone except the unreasonable or if they can be justified by considering what people would endorse under hypothetical conditions. Enoch replies that these idealized conditions are not related to the underlying motivation for the view (justifying state action to those who are actually subject to it) and that they are also ad hoc because they define unreasonable people or idealized conditions a way that is not theoretically motivated, but which neatly rules out any counterexamples that would be a challenge to the view.

A similar dynamic plays out in Rawlsian discussions of distributive justice. Say that motivation for Rawls's theory of distributive justice is to describe an economic order that respects every person's status as a free and equal member of society. The original position achieves this by describing the economic institutions that people would support under conditions that prompt them to consider the economic order impartially.⁴⁰ But the

³⁹ See Enoch 2015.

⁴⁰ Freeman 2007, 126.

difference principle describes institutions that would be supported under conditions of full compliance, or what Rawls sometimes describes as “nearly full compliance”.⁴¹ This is the level of idealization that encounters a problem like the one Enoch identifies with public reason theories. The justification for the idealization to full compliance is not motivated by the theory's aspiration to model what people would choose under impartial conditions. Rather, the idea is that it is necessary to know what principles people would support in ideal conditions of full compliance in order to know what principles people should support in non-ideal conditions that fell short of full compliance.⁴²

But idealizing on the dimension of compliance, rather than some other dimension, potentially stacks the deck in favor of the difference principle by building into the concept of full compliance a level of compliance that rules out compliance with a more robust egalitarian or altruistic ethos but rules in compliance that exceeds the levels of compliance in existing societies. As in the case of public reason then, the idealization of full compliance is unrelated to the underlying motivation for the view (modeling what people would choose under impartial conditions) and idealizing in this way is also potentially ad hoc, because it defines a level of compliance in a way that rules out alternative conceptions of distributive justice that would be a challenge to the difference principle.

This intermediate level of idealization on the dimension of compliance results in a kind of intractability that is similar to what Enoch observes in discussions of public reason. When libertarians discuss distributive justice in ideal theory, they claim that ideally, people who complied with principles of just acquisition and transfer would comply with property rules that enabled them to

⁴¹ For a further discussion of this point see Freiman 2017, 13.

⁴² Freeman 2007, 472.

arrive at non-statist solutions to public goods problems, and the best society would be a capitalist one.⁴³

Rawlsian critics reply that such an argument is unrealistic and that capitalism is structured in a way that *necessarily* causes vast concentrations of wealth and persistent inequality – no amount of compliance with principles of justice can solve these structural problems.⁴⁴ So at the other end of the idealization spectrum, economists and libertarians may acknowledge that inequalities of class and wealth are a consequence of people acting in their own self-interest rather than complying with the rules of just institutions. But they then argue that the disadvantages of self-interested behavior weigh *against* governmental solutions because non-compliant people would capture the coercive power of the state for their own advantage.⁴⁵ On this view, the fact that people are not immune from self-interest and free-riding is a reason to avoid concentrating power in political institutions where monopoly power is even more destructive than monopoly power in the marketplace.⁴⁶

Either way, at the level of ideal theory or at the level of non-ideal theory, libertarians argue that the difference principle is not supported. To deliver the difference principle, the idealization of full or nearly full compliance must be interpreted in a way that is

⁴³ Cf. Brennan 2014; Freiman 2017.

⁴⁴ Property owning democracy and liberal socialism, Freeman writes, are more likely to achieve the Difference Principle than capitalism because capitalism “by nature” creates substantial inequalities and a privileged class of people who control most of the productive wealth. Freeman 2018, 127

⁴⁵ Freiman calls this the behavioral symmetry standard. Freiman 2017.

⁴⁶ Freiman’s point is that if some other system could, at its best, be superior to capitalism, it must be compared to capitalism at its best as well. If capitalism fails because of individual corruption, free-riding, weakness of will, or inefficiency, these factors are also likely to weigh against alternative political and economic arrangements with equal force.

controversial to libertarian interlocutors. When libertarians disagree with the claim that the economic order would resemble the difference principle in ideal theory, they needn't reject the Rawlsian aspiration to understand justice by modeling what people would choose under impartial conditions where everyone complied with justice. Rather, they deny the intermediate level of idealization involved in the Rawlsian interpretation of compliance.

A similar move occurs in Rawlsian discussions of economic freedom. Consider Freeman's claim that distributive justice "would not permit the *laissez-faire* doctrine of *caveat emptor*" and that the difference principle would support implied warranties in contracts that ensured consumer protection, laws against predatory lending, and the unconscionability doctrine in contract law.⁴⁷ On Freeman's view, the *laissez-faire* doctrine of *caveat emptor* would be incompatible with promoting a fair distribution of advantage, even if it included the standard protections that proponents of a *laissez-faire* system endorse, such as laws against fraud and misbranding. But here again, it's unclear what level of idealization to apply to this claim. In practice, limiting the public enforcement of contracts can be counter-productive because it limits the options of the least-advantaged and may cause some people to resort to privately enforced lending and labor agreements, which are not subject to democratic oversight and which potentially riskier than public enforcement.⁴⁸ In principle, laws against fraud and misbranding should be sufficient to ensure consumer protection, and restrictions on people's ability to freely negotiate the terms of their labor or to decide what to buy would be paternalistic.

Or, return to Freeman's voluntary slavery argument.⁴⁹ Freeman argues that since "contract and property are matters of publicly

⁴⁷ Freeman 2018. 181

⁴⁸ Cf. Flanigan 2017.

⁴⁹ This view is similar to Seanna Shiffrin's (2000).

enforceable right,” upholding voluntary slavery contracts consists in imposing duties on all citizens that they respect their fellow citizens’ private agreements as valid, as long as people voluntarily agreed to the terms.⁵⁰ But in ideal theory, Jason Brennan argues that if people all complied with principles of justice, and all people had a substantial social safety net, then they would not engage in exploitation and voluntary slavery agreements would not be an issue. Or, Chris Freeman argues that public officials’ refusal to uphold such contracts is consistent with libertarianism since people’s rights to make contracts do not include rights to public enforcement.

At the other end of the spectrum of idealization, the closest thing to voluntary slavery agreements currently arise in circumstances where people’s institutions have failed them so much that they are willing to migrate and work in a different illiberal society where they lack legal rights and are obligated to work until the end of their labor agreement.⁵¹ In these cases, Freeman’s objection that “society is called upon ... treat a person not as a being with rights due moral consideration and respect, but as property” doesn’t apply.⁵² The presence of these labor agreements reflects a preexisting lack of moral consideration and respect for foreigners, which is embedded in public institutions, not the other way around. And because voluntary slavery agreements generally arise in conditions that are already illiberal, so they do not call upon liberal members of a society or liberal public officials to uphold and enforce agreements that are contrary to liberal values. Moreover, in these unfortunate circumstances, no

⁵⁰ Freeman 2018, 66.

⁵¹ This may describe the experiences of migrants who work in Qatar, for example, where the legal system grants foreign workers very few legal rights and workers are very vulnerable to fraud and abuse. Cf. Morin 2013.

⁵² Freeman 2018, 66.

one who is discussing distributive justice, including libertarians, would defend the fraudulent and abusive conditions that characterize most of these arrangements, even if libertarians would, in principle, support the enforcement of a truly consensual agreement that took this form. On the libertarian view, the problem with seemingly voluntary slavery agreements isn't that public officials and citizens are expected to uphold them. The problem is that too often, such agreements are not actually voluntary. So, at either end of the spectrum of institutional idealization, voluntary slavery agreements do not require public officials to uphold and enforce contracts that are inconsistent with liberal values.

Freeman does not direct his argument against libertarianism at the level of fully ideal theory or at the level of actual policy. The intermediate level of institutional idealization derives principles of justice by imagining that people are better than they are, but only in particular ways.

Conclusions

So far, I introduced a problem – which is that libertarians and orthodox Rawlsians talk past each other because the theory is under-specified. Orthodox Rawlsians write as if the theory clearly delivers their preferred specification, but it can't be that clear if libertarians keep disagreeing! At this point, it may seem that the solution to the problem would be to refine and specify the Rawlsian framework even further, to make it even clearer so that it delivers more determinate results. Yet this exercise is what generated the problem in the first place. As philosophers refined their versions of orthodox and unorthodox Rawlsianism to deliver more determinate results, the theory became more specified

for those who were developing it but less plausible to people who disagreed.

Justice as fairness begins as a single path, but it cannot end in a single place. In order to know which theory of distributive justice is the right one, it's not enough to consult justice as fairness because it doesn't rule out much. Rather, the theorist must appeal to other values in order to explain why she chose to take the path of property-owning democracy, rather than market democracy, as she walked the Rawlsian path. But then, once we reach the intersection and it's time to make that choice and justice as fairness cannot help, it's unclear why we walked down the path in the first place. Rather than talking about justice as fairness, which can support a range of interpretations about distributive justice, the theorist of justice may as well just argue for her favored theory of distributive justice in its own right.⁵³

The foregoing discussion of Rawlsian distributive justice illustrates the broader point. Libertarian proponents of freedom of contract argue that Freeman is holding the liberties he values (speech, expression) to lower justificatory standards than he applies to economic liberties, but that the Rawlsian framework should support the basic status of economic freedom, even if that would require revisions or reinterpretations of Rawls's theory of

⁵³ David Enoch makes a similar point about public reason liberalism. Rather than talking about whether a view is reasonable or whether public reason liberalism can support it, people should just debate the merits of a view straightforwardly. On Enoch's view, people should focus their disagreement on the content of what they disagree about, not on whether the parties to the disagreement are reasonable. Similarly, I am arguing that people should focus their conversations about justice on the considerations in favor of theory A or B, rather than focusing on whether the interpretation of justice as fairness that supports theory A or B is correct. Cf. Enoch 2013 and Enoch, *Against Public Reason*.

distributive justice. Orthodox Rawlsian reply that the Rawlsian framework does not support the basic status of economic freedom, because libertarians are misinterpreting what it means for a liberty to play a role in the development of citizens' moral powers, so no revisions to the Rawlsian theory of distributive justice are needed. The disagreement about freedom of contract shifts to a dispute about the meaning of terms like "moral powers" of "basic liberty" rather than addressing the substantive issue of whether public officials may permissibly limit citizens' ability to make legally binding contracts.⁵⁴ This is a methodological point, and a similar point might arise in discussions of the Rawlsian methodology itself. Methodological objections can be re-cast as misinterpretations of the procedure or of concepts like "considered judgment," rather than refuted with arguments about how to make tradeoffs between theoretical virtues.

Perhaps it's time to travel off the beaten paths. The Rawlsian model gave us a way of talking about the different ways that institutions affect our lives, and it clarified the terms of important debates about the value of freedom and extent that public officials should uphold particular property rules, create public services, and enforce protections for various liberties. But the Rawlsian model doesn't tell us what theory of distributive justice is correct. Because the model has many moving parts and because its standards of evaluation depend so much on whether the model yields "extensionally adequate conclusions," Rawlsian arguments may now tell us more about their Rawlsian authors than they tell us about justice.

Katrina Forrester recently arrived at a similar conclusion on different grounds. She writes,

⁵⁴ Cf. Chalmers 2011.

Perhaps it is time to see the dominant philosophical liberalism of the late twentieth century not as the primary resource for political philosophers but as one doctrine among many and to understand Rawls's theory as a discrete chapter in the history of political thought.⁵⁵

How might political philosophy look going forward? My tentative suggestion is that the aforementioned concerns about reflective equilibrium and intermediate levels of idealization weigh in favor of a more piecemeal approach at the level of non-ideal theory and a simpler, more unified approach to theorizing about justice at the level of ideal theory.

To illustrate the more piecemeal approach, recent entries in libertarian political philosophy may be a helpful guide. When they are not addressing orthodox Rawlsianism directly, libertarians generally argue against specific policies from a pluralistic moral foundation. For example, they argue against existing restrictions on specific liberties, such as limits on the right to own a business, minimum wage laws, maximum hour laws, occupational licensing requirements, the right to hire immigrants, bans on payday lending, zoning regulations, and laws that criminalize entire occupations, e.g., sex work, and policies that empower public officials to seize people's property for the sake of public projects. Feminist critics of Rawls take up a similar strategy.⁵⁶ In contrast, Freeman does not discuss any of these policies at length—most go unmentioned. But if the foregoing arguments are right, the Rawlsian approach could

⁵⁵ Forrester 2019, 279.

⁵⁶ See e.g. Okin's discussion of Rawls. Jaggar expands on the methodological implications of Okin's critique. Cf. Okin 1989 and Jaggar 2015.

weigh in favor (or against) any of these policies in the right (or wrong) hands. If so, then the Rawlsian apparatus is unlikely to be especially helpful in informing specific policy debates or advancing revisionary, new positions.⁵⁷

A disadvantage of the piecemeal approach is that it's difficult to know why the proposals on offer are the right ones without appealing to a general, theoretical model. For this reason, simple, abstract, theoretical frameworks are useful for identifying inconsistencies in people's beliefs and thereby challenging people's beliefs about public policy. These ideal theories can inform how we evaluate existing institutions, or they can simply serve as a vision of the truth.⁵⁸ Understood in this light, maybe the Rawlsian framework is one ideal theory among many.⁵⁹ But if orthodox Rawlsianism aims to serve as an ideal that informs existing institutions, then its indeterminacy undermines the usefulness of the theory even as a guiding ideal. And even if orthodox Rawlsianism could deliver a determinate vision of the truth of how we ought to live together, other ideals are seemingly more appealing.

⁵⁷ Hare makes a point like this. Hare 1973, 145 writes, "Since the theoretical structure is tailored at every point to fit Rawls' intuitions, it is hardly surprising that its normative consequences fit them too – if they did not, he would alter the theory ... and the fact that Rawls is a fairly typical man of his times and society, and will therefore have many adherents, does not make this a good way of doing philosophy."

⁵⁸ Estlund 2019.

⁵⁹ As Forrester writes, rejecting Rawls's model as the primary resource debates in political philosophy opens up new possibilities, where proponents can defend theories of justice on equal footing, each as one doctrine among many, on their own terms rather than on the contested and slippery terms that have evolved over the last half-century of Rawlsian discourse.

Catholics call Mary the Mirror of Justice because she is without sin, so she can perfectly represent an image of God’s goodness. The face of God is surely a compelling ideal. But Rawls was dismissive of a religious approach to justice.⁶⁰ So in justice as fairness, Rawls created his own mirror of justice, which aimed to present a secular image of how we could live together.⁶¹ Like the image of Mary, justice as fairness is offered as a tool. But when we see things in Rawls’s mirror, we see them dimly. We see only part of what justice requires because we can’t see beyond our own distorted reflection. It’s time to put down the looking glass and see each other face to face.

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⁶⁰ Freeman 2018, 9-11

⁶¹ For a further discussion of the claim that Rawls was still, in some way, engaged in a theological project, see Nelson 2019.

References

Block, Walter E. 2003. "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein," *Journal of Libertarian Studies* 17 (2), 39-85.

Brennan, Jason F. 2007. "Rawls' Paradox," *Constitutional Political Economy* 18 (4): 287-299.

_____. 2012. *Libertarianism: What Everyone Needs to Know*, 1st edition. Oxford: Oxford University Press.

_____. 2014. *Why Not Capitalism?*, London: Routledge.

Cameron, Charles M. 2000. *Veto Bargaining: Presidents and the Politics of Negative Power*. Cambridge: Cambridge University Press.

Cath, Yuri. 2016. "Reflective Equilibrium," *The Oxford Handbook of Philosophical Methodology*. Edited by H. Cappelen, T. Gendler & J. Hawthorne, *The Oxford Handbook of Philosophical Methodology*. Oxford: Oxford University Press, 213-230.

Chalmers, David J. 2011. "Verbal Disputes," *Philosophical Review* 120 (4): 515-566

Daniels, Norman. 2003. "Reflective Equilibrium," April 28, https://plato.stanford.edu/entries/reflective-equilibrium/?source=post_page

Draper, Paul and Nichols, Ryan. 2013. "Diagnosing bias in philosophy of religion," *The Monist* 96 (3): 420-446.

Enoch, David. 2013. "The Disorder of Public Reason," *Ethics* 124 (1): 141-176

_____. 2015. "Against Public Reason," *Oxford Studies in Political Philosophy*, Volume 1 (Oxford University Press), accessed May 22, 2020,

<https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199669530.001.0001/acprof-9780199669530-chapter-6>

Estlund, David. 2019. *Utopophobia: On the Limits (If Any) of Political Philosophy*. Princeton: Princeton University Press.

Flanigan, Jessica. 2017. "Rethinking Freedom of Contract," *Philosophical Studies* 174 (2): 443-463

_____. 2018. "All Liberty Is Basic," *Res Publica* 24 (4): 455-474.

Forrester, Katrina. 2019. *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy*. Princeton: Princeton University Press.

Freeman, Samuel. 2007. *Rawls*, 1st edition. London: Routledge.

Freeman, Samuel. 2018. *Liberalism and Distributive Justice*. Oxford: Oxford University Press.

Freiman, Christopher. 2017. *Unequivocal Justice*, 1st edition, Routledge: New York.

Freiman, Christopher and Thrasher, John. 2019. "The Right to Own the Means of Production," *Economic Liberties and Human Rights*.

Harman, Elizabeth. 2014. "Is It Reasonable to 'Rely on Intuitions' in Ethics?," accessed September 24, 2014, [Http://www.princeton.edu/~eharman/HarmanIntuitions.pdf](http://www.princeton.edu/~eharman/HarmanIntuitions.pdf).

Hare, Richard Mervyn. 1973. "Rawls' Theory of Justice—I," *The Philosophical Quarterly* 23 (June), 91, 144-155.

Iyengar, Shanto and Westwood, Sean J. 2015. "Fear and Loathing across Party Lines: New Evidence on Group Polarization," *American Journal of Political Science* 59, no. 3 (2015): 690-707

Jaggar, Alison M. 2015. “On Susan Moller Okin’s ‘Reason and Feeling in Thinking about Justice’,” *Ethics* 125 (4), July 1: 1127-31, <https://doi.org/10.1086/680878>

Kagan, Shelly. 2001 “Thinking about Cases,” *Social Philosophy and Policy* 18, (2): 44-63.

Kelly, Thomas and McGrath, Sarah. 2010. “Is Reflective Equilibrium Enough?,” *Philosophical Perspectives* 24: 325-359.

Krehbiel, Keith. 1998. *Pivotal Politics: A Theory of US Lawmaking*. Chicago: University of Chicago Press.

Lister, Andrew. 2018. “The Difference Principle, Capitalism, and Property-Owning Democracy,” *Moral Philosophy and Politics* 5, no. 1 (June 26): 151-172, <https://doi.org/10.1515/mopp-2017-0012>.

Lomasky Loren E. 2005. “Libertarianism at Twin Harvard,” *Social Philosophy and Policy* 22 (1), January): 178-199, <https://doi.org/10.1017/S0265052505041075>

Morin, Richard. 2013. “Indentured Servitude in the Persian Gulf,” *The New York Times*, April 12, sec. *Sunday Review*, <https://www.nytimes.com/2013/04/14/sunday-review/indentured-servitude-in-the-persian-gulf.html>.

Nelson, Eric. 2019. *The Theology of Liberalism: Political Philosophy and the Justice of God*. Cambridge (MA): Belknap Press.

Okin, Susan Moller. 1989. “Reason and Feeling in Thinking about Justice,” *Ethics* 99 (2): 229-249.

Rawls, John. 1971. *A Theory of Justice*. Original Edition, reissue edition 2005. Cambridge (MA): Belknap Press.

Wilfrid Sellars. 1963. “Philosophy and the Scientific Image of Man,” *Science, Perception, and Reality* 2: 35–78.

Schindler, Samuel. 2018. *Theoretical Virtues in Science: Uncovering Reality through Theory*. Cambridge: Cambridge University Press.

Shiffrin, Seana Valentine. 2000. “Paternalism, Unconscionability Doctrine, and Accommodation,” *Philosophy & Public Affairs* 29, no. 3 (July 1): 205-250, <https://doi.org/10.1111/j.1088-4963.2000.00205.x>.

Stemplowska, Zofia. 2008. “What’s Ideal About Ideal Theory?,” *Social Theory and Practice* 34 (3): 319-340.

Tomasi, John. 2013. *Free Market Fairness*, Reprint edition. Princeton: Princeton University Press.

Williamson, Timothy. Forthcoming. “Model-Building in Philosophy,” in *Philosophy’s Future: The Problem of Philosophical Progress*. Edited by Russell Blackford and Damien Broderick (Oxford: Wiley Blackwell).

Wolff, Robert Paul. 2015. “The Philosopher’s Stone: Response to the comments on Rawls,” *The Philosopher’s Stone* (blog), July 13, 2015, <https://robertpaulwolff.blogspot.com/2015/07/response-to-comments-on-rawls.html>.

SYMPOSIUM
LIBERALISM AND SOCIAL JUSTICE



REASONING ABOUT DISTRIBUTIVE JUSTICE
JUSTICE AS FAIRNESS AND
BASIC SOCIAL INSTITUTIONS

BY
ALEXANDER KAUFMAN

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Reasoning About Distributive Justice

Justice as Fairness and Basic Social Institutions

Alexander Kaufman

John Rawls describes a society whose institutions are effectively regulated by the principles of its public conception of justice as a well-ordered society. The institutions of a well-ordered society must, in Rawls's theory, satisfy a demanding set of requirements. These requirements operate jointly and together define the substance of Rawls's conception of social justice ("justice as fairness"). Since these requirements apply collectively and "as a unit," (Rawls 1971, 73, Rawls 2001, 46n10)¹, no single criterion determines the nature of just social institutions. Rather, just institutions are the product of a complex process of reasoning.

Against a background of social arrangements that guarantee the protection of basic liberties, institutions that satisfy the requirements of justice as fairness must ensure the provision of a basic social minimum, guarantee real equal economic and social opportunity, and require that remaining inequalities in the

¹ The two principles are intended "to apply in tandem and to work as a unit" (Rawls 2001, 46n10).

distribution of social and economic goods are to everyone's advantage. Rawls emphasizes that each of these requirements interacts with and qualifies the character and proper application of the other requirements. A set of institutions that satisfies these requirements is therefore the product of a complex process of reasoning that realizes the collective practical implications of these interacting requirements.

The form of reasoning that is required to govern the process of designing institutions for a well-ordered society under justice as fairness remains incompletely understood. Even after 45 years of careful study, the literature of distributive justice has yet to provide a clear specification of the institutions of a well-ordered society under justice as fairness or of the process of reasoning that could define such a set of institutions. Many descriptions of the institutions of justice as fairness in the general literature of distributive justice provide accounts of Rawls's theory that border on caricature.

Samuel Freeman's *Liberalism and Distributive Justice* addresses and corrects a number of confusions that have characterized accounts of Rawlsian justice and provides the foundations for a clear understanding of the logic underlying justice as fairness. In particular, Freeman emphasizes the preeminent importance of fair equality of opportunity in a well-ordered society, stresses that the social minimum in Rawls is a requirement that is separate from and lexically prior to the difference principle, and corrects a multitude of prominent misunderstandings regarding the justification and application of the difference principle.

Nevertheless, I will argue, Freeman's work in some respects continues to reflect a number of widely-accepted assumptions regarding Rawls's thought that are not consistent with the substance and structure of Rawls's actual argument. In particular, Freeman's account—while stressing that just institutions in a well-

ordered society must secure fair equal opportunity and a social minimum—fails to integrate the requirements of the principles of justice as fairness as Rawls’s arguments require. In addition, I will argue that Freeman’s interpretation of fair equality of opportunity underestimates the scope of the requirements of that principle. Freeman’s account therefore to some extent fails to correct the distortions that have undermined general understanding of the reasoning process required to generate just institutions in Rawls’s theory.

Since misunderstandings regarding the substance and justification of the difference principle are responsible for much of the confusion regarding the character of Rawlsian distributive justice, I will discuss a number of these misunderstandings before discussing the process of reasoning necessary to generate just institutions. Assigning such priority in the discussion to the difference principle risks confirming widespread confusions regarding the status of this principle in Rawls’s thought, but confusions regarding the difference principle are so pervasive that a corrective discussion of justice as fairness must begin here. Second, I will discuss the nature of institutional arrangements that satisfy the joint requirements of Rawls’s principles of distributive justice and the form of reasoning necessary to generate such institutions.

I

Preliminaries:

The Limited Scope of the Difference Principle

According to a widely held understanding of Rawls’s theory, just institutions are simply those institutions that maximize the share of social goods held by the least advantaged members of

society. John Roemer supplies a typical statement of this view: Rawls “proposed a theory of justice in which distribution was determined by the difference principle... [which requires] the adoption of that economic mechanism which maximizes the bundle of primary goods that the group that is worst off...receives” (Roemer 1994, 5).

This statement incorporates a remarkable number of confusions in one sentence. According to this account of Rawls’s theory: (i) justice as fairness is an allocative theory of justice—that is, a theory designed to divide “a given collection of goods among definite individuals” (Rawls 1971, 77); (ii) the difference principle alone determines the just distribution of goods in Rawls’s theory; (iii) the difference principle specifies a unique set of just entitlements to goods; (iv) the difference principle requires maximizing the bundle of primary goods received by the least advantaged; and (v) the difference principle supplies the maximin solution that is justified by Rawls’s maximin argument (this claim is implicit here and stated explicitly elsewhere in the text²). All of these claims are false. In this section, I will both discuss the elements of Rawls’s theory that contradict these claims and note Freeman’s more accurate treatment of these issues.

(i) *Rawls’s Rejection of Allocative Approaches to Justice*. Rawls defines an allocative conception of justice as a conception that aims simply to distribute a given collection of goods over a set of persons. One might favor such an approach in order to maximize utility, to reward merit or desert, to realize efficiency, or to realize any number of other values. Allocative theories, Rawls notes, assume that the goods in question are freely available to be distributed and that “there are no prior claims on the things to be distributed”

² Rawls offers a theory “maximizing primary goods” (Roemer 1994, 115).

(Rawls 1971, 77). In Robert Nozick’s words, allocative theories treat goods “as if they appeared from nowhere, out of nothing.” (Nozick 1974, 160).³ In claiming that the distribution of goods in justice as fairness is determined by the difference principle, Roemer thus characterizes Rawls’s theory of justice as an allocative theory – that is, as a theory designed primarily to distribute a stock of benefits over a group of people.

Rawls, however, carefully distinguishes his conception of justice from allocative conceptions. In justice as fairness, unlike allocative conceptions, the distribution of social goods is not determined by dividing “a stock of benefits available” (Rawls 1971, 76) over a group of individuals. Rather, Rawls notes, his conception of justice is characterized by pure procedural justice. In pure procedural justice, the justice of a “distribution cannot be judged in isolation from... what individuals have done in good faith in light of established expectations” (*ibid.*). In Rawls’s theory, then, each person – in realizing her rational life plan – defines the contents of her own just share of goods within a just scheme of cooperation. As Freeman notes, this aspect of Rawls’s theory “make[s] the moral requirements of (distributive) justice compatible with individuals’ being able to live according to their freely chosen rational life plans while conforming to, and even acting for the sake of, justice” (Freeman 2018, 245). While Roemer and many other interpreters of Rawls claim that Rawls aims to impose a predetermined pattern – a pattern in which the share of the least advantaged persons is maximized – on the distribution of goods,⁴ Rawls explicitly rejects such a view: “If it is asked in the abstract

³ Elsewhere, Nozick suggests that proponents of allocative theories write as “[i]f things fell from heaven like manna, and no one had any entitlement to any portion of it.” Nozick 1974, 198.

⁴ In Rawls, Roemer argues, “distribution [is] determined by the difference principle.” Roemer 1994, 5.

whether one distribution of a given stock of things... is better than another, then there simply is no answer to that question” (Rawls 1971, 76). In justice as fairness, a just allocation is the allocation that people generate when they employ their abilities within just economic institutions. We cannot know what distribution justice requires until we see what people have actually done in the context of just social institutions. While justice as fairness favors institutions that improve the expectations of the least advantaged, then, it does not require the adoption of a mechanism that determines the share of primary goods that the least advantaged (or any other class of persons) actually receive –only an allocative conception would impose such a requirement.

(ii) *The Status of the Difference Principle.* The difference principle does not impose the only – or even the most important – requirement of distributive justice in Rawls’s theory. Rawls’s second principle requires the satisfaction of two conditions: (i) the principle of fair equality of opportunity, and (ii) the difference principle. Moreover, Rawls assigns lexical priority to fair equality of opportunity (Rawls 1971, 77-78, 265-67): if concerns regarding equal opportunity conflict with concerns about distribution under the difference principle, concerns regarding equal opportunity are to be assigned absolute priority. Finally, Rawls’s first principle imposes a requirement on just distributions that is lexically prior to the difference principle. Under the first principle, the provision of a social minimum, sufficient to ensure the worth of liberty, constitutes (i) an essential institutional guarantee in a well-ordered society (*ibid.*, 243), (ii) a constitutional essential (Rawls 1993, 228-29), and (iii) a guarantee that should perhaps be embodied in a principle lexically prior to the liberty principle itself (Rawls 2001, 44n7).

The standard view that the difference principle defines the full requirements of distributive justice in Rawls’s theory thus

fundamentally misrepresents the character of justice as fairness. If Rawls's theory required nothing more than satisfaction of the difference principle (and if the difference principle really required maximizing the share of primary goods received by the least advantaged), then policies required to secure distributive justice would focus primarily on the redistribution of income through tax and transfer programs. Since fair equality of opportunity is the more fundamental requirement of the second principle, however, the policies necessary to secure distributive justice will primarily emphasize education, training, full employment policy, universal healthcare, and childcare allowances. In addition, as Freeman emphasizes, fair equality of opportunity requires significant redistribution to "prevent concentrations of power" (Rawls 1971, 245) likely to undermine both equal opportunity and the basic liberties (Freeman 2018, 142-43).

(iii) *Specification of a Unique Set of Just Entitlements?* Does the difference principle define a specific preferred distribution of goods? The answer is clearly no. As discussed above, justice as fairness is a theory of pure procedural justice (Rawls 1971, 118, see 73-78), and the defining characteristic of such a theory is that a unique just distribution of goods cannot be specified *ex ante*. Rather, the theory merely sets out principles to govern the basic structure of a social system. As Freeman emphasizes, Rawls's principles regulate the design of social institutions, not the distribution of goods. The difference principle "applies only to the institutions of the basic structure" (Freeman 2018, 113). It is not meant to apply directly to the determination of individual shares of goods or to small-scale policy decisions. Once principles to govern the basic structure of society are in place, a just distribution "is arrived at by honoring the claims determined by what people undertake to do in light of [their] legitimate expectations;" and "the outcome is just whatever it happens to be" (Rawls 1971, 74). In fact, the distinctive feature of pure procedural justice is that "the

procedure for determining the just result must actually be carried out” before a just distribution can be identified (*ibid.*, 75).

(iv) *Does the Difference Principle Require Maximizing the Resource Share of the Least Advantaged?* Since justice as fairness is a theory of pure procedural justice, each person is responsible for determining the contents of their own just share of goods. Society must ensure that the expectations (that is, real opportunities) of the least advantaged are significant, but a just society has no obligation to maximize the actual share received by any person or group. As Freeman emphasizes, the difference principle is designed to ensure fairness and reciprocity in social and economic relations, and not to serve “as a principle of redress or assistance to meet...basic or special needs” (Freeman 2018, 124). An interpretation of that principle that strictly required maximizing of the income of the least advantaged, Freeman notes, would actually fail the test of reciprocity, since “this would come at the expense of other equally if not more important social needs and interests, such as meeting the basic needs of all citizens and the special needs of the disabled” (*ibid.*).

(v) *Is the Difference Principle a Maximin Criterion?* Rawls states explicitly that the difference principle is not a maximin principle⁵ and that the justification for the difference principle does not involve an appeal to the maximin rule: “the reasoning for the difference principle does not rely on [the maximin] rule” (Rawls 2001, 95). Interpretations of Rawls that view the difference principle as a maximin criterion, in fact, conflate the idea of a satisfactory minimum with the idea of a guaranteed minimum level of primary goods. Such interpretations inaccurately assume that

⁵ “Economics may wish to refer to the difference principle as the maximin criterion, but I have carefully avoided this name... [t]he maximin criterion is...a rule for choice under great uncertainty, whereas the difference principle is a principle of justice” (Rawls 1971, 72).

the difference principle secures the satisfactory minimum sought under the maximin rule by guaranteeing a minimum bundle of primary goods to the least advantaged members of society. Rawls, however, explicitly contradicts such a view in his account of the satisfactory minimum sought under the maximin rule.

Rather than a share of primary goods, the satisfactory minimum sought by the parties in the original position is “a satisfactory conception [of justice]” that is “assured by the two principles in lexical order” (Rawls 1971, 135). During deliberations in the original position, the parties focus on the task of ranking conceptions of justice by their acceptability.⁶ In order to select the most acceptable conception, the parties assess “a definite list of traditional conceptions” (*ibid.*, 102) and choose from that list the conception that constitutes the most satisfactory “minimum conception” (*ibid.*, 153) of justice. The task of the choosers is therefore to assess the acceptability of conceptions of justice. The most acceptable conception must (i) provide the most adequate protections for citizens’ fundamental interests and (ii) establish the right kind of priority between claims grounded in competing fundamental interests. Thus, the parties in the original position – in securing a satisfactory minimum in accordance with the maximin rule – focus, not on choosing an allocation of primary goods to be assigned to the least advantaged, but rather on assessing the character of different conceptions of justice – the kinds of interests that they protect, the kinds of balance that they establish between fundamental interests, and the kind of political and social world that would result from the adoption of each conception.

A satisfactory minimum conception of justice guarantees the protection of fundamental interests to every member of society,

⁶ “Conceptions of justice are to be ranked by their acceptability” (Freeman 2018, 16).

not merely to its least advantaged members. The maximin argument, thus, is completely misunderstood if it is interpreted to require maximizing the share of primary goods received by the least advantaged. It is the conception taken as a whole that constitutes the satisfactory minimum: the requirements of the principles that constitute the chosen conception “are tied together as one conception of justice which applies to the basic structure of society as a whole” (Rawls 1971, 136, see Rawls 2001, 99), and the fact that this conception secures a “satisfactory political and social world” – not merely a bundle of goods, resources, and protections – “is crucial for the argument” (Rawls 2001, 100). Rawls refers to this combination of guarantees, and not to a guaranteed income or bundle of primary goods, when he argues that a chooser in the original position would “care very little, if anything, for what he might gain above the minimum” guaranteeable level (Rawls 1971, 134).

Rawls’s actual account of distributive justice is thus quite different from the commonly held view that his theory can be reduced to a single requirement – maximizing the share of primary goods of the least advantaged. In fact, his theory imposes no such requirement, and instead requires the creation of social conditions in which basic social institutions provide guarantees to all citizens ensuring the worth of liberty, real equal opportunity, and fairness in the distribution of goods.

II

Reasoning About the Justice of Institutions.

Taking into account the distinctions between the standard understanding of Rawls and the substance of his actual theory, what features does his theory require in just social institutions? The analysis must address the following question: what set of social and

economic institutions will ensure the value of liberty, guarantee real equal opportunity, and secure fairness in the distribution of goods? As noted above, Rawls argues that the social conditions that could satisfy these conditions are to be determined by the joint application of the principle of fair equality of opportunity and the difference principle, operating as a unit. The requirements of fair equality of opportunity are quite significant, requiring an effective guarantee that persons with equal abilities and motivation will enjoy equal prospects of success. In addition, just institutions must ensure the provision of a social minimum that ensures the worth of liberty. Thus, an analysis of the requirements of distributive justice that simply examines the requirements of the difference principle falsifies Rawls's theory.

Freeman generally recognizes that the character of just institutions in a well-ordered society is not determined simply by the application of the difference principle: "Rawls says the difference principle cannot be taken seriously apart from the first principle and fair equality of opportunity" (*ibid.*, 110). Nevertheless, Freeman in some instances treats the requirements of a social minimum and fair equality of opportunity as mere preconditions to the application of the difference principle to questions of justice. To the extent that he isolates his analysis of the institutional requirements of the difference principle from his discussion of the other two requirements of distributive justice, Freeman slights the integrated character of Rawls's approach to reasoning about justice. In addition, I will argue, Freeman underestimates the scope of the requirements of fair equality of opportunity.

In this section, I will first provide a sketch of (i) the form of reasoning about just institutions required by the joint application of the principle of fair equality of opportunity and the difference principle and (ii) the scope of the requirements of fair equality of

opportunity. After sketching these requirements, I will examine the degree to which Freeman's account (i) retains some of the standard account's nonintegrated approach to the justice of institutions and (ii) slights the scope of the requirements of fair equality of opportunity. In subsection one, I will discuss Rawls's claim that the principles apply as a unit. In subsection two, I will discuss the scope of the requirements of fair equality of opportunity. In subsection three, I will discuss Freeman's approach and its fit with Rawls's integrated approach to reasoning about distributive justice.

(i) *The Principles Apply as a Unit.* The integration of the two elements of Rawls's second principle relates to both their meaning and their implementation. Rawls argues that fair equality of opportunity and the difference principle, taken together, express an understanding of genuine distributive justice in which the difference principle, while lexically subordinate to the principle of fair opportunity, nevertheless transforms both the operation of the fair opportunity principle and the proper understanding of its aims.

While the principle of fair equality of opportunity, alone, would secure a form of pure procedural justice, the form of procedural justice secured by that principle would fail to address adequately concerns about arbitrary influences on life chances unless the distribution of goods were also regulated by the difference principle. For example, while the fair opportunity principle, considered in isolation, would seem to require equal attention to inequalities of opportunity at every level of income and wealth, consideration of the factors that justify the difference principle requires the conclusion that "to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions" (Rawls 1971, 86). The difference principle therefore qualifies the application of the fair opportunity principle to require that in providing education and other services to ensure equal

opportunity, society should devote more immediate attention to the needs of the least advantaged. Similarly, while the difference principle directs the attention of policymakers to the needs and interests of the least advantaged, consideration of the factors that justify the fair equality of opportunity principle requires that the aid provided to the least advantaged should focus, in significant part, upon improving opportunity rather than on supplementing income directly.

Finally, in addition to transforming important features of the operation of the fair opportunity principle, the difference principle “transforms the aims of society” (*ibid.*, 91) in a manner that fundamentally changes public understanding of the goals and meaning of equal opportunity. In particular, equal opportunity no longer means equal opportunity “to leave the less fortunate behind” (*ibid.*). Rather, the difference principle “transforms the aims of the basic structure so that the total scheme of institutions no longer emphasizes social efficiency and technocratic values” (*ibid.*, 87) to the exclusion of reciprocity and fraternity. In particular, the difference principle’s requirement of priority for the claims of the least advantaged to receive education and other services under the fair opportunity principle “expresses a conception of reciprocity” (*ibid.*, 88) implicit in the difference principle’s transformation of the notion of opportunity.

(ii) *The Scope of Fair Equality of Opportunity.* The principle of fair equality of opportunity requires that persons “with similar abilities and skills should have similar life chances” (*ibid.*, 63). The principle requires not merely the enforcement of legal protections of formal equal opportunity, but “that all should have a fair chance” to attain success. Persons “similarly motivated and endowed” should have “equal prospects of culture and achievement” regardless of their initial social position (*ibid.*).

Rawls provides only a sketchy account of the principle and its requirements, he notes, because he assumes that “the elements of this framework are familiar enough” (*ibid.*). The principle, he assumes, embodies liberal notions of egalitarian justice discussed in the work of nineteenth and early twentieth century liberal philosophers and theorists such as Henry Sidgwick and R. H. Tawney. For a more thorough account of the nature and necessary conditions of equal opportunity, he refers the reader to specific passages in Sidgwick, Tawney, and Bernard Williams (*ibid.*, 63, n11).

The passage that Rawls cites from Williams’s paper “The Idea of Equality” provides the clearest account of the full scope of the requirements of the principle of fair equality of opportunity. Equal opportunity, Williams argues, is best understood as requiring that “people from all sections of society [must] have an equal chance of satisfying” the necessary conditions for the acquisition of any particular social good (Williams 1962, 125). If education at an expensive elite school is a necessary condition of entry into certain careers (e.g. medicine, law, investment banking), Williams argues, a society that allows elite schools to allocate positions in their classes on the basis of ability to pay fails the test of fair equality of opportunity.

More generally, Williams argues that if social arrangements are such that children from privileged homes have greater opportunity to succeed than children from less advantaged homes because of qualities specifically associated with privileged homes, then the society fails to satisfy the requirements of equal opportunity. In incorporating Williams’s account of equal opportunity by reference as an account of the concept of equal opportunity that is “familiar enough,” Rawls thus indicates that fair equality of opportunity, if fully implemented, would require “imaginative social reform” (Williams 1962, 127) to address any deficits of education or training

and any inequalities of access to health care or advantageous environmental factors that might result in unequal ability to compete for advantageous positions. A society therefore fails to achieve fair equality of opportunity if any person or group suffers from a deficit in skills, education, or other capacity required to compete effectively for a desirable position, and that deficit (i) is the product of environmental factors and (ii) could be removed by social policy.

(iii) *Freeman on Just Institutions*. Freeman provides an account of the full scope of fair equality of opportunity and the integration between fair opportunity and the difference principle that is more accurate than the accounts provided in most interpretations of Rawls's theory. First, Freeman assigns full weight to Rawls's requirement that a just society must ensure the provision of a social minimum that ensures the worth of liberty. He notes, for example, that "Rawls says that the difference principle cannot be taken seriously apart from the first principle and fair equality of opportunity" (Freeman 2018, 110). The social minimum required by the first principle, Freeman notes, must be secured through adequate expenditure to ensure "the fair value of the rights" of citizens in a property-owning democracy (*ibid.*, 142).

Freeman also takes significant account of the requirements of fair equality of opportunity. He notes that just institutions must, to ensure fair equal opportunity, "provide for extensive universal education benefits and job training, childcare allowances for working parents, as well as universal healthcare" (*ibid.*). These interventions, he notes, are necessary not merely to improve the economic prospects of the less talented, but to ensure that equal opportunity is not understood as an authorization to leave the least fortunate behind. Justice as fairness thus "does not lead to a meritocratic society [because equal opportunity] is combined with the difference principle" (*ibid.*, 111). Interventions to ensure the

availability of “ongoing educational, career, and cultural opportunities from early on and throughout their lifetimes” must be available in order to ensure “to the less talented and less favored,” (*ibid.*) not merely economic prospects, but also the social bases of self-respect. The required interventions, Freeman notes, will necessarily involve ambitious social policies, including “publicly funded day care for all children... designed to stimulate their capacities and develop their mental abilities and social skills,” as well as family allowances to make it possible for “families [to] afford to expose children to social and cultural experiences otherwise reserved for parents who can afford such advantages” (*ibid.*, 112). In addition, Freeman notes that fair equal opportunity would require that the share of childrearing responsibilities should not fall disproportionately on women.

Finally, Freeman notes that ensuring fair equality of opportunity would require significant redistribution of income, wealth, and control over social assets: “economic inequalities are to be restricted when they reach a point that subverts the fair distribution of (formally) equal opportunities to compete for open educational and career positions and take advantage of the benefits of culture” (*ibid.*, 110). Inequalities in wealth cannot, in particular, “be so great that they seriously dilute the ‘full and equally effective voice’ and political influence of the less advantaged or distort the political process and its agenda to favor the interests of the more advantaged” (*ibid.*). Just social institutions must therefore employ tax and transfer policy aggressively to ensure an acceptable distribution of income, wealth, and control of the means of production.

Freeman’s acknowledgment of the priority and significant requirements of fair equality of opportunity is a welcome corrective to standard interpretations of Rawls that reduce social justice to maximizing the share of primary goods of the least

advantaged. Nevertheless, Freeman’s discussion of justice as fairness in some ways continues to reflect the influence of those standard interpretations. While Freeman discusses significant requirements of fair equal opportunity relating to education, training, health care, and income distribution, he appears to treat equal opportunity as merely an ancillary concern to be addressed before turning to the real subject of distributive justice – implementation of the difference principle. In chapter three of *Liberalism and Distributive Justice* – the first of the two chapters that focus on just institutions – Freeman devotes three prefatory pages, out of a total of 26 pages, to fair equality of opportunity. Chapter four devotes significantly more space to the discussion of equal opportunity, but still treats this concern as secondary to the effects of the difference principle. Fair equality of opportunity, Freeman argues in this chapter, imposes requirements that address a “gap” in Rawls’s argument relating to the proper scope of economic agency in a well-ordered society. According to Freeman, fair equality of opportunity requires the guarantee of “ongoing opportunities...to exercise economic powers” that ensure to each citizen “the freedom and control in their work” (*ibid.*, 160) necessary to secure the social bases of self-respect to a degree that significantly distinguishes property-owning democracy from welfare-state capitalism. Freeman’s central focus, however, remains the manner in which the difference principle (supplemented by the other principles) secures justice in social institutions.

Missing in Freeman’s account is a sense of the scope of the requirements of equal opportunity or of the interaction that Rawls contemplates between fair equality of opportunity and the difference principle. Far from merely supplementing the difference principle, fair equality of opportunity requires sweeping “imaginative social reform” to address any deficits of education or training and any inequalities of access to health care or

advantageous environmental factors that might result in unequal ability to compete for advantageous positions. This principle does not set out requirements of justice supplementary to the difference principle. Rather the equal opportunity principle sets out the primary requirements of distributive justice in institutions. Moreover, the opportunity principle both qualifies the meaning and application of the difference principle and is, in turn, qualified in its meaning and application by the difference principle. Finally, in focusing primarily on the implementation of the difference principle, the provision of compensatory services to the less talented, and the use of tax and transfer policy to secure an acceptable distribution of income, wealth, and resources, Freeman provides an interpretation of Rawls that makes justice as fairness look unacceptably allocative in character – that is, too focused on transfers of income and services from the more fortunate to the less advantaged. Such an account fails to convey Rawls's conception of a well-ordered society constituted by institutions that protect the full range of essential interests of every member of society.

Conclusion

Rawls's conception of justice aims, most fundamentally, to ensure the economic and social autonomy of each member of society. At the base level, justice as fairness guarantees an absolute right to a social minimum necessary to ensure the worth of liberty. Above this level, social cooperation for mutual benefit operates within institutions that are designed to ensure that all persons, regardless of their original social position, enjoy real equal opportunity to develop their talents and employ them productively. Finally, the difference principle ensures that institutions assign priority to realizing opportunity for the least advantaged persons, that opportunity is understood in terms of the

chance to realize equal citizenship, not the opportunity to leave others behind, and that the inequalities permitted to the more fortunate under circumstances that satisfy the preceding conditions are to everyone's advantage.

Freeman's interpretation goes a long way towards correcting the distortions in standard understandings of Rawls's work. A fully balanced account of justice as fairness, however, must provide an account of the process of reasoning through which the two constitutive elements of Rawls's second principle – fair equality of opportunity and the difference principle – are jointly brought to bear on the problem of designing institutions for a well-ordered society.

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References

Freeman, Samuel. 2018. *Liberalism and Distributive Justice*. Oxford: Oxford University Press.

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.

Rawls, John. 1971. *A Theory of Justice*. Original Edition, reissue edition 1999. Cambridge (MA): Belknap Press.

_____. 1993. *Political Liberalism*. New York: Columbia University Press.

_____. 2001. *Justice as Fairness. A Restatement*. Cambridge (MA): Belknap Press.

Roemer, John. 1994. *Egalitarian Perspectives: Essays in Philosophical Economics*. Cambridge: Cambridge University Press.

Williams, Bernard W. 1962. "The Idea of Equality," *Politics, Philosophy, and Society: Second Series*. Edited by P. Laslett and W. G. Runciman. Oxford: Basil Blackwell, 110-131.

SYMPOSIUM
LIBERALISM AND SOCIAL JUSTICE



WORK IN PROPERTY-OWNING DEMOCRACY:
FREEMAN, RAWLS, AND THE WELFARE STATE

BY
INGRID SALVATORE

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Work in Property-Owning Democracy: Freeman, Rawls, and the Welfare State*

Ingrid Salvatore

In *Liberalism and Distributive Justice*, Samuel Freeman collects a number of essays published between 2009 and 2018. Although many important questions of political philosophy are addressed in the book, from the historical relation between classical liberalism and capitalism to that between global justice and distributive justice, a pivotal role is given to the idea of property-owning democracy (POD), an institutional arrangement intended to overcome capitalism, favoring the wide distribution of wealth in a system of privately owned means of production. In the central paper addressing this topic, Freeman insists on the odd fact that even though Rawls has generally been understood as a defender – and perhaps *the* defender – of the welfare state, this was not his own position. In fact, Rawls was a critic of the welfare state, deeming it incapable of realizing the requirements of justice as fairness. Together with liberal

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(democratic) socialism, Rawls defended POD as the best social arrangement of his just society.

Reading Rawls as providing a justification of the welfare state is a common mistake. Italy provides no exception. Among the many reasons why I am particularly happy to participate in this *Symposium* – and I would like to thank all the participants and Professor Freeman for agreeing to contribute to this issue – is to help introduce this debate in Italy as well. In my paper, I will try to clarify the distinction that Rawls traces between the welfare state and POD. I will argue that Rawls distinguishes two different ways in which a system can be inconsistent with justice as fairness. The first concerns those systems that are based on principles that simply deny justice as fairness, as in the case of capitalism. The second concerns systems that, while pursuing aims similar to those of justice as fairness, are structured in ways that cause them to work very differently from their intended aims. Following Esping-Andersen's identification of different "worlds" of welfare states, I will show which specific kind of welfare state falls under Rawls's first argument. Although Rawls does not say much about the other kinds of welfare states, I will claim that by acknowledging that Rawls does not aim to reject the welfare state *per se*, Freeman does still try to defend POD as more compatible on the whole with Rawls's ideal of justice, turning on one version of Rawls's second argument. In contrast with many supporters of the welfare state, for Freeman, Rawls anchors his defense of POD with a specific view of distributive justice, according to which redistribution is inextricably linked to production. In doing so, I believe that Freeman shines a light on some crucial aspects of the theoretical foundation of justice as fairness that are still in need of clarification. I will claim, however, that if, as Freeman wants, taking part in production must be the basis of distributive justice, then it will be a robust welfare state – rather than POD – that realizes Rawls's principles of justice.

Although intended to defend the welfare state against POD, I regard my speculations as modelled on Freeman’s own ideas. In what measure they make sense of his view, I will leave to Professor Freeman to establish.

I

Rawls’s defense of POD, and especially his rejection of the welfare state, has emerged only recently. In fact, *A Theory of Justice* has generally been understood as a defense of the welfare state. In part, this is due to internal reasons. As we are about to see, Rawls’s reference to POD in *Theory* is not very elaborate and its contrast with the welfare state is not clearly stated. As Rawls will claim about thirty years later, of the two things he would “handle differently”, if he wrote *Theory* again, “to distinguish more sharply the idea of property-owning democracy from the idea of a welfare state” is one¹ In fact, it is only in *Justice as Fairness: A Restatement* that Rawls finally clarifies his rejection of the welfare state in favor of POD.

Rawls’s idea of POD was inspired by James Meade, who wrote about the subject in the early 1960s. However, we should not overestimate the loan. Meade’s POD, as well as his own rejection of the welfare state, pertains to certain concerns regarding the future effects of greater automation, none of which Rawls shows signs of sharing, and which proved to be quite different from what was expected, as we will see.²

In addition, reasons related to *Theory*’s social and political environment help explain Rawls’s reception as a defender of the

¹ J. Rawls, “Preface for the Revised Edition”, in Rawls 1999 (1971), xiv.

² Meade 1969, 26. For a short history of POD, cf. Jackson 2012. For a comparison between Meade and Rawls, see Thomas 2017, 160 ff.

welfare state. Rawls theorizes an ideal society with the aim of providing both a foundation of certain institutional arrangements and, where an actual society does not match these standards, an instrument for reforming them. His principles of justice establish a sufficiently detailed system for sharing socially produced wealth in a framework of equal freedoms for all. Although far from perfect, the welfare state represents the most concrete and effective system for distributing the product of social cooperation, and is unsurprisingly a source of endless disputes – both scientific and philosophical – regarding its foundations, its aims, and its extension. It is anything but strange that Rawls's *Theory* came across these debates, leaving in the background, essentially unnoticed, the fringe and rather vague idea of POD, both in Europe and in the U.S. This becomes even clearer in the light of two further considerations.

Whether rightly or wrongly, from a European perspective, the welfare state is our own creation. It constitutes not just one aspect of the institutional arrangement of European societies, but the very organization of its social tissue. Obviously, this is not to say that there are no social policies or a concern for the less fortunate in the U.S. Fierce disputes surrounding cultural/structural explanations of the perpetuation of poverty bear witness to a lively debate regarding American welfare policies, dating back to the “War on Poverty” of the 1960s. Against the backdrop of these disputes, in 1996 President Bill Clinton signed into law a (controversial) reform “ending welfare as we know it.” By introducing a new institutional mechanism called “work for welfare” (workfare), the reform sought to fight welfare dependence, seemingly representing an admission of the failure of American social policies as well as the lack of a genuine welfare state. Rawls's distributive ideal has been read as an attempt to push

America to become a real welfare state, by taking the European welfare state as a model.³

On the other side, the European welfare state was not operating in safe waters. Since the economic recession of the mid-1970s, philosophical, scientific, and political controversies regarding the nature of the welfare state have been accompanied by a debate on the *crisis* of the welfare state, addressed by both the right and the left. The original discourse of the crisis of the European welfare state was framed in fiscal terms, necessitated by the growth of public debts and their inflationary consequences. However, even when this diagnosis of the crisis proved ungrounded, budgetary concerns did not disappear, as a new issue came to be regarded as crucial. It was claimed that in the age of globalization big welfare states engender a lack of competitiveness unsustainable for their economies, as it appeared evident when comparing “Eurosclerosis” with the nimble USA.⁴ The new diagnosis was endorsed by the European Commission, which in the 1990s issued a series of Green and White Papers essentially proclaiming the unsustainability of European welfare policies. Certainly, in these papers the Commission repeatedly championed the American welfare state for more efficaciously stimulating people to work, giving rise to an academic and political debate on the Americanization of the European welfare state.⁵

The Americanization of Europe was no doubt mentioned in a pejorative sense, but it would be reductive to circumscribe the attempt to reform the welfare state only to those right-wing circles

³ Examining the successes and the failures of what he calls the War on Poverty, originated by President J.F. Kennedy in the 1960s, Michael Katz writes: “Rawls offered liberals what they badly needed: a fresh, cogent legitimation of the welfare state”, Katz 2013, 145.

⁴ Cf. Castles 2004.

⁵ Cf. Alber 2010, 103. For the White and Green Papers, cf. Kuper 1994.

inspired by neoliberalism. For one part of the European left, the traditional welfare system was indeed in crisis, and the need for a new institutional design was not simply an ideology. As Antony Giddens claims in his famous *Third Way*, the political manifesto of Tony Blair's New Labour and, shortly after, of the New-Left spreading across Europe, European welfare states were based on a number of preconditions none of which still stood, from full employment (implicitly intended as *male* full employment), to a homogeneous labor market.⁶ Changes in the structure of the family, of society, and of the market, were manifestly creating a social demand that was much more complex and diversified than in the past and that the traditional welfare state appeared unable to match.

In a different context and with different aims, G.A. Cohen has noted how distributive justice was traditionally viewed as a social transfer from the wealthy to a homogeneous working class. Distributive questions across workers were not significant. However, what came to be known as the disintegration or fragmentation of the working class was radically changing this view. In the presence of a fragmented working class, the traditional conception of the distributive question took a different shape, conferring a central role to the way in which redistribution among workers occurs.⁷ This immediately affected the welfare state, especially because it was accompanied by the emergence of new forms of poverty and social unrest. As an effect of structural changes in the family, society, and the economy, the fragmentation of the working class and the emergence of new forms of poverty were viewed by many as evidence that the welfare state had to be profoundly re-examined, and new forms had to be invented.

⁶ Giddens 2008.

⁷ Cohen 1995, 153.

Such an analysis of the crisis of the welfare state was all but popular on the left.

Indeed, for welfare systems that – no matter what their genesis – had been profoundly shaped by socialism, not to say Marxism, emphases on the failures of the traditional welfare state, on the fragmentation of the working class, and on the new attention being paid to poverty, were seen as signs of social regress. For this “old” left, claiming that the welfare state had to cope with the insurgence of diversified social needs and facing the new flexibility of the labor market represented a process of Americanization in the unmistakably negative sense of foreshadowing a reduction of workers’ rights. The wrongs, according to these critics, were not in the welfare state “as we know it,” but in neoliberal politics. Willingly or unwillingly, by trying to reform the welfare state, the European reformists were, in effect, accepting the neoliberal logic, accommodating the welfare state to the market’s diktat.

The debate on the crisis of the welfare state was harsh and divisive. It would not be an exaggeration to deem it one of the causes, if not the main cause, of the blatant difficulties that the left is today facing all across Europe. Worse, it constitutes one of the sources of populism and nationalism on both the left and the right. In fact, the process of the centralization of economic policies that took place following the establishment of the European Union (EU) moved forward unaccompanied by a centralization of social policies, which essentially remain in the hands of states. This determined (and determines) a schizophrenic Europe that, while requiring that states implement social policies, prevents them from doing by imposing budgetary constraints.⁸ The effect is fueling anti-European sentiments that reinforce nationalism and populism.

⁸ Atkinson 2002, 627-628.

The relevance of this issue can hardly be overstated and goes well beyond political circles. Against this background, Ronald Dworkin conceived his *Sovereign Virtue*, whereby he explicitly pledges for a redefinition of the welfare state in line with the third way.⁹ Clearly, it is also because of this that Rawls has come to be read as a defender of the welfare state. From a European perspective, of course he had.

In the face of fierce political debates concerning if and how to reform the welfare state, Rawls's *Theory* represented an invitation to Americans to look at the European experience and a guide for us.¹⁰ This renders it particularly important to clarify, as Freeman and a few other scholars have begun to do, the meaning of Rawls's rejection of the welfare state in favor of POD, promoting, as Rawls claims, "the wide dispersal of property" as a necessary condition to maintain "the fair value of the equal liberties" (Rawls 1971, 245).

II

Though it is only in 2001 that Rawls clarifies his opposition to the welfare state, his interest in POD dates back to *Theory*. Rawls introduces POD in the second part of *Theory* when he turns to "describe an arrangement of institutions that fulfils [the] requirements [of the second principle of justice]" (Rawls 1971,

⁹ Dworkin 2000, 7.

¹⁰ Esping-Andersen 2002. The book is the outcome of a scientific report on the evolving architecture of the European welfare state that Gøsta Esping-Andersen, together with Duncan Gallie, John Myles, and Anton Hemerijck, were asked to produce by the Belgian Minister for Social Affairs and Pensions, Frank Vanderbroucke, for a conference organized by the Belgian Presidency, after the "new and ambitious goal ... assigned to the European Union for the next decade" set by Lisbon Council of 2000 (ix). As Vanderbroucke says in presenting the book, in accomplishing their task, Esping-Andersen and his collaborators "explicitly refer to a broadly Rawlsian conception of justice" (xvi).

228), after having discussed them “in abstraction from institutional forms” in the first part (*ibid.*, 171).

In considering the three parts into which *Theory* is divided (“Theory,” “Institutions,” and “Ends”), one might be tempted to read its second and third parts as additional elements in which Rawls takes pride in applying his two principles as an exercise of dexterity, adding nothing to the justification of the principles. Had Rawls less time or less will, he could have released the first part alone without loss. Despite this being a grave mistake, it would not be as harmful had it not helped to reinforce a misunderstanding of Rawls as an idealist philosopher, who establishes his principles of justice in conditions that are not our own and are thus either meaningless or useless to us.¹¹ Nevertheless, Rawls is not playing with Platonic idealism. Principles of justice that are good for Heaven but that have no hope of realization on Earth would be meaningless to Rawls. For while “justice as fairness is not at the mercy ... of existing wants and interests,” as Rawls clarifies, “it sets up an Archimedean point for assessing the social system without invoking a priori considerations,” resting on the contrary on “psychological premises” as well as on any sort of useful empirical consideration, from sociology, to economics, to social and moral psychology (*ibid.*, 321, 230). The parties in the original position, as Rawls states, “know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the law of human psychology.” “There are no limitations,” for Rawls, “on general information,” as no limitations are put “on general laws and

¹¹ Freeman discusses this topic in replying to Amartya Sen’s objection to Rawls (Freeman 2018, 257-293). Reading Rawls as an idealist is becoming more and more common as the resurgence of realism or new-realism spreads, under the influence of authors such as Bernard Williams, Stuart Hampshire, William Galston, and many others.

theories” (*ibid.*, 119). In fact, in the absence of such considerations, the choice of parties would be ungrounded.

As is well known, Rawls assumes that the parties in the original position choose the principles of justice regulating the arrangements of the main institutions of their society. When making this decision, the parties knowingly choose the kind of obligations which they will find themselves constrained by, according to the institutional arrangement they select and the position which they happen to occupy. They are required to accurately evaluate whether they will be able to cope with the burdens that will weight on them, taking into account the attitudes and sentiments that the scheme will generate. They will reject principles that would generate systems that they have reasons to believe *now* will place on them burdens that they would not be able to satisfy. If certain principles are likely to generate systems that do not enhance self-respect, for instance, the parties will judge that they will nourish envy or resentment, possibly stimulating them to deviate from justice should the circumstances allow. As a result, they will reject those principles.

However, given that “the principles of justice apply to the basic structure and regulate how its major institutions are combined into one scheme” (*ibid.*, 242), the “duties and the obligation” the parties are required to evaluate are those with which they could be asked to comply, depending on the position they happen to occupy in the social scheme that the principles engender (*ibid.*, 171). In this sense, the principles are selected by keeping in mind the institutional system and the obligations it would create. Accordingly, considerations concerning which ideal system certain principles will produce are crucial for choosing them, demonstrating that the second (and third) part of *Theory* are all but additional. Indeed, the justification of the two principles would not be complete in their absence.

Given the relevance that the choice of a system has for the very justification of the principles of justice, the selection of POD as a form of economic organization that, together with liberal socialism, can only realize justice as fairness, is an especially important topic. Especially important too is the rejection of the welfare state as inadequate to the scope. The juxtaposition of POD to the welfare state becomes explicit only in Rawls 2001. In *Theory*, in fact, not only is there no clear indication of the welfare state's rejection, but some reasons are offered to believe the opposite. Rawls's first mention of POD comes after a discussion concerning ownership of the means of production. The aim of this discussion is to show how, given certain conditions, justice as fairness can be realized in a regime of private property or through public/collective ownership of the means of production. The two main elements for such an equivalence are the provision of public goods and the role of the market. The essence of such a discussion may be summarized as demonstrating that the public ownership of the means of production does not necessarily perform better in providing public goods, and that there is no principled opposition between the market and socialism.

With respect to public goods, ranging “from military equipment to health services” (Rawls 1971, 239), Rawls acknowledges how, given their public and indivisible nature, the distribution of public goods must be carried out by the state and not by the market. However, he emphasizes how distribution is distinct from production. In this sense, once a decision has been taken on which and how much must be provided, it does not matter whether the state buys them on the market or from firms that are publicly owned (*ibid.*)¹². Public ownership must also be severed from the amount of public good that is provided by the state. In this regard,

¹² This point could be contested. In fact, there might be good reasons for not wanting an overly meager state. Stiglitz 2000, 207.

the two systems can analogously perform well or badly. Moreover, according to Rawls, the particular list of public goods to be provided does not concern a theory of justice and must be left to political sociology (*ibid.*).

With regard to the market, Rawls distinguishes liberal/democratic socialism from systems based on a command economy, be it right- or left-wing. Liberal socialism is characterized by full acknowledgment of individual fundamental freedoms, among which is the free choice of occupation. By not interfering with this, any socialist society must necessarily allow some kind of labor market (*ibid.*). Moreover, even though in a socialist economy planning will play a greater role in driving production, room is still left to deploy the informative power of the market (*ibid.*). As long as nothing prevents the public ownership of the means of production from making use of the market, and there is no connection between the system of production and the quality and quantity of public goods, justice as fairness can be realized by either socialism or by a system that allows private property as POD. Which of the two systems will ultimately prevail, for Rawls, depends “upon traditions, institutions, and social forces of each country, and its particular historical circumstances” (*ibid.*, 242; Rawls 2001, 139). By turning to POD as the favored system of *Theory*, Rawls thus seems to suggest that that is the system most likely to be realized in a country like the U.S., whereas were Sweden the society in question, it would be socialism rather than POD which best realizes justice as fairness, given its dissimilar history and political culture. However, despite mentioning POD and liberal socialism as the two preferred cases, Rawls adds “many intermediate forms” that, depending upon traditions, institutions, social forces, historical circumstances and so on, can all realize the two principles of justice (Rawls 1971, 242). This reasonably suggests that at least some forms of welfare states are included within the intermediate forms capable of realizing the requirements

of justice. Such an impression is immediately reinforced by the very description of POD, which includes equal opportunities for education and cultures, equal opportunities in economic activities and in the free choice of occupation, social minimum, all of which are traditional elements of the welfare state. It is only when mentioning inheritance and gift taxes as means for the “wide dispersal of property” that Rawls hints at something beyond the scope of the welfare state (*ibid.*, 245). In fact, both inheritance and gift taxes are currently implemented in many states, albeit to a lesser extent today than in the past. However, what Rawls seems to have in mind is a kind of taxation well beyond what currently exists. Nevertheless, even when this is taken into account, it is not clear that inheritance and gift taxation stand in contrast to the welfare state (Freeman 2018, 144).

Regardless, as stated earlier, in *Justice as Fairness* Rawls makes clear that not only are POD and the welfare state two distinct ideal models, but that the latter is in contrast with justice as fairness (Rawls 2001, 139). Of the five systems that Rawls takes into account, evaluating which can effectively realize the two principles of justice and which cannot, only POD and socialism survive. No mention is made of intermediate forms. Moreover, the equivalence between socialism and POD is now only conditional. For Rawls acknowledges that the public ownership of the means of production might prove more effective than POD in realizing justice, as a regime of POD might generate “political and economic forces that make it depart all too widely from its ideal institutional description.” If this is the case, as Rawls claims, “the case for liberal socialism is made from the standpoint of justice as fairness” (*ibid.*, 178). Of the three remaining systems, the command economy is easily dismissed in that it violates the first principle of justice. Capitalism is more interesting. Capitalism, as a concrete system, is hardly mentioned in *Theory*; just a couple of times in reference to Keynes (Rawls 1971, 263). However, *Theory* fully and unequivocally

rejects the system of natural liberty, the philosophy on which capitalism is grounded. Thus, what is genuinely new in *Justice as Fairness* is the contrast between POD and the welfare state and, in particular, the rejection of the welfare state on the very same bases as for capitalism.

Rawls rejects the system of natural freedom (capitalism) for it allows that “the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies.” Although granting a background of equal liberty and equal “legal rights of access to all advantaged position,” “no effort is made” in a system of natural freedom “to preserve an equality, or similarity, of social conditions” (Rawls 1971, 62). Something similar is true of the welfare state, as according to Rawls it “also rejects the fair value of political liberty” (*ibid.*, 137). Rawls acknowledges that, in contrast to capitalism, the welfare state shows “some concern” for equality of opportunity, but he assumes that “the policies necessary to achieve that are not followed” (Rawls 2001, 138).

Nevertheless, it must be noted that Rawls distinguishes two ways in which a system can stand in contrast to justice as fairness. The first is a principled one, concerning systems that simply do not aim to reach a certain ideal. Under the plausible assumption that a system is unlikely to reach something for which it does not aim, a system that is explicitly not intended to satisfy the requirements of justice as fairness cannot but be rejected from the point of view of justice as fairness (*ibid.*, 137). This is clearly the case of capitalism. Capitalism is based on a system of philosophical doctrines that variously deny the requirements of justice as fairness *as just* requirements. However, as we have seen in the case of socialism, POD is only *prima facie* equivalent to it. Eventually, Rawls acknowledges that by allowing private property, POD may end up generating interests in its basic structure that can make it difficult, if not impossible, to satisfy the requirements of justice (*ibid.*, 178).

This means that a second way in which a system can stand in contrast with justice as fairness is that, while aiming to reach the very same ideals or something similar, it is so designed that its basic institutions generate interests “that make it work very differently than its ideal description” (*ibid.*, 137). If this is the case, then the contrast between justice as fairness and the welfare state might concern not so much its aims, but its design.

As we have seen, the main objection that Rawls raises against the welfare state rests on its failures in protecting the fair value of equal liberty. What Rawls clarifies in *Justice as Fairness* is that the reason why the welfare state provides insufficient protection for the fair value of political freedom is that it typically redistributes “at the end of each period” (*ibid.*, 139). In doing so, the welfare state intervenes too late, so to speak. Those with less will receive their share eventually, but this *ex post* intervention is of little avail against “a discouraged and depressed underclass,” “chronically dependent on welfare.” These people will easily feel “left out” and unwilling to “participate in the public political culture” (*ibid.*, 140). According to Rawls, income redistribution at the end of each period warrants that none will “fall below a decent minimum standard of life,” and that all will “receive certain protections against accident and misfortune,” including unemployment compensation and medical care (*ibid.*, 139). Nevertheless, it cannot “prevent a small part of society from controlling the economy, and indirectly, political life as well” (*ibid.*). Despite the fact that “welfare provisions may be quite generous and guarantee a decent social minimum covering the basic need” (*ibid.*, 138), the welfare state still “permits a small class to have a near monopoly of the means of production” (*ibid.*, 139). Accordingly, to protect the equal value of political freedom, “the widespread ownership of productive assets and human capital (that is, education and trained skills), at the beginning of each period” must be ensured as a necessary condition (*ibid.*). This would “put all citizens in a position to

manage their own affair on a footing of a suitable degree of social and economic equality” (*ibid.*).

Based as it is on the way in which its redistribution functions, however, this objection is clearly addressed to the *modus operandi* of the welfare state. It does not necessarily concern the project underlying its construction.¹³ Capitalism and welfare state capitalism, after all, do constitute two different ideal models, in Rawls’s view. While *laissez-faire* capitalism not only *permits* “a small class to have a near monopoly of the means of production,” but this is what it consists in, the same cannot be said of the welfare state. In the measure in which the welfare state is distinct from capitalism, we can say that it is a *failure* of the welfare state that it *permits* the accumulation of the means of production in just a few hands. This leaves open the possibility that, while putting citizens “on a footing of a suitable degree of social and economic equality” is after all the aim of the welfare state, doubts can be cast concerning its capacity to do so. As in the case of the contrast between POD and socialism, this is largely an empirical question. Its vindication depends on proving that there are structural features of the welfare state that inevitably cause it to fail in this way. It should be proved, for instance, not only that *ex post* redistribution has been until now unable to prevent capitalist accumulation, but that it is structurally unable to do so.

However, in the very same paragraph, interwoven with this line of argument a very different point can be reconstructed. Moving on to a second, stronger objection to the welfare state, Rawls describes this as a system essentially devoted to assisting “those who lose by accident or misfortune” (*ibid.*). In contrast with POD, according to this second argument, the welfare state does implicitly conceive of the least advantaged as the “unfortunate and unlucky

¹³ A similar conclusion, although based on a different argument, is reached by Schemmel 2015, 395.

– objects of our charity or compassion,” if not of our pity (*ibid.*). Rawls, of course, does not deny that protecting people from misfortune and assisting the unlucky are requirements that a just society is compelled to satisfy. In fact, these functions remain essential responsibilities of the institutions of a just society (*ibid.*). However, assisting the unfortunate is neither sufficient for the sake of justice nor is it the essential aim of a just society. Well beyond assisting the unlucky or the unfortunate, a just society must recognize “a principle of reciprocity to regulate economic and social inequalities” (*ibid.*, 138), something that the welfare state appears not only unable to do, but not intended to do. Might these two objections address different kinds of welfare states? Rawls does not sufficiently explore the argument. However, as I will claim, Freeman hints at such a possibility. For the rest of this paper, I will address Freeman’s interpretation of Rawls’s criticisms of the welfare state and defense of POD. For the sake of simplicity, I will often speak of Freeman’s criticism of the welfare state and defense of POD, sometimes attributing to Freeman opinions that are, in effect, accounts of Rawls’s thought.

III

As Gøsta Esping-Andersen has remarked, it is quite common even in the scholarly literature to take the welfare state as a given, uncritically accepting the “nation’s self-proclaimed welfare-state status,” and making little effort to define the welfare state itself.¹⁴ Questions concerning (for instance) ways in which the welfare state supports or conflicts with capitalism, or whether the welfare state has essentially to do with class mobilization or with a basic modicum of well-being for citizens, do not seem to be of much

¹⁴ Esping-Andersen 1996, 20.

interest to welfare scholars.¹⁵ In discussing the welfare state in general, however, we must be certain that anything similar even exists. Nobody would deny, in fact, that present-day welfare states largely differ from each other. Thus, we must ensure that in abstracting all the aspects that make them different from one another, we can still talk of the welfare state as a single object. So, what exactly is a welfare state?

Welfare state studies can be conceived as one part of a larger topic concerning the relation between the market and the state. In the historical battle between liberalism and socialism, liberals were those defending a limited role for the state at the service of the market. This was also how socialists conceived of the liberal state. Socialists argued that the liberal state was indeed at the service of capitalism, but whereas liberals saw this as the eternal role of the state, Marxists believed that it merely constituted a historical phase, destined to collapse. Freeman notes the irony that the liberal position of those days, defending a limited role of the state, closely resembles the current position of American conservatives, opposed by the liberals of today (Freeman 2018, 2). It would certainly be misleading to suggest that Freeman aims at reconstructing the meaning of the word “liberal.” However, in the first two chapters of his book, Freeman traces some important distinctions internal to the liberal doctrine that, in part, explain the question.

Freeman distinguishes between two forms of liberalism: classic and high. The reason for choosing an expression as uncommon as high liberalism, evoking historians’ expressions “High Classicism” or “High Middle Age,” is double. On the one side, Freeman wants to avoid speaking of new liberalism, generating confusions with neoliberalism, as high liberalism represents the opposite.

¹⁵ *Ibid.*, 18.

Neoliberalism is the expression commonly used in the current debate to refer to a set of policies urging for a retreat of the state from the market, in contrast with high liberalism (*ibid.*, 1). On the other side, some historical flavor is desired. For high liberalism does not coincide with contemporary liberalism, dating back to Mill and Dewey (*ibid.*, 23); moreover, it must be seen as an evolution of classical liberalism, generated by a different interpretation of ideas and principles already embodied in it (*ibid.*, 3). The common ground of liberals of any kind, of course, is the special importance attributed to individual freedoms. Although liberals differ in the list of freedoms they acknowledge as basic, a cluster of fundamental freedoms can still be identified: freedom of thought, freedom of conscience, freedom of the person, and free choice of occupation are all examples of basic liberties (*ibid.*, 17). For people actually exercising their liberties, freedom must be regulated. All fundamental freedoms thus find restrictions of some kind. However, while no freedom is unlimited, restrictions are permitted only for the sake of protecting freedom itself (*ibid.*, 17). If this represents the common point of liberals of any sort, where classic and high liberals mostly disagree is on the importance they attribute to economic freedoms, property rights, and the related freedom of contracts (*ibid.*, 18). However, contrary to what might be believed, the difference for Freeman is on the emphasis they attribute to economic freedom, rather than being absolute. For while classical liberals do attribute to economic freedoms a degree of importance that high liberals challenge, they do not claim the very same significance of personal liberties. Indeed, they acknowledge that economic freedom can be restrained for reasons other than protecting freedom. Classical liberals, in this sense, would recognize as bases to restrict economic freedoms the conditions necessary for free competitive market and efficiency, as well as for procuring and maintaining health, safety, and public goods (*ibid.*, 19). According to Freeman, this is where classical

liberals mostly differ from libertarians, whom he does not deem part of the liberal family. In fact, in contrast to classical liberals, libertarians attribute to property rights the same value of basic personal freedoms (*ibid.*, 73). Moreover, they conceive of political power as private and “privately exercised” (*ibid.*, 83), whereas for liberals both classical and high, political power is eminently public, to be exercised impartially and only for the common good (*ibid.*, 21, 72). The acknowledgment of the legitimacy of the state’s intervention, even at the cost of restricting economic freedom for the sake of the public good or protecting social or collective interests, reveals, for Freeman, the real nature of classical liberals’ view of economic freedoms. In classical liberalism, in fact, economic freedoms essentially depend on efficiency (*ibid.*, 19). In that they view the market as the most efficient way to allocate and distribute income and wealth, classical liberals regard a system of economic freedoms as justified insofar as it is necessary to keep the market free and efficient, with the underlying assumption that a system in which income and wealth are efficiently allocated maximizes the collective interests. It is not by chance, Freeman notes, that most classical liberals were utilitarians (*ibid.*, 21).

Utilitarianism, according to Freeman, both provides the justification of capitalism and explains the transformation of *laissez-faire* capitalism into welfare state capitalism (*ibid.*). In fact, endorsing social utility as their fundamental value, classical liberal utilitarians had no trouble in justifying money transfers from the wealthier to the poorer. Poor people usually attain more satisfaction from a given amount of money than those who already have a lot of it. It is easy, from this perspective, to justify provisions to “the most disadvantaged, or at least to the disabled ... in order to raise them at least to the threshold of a minimally decent life” (*ibid.*, 21). This is not to say that contemporary classical liberals do not object to the extent of these transfers. However, most of them,

according to Freeman, accept a “safety net” for people unable to provide for themselves (*ibid.*).

What is very interesting, in this brief account of the philosophical foundation of the welfare state as a system providing support to the most disadvantaged or to the disabled, is how no mention is made of the traditional social insurance schemes addressed to workers, often on a contributory basis. These include medical care, sickness, old-age, unemployment and maternity benefits, together with less traditional paid and non-paid leave for training, paid and non-paid leave for assisting relatives and so on. Not only are such schemes what any welfare scholar would consider the proper object of her field of studies, but they are the very parameters whose variations defines kinds, types, or worlds, of welfare states regimes. What might explain such a discrepancy? Referring to the welfare state while having in mind poor relief is not uncommon in the Anglo-American world. As Brian Barry suggests, “with few exceptions, British and American philosophers who have written about the justification of the welfare state have in fact produced a justification of the Poor Law.”¹⁶ According to Barry, there might be significant theoretical reasons explaining such an attitude, for there is an obvious sense in which poor laws are more redistributive than the welfare state.¹⁷ However, although this is a very important point, there are also important historical reasons to consider.

Taken as historical objects, existing welfare states evolved in very different milieu, so to speak, animated by very different political cultures. As is well known, Northern European welfare states, the promised land of any welfare scholar, are often insulated as a very peculiar experience, with no comparison in other

¹⁶ Cf. Barry 1990, 504.

¹⁷ *Ibid.*, 505.

countries. Southern European welfare systems, on the other hand, may be distinguished from the rest of Europe owing to differences in the structure of society and in the family.¹⁸ Welfare in the United Kingdom (UK) is sometimes considered *unique* in the European panorama, in that it is more similar to the American welfare state than to European models. Analyzing these differences, Esping-Andersen identifies three different worlds of welfare systems: the liberal, the corporatist, and the social-democratic.¹⁹ By referring to different *worlds*, Esping-Andersen wants to suggest that the expression “welfare state” is better understood as lying at the level of species rather than at the level of kinds. After all, it is one thing to be a lion, and another to be a cat.

In terms quite congenial to Rawls, Esping-Andersen believes that analysis of the welfare state must be conducted not at the level of political sociology, but at the level of political economy. By this he means that the nature of the welfare state is better understood by investigating the role of the state in managing and organizing the economy, under the assumption that “employment, wages and overall macro-economic steering are ... integral components in the welfare state complex”.²⁰ Once so understood, for Esping-Andersen, the differences between existing welfare states do appear not as epiphenomenal varieties of a single object, but as manifestations of different “logics,” according to which different kinds of welfare states operate. This helps clarify how in thinking of the welfare state we cannot speak of a single object at different degrees of development, but of different objects aimed at realizing different goals.

¹⁸ See Ferrera 1996.

¹⁹ Esping-Andersen 1996, 3.

²⁰ *Ibid.*, 2.

Esping-Andersen's tripartition of welfare states is based on a criterion of class coalition, according to which the logic governing each model essentially depends on the way in which different social and political forces from the working class to religious institutions and conservative parties combine to shape the system.²¹ However, this is not what mostly interests us. In fact, on different bases, Richard Titmuss has traced a similar distinction between residual and institutional welfare states, this idea becoming a classic in welfare studies. More interesting is the fact that these authors make similar diagnoses concerning the model into which the American welfare state falls – liberal or residual – according to the terminology adopted.²² Consistent with Freeman's reconstruction of the welfare state as the product of the very same political culture offering the most consistent justification of capitalism, Esping-Andersen, Titmuss and many others agree that the American welfare state exemplifies a type of welfare system that is characteristically market conforming. As Freeman enlightens, driven by the conviction that the market provides the most efficient allocation of wealth and income, the American welfare state is residual in that it is designed to interfere as little as possible with the efficient operations of the market. This is what gives it its peculiar residual, assistance-based appearance.

These considerations lead to the finding that, to the extent that the welfare state is rejected as incompatible in principle with the aims of justice as fairness, as in the second of Rawls's objections, it is not the welfare state as such that is rejected but a specific form of welfare system.²³ This helps explain why Freeman speaks of the welfare state in terms of policies tackling poverty. For poor relief,

²¹ *Ibid.*, 3.

²² Titmuss 2018 (1958).

²³ Schemmel 2015, 397.

in effect, is the essential characteristic of residual welfare states, both in theoretical terms and with regard to their policies. In fact, the American GDP share for social protection – notably “the lowest of *any* Western industrial society,” according to the OECD – is mostly absorbed by programs for the poor.²⁴ This is not to say that the American welfare state does not provide pensions, medical care, or unemployment insurance. For however much talk of the American welfare state “remains for many an oxymoron,” in the words of Michael Katz, it would be mistaken to deny that there exist in the US genuine social insurance programs.²⁵ Currently, a complex of federal-national programs guarantees relatively generous old-age insurance. Medicare and Medicaid, the two health programs respectively addressed to the elderly and to the poor, have been extended, covering a significant part of the population.²⁶ Nonetheless, it is still the case that “when the American government does act to shelter individuals and families from economic hardship, it is more likely to do so in ways that conform to market principles.”²⁷ The lion’s share of American social insurance, for instance, is represented by private welfare. For the most part, (regular) employees receive their health insurance and pensions from their employers, according to schemes and rules that are not mandated by the state and are mainly in the hands of

²⁴ Noble 1997, 7.

²⁵ Katz 2010, 508.

²⁶ *Ibid.*, 517. This was before Donald Trump’s election.

²⁷ Noble 1997, 7. Recent OECD data indicate that social spending is 18 per cent of the GDP of the U.S., compared with 22.66 per cent in Portugal and 27.9 per cent in Italy. France is highest, with 31.2 per cent. In themselves, these data do not say much. Both in Italy and Portugal, for instance, a large amount of social spending goes toward pensions. However, in the U.S. the rate of expenditure is the lowest according to any indicator. <https://data.oecd.org/social-exp/social-spending.htm>.

private insurance companies.²⁸ This apparently “state-free” insurance system is responsible for a “conceptual” distinction between workers, seen as receiving benefits corresponding to nothing but what they paid, and non-workers, receiving underserved public assistance out of “the others” benevolence.²⁹ Although this is strictly false, for there are also obvious redistributive elements in insurance schemes, the separation between private insurance and public assistance characteristic of residual welfare states reinforces such a conceptualization.³⁰

The U.S. is of course not unique in practically and conceptually linking social benefits to work. However, depending on its market-conforming policies, it is characterized by the fact that the state plays a very limited role in education and training, as well as in offering jobs. In such a market-conforming welfare state, poverty is the only issue that the state must confront. Unemployment *per se* is a self-solving market problem, dealt with by reducing pay and expectations.³¹ It is instructive, from this point of view, to look to Robert Solow’s comments concerning the workfare reform mentioned at the beginning of this article. As we have seen, the workfare reform was aimed at reducing assistance by activating people in the labor market. Solow is sympathetic with the intent of the reform. He believes that “if it could be taken for granted that [transforming welfare into work] would be accomplished in ways that are neither punitive nor degrading, then ... the routine substitution of work for welfare would be clearly desirable, indeed a necessary step to ... a ‘decent society’”.³² However, predicting its

²⁸ Noble 1997.

²⁹ Katz 2013, 3.

³⁰ To understand the redistributive nature of private schemes, we have to think of the role that taxation policies play in shaping private-sector pensions plans. See Howard 1997; Esping-Andersen 1996, 79-104.

³¹ Solow 1998, 24.

³² *Ibid.*, 7.

failure, he strongly criticizes the reform as more a slogan than a reality. The reason for Solow's disappointment is the fact that having faith in people finding a job by simply "activating" them is based on the false premise that a large number of jobs waiting for uneducated ex-welfare mothers will soon become available, matching the offer, so that "a net addition to aggregate employment" will be effected. However, as Solow notices, "there is absolutely no reason to believe that our economy holds a substantial number of unfilled vacancies for unqualified workers".³³ Answers to chronic dependence require much more effort to find than workfare.³⁴ In fact, even Sweden's inclusive welfare state was made sustainable by pursuing employment policies. Nevertheless, the state played an extraordinary role, providing services for intensive education and training programs, and absorbing workers – especially women – in the service sector.³⁵

What has been said so far is consistent with a description of the welfare state as implicitly conceiving of the least advantaged as the "objects of our charity or compassion." In residual welfare states, this is literally what happens. In residual welfare states, social security is not really viewed as a set of social rights, but as part of a private agreement between employers and employees. State intervention is thus only permitted when the problem is already there. It is this that makes the welfare state residual. For where the state refrains from tackling unemployment and from regulating employment in all its forms, there is little that needs to be done.

³³ *Ibid.*, 27.

³⁴ The OECD data are again interesting. Together with the UK, the U.S. is the country investing the least in the labor market. Estonia, Slovenia, and the Slovak Republic, just to name a few examples, show less spending than in the past, but are still well above the U.S. line from 2008. <https://data.oecd.org/socialexp/public-spending-on-labour-markets.htm#indicator-chart>.

³⁵ Esping-Andersen 2003, 80.

The welfare state is reduced to a public assistance role. When a welfare state is residual and, as we have said, market conforming, then it makes sense to describe it as pursuing aims distinct from and in contrast with justice as fairness. For, in full contrast with justice, the logic of a residual welfare state is that of interfering as little as possible with the market's efficient usage or "exploitation" of individuals' productive powers for the sake of some and not of all. This translates into policies ideally aimed only at those who are considered unable to work, members of specified categories, from people with disabilities, to widows, to single mothers of very young children, all of whom must prove their eligibility. The consequences are selective benefits administered by a bureaucratic apparatus, which intrudes into individuals' lives and produces social stigma.³⁶

One peculiar characteristic of the residual welfare state, moreover, is that what is viewed as an act of generosity, deserving gratitude for those who pay for it, does not look quite so generous to those who receive it. In fact, in residual welfare states it is difficult to raise the poor above a certain threshold. Doing so would end up with workers and non-workers enjoying the same quality of life, in contrast with the aim of making the market the best option. This also fits with Freeman's considerations showing how in (residual) welfare states, citizens are likely to consider the assisted as a social cost, while the assisted feel threatened in their self-respect (Freeman 2018, 155). In residual welfare states, in fact, both those who pay and those who receive have reasons to complain.

The sketch of the American welfare state just offered is quite conventional. Even though it is widely shared, some scholars would criticize it, either by questioning some aspects of the picture,

³⁶ On the disadvantage of selective, non-universal services, see A. Weale 1990, 474.

or by rejecting the picture entirely. The emphasis on dependence on which both Freeman and Rawls insist, for instance, is a highly disputed question among scholars. According to many, insistence on dependence is overstated, either because the evidence does not support it, or, more radically, due to skepticism regarding the sanctification of self-reliance. A wider objection comes from scholars who fully reject the characterization of the American welfare state as residual. Resting on Christopher Howard's research on fiscal policies, for instance, Jens Alber claims that European scholars, and the many American students who rally behind them, completely misunderstand the American welfare state. By focusing almost exclusively on direct expenditure and ignoring tax benefits, they significantly underestimate the social impact of the American welfare state.³⁷ However, it has not been our goal here to negotiate these disputes. The aim of this sketch has merely been to account for the sense in which there might be – in fact, there are – kinds of welfare states that are effectively incompatible with justice as fairness. This vindicates Rawls's strongest objection, according to which the *ex post* distribution of this kind of welfare state depends upon the idea that assisting those who fall into poverty *only once they fall* is the only possible aim of redistribution. Nevertheless, what can be said about the second possible objection? If there is more than one kind of welfare state, there can be a sense in which POD surpasses non-residual welfare states not because they in principle contradict justice of fairness, but because their overall design makes them unlikely to realize what they are meant to realize. Is that the case?

³⁷ Alber 2010, 103.

IV

From a historical point of view, as we have seen, the welfare state must be considered as the product of very different social circumstances that gave rise to systems functioning according to different “logics.” Of the three models of welfare states that Esping-Andersen distinguishes, only the liberal (residual) presents the peculiar market conformity that we have just described. This does not mean, however, that all non-residual welfare states share similar concerns for social justice, nor that they are the products of similar processes and forces. For instance, corporatist welfare states (Italy, Germany, and to some extent France) are the outcome of conservative efforts and, especially in Italy, of the Church’s influence on the state. They were designed not for the sake of equality, or social justice, but essentially to hold off the threat of socialism. This was effected by segmenting the world of work and thereby making expert use of the divide-and-conquer principle. As a result, they are strongly fragmented welfare states, characterized by complex and differentiated social schemes intended to engender white-collar loyalty, separating them from the working class.³⁸ In this sense, only the social-democratic welfare state is genuinely egalitarian. Nevertheless, compared with the residual welfare state, corporatist welfare states are still more sheltering.³⁹ Moreover, they have been interpenetrated by universalistic features of social-democratic models, as public and (essentially) unconditional health systems show.⁴⁰ Thus, although both Southern and continental welfare states can hardly be equated to their Northern

³⁸ Esping-Andersen 1996, 24. On the Italian welfare state as shaped by a long path of reforms attempting to cope with Europe, see Ferrera & Gualmini 2004.

³⁹ Esping-Andersen 2003, 79.

⁴⁰ The German health system, in fact, is rather peculiar, but this does not change the essence of the argument.

counterparts, I will refer in the following to a generic European welfare state as aimed at rendering people much more equal and much less exposed to market risks.⁴¹

However, even if we take for granted that social justice can be seen as the essential aim of all European welfare states, it is still all but certain that they are capable of materializing it. European welfare states, as we have seen, are hardly enjoying their best moments. In recent decades, the costs of welfare states have become such a major problem in Europe that the concrete possibility of realizing social justice has begun to appear much less realistic than in the past. The idea that the welfare state as we *knew* it in Europe must be seen as a transitory product of a particular historical moment – and not, as we thought, a permanent result of European democracy, destined to realize full equality and social justice – is gaining momentum among scholars of different orientations. Globalization (is claimed to have) changed the scenario, making it difficult for firms to be competitive with high rates of taxation, so in the absence of global regulation, local deregulation is the only possible answer.

In the literature on distributive justice, there is a significant division between those who maintain that we can no longer conceive of society as the unit of distributive justice, and those who believe that the state still has an important role to play with respect to social justice.⁴² Although fiscal sustainability is not the essential concern in this philosophical debate, its terms can be easily extended to the welfare state. In this case, what is in question is the concrete possibility of the local taxation of global capitalists who are free to move their money, if not their firms, as they like.

⁴¹ Ferrera 1996.

⁴² Freeman addresses this question in chap. 6.

I do not deny the impact of globalization on national welfare states. However, it must also be kept in mind how the self-declared inevitability of a retrenchment of the welfare state for reasons of competitiveness could actually depend on the neoliberal orientation of the élites, rather than on the unsustainability of the welfare state. As Paul Krugman suggests, “it is simply not the case that the world’s leading nations are to any important degree in economic competition with each other.” Although attractive to many people, “the obsession with competitiveness is not only wrong, but dangerous, skewing domestic policies and threatening the international economic system.”⁴³ In the same line, analyzing the “myths and realities” of the unsustainability of the welfare state, Francis Castles points out that the widespread claim that globalization is producing or will soon produce the collapse of the welfare is in no way supported by empirical analysis.⁴⁴

I rest on this ground. While not denying the complications that national welfare states must face in a globalized environment, I assume that, insofar as the European welfare state is in fact in trouble, the causes of such difficulties are endogenous rather than exogenous, as we are going to see.⁴⁵ It must be said that such an assumption is more palatable in countries with a coinage and a national bank. The situation is more complicated in Europe, where, with the constitution of the EU, states have lost a significant part of their decision-making power in fiscal and monetary policies, not substituted, as noted earlier, by a complementary will of the Union to implement social policies. However, I will ignore this further aspect, assuming that more than an economic question, this is a political and institutional question that will hopefully be solved when we begin to consider Europe as

⁴³ Krugman 1994, 30.

⁴⁴ Castles 2004, 14.

⁴⁵ Esping-Andersen 2003, 3.

a single unit of some kind, instead of having a bundle of states pursuing their own interests.

The continued importance of the state, moreover, is indirectly confirmed by the fact that, despite enduring warnings as to the necessity of reducing social expenditure, policies in this direction have not in reality provoked a reduction in workers' rights in the traditional sector of the labor market. However, they have not failed to produce consequences.

Non-residual, less market-conforming welfare states determine a labor market that is typically much more rigid than residual ones. Employers in such welfare states do not have the same room for maneuver they are allowed, for instance, in the more flexible U.S. There is not the same degree of flexibility in lay-offs and recruitment, for example. The rigid legislation of the labor market is obviously an intended goal of non-residual welfare states. It is part of what makes them non-residual. However, the unwanted outcome of such desired rigidity is a decrease in employers' propensity to recruit personnel.⁴⁶ The effect of the rigidity of the labor market is not particularly problematic at higher levels of the productive chain, where productivity is also high, and employers are prone to endorse the costs of qualified workers and to take responsibility for hiring them. However, it is especially relevant at the bottom of the labor market, as well as for young people, typically lacking work experience. Employers do not willingly hire workers if the contract legislation does not allow them to discard them as soon as market opportunities change or the employee fails to match their expectations. As a result, we see high rates of unemployment affecting all European countries, albeit in different measures. Apparently, the more workers are protected in their workplace, the less work and job places will be available, hence the

⁴⁶ Scharpf 2001, 279.

more the welfare state protects “insiders,” the more it excludes “outsiders.” We might say that each American working poor is a European unemployed.⁴⁷ This is what has been called “welfare-without-work.”⁴⁸ We can imagine, of course, that in a just society, where education is intensively pursued, the problems of unskilled people will be reduced. However, no matter how intensively we pursue education – and we must – there will always be workers at the bottom of the production. If, as we surely want, we protect them, we must also accept that a significant number of otherwise available jobs will not be offered on the market. The answer that most European governments have provided to the growth of unemployment has essentially consisted in making the labor market more flexible. Specific formulas have differed, but the common result has been a maze of contractual instruments easing employers’ burdens and decreasing the rights of large sectors of workers. This is part of what we have called the Americanization of Europe. While the introduction of flexibility has generally been justified as an instrument for favoring access to the labor market, by triggering a virtuous circle, the reality has been the emergence of a secondary labor market from which people rarely escape. Moreover, even under these conditions, rates of unemployment are often very high.

The scenario envisaged by the welfare-without-work phenomenon is not one that Freeman explicitly addresses. However, the relation between welfare and work, or, as we also might say, between work and distributive justice, is particularly useful for clarifying some aspects of his conception of POD, as well as his criticism of the welfare state. The spread of high rates

⁴⁷ Esping-Andersen 2003, 1: “Europe will herald in the new century with 15-odd million unemployed; North America, with about the same number of low-wage workers.”

⁴⁸ Esping-Andersen 1996b, 66-87.

of unemployment in Europe has pushed many politicians and policy makers to consider the possibility that severing social security from work might be a valid answer to the phenomenon, taking the welfare-without-work scenario not as a problem to solve, but as the solution. While the political viability of such a solution is still controversial, the idea that the traditional connection between work and social security on which non-residual welfare states are also based should be dropped finds a philosophical ground in the luck egalitarianism theory, whose representatives, in Freeman's terms, "are open to the claim that distributive justice should not be contingent upon social cooperation and contributing one's fair share" (Freeman 2018, 150).

Apparently, luck egalitarians have much to share with Rawls. Like Rawls, they believe that our life prospects are deeply influenced by the social position of the family into which we happen to be born, and that this is incompatible with the ideal of a just society. They are also convinced that justice requires the deletion of these influences, giving people the very same chance to develop their natural endowments. Moreover, in contrast with utilitarians, they ground the opportunity people must be given to develop their natural gifts not on the obvious social advantages that this can procure, but on an individual basis. For luck egalitarians as for Rawls, people must have the very same possibility not only to realize their plans of life, but to develop their life prospects in ways "insensitive to their circumstances," as Dworkin would say, of which they are not responsible.⁴⁹ In addition, luck egalitarians share with Rawls the idea that, while we have different native talents and personal endowments, any distinction between the personal, "genetic" endowments we possess and the social circumstances in which we happen to find

⁴⁹ Dworkin 2000, 323.

ourselves is extremely difficult to draw. Furthermore, even when talking of genuine traits of character and personal abilities, their distribution is a matter of sheer luck, which should not play a role in matters of distributive justice.⁵⁰ Of course, this does not mean that we aim at “equalizing” individuals in the same way we try to equalize social positions. In the case of social positions, we actually try “to level the playing field,” to quote Roemer.⁵¹ However, we do not attempt to eliminate the differences among us. Nonetheless, just like we transfer money from the socially advantaged to the socially disadvantaged, we must transfer money from the naturally advantaged or endowed to the naturally disadvantaged, so that the only social and economic differences to persist among us will be those we might ascribe to our different conceptions of what makes life worth living.⁵²

Although this picture clearly recalls Rawls’s theory of justice, Freeman underlies how luck egalitarians radically depart from Rawls, in that they do not capture an aspect that is central in his view of distributive justice. In particular, Freeman claims that what they do not account for is a conception of distributive justice aimed at realizing reciprocity “at the deepest level,” which includes as a distinctive aspect “productive reciprocity,” or “reciprocity among socially productive citizens” (Freeman 2018, 150). Not focusing “on reciprocity among socially productive citizens,” however, luck egalitarians interpret distributive justice as a matter of “redress or compensation,” making clear how their view of social justice is still that of compensating the unlucky or assisting the unfortunate (*ibid.*, 149). Having in mind the welfare-without-work scenario, this means that in the face of high unemployment, nothing prevents

⁵⁰ *Ibid.*, 74. See also Cohen 1989.

⁵¹ J. Roemer, *Equality of Opportunity*, Harvard University Press, Cambridge MA. 1998, 5.

⁵² Dworkin 2000, 73.

luck egalitarians from considering work something that we had better retain for the endowed and the talented who can fruitfully deploy their capacities in the market, allowing everyone else to choose whether and how much to engage in productive activities. This is not to say that any luck egalitarian supports a universal basic income of the kind Philippe Van Parijs and others defend.⁵³ They may or may not, but whatever their position on the necessity of working, what they lack is an argument for excluding the welfare-without-work scenario as a plausible solution for a just society grounded on their very conception of distributive justice. Their view, we can say, is purely distributive, and does not concern production. Nevertheless, as the nexus between production and redistribution is disregarded, their conception of social justice comes to resemble that underlying residual welfare states. Hence, even though luck egalitarians aim to equalize people, rather than merely relieve the poor, their commitment to redistribution is still concern for the unlucky, and is thus susceptible of criticisms comparable with those that can be raised against such form of welfare state. This argument, however, is not fully convincing.

Freeman assumes that if we give up productive reciprocity, dropping the nexus between work and redistribution and providing to all a basic income of some sort “whether they are able and willing to work or not,” “we encourage dependence among the worst off and a feeling of being left out of society” (Freeman 2018, 151). Nevertheless, while it is true that residual welfare states are objectionable in that they only aim to assist the poor, the emphasis here must fall on poverty, not on assistance. Assistance, it seems to me, is different from assisting *the poor*. Under the assumption that we all need assistance sooner or later in our lives, assistance is

⁵³ Indeed, Dworkin explicitly excludes it, defending a system that, while warranting training, requires that people make their best effort to find a job. *Ibid.*, 336.

the very reason why the welfare state exists at all. However, I do not see how POD could be different from this point of view. Not by chance, it incorporates many elements of the traditional welfare state.

Residual welfare states, as we have seen, are not merely characterized by the fact of assistance, but by the specific way in which assistance takes place. Given their market-conforming design, in residual welfare states, assistance takes place only when individuals fail. No real effort is made to prevent people from failing. It is this form of assistance – rather than assistance in itself – that generates the feeling of being excluded. We have already noted how social security is no less redistributive than social assistance. Not all of us, fortunately, get sick. Not all of us have children, or face short-term unemployment, but we all pay for this kind of safety net. What luck egalitarians claim is that if such a mechanism works for what we may call “the labor market lottery,” it is unclear why it should not work for any other lottery in our lives.

It is worth recalling that what Rawls finds objectionable about the (residual) welfare state is that it creates an underclass of people “chronically dependent on the welfare state,” who, feeling excluded, do not take part in public life. Nonetheless, when talking of chronic dependence on “others’ largesse,” to quote Freeman, we are talking of poorly educated people on the edge of poverty. Of these people, it makes sense to say (as Freeman suggests) that they are “politically despondent” (Freeman, 132). However, there is no reason to believe that the non-workers of non-residual welfare states would amount to the poor of residual ones. As the basis of redistribution is equality and not poverty relief, non-workers would be provided not only with education, health care, and family allowances, but with a sufficiently high social income. Granted these conditions, even if individuals do not work and do

not exercise what Freeman calls “economic agency,” they read, or may read, newspapers, they watch, or may watch, television, or use the Internet. In sum, they are likely to be informed of what is going on at least in the same measure as people involved in the market. Moreover, although it is their choice how they will dedicate their time, be it travelling or taking piano lessons, nothing prevents them from being politically engaged or committing in civil movements. As soon as they are no longer poor, and nothing compels us to believe that they must be, there seems to be no reason to assume that exclusion from the labor market automatically transforms into political passivity. I am not denying that there might be *other* reasons for distinguishing redistribution among workers from redistribution between workers and non-workers. However, the fair value of political liberties does not seem to be the point at issue. The problem, if there is one, must lie somewhere else.

Freeman notes that it is easy to forget that “among the primary goods ... are not only income and wealth, but also ... the social bases of self-respect” (Freeman 2018, 151). Work is one fundamental source of self-respect. The implication Freeman draws from the relation between work and self-respect is double. On the one hand, Freeman assumes that the social bases of self-respect are threatened when workers lack “economic agency” (*ibid.*, 159), having “no economic powers or responsibilities in deciding the direction or policies of the firm” (*ibid.*, 151). Thus, in terms recalling Marx’s concept of alienation, Freeman insists that, when lacking decision power, workers might come to be treated as at one with the machinery they are maneuvering, as a thing and not, as they deserve, as full moral persons. On the other hand, Freeman believes that if work is so crucial for self-respect, then the Rawlsian principle of fair equality of opportunity should have stronger implications than Rawls draws. For the principle, according to Freeman, should not only require, “as Rawls says,” fair opportunities to compete for open positions and educational and

cultural resources. In Freeman’s interpretation, “it also requires ongoing opportunities for citizens to exercise economic powers and some degree of freedom and control in their work, thereby assuming a degree of initiative and responsibility” (*ibid.*, 160).

The implication Freeman draws from the fair equality of opportunity is largely shared. Many insist on being working and participating in productive activity a crucial basis for self-respect. We have already mentioned Solow, for instance. Richard Arneson is another. For the most part, however, the status of the nexus between work and self-respect is conceived as largely depending on culture. “In our culture,” Solow says, “a large share of our self-respect depends on one’s ability to make a living.” His claim is echoed by Richard Arneson, according to whom “the linkage between self-esteem and employment ... is forged by cultural beliefs.”⁵⁴ Christian Schemmel also specifies how, whether and to what extent relying on ourselves jeopardizes individuals’ self-respect “depends on the social meaning of welfare transfers,” varying from context to context.⁵⁵ However, this is not what Freeman has in mind. Nor is it what Freeman believes Rawls had in mind. For Freeman, the relation between work and self-respect, as well as the sense in which having a meaningful job is among the human goods, must be taken as a true fact of human nature, an empirical claim supported by “psychological laws” (Freeman 2018, 162). Freeman (and Rawls) would certainly agree that the status of these laws is not as fundamental as the laws regulating our brain/mental processes, if any, but this should not bring us to see cultures as floating over social institutions.

Marx is often said to have prefigured a society freed from needs.⁵⁶ It is not my intention to delve into Marx’s exegetical

⁵⁴ Solow 1998, 7; cf. Arneson 2001.

⁵⁵ Schemmel 2015, 398.

⁵⁶ Rawls does read Marx in these terms. See Rawls 1971, 249; Cohen 1995, 116ff.

disputes, but it is worth recalling how there was at least another Marx who also believed that while through their work of modifying nature human beings satisfy their needs, they also modify themselves, thereby creating new and unforeseeable needs, to be satisfied in a never-ending process of production and transformation.⁵⁷ While the way we produce is subject to continual change, the fact of social production, for Marx, is not. Rather, common to all forms of society, social production is a condition of human existence.⁵⁸ Taken from this point of view, the reward we attach to labor reflects the fundamental and constitutive role of social production. A human association in which to work or not means nothing would no longer be a “society” in the sense we currently attach to the word. Perhaps in an unimaginable future there will be human associations in which things will be different, but this is not something that makes any sense for us to discuss.

In Marx’s descriptive/explicative view, the role of social production, whose structure depends on historical laws beyond our control, is all-encompassing. It determines the rest of the social structure. This is not what Rawls believes. Rawls hypothesizes that we *choose* our system of production, making sense of a project for reforming societies, something that would have been meaningless for the non-reformist Marx. Moreover, in contrast with Marx, Rawls’s basic structure is distinguished into two parts governed by principles that enjoy a relative degree of autonomy from each other. It is not the case that the way our system of production is organized determines the sphere of our personal freedoms and rights. In no sense is the first principle of justice derived by the second. This does not mean, however, that redistribution could be handled independently in a system of production. In fact, for Rawls and Freeman as well as for Marx, it is by setting a system of

⁵⁷ Marx 1867, I, 283, 287.

⁵⁸ *Ibid.*, 290.

production that we establish how the social product is distributed. In Rawls's normative terms, this means that asking how the social wealth should be distributed is to ask how our system of production should work and how, accordingly, our roles in the production should be constituted: Which duties and powers, which social prestige, and finally, which share of the social product. It is in this sense that distributive justice is essentially conceived as the distribution of the social wealth among its producers.

Obviously this does not mean that we owe nothing to people who do not contribute. Distributive justice does not exhaust justice. There are things that we owe to people who cannot work, to refugees and to economic migrants. We have duties of assistance to other nations and so on. All of these are very fundamental questions that a general theory of a just society should fix, but they are not the basic question of distributive justice, and they are not answered by the second principle of justice (Rawls 1971, 7).

The *prima facie* egalitarian character of Rawls's principles of redistribution, according to which we should redistribute equally – unless a different distribution is better for all, starting from the least advantaged – makes it easy to understand Rawls as stating that the logic underlying the two principles of justice is one and same. Exactly as we are equal with respect to the first principle of justice, so that any way of treating us differently with respect to fundamental freedoms would be a violation of it, so the reason why we distribute equally, at least *prima facie*, is that economic and social differences among us would violate equality. In fact, even though it is certainly true that individuals differ from each other, some being better endowed and more talented than others, their superior endowments only depend on winning or losing the morally arbitrary lotteries, natural or social. Given that nobody deserves the talents and social advantages one happens to have, we cannot make redistribution contingent on them. Anything that creates

differences among us and that depends on these arbitrary elements of sheer luck, or that does not depend on our genuine choices, is morally unjustified. However, so the argument would proceed, if the reason why we redistribute equally is that people are in fact morally equal, then there can be no reason for distinguishing workers from non-workers.

While apparently heavily drawing from Rawls, such a “monistic” view does not capture the sense in which the distribution of “natural talents and abilities – as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstance and such chance contingencies as accident and good fortune” (*ibid.*, 63) are morally arbitrary and do not ground any claim to a share of the social product. In fact, what Rawls means by saying that social and natural endowments do not ground entitlements is not that because they are morally arbitrary no difference can depend on them without violating moral equality. This is in contrast with the pluralistic structure of the basic structure. Rawls’s rejection of *natural* entitlements rests on the fact that talking of *entitlements* “presupposes the existence of an ongoing system of cooperation” (*ibid.*, 89). In fact, it is only given a system of cooperation that people are entitled to something. As Rawls sees the issue, “natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position.” These, according to Rawls, “are simply natural facts” (*ibid.*, 87). Although for Rawls it is how institutions treat such facts that determines what is just or unjust, no implication follows that to treat people *as equals* the entire product of social cooperation must be redistributed equally. In Rawls’s view, while the first principle of justice regulates all that which in some way we oppose in society – that which is not available to others – the second principle refers to the division of labor. Here, granted the rights warranted by the first principle (and by the first part of the second),

the differences among us can and must be deployed for reciprocal advantages (*ibid.*, 87).

Thus, the *prima facie* egalitarian character of the redistribution recommended by the second principle of justice does not depend on the fact that because your (known) contribution owes to features that you do not deserve, then you are not entitled to the (entire) share of your product. Rather, the idea is that in a system of cooperation based on the division of the labor, it makes absolutely no sense to claim a share (or a right to the holding) by referring to the contribution, it simply being false that the product of the social cooperation can be explained as the logical sum of individuals' productive effort (*ibid.*, 271).⁵⁹ In essence, the question is epistemological, not moral. What is wrong in explaining the distribution of wealth by referring to factors such as luck, or chance, or, for this matter, parsimony, laboriousness, and so on, is not that they are morally arbitrary, which they are, but that they are not explanatory enough. Such explanations ignore (or hide) the structural and irreducibly social aspects that cause individuals to perform as they do. Injustice lies in ignoring these structural aspects. By compelling us to choose the principles of justice, Rawls addresses the idea that the rules with which we have to comply must resemble as closely as possible those we would give to ourselves, reflecting a Kantian conception of society as an association of free human beings. Rawls believes that in order for people to live a life that reflects their choice, certain material conditions must be granted. In this sense, individuals must be put in the condition of living a free life on an equal basis. However, this does not mean that Rawls aims at eliminating, or ignoring, the

⁵⁹ For a rejection of the principle “to each according to her contribution” based not on moral considerations, but on a theory of explanation, see Garfinkel 1981, 195. See also Rawls 1971, 269.

structural aspects of society. When talking of the compensation of social and natural determinations, luck egalitarians seem to be engaged in forging an ideal of unconditional free choice, as if by eliminating social and natural influences they could also remove these constitutive features of society.⁶⁰ This does not make sense for Rawls. A just society is not one in which individuals can have anything like a radically free life, but one in which acting freely means to act in a certain way. In this respect, Rawls's ideal of free choice is strongly qualified, incorporating a robust conception of the person and the society (Freeman 2018, 24). For Rawls, as free but unmistakably social beings, the rules according to which we can live our lives include, among others, those that express recognition of the fact “that the well-being of each depends on a scheme of social cooperation without which no one can live a satisfactory life” (Rawls 1971, 88).

I think that this, rather than the fair value of political liberties, provides the basis for Freeman's understanding of POD as more compatible on the whole with Rawls's conception of justice. With its *ex ante* redistribution, POD distinguishes the social conditions that must be warranted for putting “citizens in a position to manage their own affairs” on an equal basis from the sphere where individuals must be let free to manage their own lives. On the other hand, as a system of production, POD also accounts for the truth that the goods that put people in the position to manage their own affairs must be produced and reproduced. In this sense, POD incorporates the idea that to live a life that is self-directed also means to live a life according to rules which make a system of production — existing for the sake of mutual benefit — both

⁶⁰ It is interesting to note how Cohen's reflection on equality and his objections to Dworkin's egalitarianism is, in fact, a wide reflection on the concept of choice (cf. Cohen 1989) Philippe van Parijs also often refers to the absence of compulsory working as *real* freedom. Cf. van Parijs 1995.

possible and prosperous. Whereas the welfare state traditionally focuses almost exclusively on redistribution, POD arises as an encompassing system of production and redistribution. Nevertheless, just because Rawls's ideal of autonomy requires our participation in the society, here comprehending our participation in the system of production, there are good reasons to believe that the welfare state is more compatible with justice as fairness than POD. Indeed, the welfare state might prove indispensable if production plays the role it is assumed to play in Rawls's ideal of justice.

Given the fundamental importance that both Rawls and Freeman attribute to work, it is unsurprising that they both insist on the importance of full employment policies. Freeman, as we have said, goes even further, requiring an interpretation of fair equality of opportunity presupposing ongoing opportunities for citizens to exercise economic powers, which I see as a request for a serious and extended involvement of the state in employment policies. As we have also seen, however, full employment is not an easy goal to attain, as sheltered workers and a rigid labor market seem to be accompanied by high rates of unemployment and vice versa. Despite Krugman's repeated reminder that it is wrong to see states as competing against one another in the international arena, the common explanation of the correlation between sheltering welfare states and unemployment is that, in a context of international competition, firms burdened with strong workers' rights perform much worse than those operating in more market-conforming societies, creating disincentive effects on enterprise. Exactly this kind of analysis has prompted reforms of the labor market, reducing its "rigidity," as we sketched earlier. However, as Fritz Scharpf notes, such a taken-for-granted relation between international pressure, welfare expenditure and rates of unemployment should be examined more closely, for although unemployment is a significant problem in much of Europe, this is

not the case all across Europe. Indeed, interesting and unexpected correlations emerge between high welfare expenditures and high employment rates. According to Scharpf, if there actually were a simple correlation between welfare expenditure and unemployment rates, what we would find is that in sectors exposed to international competition, countries with strong welfare states would perform badly, while countries not burdened in such a way would perform much better. In fact, this is not the case.

In a very detailed data analysis, Scharpf shows how “[t]he United States is doing rather poorly in the exposed sectors, whereas some of the Scandinavian countries, and among Continental countries Germany, Austria and, remarkably, Portugal, are doing much better.”⁶¹ Interestingly, the countries showing the highest unemployment rates (Italy and France) are those “characterized by intermediate levels of welfare expenditure,” and whose main characteristics are their low rates of employment in *local* services – “community, social and personal service” – which are typically not exposed to international pressure. Moreover, whereas in the U.S. “41 per cent of the working age population have jobs in the local services, and Sweden is not far behind at 39 per cent, [in] Austria, Germany, France, and Italy, by contrast, the employment/population ratio of local services reaches only 28 per cent.” Germany fares worse than Denmark, the UK, and the Netherlands, but it fares better than the rest of the European countries. Thus, not only does there not seem to be a clear correlation between unemployment and welfare expenditure, but because “it is in these ‘local services’ that the data show a significant difference,” it is there that the explanation of “the poor employment performance of Continental welfare states,” Germany, Italy, and France, seems to lie.⁶² In fact, what these data

⁶¹ Scharpf 2001, 273.

⁶² *Ibid.*, 274.

show is the existence of a double correlation between rates of employment and highest and lowest welfare expenditures. The countries showing better employment rates are *both* those spending more (Norway, Sweden) and those spending less (the U.S.). This may appear surprising at first sight, but upon reflection it is not. We hinted at the beginning to the anxieties that incipient automation engendered in social scientists, fearing an affluent society accompanied by a substantial loss of job places. This was not only Mead's anxiety. Writing a few years later, Titmuss revealed the same kinds of worries, and in fact they are still around.⁶³ Nevertheless, what these kinds of scenarios generally overlook is the vast extension of a demand for services marking the passage from industrial to post-industrial capitalism.⁶⁴

Services are certainly not new, as they have always existed. However, their growth is new. Many reasons have contributed to the growth in demand for services. The general amelioration of the economic condition of a large part of the population has transformed societies from being dominated by producers to consumers instead, expanding the tertiary sector. Further, farms' tendency to reduce their dimensions (and their costs) by externalizing part of their production has also contributed to the "tertiarization" and the expansion of the service sector. Even more important, however, are two social changes that have taken place in recent decades. On the one side, the aging of the population creates a demand for assistance and health services. This is not only because older populations need more health care. More generally, the lengthening of life expectancy pushes people to take care of themselves, as what we all want is a long, *good* life, not only a long life. On the other side, however, the most important change at the

⁶³ Titmuss 1964, 31. For an analysis of the literature on "the end of work", see Esping-Andersen 1996, 191-206.

⁶⁴ *Ibid.*, 193ff. See also Esping-Andersen 2003.

basis of the increased demand for services can be found in the family, which has undergone a transformation whose social and economic reach is, as Esping-Andersen notes, not yet clearly understood: “For decades,” Esping-Andersen says, “the family – both as social institution and as decision maker – was largely assumed away ... our grandfathers were male breadwinners [and] our grandmothers most likely housewives ... very few children today grow up in this kind of family.”⁶⁵

The family “assumed away” in effect was as much the basis of society as the basis of the welfare state. In fact, the welfare state was established according to a specific view of the family, where a male head supported his family. If we put aside any private, personal or domestic problems, such a kind of welfare state may offer quite good protection against the risks faced by workers in the market. The worker does not have old parents to assist, nor children to pick up from school or needing assistance. All these kinds of troubles, in fact, were handled by his wife, who was not even counted within the workforce.⁶⁶ As long as the family had remained the primary safety net, a demand for services did not emerge. Activities such as raising children, cleaning the home, assisting old parents, and coping with the infinite number of problems people can incur in their lives, simply do not amount to working. The situation changes drastically when women are no longer willing (and able) to play that role. In this case, not only must we double the working force, but we have both a demand for services and a new kind of worker. The ways in which different societies have reacted (or not) to the emergence of such a demand for services explain differences and similarities in employment

⁶⁵ *Ibid.*, 12.

⁶⁶ This point is strongly connected with feminist theory in general, and with the feminist analysis of the welfare state, even though my focus is different. See Okin 1991; Robeyns 2012.

rates despite very different welfare expenditures, ultimately depending on their different welfare states. In fact, the U.S. and Sweden both provide an answer to the demand, offering services and lowering unemployment, but given their very different welfare states, it is unsurprising that they do this in very different ways. As Scharpf notes, services are offered by the state in Sweden and by the market in the U.S.⁶⁷

Interestingly, this difference does not make a difference at the top level of job offers. For while the biggest welfare states make available a large number of qualified and well-paid jobs in the public system, in the market-conforming American welfare state, such jobs are offered in the private and sheltered sectors of insurance, the health system, and education. On the other side, the difference becomes significant in the lower part of the job market. Here too, in fact, the U.S. performs very well in offering jobs, but these are low-productive jobs for unskilled people, and whose availability depends on low pay and a very flexible labor market. The outcome is the plight of the working poor.⁶⁸ In countries with high welfare expenditures, much fewer of these jobs are available. What thus explains their good employment rates is the dimension of the public sector, offering together with high-quality jobs a number of decent jobs for unskilled workers, as emphasized by Scharpf. This also explains why the countries that fare poorly are those with rigid labor markets and medium-sized welfare states, like France and Italy, as well as according to Scharpf, Germany.⁶⁹ However, the dimension of the public sector does not only consist in regarding the state as employer of last resort. On the contrary, as Esping-Andersen clarifies, the services offered by Scandinavian

⁶⁷ Scharpf 2001, 276.

⁶⁸ Actually, according to Esping-Andersen 1996, 207, “[t]he United States has the least professionalized post-industrial economy.”

⁶⁹ Scharpf 2001, 278.

welfare states represent an adaptation to the increasing uncertainty determined by changes in the family, by the mass entry of women into the labor market, and by the new flexibility characterizing de-industrialization. Especially for non-qualified workers, the large offer of services marks a shift from warranting a lifelong workplace to protecting workers from increasing uncertainty, for while deindustrialization does not engender a loss of work, it produces a great deal of flexibility. This requires forms of protection that extend throughout life, from “training, retraining, or employment promotion programs” as soon as our competences become obsolete, to the services that the family can no longer provide.⁷⁰

By turning to POD, the point I want to raise is that we might imagine that people granted the *ex ante* redistribution of wealth and property, may deal with such uncertainties on their own. They can buy services and training on the market, paying a fair price and avoiding the fragmentation of the labor market in a protected core and a semi-exploited periphery. However, there are reasons to be skeptical of the private sector capacity to deliver such services. An individual would find it hard to collect the information needed to make choices on the market on how to reinvent him- or herself, with failure immediately resulting in the re-emergence of a residual welfare state. More broadly, the problem that long-life uncertainty raises seems to me theoretical rather than practical. For the new uncertainties of the market seem to require goods and services that cannot be described as background conditions of justice. We are no longer in the position to equip people, *ex ante*, with all that they need to choose and pursue a plan of life, to then let them “manage their own affairs.” As uncertainty becomes pervasive and the family no longer represents a safety net, managing our own affairs may become a very risky business, making the welfare state and its long-lasting commitment to individual protection the only viable

⁷⁰ Esping-Andersen 2003, 80.

choice. In this sense, POD appears to me as an old-fashioned idea, inextricably embedded in the golden era of industrialism.

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References

Alber, Jens. 2010. “What the European and American Welfare States Have in Common and Where They Differ: Facts and Fictions in Comparisons of the European Social Model and the United States,” *Journal of European Social Policies* 2: 102-125.

Arneson, Richard J. 2001 (1990). “Is Work Special?,” in *Philosophy and the Problem of Work. A Reader*. Edited by K. Schaff, Boston: Rowman & Littlefield.

Atkinson, Tony. 2002. “Social Inclusion and the European Union,” *Journal of Common Market Studies* 40 (4): 625-643.

Barry, Brian. 1990. “The Welfare State versus the Relief of Poverty,” *Ethics* 100 (3): 503-529.

Castles, Francis G. 2004. *The Future of the Welfare State. Crisis Myths and Crises Realities*. Oxford: Oxford University Press.

Cohen, Gerald Allan. 1989. “On the Currency of Egalitarian Justice,” *Ethics* 99 (4), 906-944.

_____. 1995. *Self-Ownership, Freedom, and Equality*, Cambridge: Cambridge University Press.

Dworkin, Ronald. 2000. *Sovereign Virtue*. Cambridge (MA): Harvard University Press.

Esping-Andersen, Gøsta. 1996. *The Three Worlds of Welfare Capitalism*. Cambridge: Polity Press.

_____. 1996b. "Welfare State without Work: The Impasse of Labour Shedding and Familialism in Continental European Social Policies," in *Welfare in Transition: National Adaptation in Global Economies*. Edited by G. Esping-Andersen, London: Sage, 66-87.

_____ *et al.* 2002. *Why We Need a New Welfare State*. Oxford: Oxford University Press.

_____. 2003. *Social Foundations of Post-Industrial Economy*. Oxford: Oxford University Press.

Ferrera, Maurizio. 1996. "The 'Southern Model' of Welfare in Social Europe," *Journal of European Social Europe*, 1, 17-37.

_____ & Gualmini, Elisabetta. 2004. *Rescued by Europe? Social and Labour Market Reforms in Italy from Maastricht to Berlusconi*. Amsterdam: Amsterdam University Press.

Freeman, Samuel. 2018. *Liberalism and Distributive Justice*. Oxford: Oxford University Press.

Garfinkel, Alan. 1981. *Forms of Explanation*, Yale: Kingsley Trust.

Giddens, Anthony. 2008. *The Third Way*. Cambridge: Polity Press.

Howard, Christopher. 1997. *The Hidden Welfare State*, Princeton: Princeton University Press.

Jackson, Ben. 2012. “Property-Owning Democracy: A Short History”, in *Property-Owning Democracy. Rawls and Beyond*. Edited by Martin O’Neill and Thad Williamson. Oxford: Blackwell 2012, 33-52.

Katz, Michael B. 2010. “The American Welfare State and Social Contract in Hard Times,” *Journal of Policy History* 22 (4).

_____. 2013. *The Undeserving Poor*. Oxford: Oxford University Press, Oxford.

Krugman, Paul. 1994. “Competitiveness: A Dangerous Obsession,” *Foreign Affairs* 73 (2): 28-44.

Kuper, B.-O. 1994. “The Green and White Papers of the European Union: The Apparent Goal of Reduced Social Benefits,” *Journal of European Social Policies* 2: 129-137.

Marx, Karl. 1867. *Capital*, vol. I. London: Penguin 1990.

Meade, James E. 1969. *Efficiency, Equality and the Ownership of Property*. (Original edition: 1964). Routledge, London 1969.

Noble, Charles. 1997. *Welfare as We Knew it. A Political History of the American Welfare State*, Oxford: Oxford University Press.

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.

Okin, Susan Moller. 1991. *Justice, Gender and the Family*. London: Basic Book.

van Parijs, Philippe. 1995. *Real Freedom for All: What (if Anything) Can Justify Capitalism*. Oxford: Oxford University Press.

Rawls, John. 1971. *A Theory of Justice*. Original Edition, reissue edition 1999. Cambridge (MA): Belknap Press.

_____. 1993. *Political Liberalism*. New York: Columbia University Press.

_____. 2001. *Justice as Fairness. A Restatement*. Cambridge (MA): Belknap Press.

Robeyns, Ingrid. 2012. *Care Gender, and Property-Owning Democracy*, in *Property-Owning Democracy. Rawls and Beyond*. Edited by Martin O’Neill and Thad Williamson. Oxford: Blackwell 2012, 163-179.

Scharpf, Fritz W. 2001. “Employment and the Welfare State: A Continental Dilemma,” in *Comparing Welfare Capitalism Social policy and political economy in Europe, Japan and the USA*. Edited by B. Ebbinghaus and P. Manow. London: Routledge, 270-283.

Schemmel, Christian. 2015. “How (Not) to Criticize the Welfare State,” *Journal of Applied Philosophy* 32 (4), 393-409.

Solow, Robert M. 1998. *Work and Welfare*. Edited by A. Gutman, Princeton: Princeton University Press.

Stiglitz, Joseph. 2000. *Economics of the Public Sector*. New York: W.W. Norton & Company.

Thomas, Alan. 2017. *Republic of Equals. Predistribution and Property-Owning Democracy*. Oxford: Oxford University Press.

Titmuss, Richard M. 1964. “The Limits of the Welfare State,” *New Left Review* 27 (1).

_____. 2018. *Essays on the Welfare State*. (Original edition 1958). Bristol: Policy Press.

Weale, Albert. 1990. “Equality, Social Solidarity, and the Welfare state”, *Ethics* 100 (3): 473-488.

SYMPOSIUM
LIBERALISM AND SOCIAL JUSTICE



REPLIES TO CRITICS

BY
SAMUEL FREEMAN

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Replies to Critics

Samuel Freeman

1

Reply to Edmundson

Bill Edmundson primarily focuses on my arguments in chapter 4 of *Liberalism and Distributive Justice* on property-owning democracy and its connection with the difference principle. Basically, he sees Rawls's argument against welfare state capitalism as resting almost exclusively on the fair value of the political liberties, and contends that only socialism of some form can satisfy Rawls's stated aim to guarantee democratic citizens' equality of opportunity for political influence. Property-owning democracy he contends cannot meet the requirements of the fair value of the political liberties. This is the primary thesis of Edmundson's important recent book, *John Rawls: Reluctant Socialist*. I contend in my book that the difference principle plays a crucial role in Rawls's argument for social equality and against any form of capitalism, and that the difference principle together with fair political value and fair equal opportunity supports a property-owning democracy as well as liberal socialism. Instead of restricted utility, which I contend

underlies Rawls's conception of the capitalist welfare state, Edmundson somewhat surprisingly contends that a better way to understand welfare state capitalism is in terms of Rawls's principles of justice themselves, absent the guarantee of the fair value of political liberties, a position he calls "*justice-without-fair-value*." Justice-without-fair-value is exactly like justice-as-fairness, he says, but without the first-principle guarantee of the fair value of the political liberties. On this interpretation, the second principle of justice is perfectly compatible with the vast inequalities typical of welfare state capitalist economies, so long as they benefit the least advantaged members of society.¹ This is a familiar reading of Rawls's justice as fairness, especially by many on the critical left; it has long been assumed that his aim in *A Theory of Justice (TJ)* was to justify the capitalist welfare state that evolved in liberal democracies between the Great Depression up until the 1980's. Rawls sought to combat this (mis)interpretation, in the Preface to the 1999 revised edition of *A Theory of Justice (TJ)* – which was originally the Preface to the 1987 French edition – and he argued at greater length in *Justice as Fairness: A Restatement* (2001) that the principles of justice do not justify welfare state capitalism.² Justice

¹ Edmundson says in his book, "what could be termed Neoliberalism...is just like the two principles, but without a guarantee of the fair value of equal political liberties" (Edmundson 2017, 76, n.3). I argue below that neoliberalism or "justice without-fair-value" cannot be squared either with the 2nd principle's requirement to mitigate inequalities implicit in fair equality of opportunity, or with the "deep reciprocity" of the difference principle.

² Here referred to as 'JF' or the '*Restatement*.' As the editor, Erin Kelly, says (JF, xii), the *Restatement* consists of Rawls' lecture notes for his class in the history of political philosophy in the 1980's, and were substantially completed by 1989 with some revisions in the early 1990's as he completed *Political Liberalism* (here PL). The remaining lecture notes for this class were on Hobbes, Locke, Rousseau,

as fairness instead justifies either a property owning democracy or market socialism – as Rawls initially claimed to little fanfare or notice in the first edition of *Theory*.³

Edmundson and I disagree primarily about his contention that Rawls’s argument against the welfare state and for property-owning democracy or liberal socialism rests solely on the conditions necessary to guarantee political fair value. I contend on the other hand that the difference principle together with fair value and FEO are all three crucial components of Rawls’s argument against welfare state capitalism (WSC). A second major disagreement lies within Edmundson’s rejection of both Rawls’s and my separate arguments for property owning democracy. Edmundson suggests here the striking thesis – developed at length in his book *John Rawls: Reluctant Socialist* – that no private property system, not even POD, is capable of guaranteeing the fair value of the political liberties with equal political influence; hence some form of socialism is required by Rawls’s principles of justice. He argues there, not for liberal socialism of the kind Rawls endorses, but for a kind of democratic socialism, at least at the level of “the commanding heights of the economy,” (Keynes’s term) that resembles in many respects British socialism of the post-WWII years, where the state owned and controlled major industries.

Here, I will focus first (in § I) on the difference principle and how my understanding of it differs from Edmundson’s. Then I will discuss why I think the difference principle and fair equality of opportunity are crucial components of Rawls’s argument for both

Hume, Mill, and Marx, and were published as *Lectures in the History of Political Philosophy* (Rawls 2008).

³ See, TJ orig. 258, 271, 272-274, 279; cf. TJ rev., 228, 240-242, 247. See also “Fairness to Goodness,” (1975) in Rawls 1999, 277, where Rawls says that both “associational socialism or property-owning democracy” may be realized by the principles of justice.

property- owning democracy and liberal socialism. The fair value of political liberties itself is not enough. First, in §§ II-III, I discuss and contest some of Edmundson's main reasons for contending that property owning democracy does not meet the requirements of Rawls's principles of justice. Then in § IV, I discuss reasons why Rawls's second principle requires the fair distribution of economic powers and prerogatives to all citizens, including in their place of work. I address in § V Edmundson's and others' argument that my position is basically a defense of syndicalism – or exclusively worker-owned and managed firms. In arguing that workers should have fair opportunities to exercise powers and prerogatives in their work, it was not my intention to defend syndicalism – or exclusively worker ownership and control of firms – but rather a wide variety of arrangements in which workers can exercise a guaranteed minimum of powers and prerogatives in their employment. Finally, in § VI I respond to Edmundson's and others' contention that my position violates freedom of association and occupation. I argue that, while the first principle protects freedom to choose one's occupation and workplace, it does not protect either the freedom to engage in impermissible occupations or the freedom to contract into or join forms of economic association that conflict with the second principle of justice.

Before beginning, I should say that Edmundson's book is an important contribution, in large part because it stands as a much-needed correction to the longstanding criticism from the Marxist and critical left, that Rawls's justice as fairness is but one more liberal attempt to justify the inequalities inherent in capitalism. I respond in chapter 3 of my book to G.A. Cohen's version of this criticism, which I contend rests on misunderstanding the difference principle. Edmundson argues differently, that the criticism rests instead on misunderstanding the crucial role of the fair value of political liberties in mitigating economic inequalities and dissolving the concentration of private wealth that attends

private ownership of means of production. So, we agree on the outcome – that far from being incompatible with (liberal) socialism, justice as fairness is a reasonable – perhaps the most reasonable – justification of it. I go one step further, and agree, with Rawls, that property-owning democracy is (also) justified by Rawls’s conception of justice. Here I’ll also note that Edmundson’s primary thesis in his book exactly controverts Alan Thomas’ argument in his book – which is that *only* property-owning democracy, not liberal or democratic socialism, can satisfy Rawls’s principles of justice. I respond to Thomas’ argument in my reply to his comments.

I

Democratic Equality and the Difference Principle

I.1. My case for property owning democracy rests in large part on Rawls’s difference principle, as I believe Rawls’s does as well. I agree with Edmundson that the conditions for guaranteeing the fair value of political liberties (and fair equality of opportunity as well) are an important part of Rawls’s argument against welfare state capitalism. But I disagree with his contention (developed at length in his book) that the fair value requirement is sufficient to eliminate property owning democracy from consideration as well. One reason I focus most of my attention on the role of the difference principle in Rawls’s argument for POD and liberal socialism is that, unlike the difference principle, Rawls had little to say about the economic arrangements required to guarantee the fair value of political liberties. Clearly, he thought fair equality of opportunity for political influence (like the 2nd principle’s fair equality of opportunity principle itself) required mitigating economic inequalities and diminishing as far as possible the influence of wealth on the electoral and political process; also, that

fair value could not be realized in a capitalist economy, even combined with the welfare state, because of capitalism's unregulated inequalities and inevitable concentration of wealth. But unlike Edmundson, Rawls believed that these aims could be achieved in a property-owning democracy (POD) wherein economic wealth, and social and economic powers and prerogatives are not concentrated in a capitalist class but are widespread across all citizens in a democratic society; moreover, where economic inequalities are kept in check by all three principles of justice – fair political value, fair equality of opportunity (FEO), and the difference principle.

Here Edmundson is sceptical, and has a different understanding of the difference principle (and seemingly FEO too) than I do. He says (Edmundson 2020, 24) that it “could be misleading” when I suggest that the difference principle expresses “democratic reciprocity” and “reciprocity at the deepest level.” For “Rawls rejects the difference principle in its general form,” – by which Edmundson means, as he continues – “the general conception of justice, that is to say the difference principle regarded as the sole requirement of justice” – primarily because the general conception does not guarantee equal rights of political participation and their fair value. The implication is that there is nothing democratic about the alleged reciprocity of the difference principle. The fair value of equal political liberties is for Edmundson the fundamental expression of democratic equality in Rawls, not the difference principle or even fair equal opportunity principle. This comes out also when Edmundson contends that capitalism is best conceived as grounded, not in utilitarianism, but in Rawls's general conception of justice, and also when he says that rather than restricted utility as I contend, welfare state capitalism is best conceived as being grounded in Rawls's principles of justice absent the guarantee of the fair value of political liberties – “justice-without-fair-value” he calls it (Edmundson 2020, 27). The

suggestion again is that the difference principle itself – in either its general or special form – is not a democratic principle itself, even if it does guarantee reciprocity of distributions, since it puts no restrictions on the inequalities allowed so long as they benefit the least advantaged. Edmundson seems to suggest that inequalities are sufficiently constrained only by the guarantee of the fair value of equal political liberties, which evidently includes and goes well beyond those restrictions on inequalities imposed by fair equality of opportunity on Edmundson’s reading.

I think it is a mistake to conflate Rawls’s difference principle with the general conception of justice, for reasons I discuss below. But basically, I have a different understanding of the difference principle proper – as part of the second principle – and its role in the special conception than does Edmundson. To begin with, “Reciprocity at the deepest level” is not my term but one Rawls himself uses in distinguishing the kind of reciprocity realized by the difference principle from other alternatives (JF 49).⁴ My term “democratic reciprocity” comes to the same thing; it refers to the “deeper ideal of reciprocity implicit in the difference principle.” (JF 126). Rawls says that some such form of the idea of reciprocity expressed by the difference principle “is essential to democratic equality” (JF 133). In saying this, Rawls implies, I believe, that political equality with fair value and other equal basic liberties even when combined with FEO are *not sufficient* to guarantee *democratic equality*.

⁴ Rawls says in reference to the idea of free and equal citizens who are fully cooperating members of society over a complete life, “I believe this idea involves *reciprocity at the deepest level* and thus democratic equality properly understood requires something like the difference principle.” (JF 49) Rawls also says the difference principle contains “a deeper idea of reciprocity implicit in the difference principle” than in other alternatives. (JF 126, also JF 124)

It is no accident then that § 13 of *A Theory of Justice* is entitled ‘Democratic Equality and the Difference Principle.’ Rawls says, “democratic equality properly understood requires something like the difference principle” (JF 49). The difference principle I believe guarantees a kind of social equality – Implicit in “reciprocity at the deepest level” – that the first principle with fair value and FEO cannot achieve by themselves. The term ‘democratic equality’ as Rawls uses it refers to “the democratic interpretation” of the second principle of justice (IJ 75/65) – the difference principle combined with fair equality of opportunity. I think the democratic interpretation also must apply to the first principle, to guarantee what one might call “the fair democratic value of political liberties.” For without the difference principle, equal basic liberties and FEO are difficult to interpret by themselves, and yield only *liberal equality* once combined with the Pareto principle, a weak reciprocity principle. Even assuming liberal equality makes some attempt to achieve what might be termed the “fair liberal value of political liberties,” in the same way it achieves a liberal version of fair equality of opportunity, neither guarantees the restrictions on inequalities required by democratic equality and the democratic interpretation of the principles of justice.

The difference principle is then crucial to democratic equality and the democratic interpretation of *both* principles of justice. Later I’ll argue that Edmundson perhaps overestimates the conditions necessary for the fair value of the political liberties when he argues that fair value alone requires socialism and not POD. Whether or not that is the case, Rawls clearly must have thought that there is a kind of *social equality* guaranteed by the difference principle that is essential to democratic equality and that is not realized by equal political liberties and their fair value alone independent of the

difference principle, even within a socialist regime that is not governed by the difference principle.⁵

So, I take issue with Edmundson's capitalistic interpretation of the difference principle. What is most striking is his claim that the best understanding of welfare state capitalism is Edmundson calls "justice as fairness-without-fair-value." It is hard to square welfare state capitalism either with the equality requirement of fair equality of opportunity on its democratic interpretation, or with the "deep reciprocity" of the difference principle. The reason is that capitalism, even with the welfare state, involves few if any efforts to constrain inequalities of income, wealth, and economic powers and responsibilities. The difference principle plainly says that inequalities are justifiable only if they are "to the *greatest advantage* of the least advantaged." Under no convincing interpretation of capitalism's invisible hand, even with the welfare state with social insurance programs meeting basic needs, are there either

⁵ Here we might imagine a socialist regime that satisfies liberal equality, where the means of production are publicly owned, inequalities of income are kept within the bounds of what is necessary to guarantee fair liberal opportunity for political influence and to compete for open positions, but otherwise the principle of efficiency or alternatively the principle of restricted utility governs economic inequalities of distribution of income and wealth – a mixed conception according to Rawls. Nothing about public ownership and control so conceived under such a democratic socialist system that secures the fair value of political liberties but not the difference principle guarantees a fair social minimum or the fair distribution of income and wealth – not any more than, as Rawls says, socialism guarantees that a large portion of national income will be devoted to public goods. (TJ 238-239 rev.) It may be that a socialist system patterned on liberal equality guarantees the fair liberal value of political liberties but results in a low social minimum, where the economic surplus is invested and reinvested for future generations (as in Communist China). This is not democratic equality according to Rawls's position, which is only achievable by the difference principle combined with the first principle and FEO.

tendencies or serious efforts to make least advantaged better off than they would be in any other economic system. As Rawls suggests (and Thomas Piketty confirms),⁶ in the absence of intentional design to counter its inequalities, the tendency of capitalist markets and the invisible hand is continually increasing inequalities between the most advantaged and the least advantage, as well as the less advantaged in between.

I've claimed then that, just as the difference principle imposes substantive equality requirements on fair equal opportunity on the "democratic interpretation" of the second principle that are not require by liberal equality interpretation of FEO, so too there is a democratic interpretation of the first principle when it is combined with the difference principle that requires the fair democratic value of the political liberties. Fair political value cannot guarantee democratic equality on its own. The difference principle is essential to the democratic interpretation of both principles of justice.⁷

I.2. *The General Conception and the Difference Principle*: Now to turn to Rawls's general conception of justice, which Edmundson terms, "the difference principle in its general form." This might seem surprising since the only statement of the general conception stated in the revised edition of TJ simply says:

All social values – liberty and opportunity, income and wealth, and the social bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values *is to everyone's advantage* (TJ 62/54, emphasis).

⁶ Piketty 2014, see also Piketty 2020.

⁷ This is not to say that the fair value of political liberties could not also be combined with other egalitarian principles for the basic structure, such as a luck egalitarian principle.

Stated this way, the general conception bears little resemblance to the difference principle since it makes no specific mention of the least advantaged. It is instead simply a generalization of the initial statement of the second principle of justice – that “inequalities are to be arranged so that they are. . . (a) reasonably expected to be to everyone’s advantage,” which is itself compatible with a Pareto principle that puts *no* restrictions on inequalities or the position of the least advantaged, so long as they are better off than equality. So, it might come as some surprise when Rawls says in the 1971 original edition shortly after discussing the difference principle, “Hence the general conception is simply the difference principle applied to all primary goods including liberty and opportunity” (TJ 83 orig.; deleted from the revised edition) This authorizes Edmundson’s contention that the general conception is “the difference principle in its general form.” This comparison of the general conception with the difference principle is strengthened by Rawls’s restatement of the general conception in TJ §46 of the original edition, which follows his restatement of the difference principle. The revised general conception says:

All primary social goods. . . are to be distributed equally unless an unequal distribution of any or all of these goods *is to the advantage of the least advantaged* (TJ, 303, emphasis added).

But the problem with comparing the difference principle with the general conception is that, even Rawls’s revised statement of the general conception still differs significantly from the difference principle itself, which says that inequalities are not simply to advantage the least advantaged, but are to be “to *the greatest benefit* of the least advantaged.” (TJ 302 orig./266 rev.) Stated as is in its final form in the original edition of TJ, the general conception is still but a more qualified statement of the Pareto principle since it

does not put any restrictions on the degree of inequalities that are permitted – only minimal improvements to the position of the least advantaged will still suffice. By contrast with the revised general conception, a genuine “difference principle in its general form” would instead say that inequalities in the “distribution of any or all of these goods is to be *to the greatest advantage of the least advantaged.*” But Rawls nowhere states the general conception in this way, to reflect what he later calls, “democratic equality” and “reciprocity at the deepest level.”

Furthermore, in the revised edition Rawls completely *omits* the revised statement of the general conception and also the claim that the general conception is simply the difference principle applied to all primary social goods. The only statement of the general conception in the revised edition of TJ is the initial Pareto statement on TJ 54 rev. There is no longer any mention of the difference principle in connection with the general conception. Rawls deleted these comparisons of the general conception with the difference principle as early as the 1975 German translation of TJ.⁸ He did not mention the general conception in *Political Liberalism* (1993), perhaps because it is a comprehensive conception of justice on a par with the principle of utility. Still something vaguely akin to the general conception resurfaces in *The*

⁸ See Rawls, *Eine Theorie der Gerechtigkeit*, trans. Hermann Vetter (Frankfurt a. M.: Suhrkamp, 1975, 1979 ppk. ed.) § 46, 337, where the revised general conception is absent from the final statement of the principles of justice, and also 104, where the concluding paragraph to § 13 no longer mentions the difference principle, as it appears in the 1999 revised edition of TJ. Rawls says in the Preface for the 1999 revised edition (TJ 1999, xii, originally written for the French edition in 1987) that the 1975 German edition has almost all the revisions contained in the 1999 revised edition of TJ, except for some revisions Rawls wrote for the French edition *Théorie de la Justice*, translated by Catherine Audard, which she mentions in her Preface to the French edition.

Law of Peoples, which requires that a decent society's laws be governed by a common good idea of justice that assigns human rights to all its members and promotes certain common interests (Rawls 1999b, 66, 71).

Why are these details important? I mentioned earlier that there is a long history of criticisms of Rawls' difference principle from the Marxist left, that the difference principle justifies capitalism and "trickle down" economics, and is little more than a revised Pareto principle that puts no restrictions on inequalities (e.g., as G.A. Cohen contends).⁹ Neo-liberal critics of Rawls also happily contend capitalist distributions with an insubstantial safety net best satisfy the terms of the difference principle. (e.g. John Tomasi, Jason Brennan). Edmundson himself says that without the fair value of the political liberties, the second principle justifies the inequalities of welfare state capitalism.¹⁰ Rawls's statement that the general conception is just the difference principle applied to all primary goods just reinforces this misreading of the difference principle itself. But then Rawls also says, "The difference principle

⁹ Cohen 2008, 29-39n, 158. I discuss the dissimilarities between the difference principle and the Pareto principle, and address Cohen's Pareto misreading of the difference principle in my book, chapter 3, 110, 116-118, 129, chapter 4, 137-138. See also my essay, Freeman 2013.

¹⁰ Also, in Edmundson's book, and echoing his claim that capitalism is best understood in terms of the generalized difference principle, Edmundson's capitalist non-democratic understanding of the difference principle is reinforced when he says: "[The difference principle] is repeatedly invoked, under different names, to justify tax cuts for the wealthy. The 'trickle down' and 'rising tide lifts all boats' similes that were the standard talking points of the Reagan and Thatcher governments are the close cousins – if not monozygotic siblings – of the difference principle in the sense of the general conception" (Edmundson 2017, 86, emphases added).

is a strongly egalitarian conception.” (TJ 65-66)¹¹ The general conception in all its forms is not egalitarian since it puts no limits on inequalities: any alternative inequality measure is permissible so long as it benefits the least advantaged to some degree. The difference principle by contrast requires choosing the alternative at any point (on the OP curve, JF 62) that most benefits the least advantaged; thereby it justifies measures that mitigate inequality by reducing the wealth of the most advantaged in ways that maximally benefit the least advantaged. Rawls had then good reason to delete in the revised edition his earlier statement that that the general conception is but a generalized version of the difference principle. (TJ 83, orig.)

I.3. *Self-Respect and the Difference Principle*: Democratic reciprocity is one reason Rawls contends that the difference principle guarantees democratic equality. A second ground for the difference principle Rawls emphasizes, especially in *Theory* (TJ §29, 179-182/155-158) in his comparison of the principles of justice with utilitarianism, is that the difference principle is among the social bases of self-respect in a democratic society where citizens regard themselves as free and equal citizens. Rawls discusses reasons for the difference principle related to self-respect in the *Restatement* (JF 127-130) in connection with the principle of

¹¹ The best way to understand the “strongly egalitarian” nature of the difference principle is by referring to the “contribution curve” (TJ §13, 76/66 rev. fig. 6 with a much better depiction in JF 62). Starting from equality (the O point) any point of inequality on the rising OP curve not only reciprocally benefits both the most advantaged group (MAG) and the least advantaged group (LAG), but also maximally benefits the least advantaged at each point in such a way that hews closer to the equal distribution line than all other alternative distributions at that point below the curve that would also reciprocally benefit the least and most advantaged. Moreover, any increasing inequalities on the downhill slope of the OP curve to the right of the D point are increasingly unjust; they are to be rectified by measures (e.g. progressive taxes) that reduce inequality and the wealth of the most advantaged in ways that benefit the least advantaged.

restricted utility's "idea of a social minimum." Following Jeremy Waldron's suggestion that restricted utility might rely on "the distinct idea of the minimum as that of meeting the basic human needs essential for a decent human life" (JF 128n). Rawls discusses certain problems with restricted utility relying on such an idea of a "decent minimum" that covers "essential needs." The main problem is that, because restricted utility's decent minimum does not meet the deeper reciprocity requirement of the difference principle, the least advantaged will "grow distant from political society and retreat into their social world. [They] feel left out, withdrawn and cynical [and] cannot affirm the principles of justice in [their] thought and conduct over a complete life" (JF 128). Then Rawls says that "in Part IV, I suggest that the concept of a minimum as covering the needs essential for a decent human life is a concept for a capitalist welfare state" (JF 129). This is one of several reasons I contend that Rawls saw restricted utility's account of a decent minimum as grounding the capitalist welfare state.¹² (Edmundson rejects this saying a better grounding of the welfare state is "justice as fairness-without-fair-value.") It is also a reason that I contend that the arguments Rawls makes against restricted utility and for the difference principle parallel those made against the capitalist welfare state and for property owning democracy in Part IV (which Edmundson also questions).¹³

¹² Rawls also says in T1 that "the term 'welfare' [in 'welfare economics'] suggests that the implicit moral conception is utilitarian." (T1 229) This suggests he had the same understanding of the term 'welfare state.'

¹³ Edmundson says I "transpose Rawls's 'second fundamental comparison' between justice-as-fairness and restricted utility, as competitor conceptions of justice, to the comparison of property-owning democracy (as a realizer of justice-as-fairness) with welfare-state capitalism (as a realizer of restricted utility)." (Edmundson 2020, 34). But in Rawls's argument against the capitalist welfare state Rawls makes roughly the same argument on grounds of self-respect

Like the main reasons for the difference principle, the social bases of self-respect is also one of the primary reasons for political equality and the fair value of the political liberties.¹⁴ The implication is that political equality and its fair value are among the conditions of social equality, along with the priority of equal basic liberties, fair equality of opportunity, and the difference principle. Rawls however did not think that social equality and the social bases of self-respect require socialist control of the means of production. For he says that the socialist right to participate in the control of the means of production and natural resources, both of which are to be socially, not privately, owned, “is not an essential basis of self-respect,” since such socialist rights are not necessary for the adequate development and full and informed exercise of the moral powers, including the sense of justice (JF 114). Perhaps Edmundson would contest these claims. But his main reason for democratic socialism is that, the fair value of the political liberties with equal chances for political influence cannot be realized in any private propertied economy, even property-owning democracy which seeks to dissolve the concentration of wealth by the wide distribution of economic wealth among all society’s members.

that is implicit in his argument against restricted utility’s idea of a decent minimum. He refers to a “discouraged and depressed underclass many of whose members are chronically dependent on welfare” in welfare state capitalism. “This underclass feels left out and does not participate in the public political culture.” (JF 140)

¹⁴ Rawls says in TJ § 82, “Grounds for the Priority of Liberty” (544-546/477-479 rev.): “Self-respect is secured by the public affirmation of the status of equal citizenship for all.” TJ 478. See also TJ 205 where Rawls says the effect of self-government where equal political rights have their fair value is to enhance the self-esteem and sense of political competence of the average citizen.

II

Private Property and the Fact of Domination

I turn now to Edmundson's contention, that socialism with public ownership and democratic control of the means of production is required by Rawls conception of justice. For all that Rawls says in defense of property-owning democracy in *Theory* and the *Restatement*, Edmundson contends that justice as fairness combined with general facts of political sociology and special psychologies imply that POD cannot satisfy the requirements of justice as fairness. This is not because the second principle of justice might require socialism. Rather it is due to the social and economic institutions required to achieve the fair value of political liberties. Only a socialist system can guarantee what Rawls calls "equal chance of . . ." or "fair opportunity for political influence" among all citizens.

The argument that fair political value requires socialism is developed by Edmundson at length in his 2017 book, *John Rawls: Reluctant Socialist*. The argument is complex and rests on several crucial assumptions that Rawls himself does not explicitly make, but which Edmundson contends are implicit in Rawls's argument. The most notable of these is what Edmundson calls "the fact of domination" – that private capital and economic inequality tend to dominate politics.¹⁵ Edmundson's key contention is that the fair value of the political liberties required by the first principle of justice cannot then be realized in any private-property economy. This is true even in a property-owning democracy that otherwise satisfies Rawls's difference principle, fair equality of opportunity, and does its best to neutralize the effects of money on political

¹⁵ He says, "Rawls acknowledges it as a general fact that disparate economic power inevitably conveys disparate political power. This is the fact of domination" (Edmundson 2017, 84).

democracy with public financing of campaigns and other measures. (Here Edmundson must assume that even though FEO has its own equality requirements these are either unobtainable without fair political value or not stringent enough; in any case FEO cannot be fully guaranteed without fair political value and requires socialism as well.) Edmundson insists in his book that the “fact of domination” is presupposed by Rawls’s argument that the fair value of political liberties must be guaranteed by the first principle of justice. He explains that Rawls did not think that public financing of political campaigns and other equalizing measures designed to neutralize the effects of money in politics would be sufficient to guarantee fair value and that further equality measures would be required. Edmundson also notes that Rawls said that for Marx any private property regime, even POD, “generates political and economic forces that make it depart all too widely from its ideal institutional description,” and Rawls concedes that “this is a major difficulty and must be faced.” (JF 178)¹⁶ On Edmundson’s account, had Rawls indeed faced this problem, he should have realized that only in a socialist economy with public ownership of “the commanding heights of the economy” can fair value of political liberties be realized.

¹⁶ Here Rawls continues, “We must ask whether a liberal socialist regime does significantly better in realizing the two principles.” As I contend in the text, if “the fact of domination” is as powerful a force in a property-owning democracy as Edmundson believes, we also must consider why its effects would be contained within a liberal socialist society, as well as a democratic socialist regime of the kind Edmundson advocates. Moreover, even if Edmundson is correct and the fair value of political liberties can only be realized in a socialist system, this still does not decide in favor of socialism, since the relevant question is, which economic system can best realize the ends and requirements of justice as fairness *as a whole*.

Rawls discusses the “curse of money” in American politics (PL 448) and suggests that it extends to welfare state capitalism even under ideal conditions. He also mentions in passing, in his discussion of “special psychologies” of envy and spite (TJ §§ 80-81) a negative “special psychology” he calls “attitudes of domination and submission” (TJ 541/474) and says these attitudes must also be considered in assessing the stability of justice as fairness.¹⁷ Edmundson refers to these attitudes as “the will to dominate” and says they and “the fact of domination” must be considered as among “the circumstances of justice” known in the original position in fashioning both the principles of justice and the institutions that they require at the constitutional stage.¹⁸ He contends the fact of domination runs throughout Rawls’s concerns for guaranteeing the fair value of the political liberties and citizens all having the fair chance to influence the democratic process.¹⁹ In his book Edmundson also expresses uncertainty about whether “Rawls accepted Kant’s view that “radical evil,” – that is, a desire

¹⁷ What Edmundson calls “the will to dominate” is further mentioned in Rawls’s lectures on Hobbes, in connection with the human tendency Hobbes called “pride and vainglory,” and it is implicit in Rawls’s discussion of Rousseau’s account of improper *amour propre* which prevails under conditions of political and economic inequality.

¹⁸ See Edmundson 2017, 87.

¹⁹ Edmundson 2017, 60-64. Sometimes Edmundson says, quoting Rawls, that fair value requires “a roughly equal chance of influencing the government’s policy” (53 quoting Rawls JF 46), and at other times Edmundson says “Fair value of political liberty requires rough equality of political influence” (57). These are quite different, as Ronald Dworkin contends, in that equal political influence is not realistically possible even assuming equality of wealth, given differences in citizens’ intelligence, persuasive power, celebrity, interest and engagement with politics, and many other factors. Rawls himself says that in order for the political liberties to have “approximately equal worth” citizens should have “roughly an equal chance” (JF 46), or “fair opportunity” (PL 327, JF 149) or “fair equal opportunity” for political influence (JF 177).

to dominate others – is simply a metaphysical fact about human beings.”²⁰ He seems to attribute to Rawls Hobbes’s view that “the anxiety about being dominated naturally generates a desire to become *indomitable*.”²¹

I do not think Rawls regarded the desire to dominate others as a metaphysical or natural fact about the human condition, nor did he think the fact of domination widespread enough in a well-ordered property-owning democracy to undermine its stability. Given Rawls’s rejection of the doctrine of original sin as “morally wrong... even repugnant,”²² his positive comments on both Rousseau’s rejection of Hobbes’s pessimism about human nature (Rawls 2008, 205, 208-209) as well as Rousseau’s argument that human nature is good and that unnatural *amour propre* is based not in human nature but in social inequality, (*ibid.*, 198-200), and other similar suggestions²³ there is little grounds for holding that Rawls regarded the desire to dominate as a psychological tendency of persons that is triggered by the institution of private property alone. Rather, like Rousseau, it is great inequalities of social class and private property that underlies political inequality and corruption on Rawls’s view. These excessive inequalities, Rawls assumed, could be kept in check, if necessary, by “steeply

²⁰ Edmundson 2017, 83, citing as evidence Rawls’s *A Brief Inquiry into the Meaning of Sin and Faith* (Harvard: Harvard University Press 2009), Rawls’s youthful senior thesis on sin and evil.

²¹ Edmundson 2017, 83. Edmundson here refers to “cf. LHPP 49-50” which is Rawls’s *Lectures on the History of Political Philosophy*. Rawls in the passage referred to is discussing Hobbes’s state of nature and the reasons behind Hobbes’s thesis, that a state of nature is or tends toward a state of war.

²² Rawls, “On my Religion,” in *A Brief Inquiry into the Meaning of Sin and Faith*, 263.

²³ See for example Rawls’s negative comments about the darkness of Augustine’s and Dostoyevsky’s views about human nature, “St. Augustine and Dostoyevsky are the two dark minds in Western thought, and the former has shaped it profoundly” (Rawls 2008, 302).

progressive taxes” on income and wealth, TJ 246, cf. JF 161 – to protect the fair value of political liberties and FEO in a property-owning democratic society that seeks to widely distribute economic wealth among all society’s members. It is *excessive inequality* of private property that undermines political equality and democracy. Private property alone does not lead to a will to dominate and excessive inequality of wealth, and does not cause inequality of fair chance for political influence.

It is unclear how central the special psychology “will to dominate” is to Edmundson’s thesis that “the fact of domination” is the inevitable consequence of a private property system. Assuming there is such a special psychology that in all private property economies – even in a POD designed to considerably mitigate inequality – It is highly questionable that its pervasive effects would be limited to private property systems and not also apply to socialist economies as well. Surely the will to dominate, whether politically, socially, or economically – if powerful enough to survive the rough equalization of private capital within a POD – would evidence itself in other ways than simply through private ownership of capital. Any market system including liberal socialism would be prone to its effects due to competition among firms and industries, regardless whether the means of production were publicly or privately owned. Moreover, any non-market socialist system – where the government owns and controls “the commanding heights of the economy,” – could well be even more prone than liberal socialism to “government control and bureaucratic power” (JF 150) and political leaders’ will to dominate because of the effects of concentration of economic and well as political power in the hands of governing elites who gain the trust of democratic majorities.

Like Rawls, I am not so pessimistic about human nature to assume that the human propensity to want to dominate politics for

personal gain or other reasons would be pervasive in a property-owning democracy that mitigates wealth inequalities and monitors wealth's influence in order to maintain the fair value of the political liberties. But perhaps this negative psychology, the will to dominate, is not necessary to Edmundson's assumption of the "fact of [political] domination" by private capital in private property economies. Instead of a being motivated by a will to dominate, owners of private capital may just want to increase their profits by any legal means available; then the unequal influence of private capital on politics could be simply an unintended side effect of otherwise reasonable persons' attempts to influence political representatives and public opinion in ways favorable to themselves. Edmundson's argument that POD inevitably falls prey to the "fact of domination" is perhaps better understood in this form – political domination is still an unintentional side effect of private ownership in any society. Still, I do not see why this fact would be any more likely in a well-ordered property-owning democracy than it would be in a competitive liberal socialist economy of the kind Rawls also endorses, or in the kind of democratic socialism Edmundson endorses with state ownership and political control of "the commanding heights of the economy."

Finally, however much Rawls may have regarded attitudes of domination and submission as prevalent under conditions of political and economic inequality, he did not believe that within a property-owning democracy that conforms to his principles of justice, that the *will* to politically dominate would have significant presence. I think the same is true about the fact of political sociology Edmundson puts forth, the fact of domination. Since inequalities are constrained within reasonable bounds in a POD that conforms to Rawls's principles, the sense of justice of free and equal democratic citizens should neutralize the effects of such negative psychologies and tendencies among reasonable citizens.

Assuming that the sense of justice of democratic citizens is as robust as Rawls contends in *Theory* chapters 8-9 and elsewhere, there should then not be a sufficient number of unreasonable citizens prone to dominate politics for personal gain to undermine the fair value of political liberties and the stability of a well-ordered society. Moreover, Rawls clearly thinks that the widespread and fair distribution of ownership of economic wealth, the dissolution of concentrations of capital and the elimination of a capitalist class that owns and controls means of production, joined together with public financing of political campaigns and public forums, mitigating excessive economic inequalities, and other measures, would all together be sufficient to guarantee the fair value of political liberties and equal opportunity for political participation and influence in a property owning democracy. So, the “fact of domination” should not be any more influential in a property-owning democracy than under liberal or democratic socialism and in neither case sufficient to undermine the stability of a well-ordered democratic society. Edmundson recognizes that Rawls makes arguments along these lines, and has more to say in his book in support of his position than I can respond to here.

III

The Fair Value of Political Liberties

Next, I’ll briefly consider equal political liberties and their fair value, in order to suggest that Edmundson may well exaggerate the requirements of the fair value of political liberties. We do not have a clear idea of what rough equality of chances for political influence could mean and why it is so important, independent of a framework of some kind. Rawls nowhere says that fair political value requires adopting the economic system that maximizes citizens’ equality of chances to exercise political influence – indeed

he implicitly denies it in saying that the basic liberties do not maximize anything (PL 332). Equal political liberty and its fair value is but one of the equal basic liberties and must be synchronized with the requirements of others into a coherent scheme. Though Rawls in *Theory* said that is this to be “the most extensive total system” of basic liberties compatible with similar liberties for all (TJ 266) he later discards that maximizing criterion for lack of coherence (PL 331) in favor of one that requires a system of basic liberties that is “fully adequate” to the “development and full and informed exercise” of the moral powers. (PL 332) Rawls says that fair value requires “approximately equal or at least sufficiently equal” worth of the political liberties for all citizens, “in the sense that everyone has a fair opportunity to hold political office and to influence the outcome of political decisions.” He notes that this corresponds with fair equality of opportunity for access to educational and employment positions. (PL 327) Fair equal opportunity is not perfect equality of opportunity, which would be better approximated, he says in *Theory*, if society were to eliminate the family (TJ 447-448) and (one might add) most other forms of personal association. But this would violate basic liberties of freedom of conscience and association, severely constraining individuals’ pursuit of important human values. The idea of perfect equality of fair opportunities for political influence incurs many of the same problems. We might better approximate perfect equality of (chances for) political influence by restricting certain individuals’ educational and cultural opportunities, especially those who are more talented or otherwise naturally gifted – since greater than average education considerably affects citizens’ opportunities for political office and influence. Even if the first principle with fair value of political liberties has priority over fair equality of opportunity, this cannot be understood to deny individuals the freedom to take advantage of educational and cultural opportunities that are crucial for the

adequate development and full and informed exercise of their moral powers, and therewith the effective exercise of basic liberties themselves, in, for example, informed democratic deliberation and many other activities. As we saw with the interactive effects of the difference principle in making possible the democratic interpretation of fair equal opportunity and of the first principle of justice itself, the principles of justice have to be interpreted as a cohesive whole, so the priority of one principle over another cannot be allowed to eclipse entirely a subordinate principle's requirements and influence.

Thus, even if we conclude that the fair value of political liberties – in the sense of equal chances for political influence – could best be fully realized in a democratic socialist society without private property in means of production, we still have to consider the effects this would have on the effective exercise of other basic liberties, as well as its effects on the fair equality of diverse opportunities for education, employment, and culture, and the consequences for the position of the least advantaged members of society. If a democratic socialist economy that achieves fair political value results in circumstances where the economy does not thrive and the least advantaged cannot effectively exercise their other basic personal liberties; or if democratic socialism undermines the creation of diverse employment, cultural and educational opportunities that individuals have fair equal opportunities to take advantage of and compete for, then these are sufficient reasons for a society to abandon democratic or liberal socialism and adopt property-owning democracy. The priority of the first principle over the second surely cannot mean that the establishment of the optimal conditions for realizing the fair value of equal political liberties has absolute priority over the effective exercise of all other equal basic rights and liberties, or the fair distribution of diverse opportunities and also of income and wealth, powers and prerogatives, and the social bases of self-

respect. Again, social and political justice does not require maximizing the worth of political liberty or any other specific liberty, or liberty itself. Instead, Rawls says, “Taking the principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This is the end of social justice.” (TJ 205)

Here it is also relevant that Rawls says the equal political liberties are in large part instrumental to realizing the other basic liberties and political values (TJ 205). He does not insist that democratic participation is intrinsically valuable for all and takes precedence over all other basic liberties or their effective exercise. Indeed, he suggests the opposite, that “the various liberties are not on a par...” and that under certain historical conditions, maintaining equal political liberties is not as essential as maintaining freedom of the person and freedom of conscience for all. “The case for certain political liberties and the rights of fair equality of opportunity is less compelling”.²⁴ Fair opportunity for equal political influence is then but one primary social good among many others, and it does not dominate the fair and adequate distribution of the rest.

This raises the question: Why is equal political liberty and “roughly equal access” to the political process (PL 328) so important within the scheme of basic liberties and justice as fairness as a whole? What is its primary role? Among the primary reasons Rawls sets forth to justify equal political liberties and their fair value are: to enable individuals to publicly voice, represent, and defend their own interests and conceptions of the good; to enable them to fully exercise and adequately develop their moral capacities for a sense of justice; to educate and enlarge citizens “intellectual and moral sensibilities,” so they take will others’ interests and the

²⁴ TJ 247/217 rev.

public good into account; and to maintain citizens' sense of self-respect as free and equal citizens (TJ 205-206, 477-478). More generally, political equality with "sufficiently" fair equal opportunity for political influence is a fundamental condition of *social equality* – "equality as it applies to the respect owed to persons irrespective of their social position" – as are all the equal basic liberties, as well as fair equal opportunity.²⁵ To realize these multiple aims Rawls says "property and wealth must be kept widely distributed," public monies must be supplied to encourage free public discussion and fund political parties and campaigns, private economic interests must be discouraged if not barred from influencing campaigns, along with other measures (TJ 198). Taking these and other reasons for political equality Rawls discusses into account, it is difficult to see why fair value can *only* be adequately realized under conditions of public ownership and control of "the commanding heights of the economy," given the alternative of a property-owning democracy that widely and fairly distributes ownership and control of these and other productive assets and resources. And even if fair political value of equal political liberties can be better realized in a socialist society than in property-owning democracy, I've argued, that still does not settle the issue. Citizen's opportunities to effectively exercise their remaining basic liberties, the diversity of fair opportunities open to them, and the economic position of the least advantage all still have to be considered before it can be decided that socialism on balance consistently outweighs property-owning democracy regardless of social, economic, cultural, and historical conditions.

²⁵ TJ 447-448. Niko Kolodny emphasizes the central role of social equality in justifying the political equality of citizens in a democracy. See Kolodny 2014.

IV

Property-Owning Democracy and the Fair Distribution of Economic Powers and Prerogatives

Edmundson devotes a large part of his comments discussing my differences and departure from Rawls's account of property-owning democracy, most notably my suggestion ("friendly amendment" to Rawls, I call it) that fair equality of opportunity should include the fair opportunity to exercise economic agency, not simply by ownership of economic wealth (already guaranteed by the difference principle), but also through the exercise of economic powers, prerogatives, and responsibilities in occupational positions and economic institutions.²⁶ In a liberal socialist society, citizens would also be entitled to certain powers and prerogatives of economic agency on my account, even if not entitled to substantial ownership of a fair share of economic wealth, which is largely publicly owned (aside from personal property, small businesses and tools and equipment, and savings from income).

Social and economic powers and prerogatives are the least discussed of the primary social goods in Rawls's works. Rawls sometimes calls these 'powers and prerogatives of authority,' (TJ 93/) and more fully 'powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structure.' (PL 181, Rawls 1999, 454)²⁷ He

²⁶ I address the issue of guaranteed social and economic powers and prerogatives in my replies to Thomas and Salvatore as well.

²⁷ Rawls says alternatively "*particularly* those in the main political and economic institutions" (Rawls 1999, 362), which would suggest powers in other institutions in addition to political and economic. In the *Restatement* Rawls adds

says, significantly for my position, “*Powers and prerogatives of offices and positions of responsibility are needed to give scope to various self-governing and social capacities of the self*”.²⁸ This statement implies there are strong reasons to guarantee all citizens at least an adequate share of powers and prerogatives in economic institutions, including their workplace. This is, I would argue, already implicit and guaranteed by the difference principle, as I discuss below. I go one step beyond this to argue that fair equality of opportunity itself should guarantee substantial opportunities to exercise powers and prerogatives of economic control in one’s workplace, for reasons discussed below. Here it’s noteworthy that Edmundson is skeptical of workers having such powers of economic agency, even in a socialist economy.

To avoid confusion, which is frequent here, by ‘powers’ Rawls does not mean *power* in the sense of control, dominance, or the ability to causally influence political, social, or economic outcomes.²⁹ He denies that.³⁰ Instead by ‘powers’ Rawls means *legal and institutional powers*, as clarified in H.L.A. Hart’s works and

the term ‘authority’ and refers to “Powers and prerogatives of office and positions of authority and responsibility” (JF 58).

²⁸ “Kantian Constructivism in Moral Theory,” Rawls 1999, 313 (emphasis added).

²⁹ Alan Thomas in his book, *Republic of Equals* (Thomas 2017, 261) approvingly cites a reply by John Tomasi to my argument that workers should have powers and prerogatives in their workplace. Tomasi says that an increased wage is also a form of power that workers may be more satisfied with than with rights to vote and participate in decisions in their workplace. Perhaps, but increased wages are not economic powers but are a different primary good, income and wealth.

³⁰ Rawls says: “That political and economic power is a primary good I never meant to say; if at certain points the text will bear this interpretation, it needs to be corrected”, “Fairness to Goodness,” in Rawls 1999, 273.

elsewhere in legal philosophy and jurisprudence.³¹ Offices and positions of authority and responsibility carry certain powers and prerogatives with them that are needed to carry out the duties and responsibilities of the position (e.g. mayor, town manager, teachers, coaches, or members of corporate boards, business managers, foremen and other employees). Likewise, legal ownership of property is normally construed as coming with certain powers and prerogatives of use and control, which one might exercise, lease or delegate to others. There are many powers and prerogatives of use and control that go with economic production and ownership of resources. In American capitalism, these powers normally are exclusively controlled and then delegated by managers, indirectly by boards of directors of firms, and eventually majority owners of shares. That's a problem I seek to address in my book.

Rawls says, "The primary social goods that vary in their distribution are the powers and prerogatives of authority and income and wealth." So, Rawls clearly thinks that inequalities of social and economic powers and prerogatives are justified, so long as the social and economic positions exercising them are open and there is fair equality of opportunity to compete for these positions. But it would seem that the *distribution* of social and economic powers and prerogatives *themselves* among the many offices and positions that exercise them is ultimately to be governed by the difference principle. For each social and economic position in which individuals are employed and have fair opportunity to compete for, there is the question of which powers and

³¹ "Hart says of powers conferred on private persons that they provide individuals with facilities for achieving their aims; they bestow upon them powers to create by certain procedures a structure of rights and duties that the courts will enforce. The power to make a will is an example. Powers so defined seem naturally to belong with liberties and opportunities as primary goods." Rawls 1999, 273 n.

prerogatives that specific position should have the authority or responsibility to exercise? Though he does not specifically address this question, this seems to be Rawls's position with respect to the fair distribution of social and economic powers, prerogatives and responsibilities, just as it is with the distribution of income and wealth. How this should be interpreted and realized, including questions of which powers and prerogatives should go with particular positions, is not addressed by Rawls. Clearly, it is not a question that can be left up purely to considerations of economic or social efficiency, but is to be determined by the difference principle. I do not think that the difference principle allows that there be employment positions with absolutely *no powers or prerogatives*, leaving workers with no discretionary control over themselves in their workplace. This is not to say that the difference principle itself implies any *specific* guarantee of social and economic powers and prerogatives to individual citizens. But it does imply however that at least *some guarantee* of such powers and prerogatives for all workers and employees is implicit in "the index" of primary social goods that are governed by the difference principle. For again, as Rawls says, "powers and prerogatives of offices and positions of responsibility are needed to give scope to various self-governing and social capacities of the self" (Rawls 1999, 313)³² (I'll say more about the difference principle's distributive role with respect to powers and prerogatives shortly).

But first, regarding Edmundson's objection that I err in contending that, not simply the difference principle, but fair equality of opportunity itself guarantees all working citizens some degree of powers and prerogatives in their place of work: I first

³² The index of primary goods distributed according to the difference principle includes income and wealth, social and economic powers and prerogatives, and the social bases of self-respect (which qualifies the first principle and FEO as well).

suggested in my 2007 book, *Justice and the Social Contract* (Freeman 2007a, 106-107) that among the fair opportunities guaranteed by FEO should be not simply opportunities to compete for educational and employment positions, but also the fair opportunity to directly exercise economic powers and prerogatives themselves. The idea was to parallel the fair opportunity to exercise equal political influence that is guaranteed by the fair value of the political liberties in the first principle, with a fair opportunity to exercise economic agency and influence in ways that may not be adequately guaranteed by the difference principle.

My reasons for initially making this claim, which were developed in greater detail in *Liberalism and Distributive Justice* (Freeman 2018a, 159-163), were to counter arguments (emphasized by John Tomasi, Jason Brennan and others) that, because capitalism seeks to maximize overall wealth in society, welfare state capitalism is in a better position to offer the least advantaged workers greater overall combined income and wealth than a property-owning democracy. Presumably, in a property-owning democracy satisfying justice as fairness, the vast majority of least advantaged workers might be inclined to alienate whatever claims they have to ownership and control of economic wealth with the risks this involves, as well as to any powers and prerogatives they may be entitled to in their workplace, in order to obtain the greater increases to income they otherwise would have in welfare state capitalism. But if so, then it should follow (advocates of capitalism contend) that the least advantaged if given the choice might be said to be better off in WSC with higher income supplements than they would be in POD with less income and greater economic powers. It was to escape this conclusion that I suggested as a solution that workers and employees' rights to exercise economic powers and prerogatives of control within their workplace should be regarded as guaranteed not simply by the difference principle, but by fair equality of opportunity itself. For

given FEO's priority over the difference principle, and since fair equal opportunities are inalienable on Rawls's account – since one cannot alienate what are regarded as conditions of social equality – workers would not then have the legal capacity to alienate their rights to exercise economic powers and prerogatives in a property-owning democracy – not any more than they could alienate their rights to exercise their equal political powers to participate in the democratic political process.

There are stronger more positive reasons to guarantee citizens' fair opportunities to exercise economic powers than these, which I discuss in my book – such as the social conditions of self-respect, free and equal persons' desire for meaningful work, and non-exploitation of workers as a condition of mutual respect. Rather than discuss these at length here, perhaps a better way to depict these kinds of considerations and the problem I was trying to address is this: as Elizabeth Anderson forcefully argues in her recent book, *Private Government*, workers and employees are legally guaranteed absolutely *no economic powers and prerogatives whatsoever* under the default laissez-faire employment contract that governs civil law in the U.S. If workers can attract or bargain for any powers, prerogatives and responsibilities, then freedom of economic contract gives them the opportunity to do so. But the least advantaged unskilled workers – a large portion of the workforce – are by law offered “take it or leave it” terms of employment that put them under the complete control of their employers, not just at work but also outside it, except for their legal right to quit their job at any time and exit the relationship (involuntary servitude no longer being legally permitted in the U.S. under the 13th Amendment). If employees exercise any powers and prerogatives at work, they are specified by employment contracts or within labor union agreements with firms or industries. The contemporary default employment contract in the U.S. is with few exceptions still grounded in the 19th century laissez-faire model

made possible by common law and state legislation, with no legal protections in the workplace except those employment discrimination and workplace safety regulations added in the second half of the 20th century (by the 1964 Civil Rights Act and OSHA regulations).

As Anderson argues, the vast majority of unskilled workers are at the mercy of their employers, many in a position of virtual involuntary servitude during the normal workday, with their activities outside work subject to surveillance and control as well (including their political activities, speech, sexual preferences, Facebook postings, smoking, drug use, etc.). (Anderson 2017, 39) Their only remedy for employer abuse of their personal integrity is their right of exit from their job, with the option of joining a different but equally despotic workplace. The circumstances of the many migrant workers who are in the agricultural, meatpacking, janitorial, landscaping, construction, and home cleaning services, etc. is even worse, since they are subject to abuse and blackmail by employers who threaten to report them to Immigration services if they do not comply with employers' every demand. Employers are as a matter of course legally granted arbitrary, unaccountable control over their employees' lives, and often abuse this power to dominate many workers lives, not simply at work but in their off-hours as well.

This is a shameful consequence of the 19th century laissez-faire capitalist employment contract that still governs American law and employment relations. It is not slavery, because employers cannot assault and physically abuse employees, and it is not serfdom either since modern workers can quit and walk away most any time they choose. But during the workday itself, and often outside it, the control that employers exercise over their workers, and the absence of powers workers themselves may exercise, resemble economic serfdom. Anderson calls it “a form of authoritarian private

government, in which, under employment-at-will, workers cede *all* their rights to their employers, except those specifically reserved for them by law” (Anderson 2017, 60). It is this kind of legalized dominance and subjugation that employers exercise over least advantaged workers’ lives in particular that I was primarily concerned with addressing in arguing that employees should be guaranteed fair equal opportunities to exercise economic powers and prerogatives of control over their person and activities in their workplace and also outside of work – including certain basic powers that are inalienable and non-fungible, and thus cannot be bartered away in the face of employers’ monopoly on bargaining power in employment contracts with the least advantaged workers.

An alternative solution to this “fungibility problem” that is perhaps more in keeping with Rawls’s own position than my suggestion is to appeal to the difference principle itself and its requirements with respect to the regulation of employment contracts. A society can recognize and enforce the inalienability of certain fundamental powers and prerogatives of economic agency that are guaranteed to all workers by their fair share of the index of primary goods. The index of primary goods under the difference principle includes the appropriate combination of income, wealth, and social and economic powers and prerogatives, tempered by the social bases of self-respect. Rawls had nothing definite to say about how to construct the index of primary goods to be distributed by the difference principle and that is used to determine to social minimum. One way to understand the role of self-respect here is to hold that the index of primary social goods is to be determined by giving due consideration to the institutional bases of self-respect that results from the combination of the more tangible primary goods constituting the index. Here the relevant question in determining the social minimum should then be: what combination of income, wealth, and social and economic powers and prerogatives is necessary to sustain the moral powers and sense

of self-respect of free and equal moral persons in a well-ordered democratic society? Whatever the appropriate combination may be of these primary goods in constituting the index, I think it is fair to assume that the difference principle neither presumes nor allows the laissez-faire employment contract that is taken for granted in most American jurisdictions to determine individuals' share of the index of primary goods under the difference principle. We already have some few legal measures that protect certain powers and prerogatives of workers in regulated welfare state economies. Most jurisdictions even within U.S. capitalism – where the laissez faire employment contract has long been the default assumption – require health and safety measures that employers are required to maintain as well as no more than a required 8-hour workday or 40-hour work week, with added requirements of overtime pay if workers are expected to work longer hours. Though often abused, these are not legally fungible prerogatives that employers can demand that workers surrender or bargain away in exchange for being hired or increased wages.

A solution to this fungibility problem that can be resolved by the difference principle itself is then to regulate employment contracts so that certain fundamental powers and prerogatives of economic agency are legally guaranteed all workers – the level that is necessary to sustain the self-respect and therewith full exercise of the moral powers of representative free and equal citizens in a well-ordered democratic society. However, this self-respect criterion is to be specified, we can safely presume that it would restrict laissez-faire freedoms of the employment contract, so that any attempted alienation of fundamental powers and prerogatives in the workplace would be legally void and unenforceable. Just as workers cannot be required by employers to alienate their health and safety protections under current U.S. law, they should not be allowed be put under duress by threats of losing their employment if they do not alienate the fundamental powers and prerogatives of

control they should have in their work as a condition of employment. The only potential shortcoming of this position perhaps is that the fundamental powers and prerogatives to be guaranteed to employees by the institutional bases of self-respect criterion may largely involve worker protections and not rise to the level of positive powers, prerogatives, and responsibilities that constitute a more robust conception of economic agency within the workplace. That provides some reason to turn to the fair equality of opportunity principle to guarantee certain additional powers and prerogatives for all workers in either property-owning democracy or liberal socialist societies.

In any case, whatever these additional powers and prerogatives may be, they would not be so stringent as to require that all firms in a property-owning democracy be worker-owned-and-managed-firms. That is certainly one form of employment in a property-owning democracy that guarantees workers certain powers and prerogatives in their workplace; and perhaps, as Rawls says, if economically viable perhaps it ought to be politically supported and subsidized by governments until it has established itself. But large shareholder-owned firms with co-determination rights for workers (and public representatives as well) is another alternative, as are a variety of smaller privately- owned businesses, individual proprietorships, partnerships, and so on.

V

My Position on Economic Agency: Not Syndicalism

Edmundson however reads me differently (as does Thomas). He interprets my remarks regarding worker's rights to economic powers and worker-owned and managed firms as an endorsement

of a syndicalist interpretation of POD.³³ It is not clear what passages he is referring to support this claim. It was not however my intention to argue that either Rawls's principles of justice or my own "friendly amendment" to them require democracy in the workplace with worker-owned-and-managed firms under property-owning democracy, nor do I think my text bears out Edmundson's syndicalist interpretation of my position.³⁴ My remarks are based in Rawls's review of the institutions of a property-owning democracy and his endorsement of J.S. Mill's "idea of worker-managed firms [as] fully compatible with property-owned democracy" (JF 176, 178). Rawls's interpretation of liberal socialism also largely but not exclusively involves worker controlled and managed firms as well.³⁵ But Rawls also endorses

³³ Edmundson says: "One might call Freeman's a 'syndicalist interpretation of property-owning democracy.' Because it has rather scant textual support in Rawls, it too has to be seen as a 'friendly amendment.'"

³⁴ Perhaps the offending passage is the following (Freeman, 2018, 143, emphases added).

POD seeks the widespread distribution of productive wealth, as well as economic powers and positions of responsibility among those actively engaged in production. Here Rawls says POD encourages either worker-owned-and-managed firms or cooperatives (JF 176, 178 [cf. Rawls 2008, 316]), or "share economy" arrangements, with workers' partial ownership of firms with rights to share in profits (JF 72.) Finally, though he says there is no basic right that workers own and control the means of production, *Rawls mentions the importance of democracy in the workplace* and in shaping the general course of the economy (JF 114, 178). Given these and other claims, *property-owning democracy for Rawls seems to include some degree of worker prerogatives and responsibilities, if not worker control, as well as workers' participation in firm's governance, for example by voting for management and having representatives on boards that make major decisions (much as Mitbestimmung, or co-determination rights.)*

³⁵ (TJ 280, TJ 266, 273, JF 138. Rawls mentions liberal socialist workers' councils on TJ 266 and 280. Rawls says: "[A] liberal socialist regime can also answer to the two principles of justice. We have only to suppose that the means of production are publicly owned, and that firms are managed by workers' councils,

“share economy” arrangements within property-owning democracy where “worker’s compensation is based on an index of the firms’ market performance” (JF 72).³⁶

While worker-owned and managed firms might then be a significant option in a POD that satisfies Rawls’s principles – as he

say, or by agents appointed by them. Collective decisions made democratically under the constitution determine the general features of the economy, such as the rate of savings and proportion of society’s production devoted to public goods.” TJ 280. See also JF 138, where Rawls refers to socialist regimes where “economic power is dispersed among firms, as when, for example, a firm’s direction and management is elected by, if not directly in the hands of, its own workforce.” Finally see Rawls 1999, 277, where Rawls says the principles of justice “may be realized either by associational socialism or property-owning democracy.” Edmundson in his book tends to de-emphasize democracy in the workplace and even liberal socialism in Rawls, advocating instead a kind of democratic socialism with democratic control of major industries, which he suggests is also compatible with Rawls’s position. I am skeptical of Edmundson’s democratic socialist interpretation of Rawls given Rawls’s emphasis on both worker-managed firms and the efficiency of markets in allocating productive resources under liberal socialism (TJ 241).

³⁶ He is referring here to Martin Weitzman’s *The Share Economy*, which argues for workers being partly compensated with a share of a firms’ profits or revenues, or ownership of shares in the firms for which they work. On employee stock ownership see Piketty 2020, 972-975, 509 and 509n. He contends that, combined with the German model of co-management with workers and shareholders each having half the seats on boards of directors of firms, employee stock ownership plans would result in predominantly worker-controlled firms, which he endorses. What Piketty calls “participatory socialism” resembles, as he says, Meade’s property-owning democracy (*ibid.*, 970n). But, like Edmundson, Piketty also favors limiting shareholder power in health, culture, transportation, environmental and other major sectors of economy; though instead of public ownership, Piketty suggests adopting something like the model of trustees of private foundations such as universities exercising fiduciary roles in such industries – which would keep with, if not Meade’s idea of “property owning democracy,” at least the idea of a “private property democracy,” a term Rawls used rather than property-owning democracy on at least one occasion. See, “Social Unity and Primary Goods,” Rawls 1999, 363.

himself says (JF 176,178) – it is not the only way that employees can exercise economic agency in their place of work and employment in a property-owning democracy. Worker-owned and managed firms are difficult if not unfeasible in some capital-intensive industries (e.g. oil tankers) which have few workers but require substantial risks and/or vast sums of money to finance – which workers are not in a position to undertake. Moreover, there is an efficiency problem in that workers will be reluctant to employ new workers even if it would be profitable to do so, since it would diminish the average share of compensation. Meade suggests as a remedy to this problem that new workers be paid only their marginal product for a time period. Whether these and other problems could be resolved to make worker-owned and managed firms the predominant model for the firm, as Mill maintained, is not crucial to the argument for giving workers ways to exercise economic powers and responsibilities in their workplace, for there are other ways to do this.

What I mainly had in mind in applying fair equality of opportunity to guarantee economic powers and responsibilities is more general: namely, that there be legal guarantees of “ongoing opportunities for citizens to exercise economic powers and some degree of freedom and control in their work, thereby assuming a degree of initiative and responsibility.” (Freeman, 2018, 160). As noted earlier, there are multiple ways for employees to exercise voice and powers of control in employment activities, some of which I discuss in my book (Freeman, 160-161). Worker co-determination rights to vote for management and have representatives on boards of private firms should be one such requirement in large firms, which would remedy the current corporate practice in the U.S. of board members’ focusing only on maximizing shareholder value at the expense of the health and

well-being of employees as well as the environment.³⁷ Another legally mandated power should be work councils within larger firms, where workers discuss and their elected representatives participate in making decisions regarding work rules on such matters as division and rotation of tasks, safety measures, breaks and free time, and other regulations within the workplace. Such work councils also are guaranteed by German and other Northern European legal systems, and would be a protection against the constant abuse and domination of many unskilled and especially migrant workers that is the norm in American agriculture, sales, and industry. As I say in this regard, “The opportunity for less skilled workers to exercise developed capacities not just in their leisure time but in their workplace as well, by overcoming the subservience of the wage relationship through the assumption of economic powers and responsibilities, can play a crucial role in providing [them with] social bases of self-respect,” (Freeman 161) – which is, Rawls says, “perhaps the most important primary social good.”

Aside from worker-managed or co-managed firms, in any POD or liberal socialist society that complies with Rawls’s principles of justice, individuals would have the freedom to work as individual worker-proprietors (roofers, landscapers, plumbers, electricians, farmers, dentists, doctors, lawyers, accountants, etc.), or as entrepreneurs who create and run a business.³⁸ Also workers should have the freedom to form business partnerships with others. Nothing prevents small businesses of this kind under either

³⁷ Since 1974 such *Mitbestimmung* rights have been mandated in Germany for firms over 500 employees. In Denmark they apply to firms with over 20 employees.

³⁸ John Tomasi in *Free Market Fairness* lauds the capitalist freedom to create small businesses such as Amy’s “Pup-in-a-Tub” dog grooming business. There is nothing to discourage such private businesses in property-owning democracy, or even liberal socialism.

property-owning democracy or liberal socialism as Rawls or I imagine it. The question is rather whether, once private firms reach a certain size (over 25, 50, 250, or more employees, for example), or gain disproportionate economic power compared with others, should rights of co-management be afforded to their employees? Or alternatively should they be publicly owned in a liberal socialist economy, with fair compensation going to their owners? The endorsement of privately owned and managed small businesses and farms in a socialist economy appears to be Edmundson's view as well. It is "the commanding heights of the economy" that are to be publicly owned and publicly managed on his view, instead of managed or co-managed by workers themselves. If mandatory co-determination in privately owned firms of over, say, 500 workers is required by law, as in Germany, with opportunities for workers to be paid with shares in firms or in mutual funds, I do not see how that limits workers' freedom of occupation and association any more than does Edmundson's public ownership and democratic control of large firms that are "the commanding heights of the economy."

Finally, in this connection, I note in my book Rawls's reference to "meaningful work" on several occasions, and discuss the importance of it to the self-respect of less advantaged workers.³⁹ Labor does not have to require trained skills in order to be meaningful. Instead it needs to be respected and appreciated by others for what it is, essential to society and the well-being of other citizens. Most of the most strenuous and essential labor in any society is performed by unskilled workers: excavation, water and waste disposal works, sanitation, cleaning and janitorial services, agricultural work and food processing; care for children, the elderly, and the severely disabled, and so on. These workers are

³⁹ Freeman 2018a, 162, quoting Rawls, TJ 290/257-258 rev.; also 529/463-464 rev.

taken for granted and not respected in America, largely because of a surplus labor supply that is not protected under the default *laissez faire* labor contract. In many European countries, where unskilled labor receives far more recognition and respect for its crucial role in maintaining the public good and well-being of all members of society, workers are not made to feel humbled by what they do, as is so often the case in American capitalism where they are unprotected, exploited and abused by profit-maximizing employers who are subject to no regulation. Work can be monotonous but still meaningful if recognized and respected for what it is, as being crucial to society and its members, and workers are respected for their crucial contributions, not taken for granted, exploited, and professionally abused. Providing unskilled workers with protections, and opportunities to exercise powers and responsibilities while on the job would go a long way towards elevating others' respect for unskilled workers and their self-respect for themselves in American society.

VI

Freedom of Occupation and Free Association

Within One's Occupation

Finally, like Alan Thomas, Edmundson contends here and also in his book that an enforced system of worker owned and self-managed or co-managed firms violates freedom of occupation and association (Edmundson 2017, 32). He raises this issue here suggesting that if everyone were required to work for shareholder firms with co-determination (or presumably also in worker-managed firm) then freedom of association for workers and

entrepreneurs would be violated.⁴⁰ The implication is that workers in every occupation would have no choice but to join some co-managed firm, and could not work in private partnerships or as individual practitioners or entrepreneurs, or in private foundations not controlled by their employees.

Again, as with syndicalism, nowhere do I suggest that all shareholder firms or private foundations, regardless of size, require co-determination measures that include a substantial percentage of their workers/employees. Just as Edmundson does not appear to hold that all means of production in a socialist economy should be publicly owned and managed but that individual proprietors, partnerships, and entrepreneurs should be allowed to flourish and exercise their creative abilities, (Edmundson, 2017, 39-42) I believe too that in a POD or liberal socialism there should be several permissible forms of occupational association, as well as individual proprietors and practitioners, and that both large worker-managed and co-managed firms with worker councils would be among them, along with traditional privately owned small businesses – restaurants, shops, small manufacturing firms, partnerships – that do not exceed certain size limits (e.g. 25-50 employees). We differ only in that, whereas Edmundson holds that very large firms – “the commanding heights of the economy,” including “systematically important financial institutions” (42) – should be publicly owned and managed, in a POD these normally would be privately owned and managed either by workers themselves or in co-determination arrangements with representatives of private shareholders, or managed by trustees of private foundations who exercise fiduciary roles, on the model of private universities. So, there should be no

⁴⁰ Edmundson says: “Productive enterprises within a market economy are not all of a piece. Co-determination at the level of the firm and profit-sharing cannot be imposed across all firms in an economy without significantly curtailing the rights of both entrepreneurs and those who would like to work for them.”

issues with freedom of occupation and association in one's workplace in a POD, not any more than in Edmundson's hybrid socialist/private property democracy arrangement that allows for smaller privately-owned businesses and private entrepreneurship. Thus, I do not think that my view violates liberal concerns of value pluralism Edmundson raises with respect to different forms of employment.⁴¹

Freedom of occupation and choice of workplace is sometimes included among the basic liberties by Rawls, and sometimes as part of fair equality of opportunity. It is safe to assume that it is guaranteed by both, in several different ways discussed below.⁴² Moreover, freedom of association is clearly one of the basic liberties protected by the first principle. But it is a separate question whether the first principle applies to protect *economic freedoms* to form and join *economic associations* and therewith protects all or most forms of corporate or group organization in employment that individuals would freely contract into. Unlike classical liberals such as Hayek, Friedman and Tomasi, I do not think that either the basic liberty of association or freedom of occupation and choice of

⁴¹ He cites Chiara Cordelli's "Privatization without Profit" and the "externalization function" served by private businesses. See Cordelli 2019.

⁴² Rawls clearly states that freedom of occupation is a basic liberty protected by the first principle in later works: in *Political Liberalism* it is part of freedom and integrity of the person along with freedom of movement, (PL 232, 335, see also 228, 230) and in the *Restatement*, it is protected by "the priority of liberty," (JF 158) and is necessary for the development and exercise of citizens' capacity for a conception of the good. (JF 169) On the other hand, Rawls also mentions free choice of occupation and freedom of movement as being distinct from the basic liberties and instead as connected with or "protected by fair equality of opportunity" (PL 76, 181; JF 58). Finally, in *Theory* he is non-committal or he mentions freedom of occupation simply in connection with (fair) equality of opportunity. (e.g. TJ rev. 240-241, 242, 243, 272; see also, JF 78). Though he refers to "the important liberty of freedom of occupation" (TJ 242) nowhere is it clearly said to be a *basic* liberty, unlike later in PL.

workplace guarantee the economic freedom to contract into business associations or any form of economic organization that individuals choose so long as it does not violate others' rights and liberties. No liberal (as opposed to libertarian) would defend the freedom to form and join cartels or other price fixing schemes that undermine competitive markets – even though no one's rights in particular are violated by such agreements and associations. The prohibition on such free contracts and business associations is justified in order to both preserve equality of diverse opportunities, and also prevent price fixing, monopolization of resources, and further other reasons of economic efficiency compatible with the difference principle. It is also not a violation of freedom of occupation or of association for a society to decline to authorize the many forms of limited liability joint stock corporations so typical of capitalism since the 19th century, requiring instead business partnerships or full liability business corporations. Within a liberal egalitarian view such as Rawls's, the reasons that limited liability joint stock corporations (LLCs, S-corporations, C-corporations, partnerships vs. limited partnerships, joint ventures, trusts, and so on) are justified is *not* a basic liberty of economic association, but rather considerations of economic efficiency and ultimately (in so far as they are justified at all) the difference principle in Rawls's view. These forms of economic association are no more required by the basic liberty of free association and of occupation than are hedge funds, mutual funds, private equity and other closed-end funds, and many other investment mechanisms. If there were a basic freedom of occupational association that extended to protect all forms of business associations along with economic freedom of contract (as Tomasi and classical liberals and libertarians contend) then – since basic liberties cannot be restricted for reasons of economic efficiency – democratic decisions to restrict any of these forms of business association and

investment would be violations of the first principle of justice. This is clearly not Rawls's position.

Freedom of economic association in occupational employment is an important freedom that warrants protection, but it is not among the basic liberties. It does not extend to business and occupational associations, certainly not in the same way that freedom of association extends to intimate personal relations and friendships, or religious, political, charitable, and other forms of association protected by liberty of conscience and freedom of thought. Rawls justifies freedom of association because it is complementary to and necessary for freedom of conscience. (PL VIII, 335).⁴³ It is the freedom of *personal and political associations* that is among the personal and political liberties protected by the first principle. Freedom of economic association – in the sense of freedom to form and join most any kind of economic arrangement with others one chooses – is not conceived as a basic liberty any more than is its necessary condition, freedom of economic contract. The reasons for freedom of economic associations are, like freedom of economic contract, largely regulated by the second principle of justice, especially but not limited to the difference principle. It is a mistake to interpret Rawls as classical liberals such as Tomasi do, as holding that the first principle guarantees economic liberties of all varieties in the same way that it guarantees personal and political liberties. This clearly was not Rawls's view, nor is he committed to it in any way (as Tomasi claims) by his justification of basic liberties in terms of background conditions necessary for full and informed exercise of the moral powers of

⁴³ "Liberty of conscience and freedom of association are to secure the full and informed and effective application of citizens' powers of deliberative reason to their forming, revising, and rationally pursuing a conception of the good over a complete life." (PL 335)

practical reasoning. (On this see my reply to Jessica Flanigan's comment).

I agree then with Edmundson (and Thomas) that different forms of economic association are guaranteed by Rawls's principles of justice. But these are predominantly guaranteed by the second principle of justice, including both fair equality of opportunity and the difference principle. Freedom of occupation and choice of workplace, and freedom of economic associations that do not undermine the position of the least advantaged, are preconditions for individuals to have the fair opportunity to take advantage of diverse employment as well as educational and cultural opportunities in an economy that is designed to be to the greatest advantage of the least advantaged. In so far as freedom of occupation and occupational association are basic personal and economic liberties protected by the first principle, *the range of occupations and occupational associations that the first principle gives individuals the freedom to practice and choose among are those that are allowed or guaranteed by the second principle of justice.* This is a further sense in which democratic equality and the democratic interpretation of the second principle reflect back upon and structure the first principle of justice. Unlike freedom of conscience and freedom of thought and expression, individuals do not have the freedom to engage in occupations or join forms of economic association that undermine the economic system designed to realize the second principle of justice, including the difference principle.

Perhaps this is why Rawls often locates "freedom of occupation and choice of careers against a background of diverse opportunities," both among the basic liberties themselves, and also among the primary social goods guaranteed by fair equality of opportunity principle and the second principle of justice. I think the best way to interpret Rawls here is: that individuals clearly should have a basic personal liberty to determine their choice of

occupation and place of work, or if they work, and they have the freedom to leave a particular position (a right of exit) and take up work elsewhere at any time. These are, as Rawls suggests in *Political Liberalism* among the basic freedoms of the person along with freedom of movement, and are protected as constitutional essentials. (PL 228, 232, 335), Like freedom of personal associations, they would also seem to be among the conditions of freedom of conscience as well in so far as our occupations are often among the primary ends we find worthwhile and that give structure and meaning to many individuals' lives. Still, the range of permissible occupations and permissible forms of employment associations that individuals are free to choose among is not to be determined by the principle of equal basic liberties, but by the second principle of justice. Conflating these two separate questions – the range of permissible occupations and economic associations vs. the basic liberty to choose which permissible occupation and economic association one works within – leads to the classical liberal position that *any* economic occupation or form of business association is protected, unless it violates others' basic rights and liberties. This is the result of conflating freedom of association of all kinds with freedom of economic contract. Straightaway one can see that leads to the libertarian position that economic freedoms cannot be restricted even to prohibit monopolies, cartels and other business arrangements that undermine fair equality of diverse opportunities, the difference principle, and economic efficiency itself.

To sum up, in any POD or liberal socialist society individuals should have the freedom to work as individual worker-proprietors, independent laborers for hire, or as entrepreneurs who want to create and run a business of their own, which is suitably regulated by requirements of the difference principle. Also, the freedom to form business partnerships with others in free association is protected, again suitably regulated by the second principle of

justice. Nothing prevents small businesses of this kind under either POD or liberal socialism. The question is rather whether, once firms that reach a certain size – when they threaten to undermine the fair value of political liberties, FEO, or the position of the least advantaged – should rights of co-management and/or rights to own shares be afforded to their employees? Or alternatively, on Edmundson’s democratic socialist position, should they be publicly owned in a (liberal) socialist economy, with fair compensation (perhaps) going to their owners. The latter position appears to be Edmundson’s view, limited perhaps to “the commanding heights of the economy” that are to be publicly owned and publicly managed, instead of managed or co-managed by workers themselves. I will not take a position on the wisdom of democratic socialism at that level. But if mandatory co-determination in privately owned firms that exceed a certain number of workers is required by law instead (as in Northern European countries) – with worker-owned and managed firms as another possible alternative arrangement – I do not see how that limits workers’ freedom of occupation and employment association any more than does Edmundson’s public ownership and democratic control of large firms that are “the commanding heights of the economy.”

I regret that I am unable to respond to many other points of difference with my book that Bill Edmundson discusses in his challenging comment, but I have gone on too long already. I am especially grateful for his critical comments and the opportunity they provide to clarify in my own mind my position.

2

Reply to Alan Thomas

I greatly appreciate Alan Thomas' contribution to this symposium. His views on property owning democracy are very close to my own, though we often arrive at that position from somewhat different philosophical angles and differ in some respects in our understanding of it. Thomas' book, *Republic of Equals: Predistribution and Property-Owning Democracy* (2017) is the most significant and sustained philosophical defense of property-owning democracy yet written. There Thomas joins liberal republicanism's fundamental idea of non-domination in political and personal relations together with Rawls's theory of justice as fairness, to yield a position very similar to Rawls, except for Thomas' contention that property-owning democracy is mandated by Rawls's principles of justice, and that liberal socialism conflicts with them. Since this is one of the few points of disagreement that we have, I'll focus my comments mostly on Thomas' arguments in his book, against Rawls's defense of liberal socialism (§ 3 below), then afterwards in § 4 his argument against my own suggestion (in chapter 4 of my book) that Rawlsian fair equality of opportunity should be construed to "guarantee citizens continuing opportunities throughout their lives to exercise economic powers, and responsibilities" in their place of work (Freeman, 163). Before that, I discuss in § 1 Thomas's distinction between predistribution and redistribution, then in § 2 his claim (and Bill Edmundson's also) that Rawls' own view requires that the decision for (or against) property-owning democracy should be made at the constitutional stage on grounds of Rawls's first principle of justice, and not left up to legislative revision.

I

Predistribution and Redistribution

Liberal societies typically involve competitive market economies for the efficient allocation of productive resources and labor, and to a large extent the distribution of income and wealth as well as in determining the price of consumer goods. Taxation redistributes income and wealth that result from market activity, and is necessary to pay for national defense, public safety, maintaining the legal system, and many other public goods. Though liberals differ in their assessment of the range of public goods to be funded by government, the debate between classical and high liberals is not so much over redistribution of market outcomes for these legitimate purposes. Instead the debate is primarily over *individual entitlements to income and wealth*: whether (as classical liberals and libertarians maintain) market distributions of income and wealth determined by the (efficient) price system are themselves just (for reasons of desert, for example) because of individuals' property rights and pre-existing claims to the entire income received from market transactions and other consensual transfers; or whether (as high liberals contend) just entitlements to income and wealth require (some degree of) redistribution of market outcomes according to one or more "patterned principles" of justice, such as luck egalitarian principles, restricted utility, or the difference principle.

Rawls envisioned a regulated competitive market economy as an essential component of both property-owning democracy and liberal socialism, since markets are essential to guarantee freedom of occupation and choice of workplace, diverse opportunities, and

the efficient allocation of productive resources.⁴⁴ He clearly thought non-market transfers, through taxation and redistribution of market outcomes, were necessary for both the provision of public goods and the fair distribution of income and wealth according to the difference principle. “Social resources must be released to the government so that it can provide for the public goods and make the transfer payments necessary to satisfy the difference principle” (TJ 246). Taxation and redistribution of market distributions are also essential for purposes of mitigating inequalities of income and wealth that are necessary to maintain the fair value of political liberties, and fair equality of opportunities (TJ 245).

The predistributive/redistributive distinction is controversial (as Thomas notes).⁴⁵ Whether income and social benefits fall into one or the other class often depends on one’s political point of view. For libertarians and classical liberals who hold that individuals have strong property rights in *all* income and wealth that they gain by market or other consensual transfers, all taxation, even when justified, is redistributive of existing entitlements. Justifiable taxation is for classical liberals a charge to one’s rightful earnings and possessions, a debt owed to governments, similar to any other debt owed to private individuals. Taxes are not necessary to establish a just distribution to economic entitlements, which is pre-established by the legitimate market distributions and other consensual transfers already in place.

⁴⁴ See for example, *A Theory of Justice*, 239-40, 240-241, 272. References to TJ will be to the 1999 revised edition, unless the original 1971 edition is otherwise noted.

⁴⁵ Some philosophers express doubts about the distinction between predistribution and redistribution. See Martin O’Neill in O’Neill – Williamson 2012, 75-100; also Randall 2019, ch. 6, “Property-Owning Democracy and Predistribution.”

By contrast, Rawls and other liberal egalitarians maintain that property rights in income and wealth are not determined by such a historical process of first possession and a legitimate chain of freely transferable claims of ownership. Instead just distributions come about by a different procedure: a “social process” that involves markets but also includes taxation and compliance with other rules and procedures of basic social and economic institutions that are designed according to principles of justice. According to Rawls’s “social process view”,⁴⁶ though paying one’s fair share of taxes may be redistributive in a trivial sense – in the same way that cashiers turning over the cash and credit slips collected on others’ purchases each day is redistributive – there is no redistribution in the substantial sense of people’s rightful possessions or entitlements being transferred without regard to their consent. For people often do not have full property rights or entitlements in their entire market or gift income to begin with, but instead rights only in the sums remaining after their fair share of taxes is subtracted.⁴⁷

The predistributive/redistributive distinction concerns not simply taxation, but how individuals come to acquire *entitlements* to income and wealth and other social benefits guaranteed by societies. Rawls says that property-owning democracy avoids the concentration of wealth characteristic of welfare state capitalism, not by redistribution of income to those with less “at the end of each period” but rather by the widespread ownership of productive assets and human capital “at the beginning of each period.” (TJ rev., xv; JF 139). He is referring to each citizens’ distributive shares

⁴⁶ “By contrast [with Locke’s historical process view], as a social process view, justice as fairness focuses first on the basic structure and on the regulations required to maintain background justice over time for all persons equally...” (JF 54).

⁴⁷ This is one of the main points of Murphy and Nagel 2002.

of income, wealth and social benefits being determined primarily by (1) income earned from employment, and (2) just returns to the economic assets (through dividends, profits, interest, and rent) held by each citizen in a property-owning democracy. Income from employment is “predistributive” in part because it includes returns to the exercise of “human capital” that is built up over years through education and training. Publicly funded education of all forms secured by fair equal opportunity principle are also predistributive benefits – child development, schooling, university education, and employment training and retraining – as is universal health care, which is necessary for all citizens to take advantage of the diverse opportunities available to them (Thomas 2017, 117-118). Also, though not mentioned by Rawls, universal capital endowments, or demogrants guaranteed to citizens at some point in early adulthood⁴⁸ and universal basic income paid yearly might be considered predistributive entitlements if regarded as a citizen’s rightful shares of the joint social product.⁴⁹ Finally, so-called “social insurance” or social programs required by POD – retirement benefits; unemployment insurance; family allowances; child care allowances, and elderly and disability care allowances paid to caretakers, etc. – that are justifiable on grounds of FEO and/or the difference principle can all be regarded as “predistributive” in the broad sense Alan Thomas discusses in his comment, since they are guaranteed by pure procedural justice.⁵⁰ If

⁴⁸ See Ackerman – Alstott 1999 and more recently Piketty 2020, 979-981.

⁴⁹ van Parijs – Yannick Vanderborght 2017.

⁵⁰ Like Ackerman and Alstott, Thomas rejects the metaphor of “social insurance” in his book (Thomas 2017, 130-131) since it misrepresents the predistributive egalitarian “ideas of economic citizenship and stakeholding [as] the correct ways to conceptualize and justify capital pooling social programs.”

so, then none of these entitlements involve “redistribution” of pre-existing entitlements in order to satisfy Rawls principles of justice.⁵¹

Thomas as I understand him ties what he calls “predistributive egalitarianism” to pure procedural justice within a social process view in a similar way: whatever outcome results from a social process that complies with the rules of institutions designed to satisfy the principles of justice is itself just. Rawls’s view is not redistributive since it does not involve reallocating pre-existing entitlements that have been reached by some prior procedural process, such as market distributions and other consensual transfers. Rather the “pattern” of distributive entitlements (if there is one) implicit in the principles of justice is built into the institutional rules that individuals are expected to comply with, and is the outcome of everyone’s compliance with the rules. The important point is that on this understanding, “redistribution” is not to be understood as redistribution of legitimate entitlements from market or other outcomes. “Predistribution” in the broad sense of the establishment of distributive entitlements by pure procedural justice requires redistribution of market outcomes. It is not redistribution for people to pay taxes for public goods required by justice, since they do not have complete rights to all income they receive from market and other consensual transfers. For the same reason it is not redistribution of pre-existing entitlements for citizens to pay their fair share in taxes on their market income or accrued wealth or on gifts and inheritances when this is needed to pay for income supplements, family allowances, or other social entitlement programs required by the principles of justice, or pay a

⁵¹ Thomas also discusses in recent work how monetary policy, Keynesian fiscal policies, government regulation and other government functions involve predistribution measures that influence distributive outcomes and the just distribution of income and wealth and powers and prerogatives in a property-owning democracy.

progressive tax on income and wealth to mitigate inequalities in order to achieve the fair value of the political liberties. One of the problems with the capitalist welfare state is just that taxation for purposes of satisfying the social minimum and other entitlements involves the redistribution of pre-existing entitlements established by market and other consensual transfers, in order to provide welfare benefits that meet the basic needs of the less advantaged. Welfare entitlements in welfare state capitalism thus reallocate pre-existing entitlements, and are not the outcome of a predistributive social process that embodies pure procedural justice.

I do not then have any reservations about the claim that Rawls's position is predistributive rather than redistributive in the sense Thomas discusses, when understood in this broad sense of 'predistribution,' which is tied to "pure background procedural justice" within a social process view (JF 54). For it is still compatible with Rawls's position that redistributions of market outcomes and accrued wealth are permissible for purposes of paying not simply for public goods and the expenses of running government functions, but also to pay the entitlements necessary to maintain the social minimum and for social benefits that citizens are guaranteed according to the principles of justice. Even though government transfers of entitlements originally require redistribution of income and wealth acquired through market transactions and other consensual transfers, these entitlements themselves are not redistributive but rather "predistributive" in Thomas' sense: they are guaranteed by the rules of a social process the requirements of which entitle individuals to benefits because their actions or circumstances comply with institutional rules and procedures that conform to the principles of justice.

Finally, Thomas mentions Hayek's misunderstanding of Rawls when Hayek claimed that he "had no basic quarrel with" Rawls.⁵² Hayek initially took Rawls's pure proceduralist view – that outcomes are just if they result from institutions of the right kind – as an important point of agreement between them. Hayek evidently assumed Rawls was referring to capitalist free market institutions in which there are no constraints on resulting inequalities in distribution. Hayek later acknowledged⁵³ that he was mistaken and that there was a great distance between their views; for he had failed to understand the strongly egalitarian constraints on background institutions (the "enablers" as Thomas says) that Rawls placed on just institutions, institutions that Hayek would never accept. Among these is the qualified property system required by the difference principle, that rejects the capitalistic property rights Hayek takes for granted that sustain classical liberal conceptions of distributive justice.

II

Constitutional vs. Legislative Determination of the Economic System.

Rawls says that the first principle does not guarantee either a right to private property in the means of production (TJ 54, JF 138) nor a right to participate in the control of means of production that are socially owned (PL 298), implying that the decision between a private property economy vs. socialism is to be determined ultimately by the second principle of justice in conjunction with "historical conditions and the traditions, institutions and social forces of each country" (TJ rev., xvi). He also contends that issues

⁵² Hayek 1973, vol. 2, *The Mirage of Social Justice*, xiii and 100.

⁵³ See interview of Hayek with James Buchanan at: <https://bleedingheartlibertarians.com/2013/10/hayek-on-hayek-on-rawls/>

of distributive justice and the second principle are not constitutional essentials, that the difference principle is not part of the constitution, and that the second principle applies at the legislative stage (PL 229, 237n, JF 48-49). One might reasonably conclude that Rawls thought that the decision between economic systems (POD vs socialism) is also not a constitutional decision, but this is not altogether clear since elsewhere he seems to suggest otherwise.⁵⁴ In any case, Thomas, like Bill Edmundson, claims that the decision between POD and liberal (or democratic) socialism *should be decided* at the constitutional stage, rather than the legislative stage. This implies either that the difference principle should be made part of the Constitution, or that the second principle is entirely irrelevant to determining the economic system. The latter position is Edmundson's view since he maintains the fair value of political liberties requires socialism and that the second principle without the fair value requirement is compatible with welfare state capitalism. Thomas' position is just the opposite, that the principles of justice, especially the first principle, require a property-owning democracy.

What this debate is about is not simply the question of constitutionally insulating the economic system against legislative change. Rather the real issue is: what kinds of reasons are relevant to determining the economic system? Rawls himself assumes that the nature of the economic system is to be determined by the three kinds of reasons implicit in all three requirements in the two principles of justice: equal basic rights and liberties, fair equality of opportunity; and the difference principle. It would be a peculiar

⁵⁴ Rawls says about socialism (somewhat ambiguously): "*Collective decisions made democratically under the constitution determine the general features of the economy, such as the rate of savings and the proportion of society's production devoted to essential goods*" (TJ 248, emphases added) –, which would seem to suggest that democratic control of means of production itself can be constitutionally guaranteed, even if not guaranteed by the first principle.

move for Rawls to endorse Edmundson's position that the difference principle is simply irrelevant to determining the economic system, since its primary requirement is that it requires that society adopt the economic system that makes the least advantaged members of society better off than any other economic system. The point of this principle would be seriously compromised if the decision between POD and socialism depended solely on which system best guarantees the fair value of the political liberties, or the worth of some other basic liberty. The relevance of the difference principle then would be restricted to deciding those particular measures that maximally benefit the least advantaged within a socialist or POD economic system – even if they might be more advantaged under the alternative system.

Thomas' own view resembles Edmundson in that he also holds that the economic system should be determined at the constitutional stage in order to guarantee the basic liberties.⁵⁵ Like Edmundson, Thomas also says that the "fact of domination" including individuals' will to dominate others when they gain economic, social and political advantage, should be recognized by Rawls as a "circumstance of justice." But unlike Edmundson, Thomas contends that socialism, both the liberal socialism that Rawls endorses and the democratic socialism Edmundson professes, is among the economic systems that encourage domination and the violation of the fair value of political liberty as well as other basic liberties. Moreover, Thomas seems to hold that in a liberal or democratic socialist regime, some workers can politically dominate others in ways that result in unfair distribution of income and wealth that conflicts with both freedom of occupation and association, and reciprocity required by the

⁵⁵ Thomas 2017, § 2, "I share Edmundson's belief that when we guarantee the fair value of the political liberties, only a constitutional guarantee [of the economic system] will prove sufficiently robust."

difference principle. This is an intriguing argument Thomas makes in an important chapter against liberal socialism that is in his 2017 book, and is the subject of the next section.

III

Liberal Socialism and Freedom of Occupation

Rawls describes liberal socialism as an economy where “the means of production are publicly owned and that firms are managed by workers’ councils say, or by agents appointed by them” (IJ 248). In *A Republic of Equals* Thomas argues that liberal socialism as depicted by Rawls – conceived as a mandatory system consisting only of worker-cooperatives who lease economic resources from the government – is exploitive of workers, since it fails to protect the worth of basic liberties, in particular the “fair value” of freedom of occupation and choice of careers. The reason for this seems to be two-fold. First, the labor market is “thin” – workers have no option but to work for one or another worker cooperative in a liberal socialist regime – and the value of workers’ primary asset – labor itself, their human capital – is undervalued because they have no right of exit to a different form of economic association other than another worker cooperative. The lack of such a right of exit to another form of economic association violates the “fair value” of their Rawlsian basic liberty of occupation and choice of careers.

Second, because workers have no other options than to work for socialist worker cooperatives since it is the only permissible occupational association, they are exploited by others, including workers who are less productive. “My claim that workers will be subject to exploitation depends on the claim that they will not be given the fair return on their labor, not simply an efficient return as defined wholly by the value of that labor on a competitively

efficient market” (Thomas 2017, 228). Thomas’ argument that workers do not receive the value of their labor is largely based on Scott Arnold’s argument against market socialism, that it involves exploitation because more productive workers do not receive the value of their contribution – their marginal product – since wages are democratically determined within the firm by workplace democratic decisions.

Thomas sums up his position in this way:

All of the foregoing has served to demonstrate that Rawls was wrong: mandatory market socialism, at least, will not express his principle of reciprocity. It will violate it. Rawls’s scheme of basic liberties guarantees freedom of occupational choice, but this value is systematically undermined in a mandatory system of worker-owned cooperatives. You are free to go and be exploited anywhere, that is, paid less than your full productive contribution. In a property-owning democracy this is a choice that a worker may be inclined to make, being generally disposed to risk taking when it comes to income from labor with a hold of capital guaranteed. Workers may indeed choose to be “underpaid” from a strictly economic point of view, but in a mandatory comprehensive market socialist economy, this choice is made for you. Society as a whole has legislated a situation where you are exploited wherever you choose to work (*ibid.*, 245).

I am not in a position to assess the strengths and weaknesses of liberal socialist economy in terms of their economic efficiency. Thomas discusses several objections by John Roemer and others which address the inefficiencies of workers’ cooperatives under conditions of both liberal socialism and property-owning democracy. These include their failure to innovate, as well as their tendency to avoid hiring new workers since that will reduce workers’ shares of income from labor and (in POD) presumably

their share of capital as well.⁵⁶ What bothers me about 'Thomas' argument (following Scott Arnold's criticisms of liberal socialism) of the exploitive unfairness socialist worker cooperatives is that it appears to assume that workers are due *as a matter of justice* the economic value of their marginal contribution. If so, then it seems to conflate or at least it closely ties the question of the fair value of a person's labor together with the economic value of their marginal product under efficient labor market conditions.⁵⁷ Thomas seems to admit the questions are closely tied when he says:

My claim that workers will be subject to exploitation depends on the claim that they will not be given a fair return on their labor, not simply an efficient return as defined wholly by the value of that labor on a competitively efficient market: which standard am I using, justice or efficiency? My official Rawlsian position... is that those two criteria only align in a just society (where the assumptions of chain connectedness and close-knittedness have been vindicated)..." (Thomas 2017, 238)

In a property-owning democracy with multiple forms of occupational association, workers will know the market value of

⁵⁶ Meade and others have suggested that one way to address this problem is to pay newly hired workers for a certain period only the value of their marginal product, perhaps for a fixed term until they reach a level of seniority – however long a period is required to incentivize existing workers to make new hires. J. E. Meade, 'The Partnership Enterprise,' in Meade 1993, 119-124. *Liberty, Equality, and Efficiency*, (New York: Palgrave MacMillian) 119-124

⁵⁷ Thomas might insist he is not doing that but rather that the problem is (1) that he is trying to make the point that mandatory market socialism denies workers certain kinds of knowledge carried by the price system; and (2) that this problem will not exist in a POD which has opportunities to work in a variety of arrangements, including worker owned cooperatives, that will enable workers to realize the fair value of freedom of occupation.

their labor and will have the freedom to decide whether to work within a worker-cooperative, (where evidently they will still be exploited but will freely assent to it) or in one of several other employment arrangements they choose. Thomas claims “the labor market within mandatory market socialism denies the worker certain kinds of knowledge carried by the price system” (*ibid.*, 228). Thomas’s argument seems to be, not that workers do not receive the fair value of their labor and are exploited because they receive less than their marginal product, but rather that receiving the fair value of one’s labor depends upon having a diversity of occupational arrangements and associations of employment to choose from, some of which pay the value of worker’s marginal product. Only POD, but not liberal socialism, can satisfy this standard.

I question the assumption that worker cooperatives in either a liberal socialist or property owning democracy cannot adapt to the circumstances and democratically decide to pay workers according to alternative wage schedules – according to seniority (as unions often do), or labor time and effort, or marginal product, average product, productivity, etc., or some combination of these. Regardless of that question, what worries me about the criticism is the assumption that not having the opportunity to receive the market value of one’s marginal contribution is *itself* exploitive of workers and denies workers “the fair value of their labor.”

In my book, chapter 1 § 5, entitled “The Argument from the Fairness of Market Distributions”,⁵⁸ I question the marginal productivity theory of just distributions – “to each according to their marginal contribution” – as an appropriate basis for determining the fair returns to capital and to labor in a capitalist

⁵⁸ Freeman 2018a, 31-39 of chapter 1, entitled ‘Capitalism in the Classical and High Liberal Traditions,’ previously published in *Social Philosophy and Policy* 28 (2), July 2011: 19-55.

economy. Taking a cue from Rawls, I contend that one's marginal product depends on many fortuitous factors – including “brute” market luck the consequences of which workers are not responsible for and that are beyond their or often anyone else's control. These fortuitous factors include density of population and the surplus or scarcity of the labor supply and other resources; the “natural lottery” and how many other persons happen to have similar skills in the area; a person's social background, class, and family culture; natural accidents and social misfortunes, environmental and climate conditions, etc. The argument that distributive shares going to labor (not to mention capital) should hinge on the market value of worker's “marginal contributions” grounds distributive justice in accidental contingencies that are (as Rawls says) “arbitrary from a moral point of view.” Given the arbitrary contingencies that beset competitive markets in labor and capital, the classical liberal argument that workers and capitalists both are exploited when they do not receive the value of their marginal contributions is ironic, to say least. For it turns on its head Marx's claim that workers are exploited for this very reason – namely that they receive only the market value of their labor – their marginal product – and that the excess labor value of their contribution is extracted by owners of capital in the form of profits, interest, and rent. At least if workers were to receive the average product that flows from their labor, rather than their marginal product – the price for labor that goes to the last worker hired – there would be *some* argument for exploitation of workers by other workers that Thomas and Scott Walker allege. But even then, the so-called “product” of labor is still beset with the same arbitrary contingencies. In fairness to socialism, to avoid exploitation and pay workers the fair value of their labor, they should be paid for their *effort and their labor time*, factoring in the strenuousness, dangers, unpleasantness of their positions, as well as time devoted to educating skills necessary for the job. But even

this assumes a questionable pre-social conception of what workers deserve as the standard for determining the justice of distributive shares.

Of course, Thomas, in appealing to the classical liberal argument that workers are exploited by other workers in market socialist worker cooperatives, is not arguing that the marginal productivity theory of just distributions is the appropriate theory to determine the justice of distributive shares. He instead accepts Rawls's principles of justice, including economic reciprocity guaranteed by the difference principle. But if so, then why is the market information about how much one would receive for one's own labor in an efficient market process according to the marginal theory of just distributions relevant to deciding the justice of distributions within worker cooperatives in a competitive liberal socialist economy? Why is this information, largely based in factors that are "arbitrary from a moral point of view" pertinent if this standard does not decide the fair value of individuals' labor?

Thomas contends that the problem is that "the labor market within mandatory market socialism denies the worker certain kinds of knowledge carried by the price system" (Thomas 2017, 228), and that this is a violation of the fair value of freedom of occupation and choice of careers. But how should the idea of the 'fair value' of a basic liberty such as freedom of occupation be understood? Can fair value of basic liberties be interpreted in economic terms, especially terms that invoke economic efficiency of the labor market? The fair value of political liberties clearly is not assessed in terms of their economic value, but rather in terms of "fair opportunity for equal political influence," which Rawls says parallels the principle of fair equality of opportunity to compete for open positions. By analogy with the fair value of the political liberties, the fair value of freedom of occupation and choice of workplace should be assessed in terms of having fair equality of

access to “diverse opportunities which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them” (JF 38). These would include diverse professional and educational opportunities that enable citizens to effectively develop their “human capital” and freely exercise their productive capacities within the framework of an economic system that satisfies the principles of justice. But not having the opportunity to choose to receive the value of one’s marginal contribution seems even less necessary here for the fair value of freedom of occupation – since it is decidedly not the appropriate standard for determining just distributive shares – than not having the opportunity to be paid according to the labor value one produces. What is more important to the fair value of freedom of occupation is having the diversity of opportunities to educate and develop one’s capacities and choose and pursue a profession from wide variety of professional opportunities within an economic framework that embodies the institutional requirements of the difference principle.

If this is a more reasonable way to decide the fair value of freedom of occupation, – in terms of fair equality of diverse educational opportunities to develop one’s capacities and to compete for diverse occupations and social and economic positions in a social system determined by the principles of justice – it is hard to see how liberal socialism is undermined for reasons of the first principle, or why POD should in a better position under all circumstances than liberal socialism. That would seem to depend on whether the economic system in question, here liberal socialism, complies with the second principle and leaves the least advantaged better off than in any other system. This may be liberal socialism, Rawls says, or it may be property-owning democracy, depending on historical and cultural conditions in a society. If it is indeed true that liberal socialism has all the efficiency problems Walker, Roemer, Thomas and others foresee, then it would be

rejected by the difference principle. There is no need to claim that basic rights and liberties of occupation, or association, are violated.

IV

Freedom of Occupational Association

At certain places in his book Thomas suggests that mandatory market socialism violates both the right of exit which is part of freedom of occupation, and also violates freedom of association of workers, since they only have one form of economic association – worker controlled firms – within which to exercise their productive capacities.⁵⁹ The same would be true of a property-owning democracy that allowed only worker-owned and managed firms – syndicalism – which Edmundson attributes to my position. The problem is that worker controlled firms do not leave workers free to associate in whatever economic forum they choose – whether worker cooperatives, capitalist joint stock firms, partnerships, non-profit firms, sole proprietorships, etc. A virtue of property-owning democracy, Thomas contends, is that it allows for and perhaps encourages all of these occupational forms of free association in employment, and thereby “thickens” the labor market with greater options for free choice of occupation and association.

Rawls says in discussing the imperfections of markets: “It is important that a competitive scheme gives scope for the principle of free association and individual choice of occupation against a background of fair equality of opportunity. . . . A basic prerequisite

⁵⁹ Thomas 2017, 228, where he says: “If freedom of occupation is not a basic liberty, then it can be derived from those that are – such as freedom of association. Summarily, under mandatory market socialism, this kind of liberty is denied its fair value because the labor market is so thin. A property-owning democracy, by contrast, gives citizens both a right of exit and gives that right its fair value by ‘thickening’ the labor market.”

is the compatibility of economic arrangements with the institutions of liberty and free association” (IJ 272-273). Still I am skeptical of the argument that freedom of occupation’s right of exit and the basic liberty of freedom of association require a *basic economic freedom to occupationally associate* in whatever form of employment association individuals choose. It’s true that the fair equality of opportunity principle presupposes the primary good of “diverse opportunities,” but freedom to choose among diverse occupational opportunities does not require that each occupational position be made accessible via every feasible form of occupational association. Also, many forms of occupational association may be required by the difference principle, for reasons of economic efficiency, among others. But I do not see the grounds for the argument that it is a *basic liberty* of individuals to form, join, and exit from every form of occupational association, including one wherein they receive the value of their marginal product. This basically conflates the basic liberty of association with the (*laissez faire* freedom) of economic contract, which clearly is not a basic liberty (IJ 54). In justifying freedom of association, Rawls argues that it is complementary to *freedom of conscience*, thus necessary “to secure the full and informed and effective application of citizens’ powers of deliberative reason to their forming, revising, and rationally pursuing a conception of the good over a complete life” (PL 335). There is no suggestion here that the specification of the basic freedom of association for Rawls requires *economic rights and liberties of occupational association, to contract* and combine into a maximal or even wide variety of economic organizations. To give freedom of association such an economic interpretation implies the classical liberal freedom of economic contract to form economic combinations of all varieties, and employers’ power to set wages and determine working conditions according to economic agents’ bargaining power. This resembles John Tomasi’s contention that near-*laissez faire* economic liberties are required by

the first principle of justice, which Thomas clearly denies later (ch. 10) of his book.

Rawls regards freedom of association in employment as an “important liberty,” but this does not imply that it is a basic liberty in the way that freedom of personal, religious, and moral associations that are protected by freedom of conscience. It is important since it is conducive to diverse opportunities for all as required by fair equality of opportunity and in meeting the demands of the difference principle. The price of arguing that freedom of economic association is a basic liberty is that it tends to render certain economic freedoms typical of capitalism unassailable rights and liberties protected by the first principle. Capitalist forms of economic association then cannot be infringed or restricted for the sake of the second principle, including fair equality of opportunity or to promote the position of least advantaged under the difference principle. How then is society to respond to capitalist conglomerates or free-wheeling hedge funds that buy up profitable businesses, fire all the workers and sell off all assets, if these are protected forms of economic association and doing business under the first principle? The first principle, given its strict priority over the second, is not the way to address economic rights and liberties of association and combination of economic interests within a democratic egalitarian conception of justice.

Thomas’ argument against mandatory market socialism (or mandatory worker-controlled firms) and in favor of freedom of multiple permissible economic associations is better couched in terms of Rawls’s second principle of justice. If mandatory market socialism or worker-controlled firms are economically inefficient and violate economic reciprocity as Thomas contends, then these are relevant reasons implicit within the difference principle itself for opposing these and other mandatory forms of economic

association. Similarly the requirements of fair equality of opportunity are that individuals have *diverse opportunities of employment* (JF 58), and arguably these should include diverse opportunities for economic association, like many of those Thomas endorses. To be restricted in choice of workplace to work *only* for worker-managed firms in an economy where government owns the means of production arguably denies fair equality of diverse employment opportunities. This argument from the second principle also does not run the danger of having to weigh off claims made pursuant to FEO or the difference principle when they conflict with the demands of certain forms of occupational association that tend to undermine the position of the least advantaged – such as the laissez-faire employment contract.

Finally, regarding Thomas' contention that mandatory socialism violates economic reciprocity by exploiting workers and taxpayers: It may be true that worker cooperatives in liberal socialism involve some workers taking unfair advantage of others in the sense of not doing their fair share; but in the sense that this is true, it might be true in most any economic system, including those where workers are paid their marginal product. I don't see that marginal productivity theory is the appropriate way to decide whether workers receive their fair share, far less so that it is the appropriate criterion for deciding whether exploitation of workers and taxpayers always takes place in mandatory market socialism.⁶⁰ The appropriate criterion for deciding whether productive reciprocity is met by an economic system once again would have to be the difference principle itself, not some prior theory of economic desert that is independent of economic institutions that satisfy the

⁶⁰ After all, marginal productivity theory is a criterion Nozick and other libertarians use to argue that capitalists are exploited by minimum wage laws, collective bargaining by workers, etc., since they are required to pay workers more than their marginal product.

difference principle. If liberal socialism can do that, as Rawls maintained, then it satisfies requirements of productive economic reciprocity, so long as workers do their fair share as required by those institutions – even if their distributive shares are in large part decided by democratic decisions among workers within the firm. This does not considerably differ from collective bargaining contracts where workers – some of whom are more productive than others – are paid the same as others at their level of seniority and their labor time. I do not see a compelling case for unjust exploitation when workers are paid in this way, especially if the difficulty, dangers, and unpleasantness of their work are taken into account, and when education and professional expertise are considered.

To summarize, the basic freedom of occupation guarantees the freedom to enter *permissible* occupations, not just any lucrative activity one freely chooses. The occupations that are permissible are decided by Rawls second principle of justice, not by the first principle (with the exception of those “occupations” that violate basic rights and liberties Rawls recognizes). Moreover, unlike the fair value of political liberties, the institutions required to guarantee the fair value of freedom of occupation with its right of exit cannot be decided by appeal to first principle considerations either, such as the institutions necessary to fully exercise and adequately develop the moral powers. Instead the question of the fair value of freedom of occupation also must be settled by appeal to the second principle of justice with its requirements of the diversity of fair opportunities and the difference principle. The same applies to freedom of occupational association, which presupposes freedom of economic contract. Unlike freedom of personal, religious and other non-economic associations protected by liberty of conscience, freedom to form and join any form of occupational association one chooses that does not violate others rights is not a basic liberty. Still, individuals have the right to join and exit any

permissible form of occupational association, which is implicit in the basic freedom of occupation. But which forms of occupational association are permissible is, like freedom of economic contract, to be decided by the second principle of justice and its guarantees of fair equality of diverse employment opportunities and the economic position of the least advantaged members of society.

V

Property-Owning Democracy and Powers and Prerogatives in the Workplace

Rawls conceived of social and economic powers and prerogatives as part of the index of primary social goods whose fair distribution is governed along with income and wealth by the second principle of justice. Like income and wealth, inequalities of social and economic powers and prerogatives are permissible so long as this is compatible with the difference principle, and individuals have fair equal opportunities to occupy employment positions that exercise them. Rawls says, inequalities allowed by the difference principle are “justifiable only if the difference in expectations is to the advantage of the representative man who is worse off, in this case the representative unskilled worker” (TJ 78/68 rev). Given the importance of social and economic powers and prerogatives in “giv[ing] scope to various self-governing and social capacities of the self”,⁶¹ it would not be rational for the representative unskilled worker behind the veil of ignorance to accept a social minimum with absolutely no economic powers and prerogatives whatsoever; or to accept employment positions that gave them no discretionary prerogatives and permit themselves to be dominated both within and outside their employment. Powers

⁶¹ Rawls, “Kantian Constructivism in Moral Theory,” in Rawls 1999, 313.

and prerogatives are then an essential part of the social minimum in my understanding of Rawls's view.

As I also discuss in my reply to Edmundson I go further than this in chapter 4 of my book and suggest in effect that economic powers and prerogatives guaranteed the least advantaged by the social minimum are not fungible and cannot be bargained away in the workplace, either as a condition of employment or for higher wages. In order to guarantee their inalienability and highlight the importance of economic powers and prerogatives for all citizens, I suggested that among the diverse opportunities required by fair equality of opportunity should be the opportunity to exercise the basic minimum of economic powers and prerogatives guaranteed by the difference principle. Just as the first principle requires an inalienable equal opportunity for political agency, so too fair equality of opportunity requires that all working members of society have an inalienable fair opportunity for economic agency through the exercise of certain powers, prerogatives and responsibilities regardless of their employment position.

This is interpreted both by Thomas in his book, as well as Edmundson (together with Robert Taylor, John Tomasi, Jason Brennan and others) as my having argued that worker-owned and self-managed firms are a mandatory requirement of fair equality of opportunity in a property-owning democracy, as are worker-managed firms in liberal socialism. As Thomas in his book says: "Freeman's requirement rules out any kind of democratic deficit in the workplace – even a deficit compensated for by more money" (Thomas 2017, 261). If true, my argument would be subject to all the objections that Thomas, Taylor, and others raise against mandatory liberal socialism discussed in the previous section.

It was not my intention to argue that worker managed cooperatives and workplace democracy are the *only* form of economic association allowed by fair equal opportunity in either

property-owning democracy or liberal socialist society; nor do I think a careful reading of what I have written bears that interpretation – certainly not Thomas’ claim of “workplace democracy” (*ibid.*, 260) or “mandating ongoing workplace control, as of right, for all workplaces” (*ibid.*, 262). Clearly Rawls himself did not think that. But Rawls I believe did think, or at least was committed to the position that a basic minimum of social and economic powers and prerogatives should be guaranteed the least advantaged unskilled worker by the social minimum under the difference principle. These powers of economic agency can be exercised in a variety of employment associations and settings in a property-owning democracy, including not just worker-managed firms, but also in co-determination and profit-sharing arrangements within shareholder-owned firms, also within smaller associations such as partnerships, individual proprietorships, small businesses with employees, and simply by day laborers for hire. In this regard, I do not think that my view (or Rawls’s) differs from Thomas’, except that he claims that multiple forms of economic association are required by the first principle freedoms of occupation and association, whereas I (and Rawls I believe) contend they are to be justified in terms of the second principle of justice.

Still, Rawls did not assign an independent role to fair equality of opportunity as I did in the distribution of a basic minimum of economic powers, prerogatives, and responsibilities, nor explicitly contend that these powers of economic agency were inalienable. Now with respect to my contention that the principle of FEO demands economic agency that includes “ongoing opportunities to exercise economic powers and *some degree* of freedom and control in their work thereby assuming a degree of freedom and responsibility” and that this is an “essential” element of property-owning democracy that is inalienable: Thomas contends (like Robert Taylor) that my position assumes a kind of perfectionism,

that resembles John Tomasi's "perfectionist idea that control over one's work, is, indeed, just as important a liberty as the basic liberties." The best way to understand my claim that these economic powers are inalienable is that they preempt the standard capitalist labor contract, where the default assumption is that the terms of employment are completely determined by the employer, and involve no powers or prerogatives whatsoever; but rather, the workday is completely at the discretion of the employer, the employee can be assigned any unpleasant or dangerous task the employer pleases and fired for no good reason, and this is all presented as take-it-or-leave-it, especially with respect to unskilled working class employees, who have the formal right to freely exit particular jobs but for whom there is "no exit" from these exploitive working conditions.

As Elizabeth Anderson contends, the *laissez-faire* contract is the standard default employment contract in the U.S., and automatically applies to the vast majority of unskilled workers – especially agricultural workers, most of whom are migrants, as are many housecleaners, landscapers, meat processing industry and others who constitute a large portion of the workforce in the U.S. Employment for these low paid unskilled workers is a form of "private government," Anderson contends, a workplace "dictatorship" that even extends beyond work to condition workers' activities outside work during the course of their free time (Anderson 2017, x).

I argued in my book that workers' having adequate powers in their workplace to avoid such dominance in their employment is required by the second principle of justice, including both fair equality of opportunity and the difference principle. That workers have not only adequate income and wealth but also a fair share of economic powers and prerogatives enables them to effectively exercise and indeed maximizes the "worth to the least advantaged"

of their basic rights and liberties, which Rawls says is “the end of social justice” (TJ 179). Moreover, it is among the essential bases of self-respect for free and equal moral persons and democratic citizens in a well-ordered democratic society governed by the principles of justice. Certain fundamental worker powers and prerogatives should be guaranteed by law, in the same way that anti-discrimination, sexual harassment, and safety laws currently regulate employment contracts. Just as workers cannot bargain away their safety, or their protections against discrimination and sexual harassment on the job, so too they should not be allowed to bargain away entirely the most fundamental powers of economic agency. What the most fundamental powers of economic agency are that should be legally guaranteed within any permissible association of employees in a POD can be left up to argument and democratic legislative determination. (In my reply to Edmundson I suggest that basic minimum powers and prerogatives be determined by reference to those needed to maintain the self-respect of the representative least advantaged worker.) Co-determination rights may well be among them in the case of firms that reach a certain size, as they are in Nordic social welfare states, and perhaps worker councils within the workplace as well. As I also contend in my book, some degree of discretion, powers, prerogatives and responsibilities are a condition of meaningful work for free and equal moral persons.

To support this latter claim regarding the conditions of meaningful work, I appealed to Rawls’s Aristotelian Principle (TJ, § 65), the “psychological law” that individuals’ sense of well-being and self-respect in large part depends upon their engaging in activities – including meaningful work – that exercise and develop their higher capacities. Hardly anyone enjoys being dominated, exploited, or disrespected in their workplace in the manner allowed by the *laissez-faire* employment contract. A society that guarantees its members fair equal opportunities to develop and exercise their

capacities for productive activity, including their knowledge and skills, enables them to engage in “meaningful work in free association with others” (IJ 257). Thomas and Taylor contend that this is an appeal to perfectionism, which violates liberal neutrality, and that workers ought to be free to decide if they want to work in firms with no worker powers and higher pay (Thomas 2017, 261).⁶²

Regarding the charge of violation of liberal neutrality in excluding certain forms of economic association, such as employment positions which provide workers with no powers and prerogatives and presumably are based in *laissez-faire* contract: Liberal neutrality – an “unfortunate” term, Rawls says, since its connotations are highly misleading, PL 191) – is best understood as grounded in basic liberties of conscience, freedom of personal associations, and freedoms of the person that are necessary to act upon one’s conscientious religious, moral and philosophical convictions. Like the basic freedom of association, it does not apply indiscriminately to protect different forms of economic association, nor does it guarantee *laissez-faire* freedoms of economic association just as it does not authorize *laissez faire* freedoms of economic contract. Clearly governments do not need to be neutral towards monopolies, cartels and other economic associations who act in restraint of trade; nor must they maintain neutrality with respect to different kinds of employment contract. Employers cannot insist that employees give up their rights against racial, religious, and sex discrimination or sexual harassment. Nor can they insist, I contend, that workers abandon all discretionary powers and prerogatives in the workplace, such as time for

⁶² “The price of Freeman’s argument against even an affluent welfare state capitalist society seems to be a commitment to a perfectionist ethical ideal where control of one’s workplace is a part of the good life. Freeman denies this. . . .It is not clear to me, however, why transposing a perfectionist claim into the idiom of psychology avoids the problem – even if the psychological generalization is true” (Thomas 2017, 262).

restroom breaks, lunch, or safety protections, or require workers to only vote for one political party and practice a specific religion. Guaranteeing these protections and prerogatives against employers' arbitrary decisions is not perfectionism, but rather a matter of mutual respect among free and equal moral persons.

It is nonetheless true that Rawls, like J.S. Mill, endorses a kind of naturalized perfectionism in the Aristotelian Principle as part of his theory of the good and argument for stability in Part III of *Theory*. According to this “psychological law,” it is rational for individuals to incorporate into their rational life plans activities and occupations that exercise and develop their distinctly human capacities; otherwise they become bored and jaded by their work and (to borrow a term) “alienated” from what is experienced as meaningless monotonous tasks. The Aristotelian principle informs Rawls’s account of the stability of the institutions of a well-ordered society, including property-owning democracy and liberal socialism. My claim then would be that a POD or liberal socialist economy that guarantees basic worker powers and prerogatives is a condition of meaningful work, not *because* it realizes perfectionist values, but *because* it is *more stable* than a capitalist, POD or liberal socialist economy that allows workers to enter laissez-faire employment contract and be completely controlled or dominated by their employer, both during their workday and outside it. A society in which workers have the “option” of laissez-faire employment contracts with no protections or prerogatives for workers will soon become one in which the default labor contract for unskilled workers guarantees no powers or protections for workers, for the simple reason that it is most profitable for employers. Such a society is less stable; it does not command the allegiance of its least advantaged members or guarantee them institutional conditions for self-respect.

So the fact that my argument for the fair distribution of powers and prerogatives in the workplace appeals to perfectionist psychological tendencies characteristic of human beings to argue for the stability of a well-ordered society does not imply perfectionism as a moral conception, any more than does Rawls's appeal to the social bases of self-respect. Still, the argument for the inalienability of a basic minimum of economic powers is not simply a stability argument grounded in the Aristotelian principle; nor is it one that makes just institutions purely instrumental to realizing the human good or human flourishing, as perfectionism historically has been conceived. It is rather primarily a complex argument that appeals to such non-perfectionist principles and ideals of mutual respect, economic reciprocity, social equality, and the social conditions of self-respect; these in turn imply that laissez-faire employment contracts and associations unjustly deny workers – especially the least advantaged who have no feasible alternatives – minimal fair opportunities to exercise social and economic powers and prerogatives in their workplace. “Lacking a sense of long-term security and the opportunity for meaningful work and occupation is not only destructive of citizens’ self-respect but of the sense that they are members of society and not simply caught in it. This leads to self-hatred, bitterness, and resentment”.⁶³ Mutual respect, productive reciprocity, and the social bases of self-respect and social equality are not fungible assets that can be bartered away. The fact that some workers may not find any such ‘meaning’ or value in work that protects their health and safety, prevents them from being exploited, and enables them to freely exercise their productive capacities, and who would rather trade their rights to fair opportunities and the exercise of economic powers and

⁶³ PL, lvii in the 2005 Expanded Edition. Rawls says this as justification for making government the employer of last resort, but it applies equally well to unskilled workers who confront a labor market with no protections and prerogatives in the workplace, or outside it.

prerogatives for greater income is no more relevant than is peoples' willingness to sell their rights to vote or rights to not be discriminated against on grounds of race, religion and gender, or sexually harassed. As with any inequality of primary social goods in Rawls's account, the question: whether or not it is rational, from the point of view of the least advantaged unskilled worker, to guarantee a social minimum of economic powers and prerogatives as part of the index of primary social goods that constitutes the social minimum guaranteed by the difference principle and protected by fair equality of opportunity. It is not rational for free and equal moral persons to completely alienate all economic powers and prerogatives guaranteed by the second principle of justice. This has nothing to do with liberal neutrality or perfectionism, but is grounded in moral values of mutual respect, self-respect, productive reciprocity, and social equality, in addition to meaningful work as a condition of the stability of a well-ordered property-owning or liberal- socialist democracy. There is a distinct difference between justice being instrumental to perfectionist values, which is perfectionism, vs. relying on perfectionist psychological propensities under favorable circumstances to realize values of justice and the stability of a well-ordered society.

3

Reply to Jessica Flanigan

Jessica Flanigan raises many poignant objections to the ideas that I present and defend in *Liberalism and Distributive Justice*, including ideas that are central to Rawls's egalitarian conception of justice. I regret that I can respond here only to some of the many challenges she presents to both my and Rawls's views. But I am very thankful to her thought-provoking essay, especially because it defends a libertarian position, which is very different from the Rawlsian liberal egalitarianism that I argue for, as do the other four philosophers whose comments are presented here. One great benefit of responding to Flanigan and other classical liberal or libertarian philosophers is that they force me to clarify ambiguities and imprecisions which I may not have been aware of previously – which I will try to do in the following comments.

I

Indeterminacy of Justice as Fairness

One of the main themes of Jessica Flanigan's comment is that Rawls's theory of justice is so complex and its assumptions so vague that they can be interpreted to support different and conflicting conceptions of justice, even including libertarianism. This is a different kind of argument from the more common criticism, that Rawls's assumptions are mistaken. Nozick for example rejects the original position on the assumption that, given pre-social libertarian property rights, there is no significant role for a hypothetical social contract to play. And utilitarians contend that the maximin rule of choice is irrational and that by assuming the Bayesian principle of insufficient reason instead, Rawls's framework justifies the principle of average utility. Flanigan's

argument is that, even if we accept Rawls's many assumptions, they admit of such different interpretations that libertarianism is a reasonable conclusion, as much if not more so than Rawls's own principles of justice.⁶⁴

The argument that Rawls's basic assumptions are compatible with (if indeed they do not imply) some form of classical or libertarian liberalism was made prominent, as Flanigan notes, in John Tomasi's book, *Free Market Fairness*. Jerry Gaus, Kevin Vallier and others have made similar arguments. Tomasi argues that despite Rawls's explicit denial that laissez-faire rights and liberties are among the basic liberties, nonetheless given Rawls's assumption – that basic liberties are those necessary, as Rawls says, for the “full and informed exercise and the adequate development” of the two moral powers – then “thick economic rights and liberties” must be among those guaranteed by Rawls's first principle of justice. The consequence is to validate the justice of laissez-faire property and contract rights and market distributions of income and wealth, and therewith negating any independent distributive role for the difference principle and fair equality of opportunity. Moreover, Tomasi, like Jason Brennan and other libertarian liberals, contends that the unintended consequences of laissez-faire economies (joined perhaps with a social safety net) indeed maximizes the position of the least advantaged without intentional design, so there is no need for an independent standard

⁶⁴ Offhand, one might think that there is no possible way that libertarianism could guarantee the fair value of equal political liberties, since many libertarians do not regard even formally equal political rights and liberties as among the equal basic liberties. Libertarians such as Nozick and Jason Brennan deny that even formally equal political liberties are rights that should be guaranteed. They would deny that equal political rights are necessary for the full and informed exercise of the moral powers.

of distributive justice such as the difference principle to assess the fairness of libertarian property rights in free market distributions.

These and similar arguments by libertarians are central to Flanigan's thesis – that justice as fairness can reasonably be interpreted to support libertarian rights and liberties. These are good faith arguments, I assume. But the fact that libertarians make such arguments from Rawlsian premises does not mean they interpret Rawls correctly or that Rawls's assumptions are indeterminate, as Flanigan alleges. One must look at libertarian interpretations of Rawls one by one to decide that and whether there is a reasonable reply to them. Here I can only briefly comment on John Tomasi's argument, which supports my convictions that libertarians do not simply interpret Rawls's premises differently; rather they *misinterpret* them by both ignoring crucial assumptions and arguments, and by altering other assumptions to fit with their libertarian view.

Rawls says that basic liberties are those that are essential to the full and informed exercise and adequate development of the moral powers of free and equal moral persons generally, who are members of a democratic society.⁶⁵ He means the moral powers of ideal representative persons, (cf. TJ 56) not simply some people who happen to have one or another conception of the good that requires laissez-faire rights and liberties. The moral powers are capacities necessary for practical reasoning and action – capacities to be rational and reasonable (PL 108). Rawls also contends they are necessary capacities for free and equal moral persons' engaging in fair social cooperation. Rawls also says that, "necessary for the exercise of the moral powers," is the development of "the intellectual powers of judgment, thought and inference." (PL 81) He then argues that basic rights to liberty of conscience and

⁶⁵ *Political Liberalism*, VIII, 325, 332-333.

freedom of thought, freedom of association, the integrity and freedom of the person (including freedom of occupation and movement), and the protections guaranteed by the rule of law are all generally necessary to the full and informed exercise of the moral powers. These are not controversial rights and liberties among liberals on the left and the right. The same is true of the right to hold personal property since, as Rawls contends, without the guarantee of a secure place to reside and exclusive control of personal possessions a person cannot be a free and independent moral or rational agent engaged in social cooperation who effectively exercises other basic liberties and takes advantage of fair opportunities. What is especially controversial among liberals to the right and socialists to the left of Rawls is his denial that both laissez-faire economic rights and liberties and socialist rights to participate in control of means of production are basic liberties. This would require showing that one of the other (not both) is necessary for the full and informed exercise of the moral powers. Also subject to question by liberals on the right is Rawls's claim that equal rights of political participation and the guarantee of their fair value are among the basic liberties necessary for the full exercise of the capacity for a sense of justice.⁶⁶

John Tomasi insists that laissez-faire freedom of contract and “thick” property rights to own and control means of production are basic liberties, since they are indeed necessary for the full exercise of the moral powers (or his interpretation of them, the capacity for “self-authorship”) And many libertarians and classical liberals (such as Jason Brennan) would deny Rawls's claim that equal political rights of participation, and certainly the guarantee of their fair value where this requires mitigating capitalist inequalities of wealth, are necessary for the full and informed exercise of the

⁶⁶ This will be discussed later.

capacity for a sense of justice, even in a democratic society where citizens are regarded as free and equal.

Offhand, it seems that libertarian rights of unlimited accumulation of economic wealth, nearly unregulated freedom of economic contract, and so on, seem no more necessary to full and informed exercise the moral powers than does democratic participation in socialist control of means of production – indeed even less so since at least democratic rights are open to *everyone's* exercise in their workplace, and are not just limited to the small portion of the population who own and control means of production. The majority of people in liberal democratic societies do not seek or want to exercise such extensive laissez-faire economic freedoms, nor do the less advantaged have any realistic opportunity to do so; nonetheless, they all appear to be able to fully exercise their capacities to be reasonable and rational quite well without these extensive economic rights, liberties and opportunities.

Tomasi nonetheless contends that thick economic liberties are justifiable for the “same reasons” that Rawls says that a right to hold personal property is a basic right. But how can this be so? Rawls’s argument is that having exclusive control over personal belongings, secure living quarters, and adequate resources to meet one’s basic needs are a condition of *every citizens’* personal independence and their effectively exercising other basic liberties, executing their rational life plans, and their forming valuable relationships. This resembles Hayek’s claim that private property is justified so that all have a “private sphere” within which to plan and control their lives. But neither Rawls’s nor Hayek’s reasons for personal property can justify extensive economic rights of unlimited accumulation and private control of productive wealth and laissez-faire contract rights that classical liberals and libertarians contend for. Moreover, even if it be conceded that

individuals' exercising *qualified* private ownership of economic means of production were necessary for their individual independence or a private sphere,⁶⁷ this at most opens the door to a generous social democratic welfare state or property-owning democracy with widespread private ownership of economic wealth by *all* citizens. But these alternatives require far greater taxation, regulation, and redistribution of market distributions and other consensual transfers than Tomasi's classical liberalism or certainly libertarianism can tolerate.

I see no convincing connection between basic laissez faire economic rights and liberties and the social conditions necessary for the full and informed exercise of the moral powers of practical reason of citizens generally. I suspect the real reason for arguing that thick capitalist economic liberties are basic liberties in Rawls's sense is that *some people* in American society desire and have a conception of their good that requires an unfettered entrepreneurial and acquisitive lifestyle and the allegedly good consequences that unassailable protection of economic liberties can bring for them, including greater wealth and greater options for choice. As Tomasi says, "the exercise of thick private economic liberty is *for many citizens* a condition of responsible self-authorship" (Tomasi 2012, 183).⁶⁸ This means simply that for many people in a

⁶⁷ This is neither Rawls's nor Hayek's contention. Hayek contends, not that *all*, but only *some people* need to have control of means of production, which provides others with opportunities to work and pursue their own purposes.

⁶⁸ Likewise, Tomasi says, "*For many people*, independent economic activity is an essential, ongoing part of a well-lived life. *This* is why market democracy sees private economic liberty as a requirement of political autonomy" (Tomasi 2012, 183). On similar grounds Kevin Vallier contends that the parties in the original position will choose a principle of equal basic liberties that includes thick private economic rights and liberties. It is because private economic liberties are so integral to their rational life plans, much in the way that religion is integral to the

capitalist economic system, essential to *their particular conceptions of the good* is that they *be* capitalist entrepreneurs and/or owners of productive resources and wealth with thick economic rights of use, control, and consumption. Of course, this is true of many people in American society. But the desirability of laissez-faire capitalist lifestyles and wealth for some cannot serve as a basis for including thick economic liberties among the equal basic liberties for all persons. Simply because certain rights and liberties are essential conditions for many people to pursue their particular choice of occupations and life plans is not a reason to make them basic rights and liberties for free and equal citizens generally.

For rights and liberties to be basic in Rawls's sense, they must be necessary to the full and informed exercise and adequate development of the moral powers of *citizens generally*, those who are reasonable and rational and desire to cooperate with others on terms all can accept in their capacity as free and equal moral persons. Rawls's account of moral personality is based in a normalized ideal of representative moral persons who conceive of themselves free and equal citizens. He says, the "scheme [of basic liberties] is always to be assessed from the standpoint of the

life plans of religious people, that they will not want to gamble with their economic freedoms. The problem with this is that in Rawls's original position behind the veil of ignorance people have no more grounds for assuming that entrepreneurship is integral to their life plan than they have for believing that democratic participation in socialist economic decisions is part of their life plan. As I argue below, the analogy with freedom of religion is misdirected. People may not know they have a religion either, but what they are protecting by choosing freedom of conscience is a more general freedom to decide not just religious but also philosophical, moral and evaluative convictions that orient their actions and give meaning to their lives. This basic liberty protects the freedom to affirm, advocate, and vote for laissez faire economic liberties, but it does not guarantee these as basic liberties, any more than it guarantees freedom to democratically participate in socialist decisions about the means of production.

representative equal citizen. From the perspective of the constitutional convention or the legislative stage (as appropriate) we are to ask which system it would be rational for him to prefer.” (TJ 179 rev.) Behind the veil of ignorance at any stage of the 4-stage sequence the representative citizen does not know his/her/their particular conception of the good. The representative equal citizen instead appeals only to the higher-order interests all citizens have in common – in fully developing their moral powers of practical reasoning. The argument for each of the basic liberties is that they among the necessary institutional conditions for free and equal citizens to realize these fundamental interests and pursue a wide range of rational conceptions of their good. The fact that some citizens may have particular economic interests furthered by laissez-faire liberties, and others may have interests furthered by worker-control or socialist ownership of the means of production, is of no relevance to identifying the basic liberties, since none of these particular interests are necessary to the full and informed exercise of the moral powers in the fundamental cases they are exercised.

Tomasi and others reply that this cannot be the correct interpretation of Rawls’s basic liberties. For many citizens are atheists but still develop and exercise their moral powers without taking advantage of freedom of religion. Others refuse to vote or exercise other equal political liberties and take no interest in public life but still can have an effective sense of justice. But atheists *do* exercise their freedom of religion, by refusing to have one. Freedom of religious belief is but one aspect of freedom of conscience, which includes freedom of philosophical and moral beliefs, and the freedom to form conscientious convictions and live according to the permissible values and pursuits that give meaning to one’s life. Moreover, the failure of particular people to regularly exercise a basic liberty, such as equal political liberties, surely cannot be a reason to deny that the liberty is not normally

necessary to the effective exercise of the moral powers among representative free and equal persons who aim to fully exercise their capacity for a sense of justice. Rather it is evidence that a person has failed to take advantage of the basic liberties that enable him or her to *fully* exercise their moral powers in an *informed* manner. Freedom of thought, expression, inquiry and discussion are not taken advantage of by many recluses or by ascetic monks who have taken a vow of silence and recite prayers most of their day. But it would be extraordinary to claim that this proves that this basic liberty is not necessary to the full and informed exercise of the capacities for practical reason and judgment of free and equal citizens. Likewise, the failure of some people to exercise equal political liberties by voting, engaging in political debate and deliberation, etc. due to their political indifference does not mean these liberties are not necessary in a democratic society for development and full and effective exercise of the sense of justice of citizens generally. Rather it suggests either a sense of political futility which is common among the poor in libertarian and classical liberal societies, or that their moral sense of justice is not fully developed since they exhibit little interest to participate in public discussion or in the application of principles of justice to laws and social policies.

Moreover, like other basic liberties, the formal right to equal political liberties is a precondition of *social equality* and *equal respect* among free and equal citizens, which are fundamental bases of self-respect in a democratic society. As a necessary condition of being recognized as a social equal, political equality is, Rawls says, a crucial condition for the full and effective exercise of the capacity for a sense of justice. Whether or not citizens choose to exercise their equal political liberties is beside the point: Someone has to exercise political authority, and it demeans liberal citizens to deny them equal political rights of participation—to vote, run for office, politically assemble, join and form political parties, and engage in

political speech, debate and deliberation. The denial of equal political liberties is public recognition that some people are not social equals or active members of the political community, but rather are in the class of political subordinates who are unqualified to take part in public political life. This undermines others' respect for them as equals, which damages individuals' sense of self-respect. They become politically passive and disengaged, and the adequate development and full exercise of their capacities for justice are hindered.

So Flanigan's position that Rawls's position regarding the basic liberties is indeterminate and that it can reasonably be construed to justify *laissez-faire* economic rights and liberties is I believe simply inaccurate. The other evidence Flanigan cites to support the claim that libertarian conclusions are equally defensible given Rawls's own assumptions is Jason Brennan's and Tomasi's contentions that the least advantaged fare better in capitalist economies with a welfare state than they do in any other economic system, including property owning democracy and liberal socialism. There is no historical example of a property-owning democracy or liberal socialism as Rawls conceives them. (Yugoslavia, often cited as an experiment in market socialism is hardly an example since it was neither a liberal nor a democratic society that guaranteed basic liberties, fair equal opportunity, equal opportunity for political influence, or a social minimum designed to conform to the difference principle). Brennan and Tomasi nonetheless contend that capitalism is in a far superior position to satisfy the difference principle than either POD or liberal socialism. Since the safety net has been shredded in the US the past 40 years and the least advantaged, many of whom work, are homeless with some living in absolute poverty on less than \$2000 per year, we have to look elsewhere for support of the Brennan/Tomasi thesis – to the social democratic welfare states of Scandinavia. Though capitalist, these cannot serve as examples of the liberal libertarian safety net state

since their overall tax rate is between 50-60%, which is necessary to pay for a wide range of public goods, educational benefits, universal health care and other social insurance programs.. Given the redistributive tax rate, these hardly count as libertarian or classical liberal economies in any sense Flanigan describes. They are instead well-regulated social democratic welfare states with strong labor unions which have co-determination rights, work councils and other features of a property- owning democracy. There is no example of a libertarian economic system with basic economic rights and liberties of the kind Tomasi describes in which the least advantaged fare anywhere near as well as in these social democratic welfare states.

Nonetheless, it is still the case that in Sweden and other welfare state economies in Western Europe, the least advantaged (the bottom 20%) have virtually no economic wealth at all, and the bottom 50%, exactly half the population, have only 5-8% of national wealth depending on the country, while the top 10% enjoy 54-60% (60% in Sweden, 58% in France, and 54% in UK) and the top 1% have 20-25 % of national wealth in these countries.⁶⁹ It is only to be expected that the least advantaged are still worse off in the US with its shredded safety net, which more closely approximates the libertarian society that Flanigan defends. So, the claim that libertarian capitalism satisfies the difference principle better than a POD where income and wealth are widely distributed across all members of society seems highly suspicious at best, if not wishful thinking.

Finally it is noteworthy that Tomasi has a different understanding of the moral powers than Rawls, which may play some role in his argument. The capacity for “self-authorship” is not simply the capacity to be rational or reasonable. It is rather a

⁶⁹ See Piketty 2020, 130, 195-196, comparing France, Sweden, and the UK.

perfectionist capacity to be a fully autonomous agent capable of creating one's values and designing one's own life. This conflicts with Rawls's political conception of the person and political liberalism, since there are reasonable comprehensive conceptions that reject autonomous self-determination as essential to the human good. Tomasi alters some of Rawls's assumptions and misinterprets others. In addition Tomasi and other libertarians and classical liberal interpreters ignore many of Rawls's crucial assumptions underlying his argument for the principles of justice. The arguments from democratic reciprocity, publicity, and the social bases of self-respect, are crucial to Rawls's arguments for the principles of justice and an egalitarian understanding of the difference principle. There is little attempt to show how libertarianism better satisfies these crucial assumptions than does Rawls's account of the principles of justice. Likewise, the fair value of political liberties and fair equality of opportunity are crucial to Rawls's economic egalitarianism and his arguments against welfare state capitalism and in favor of property-owning democracy and liberal socialism. Understandably, Flanigan and libertarians such as Tomasi, Brennan, Freeman, Lomasky, and others might simply reject many of these assumptions and principles – most notably Brennan's and others' rejection of democracy, and therewith equal political liberties and the fair opportunity for equal political influence. But if so then Flanigan cannot claim that it is so difficult to identify the crux of disagreements between orthodox Rawlsians and libertarians – each sharing the same premises but interpreting them in different ways and applying principles inconsistently. (Flanigan 2020, 68) Libertarians do not share the same premises at all with Rawls. They reject many of his premises, misinterpret others, and insert different premises of their own making, when it is convenient.

I conclude that some of the most prominent arguments cited in support of Flanigan's thesis are flawed; they do not support the

contention that Rawls's theory of justice reasonably can be interpreted to justify libertarianism or classical liberalism.

II

Liberal and Illiberal Libertarians

II.1. *What is Libertarianism?* As I discuss in my Preface, I regard Libertarianism in my book as a distinct doctrine that assigns strict priority to absolute property rights over all other moral principles and values. As such, property rights and liberties are not inalienable basic rights or liberties in Rawls's sense, but rather take priority over all other rights and liberties. On the assumption that persons have absolute property in their person, "there are no rights but property rights".⁷⁰ Chapter 2 is devoted to a discussion of the ideal libertarianism of Robert Nozick and others (such as Murray Rothbard, John Hospers, Jan Narveson). I take this to be the orthodox libertarian position. This paper was begun in the early 1990's at a time when libertarianism in philosophy was largely identified with Nozick's and similar ideal libertarian positions.⁷¹

Subsequently, Jason Brennan and others now use the term 'libertarian' more broadly, to apply to any position that defends the position that (nearly) laissez-faire economic liberties and private property rights are basic and on a par with the basic personal liberties of conscience, thought, association, and tastes and pursuits. These include the classical liberalisms of Milton Friedman and the Chicago School, Hayek and the Vienna School, James Buchanan's, David Gauthier's and Gerald Gaus's liberal Hobbesian contractarianism, and the Kantian classical liberalism

⁷⁰ Rothbard 1977, 238, quoted in chapter 2 of Freeman 2018a, 75-76

⁷¹ John Tomasi helpfully commented on the paper in 1993 when we were at the Princeton Center for Human Values, and it is relied upon in his first book, Tomasi 2001.

of Loren Lomasky, John Tomasi, and others who develop these and similar views. I term these ‘classical liberal’ views, since all these philosophers endorse the liberal basic social institutions that I contend distinguish liberalism from the orthodox libertarian position I discuss in my book. For purposes of this paper I will call classical liberal positions ‘liberal libertarian’ views, as opposed to the orthodox libertarianism of Nozick and others, and also hybrid libertarian views that occupy a position between classical liberalism and orthodox libertarianism.

Following Tomasi and Jason Brennan, Flanigan depicts libertarians in this broadly liberal sense in such a way that libertarians could endorse some, all, or, like orthodox libertarians, none at all, of the basic liberal institutions that I contend constitute liberalism of both the classical and high liberal traditions. Libertarianism in this broad sense includes the classical liberal endorsement of a social safety net and government’s duty to provide a decent social minimum that prevents people from abject poverty. Libertarianism in this broad sense is an expansive position on Flanigan’s view. On this basis Flanigan, again following Tomasi, says that libertarianism is even consistent with welfare state capitalism, therewith blurring the distinction I make between the classical and the high liberal traditions in chapters 1 and 2, and perhaps between left and right libertarianism as well. On this broad understanding of libertarianism, the only liberal positions that are non-libertarian are Rawls’s, Dworkin’s and similar left liberal egalitarian, priority, or sufficiency views that reject thick economic liberties and support a robust welfare state, POD, or some form of liberal socialism.

I think it is important to distinguish the classical liberal safety net from the social minimum endorsed by welfare state capitalism. The safety net evolved from poor relief granted in the Poor Laws in Britain, initially promulgated during the Elizabethan era,

endorsed by Hobbes, and refined up through the 19th century by the establishment of workhouses and other Dickensian institutions that required recipients of poor relief to work for benefits—ideas that are still very much alive today in the Republican party’s conditioning welfare and Medicaid benefits on work requirements for those who are allegedly capable. Friedman and Hayek endorsed the social safety net, the former on grounds that public charity for the poorest is a public good, the latter on Hobbesian grounds that it is needed to prevent lawlessness by the abjectly poor. The welfare state originated in a different idea than did the classical liberal Poor Law safety net; namely, the idea that people have a political if not a moral *right to a social minimum* that guarantees at least their essential needs and enables them to live a worthwhile life beyond the subsistence level. The important difference is that the idea of a right to a social minimum that meets essential needs does not mesh with the fundamental libertarian/classical liberal idea that property rights are on a par with or even superior to other basic liberal liberties, nor with the presumption that individuals have complete rights to their entire market income and consensual transfers of wealth in its entirety. This is I argue in chapter 1 of my book a fundamental distinction between the classical and high liberal traditions, and also marks a distinction between the classical liberal safety net and the guaranteed social minimum of the democratic welfare state.

II.B. *Flanigan’s Hybrid Libertarianism*: Now to turn to Flanigan’s suggestions regarding the version of libertarianism she endorses. Unlike Tomasi, Vallier, Gaus and other classical (or if you will “libertarian”) liberals influenced by Rawls, Flanigan renounces Rawls entirely. Instead she embraces features of Nozick’s position, thereby exhibiting what I call elsewhere a kind of *hybrid libertarian* view.⁷² She defends absolute freedom of contract like Nozick, and

⁷² See Freeman 2018c.

therewith complete alienation of all rights, including basic rights and liberties, even if this results in “voluntary servitude” (as she calls it). I prefer the term ‘involuntary servitude’ since it is the nature of slavery that it is coercive with no right of exit, and hence is involuntary; this remains true in spite of the fact that one might have formally entered a contract in the past where one agreed to all this. To meet Flanigan halfway I’ll refer to “voluntary involuntary servitude,” or better “involuntary servitude contracts.”⁷³

What makes her libertarianism hybrid is that, in addition to involuntary servitude contracts, Flanigan also seems to defend a social safety net. Following Jason Brennan, she says that with such a guarantee of a safety net, the usual objections to voluntary involuntary servitude – presumably, that it is entered into only out of desperation in response to abject poverty—do not apply. Now, recognizing a social safety net implies accepting that people are going to have to be taxed to pay without their consent for benefits

⁷³ The fact that a person voluntarily entered into coercive servitude at time t1 in the past does not change the fact that it becomes involuntary at any time afterwards t2..., when the person wants to end the coercive relationship and is denied the opportunity to do so. One might say all contracts are coercive since they are legally enforceable. But few legitimate contracts involve specific performance as a remedy for breach; most instead require paying money damages or restitution. Being coercively required to remedy the breach of a contract, even a slave contract, by restitution or payment of money damages is not the kind of coercion involved in chattel slavery. But specific performance of a slave contract is, since then one is coercively forced to be a slave, another’s property. That’s what makes specific enforcement of slave contracts different from specific performance of other contracts. Though one may be coercively required to sell and transfer one’s house pursuant to a purchase and sale agreement, one retains all the rights of free and equal persons. But that’s not the way that involuntary servitude contracts are coercive either: for by rendering one’s person the property of another, a person is no longer a free and equal person, but instead is legally regarded as a mere thing.

for others. This is a serious departure from the orthodox libertarian view. This also suggests that freedom of contract is not after all absolute on Flanigan's hybrid libertarian view, since it implies that in the absence of a social safety net, involuntary servitude contracts are entered under conditions of duress and are void and unenforceable (or at least voidable). If Flanigan is willing to restrict freedom of contract so that it does not apply to enforcement of servitude contracts in the absence of a social safety net, this raises the question whether this opens the way to restrictions on the enforcement of similar contracts applied against other financially desperate persons who make agreements under similar circumstances of duress (such as those who enter servitude agreements to pay huge medical expenses to save their lives or those of family members?) Or what about people who enter servitude contracts out of emotional desperation – because they have been jilted or divorced or lost a loved one and now think life is not worth living? But not enforcing servitude contracts for reasons of these kinds of circumstantial duress does not resolve the real problem with involuntary servitude contracts: It is not (simply) that they would allow exploitation and enslavement of economically or emotionally desperate people. It's that such contracts authorize the gross violation of fundamental human rights that guarantee respect for persons as such, regardless of their circumstances or their voluntary actions. It is grossly immoral for individuals to own and treat other human beings as if they were livestock, and unjust and uncivilized for a society to recognize any such contractual rights and coercively enforce human enslavement, regardless of the circumstances or the fact of prior consent.

In defense of the enforcement of involuntary servitude contracts, Flanigan questions my argument that political enforcement of involuntary servitude contracts is an abuse of public political power and makes other citizens complicit since political power is exercised in their name as democratic citizens.

She says that if this is supposed to be a *reductio* of libertarianism, then why is not also the “the fact that protecting freedom of expression as basic would make people at public universities complicit in protecting illiberal and offensive speech ...not a *reductio* of liberalism”? She continues that my argument is an example of the problems with Rawls’s theory of justice and reflective equilibrium – that it “is very sensitive to people’s pre-theoretic intuitions – people view a counterintuitive implication of freedom of contract as disqualifying for the liberty but do not take a similarly counterintuitive implication of freedom of speech as disqualifying”

My argument was not intended as a *reductio* nor does it depend on reflective equilibrium (which I discuss below). Rather my argument states what I assume to be an obvious and unqualified moral fact—that slavery is in itself a heinous moral wrong that violates the most basic moral rights, including rights to the integrity and freedom of the person. Thus, coercive enforcement by governments (or anyone else) of involuntary servitude contracts, even if voluntarily contracted into, is also a great moral wrong, as well as an abuse of public political authority that implicates democratic citizens who are ultimately responsible for the exercise of political power. I do not see the alleged similarity with offensive, illiberal speech which may be morally wrong as well, but that is protected by freedom of thought and expression. No one’s basic rights and liberties are violated by it or by tolerating offensive speech, including those who are the object of such speech – we do not have a basic right not to be offended (unless offensive speech rises to the level of threats of harm or imminent violence). It is because slavery is such an egregious wrong, as is torture, rape, dismemberment, and many other physical and psychological abuses of persons, that the right to bodily and psychological security, integrity and freedom of the person are fundamental and inalienable human rights that cannot be bargained away. Such

actions remain great moral wrongs even when people antecedently consent to them and are given no right of exit, or fail to object and resist their mistreatment when the acts of enslavement, dismemberment, rape, torture, etc. are carried out.

This reflects a fundamental problem with orthodox Libertarianism and with hybrid views which endorse the enforcement of the alienation of basic human rights: it is that, because of absolute freedom of coercive contract and property in persons, there *are no absolute moral wrongs* that cannot be made permissible so long as some poor soul or person in desperate straits has been cajoled, or put under duress by circumstances or third parties, to give their consent at some time in the past to be coercively abused and mistreated in the future. It is because orthodox Libertarianism recognizes no absolute moral wrongs that cannot be cured by consent that it is at best only half a moral conception of justice. It does not recognize certain fundamental unqualified moral duties owed to persons as such – of mutual respect, mutual assistance, and duties not to harm or injure others. All moral prohibitions and injunctions come qualified with the condition, “unless done with a person’s binding and coercively enforceable consent.” The libertarian argument that equal respect for persons not simply allows contractors but requires the state (or protection agencies hired to do so) to coercively enforce contracts of involuntary servitude, rape and sexual abuse, dismemberment, or whatever atrocious acts wicked imagination allows, defies moral imagination. Small wonder that Flanigan in the passage quoted above rejects reflective equilibrium because it is “very sensitive to people’s pre-theoretic intuitions” about the moral limits to freedom of contract.

III

Methodological issues: Ideal theory, Facts and Principles

III.A. *Ideal Theory*. Rawls's argument from the original position involves testing alternative conceptions of justice by inquiring whether they would be generally acceptable and willingly complied with among free and equal reasonable and rational persons in a well-ordered society whose basic social and political institutions perfectly comply with requirements of justice. In chapter 8, I defend Rawls against Amartya Sen's criticism of this assumption of strict compliance made within ideal theory. Sen argues we do not need to engage in ideal theory to recognize injustice or know what we must do to alleviate it.⁷⁴ This charge begs the question since Rawls's theory has different criteria for identifying injustices than does Sen's consequentialist account, and the two theories respond to and remedy many unjust inequalities in different ways.⁷⁵ Sen, Charles Mills and others also contend that since justice as fairness was designed to apply to an ideal well-ordered society, Rawls's theory is inapplicable to us and is irrelevant for our non-ideal circumstances. This allegation is made in spite of the many occasions that Rawls applies justice as fairness directly to assess injustices in non-ideal circumstances, and his discussions of what must be done to rectify existing injustices.⁷⁶ This also begs the

⁷⁴ Sen 2009, 100-102 on the redundancy of Rawls's "transcendental" ideal theory.

⁷⁵ Sen for example rejects the priority of basic liberties and the difference principle, and argues for welfare state capitalism, which Rawls contends does not adequately address political, social and economic inequalities.

⁷⁶ See for example Rawls's extended discussions in *A Theory of Justice* of toleration of the intolerant in TJ § 35; the duty to comply with an unjust law, TJ § 53; civil disobedience TJ §§ 55, 57, 59; conscientious refusal to comply with unjust orders, laws, and decrees, §§ 56, 58; in *Political Liberalism*, his discussions of the injustices of historical restrictions on freedom of political expression and US

question and must be argued for, since the fact that a conception of justice is designed *for* an ideal society does not mean it does not apply *to* determine injustices in a non-ideal circumstances – and it was Rawls’s intention to provide standards that do just that. Finally, libertarians and conservatives argue this ideal of society itself is both unachievable and undesirable (Gaus, Schmidtz, Tomasi, Brennan, etc.). Rawls contends there is nothing intrinsic to human psychology or political economy and sociology that prevents the realization of a well-ordered society of justice as fairness, and indeed that such a society realizes essential human goods, such as our social capacities for justice and social cooperation. Whether such a society is desirable of course depends upon whether liberal egalitarians or libertarians have the better argument. Flanigan repeats many of these criticisms, and then raises other objections against the method of reflective equilibrium.

Generally, the rejection of ideal theory evidences an unwillingness to engage with the most fundamental questions of normative moral and political philosophy. For ideal theory and the assumption of strict compliance is in one form or another characteristic of the history of moral and political philosophy. Social contract theories since Hobbes, Locke, Rousseau, and Kant assume general agreement by free and equal persons to terms of cooperation everyone willingly complies with. In addition,

Supreme Court’s refusal to mitigate the effects of wealth in politics and protect the fair value of political liberties, PL Lecture VIII, §§ 10-12; in the *Restatement*, his discussion of the several ways laissez-faire and welfare state capitalism and command economy socialism violate the principles of justice, JF §§ 41-42; his rejection of procedural democracy, JF § 44; and the injustice of head taxes, JF §48 – not to mention the many places where he condemns racial and gender subordination, discrimination, and inequality; discrimination against gays and lesbians, and so on because they violate the principles of justice.

contractualism, Kant and Kantian moral philosophy, rule and indirect utilitarians, and other consequentialists (including R.M. Hare) have long sought to determine the validity of moral rules and principles by universalizing norms and inquiring as to the consequences of everyone's accepting and fully complying with them.⁷⁷ To contend that such universalized principles are not applicable to us because some people in our circumstances reject them and cannot be motivated to comply either misses the point of a fundamental idea in moral and political philosophy or is a refusal to engage with it.

It is then a rather peculiar objection when Flanigan, citing David Enoch's criticisms of ideal theory, says:

As in the case of public reason then, the idealization of full compliance is unrelated to the underlying motivation for the view (modeling what people would choose under impartial conditions). (Flanigan 2020, 84).

The suggestion is that many of Rawls's assumptions are ad hoc, and rigged to yield the conclusions he seeks, (as Flanigan also suggests in repeating R.M. Hare's well-known criticism).

Full compliance is an unfortunate way to illustrate the accusation that Rawls makes ad hoc assumptions, as is public reason as well. To begin with, I would hesitate to simplify Rawls's "underlying motivation" as simply "modeling what people would choose under impartial conditions." Like universalizability and strict compliance, the impartial moral point of view is also

⁷⁷ The common sense test, "What if everyone did that?," that R. M. Hare himself relies upon is an oversimplification of Kant's categorical imperative.

characteristic of the history of moral and political philosophy, and there are several different ways to construct and combine these fundamental ideas.⁷⁸ Regarding Rawls's motivations for appealing to both ideas, he says the social contract among free and equal moral persons made in the impartial conditions of the original position is designed to correspond with the features of a well-ordered society. These include the public knowledge and unanimous acceptance of and full compliance with the principles of justice by all free and equal moral persons in a well-ordered society. "These and other aspects of a well-ordered society are incorporated into the description of the original position by the contract condition".⁷⁹ So the parties in the original position are to agree only to principles that the free and equal moral persons whom they represent can also generally agree to and willingly comply with in a society where the requirements of these principles are impartially enforced. The same is true of the idea of public reason in political liberalism, which correlates with the publicity assumption in the original position – that the fundamental principles of social cooperation and their justification not be surreptitiously hidden from public view, but be publicly known and acknowledged by all reasonable members of society. Public reason is grounded in the publicity condition, and requires that the underlying reasons for laws and public policies that everyone is expected to comply with are publicly known and justifiable to free and equal moral persons. Rather than being ad hoc these requirements of public justification to everyone in terms of shared reasons all reasonably accept are conditions of the freedom and the

⁷⁸ In addition to Rawls, also Hume, Adam Smith, Kant, Sidgwick, Hare, Parfit, Nagel, Scanlon, Sen, Barry, and many others construct a version of the impartial or moral point of view, and several of them combine it with an assumption of strict compliance.

⁷⁹ Rawls 1999, 250.

political autonomy of free and equal moral persons who are democratic citizens.

It is no surprise then that Hare would say that both the publicity condition and full compliance in *Theory* is rigged, since the parties in the original position reject utilitarianism in large part (Rawls contends) because it cannot satisfy the full publicity condition and still maintain general acceptance and full compliance with utilitarian principles by all citizens in a well-ordered society.⁸⁰ Maintaining economic reciprocity, the social bases of self-respect, equality of basic liberties, and the maximin argument also play a significant role in Rawls's argument against utilitarianism in comparison with the principles of justice. All these same reasons apply equally forcefully to rule out the choice of libertarianism in the original position. (JF 83, cf. PL 262-265) Thus, what might seem ad hoc to utilitarians, libertarians and other advocates of egalitarian positions are in fact reasonable assumptions that are implicit in the fundamental intuitive ideas underlying Rawls's view: free and equal moral persons who cooperate on terms of reciprocity and mutual respect that all willingly accept and can comply with in their capacity as democratic citizens. Like utilitarians, the fundamental disagreement libertarians have with Rawls's principles of justice begins with their rejecting Rawls's specification of his Kantian ideal of free and equal moral persons and his contractarian ideal of social cooperation on terms that are generally acceptable and justifiable to all persons in their capacity as free and equal democratic citizens. Libertarians, like the utilitarians who claim to also occupy Rawls's framework, in fact specify the conceptions of persons and society differently than

⁸⁰ Economic reciprocity, the social bases of self-respect, and the maximin argument also play a central role in Rawls's argument that the parties would reject utilitarianism.

Rawls, and then do the same with other fundamental Rawlsian ideas, including the conditions of impartial agreement, public reason, and reasonable justification to others. As Rawls indicates (JF 83), it requires very different assumptions than those Rawls makes in the original position to arrive at the extensive property rights and vast economic inequalities that are characteristic of libertarian views.

III. B. *Facts and Principles*. One further criticism of Rawls's ideal theory Flanigan raises is that it is "intermediate", and not fully idealized, since Rawls makes certain allegedly arbitrary factual assumptions about persons and society in the original position and a well-ordered society.⁸¹ Flanigan says Rawls's and other Intermediate ideal theory is unstable and arbitrary. But Rawls's reason for interweaving factual assumptions within ideal theory is precisely to define a realistically possible and stable ideal society, a "realistic utopia" that is within the range of human capabilities. "An important feature of a conception of justice is that it should generate its own support" (TJ 137-138/119 rev.). Basically, if a conception of justice "for a democratic society" cannot be publicly known, generally accepted, and serve as a basis for practical

⁸¹ The parties in the original position Rawls states, "... know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed the parties are assumed to know whatever general facts affect the choice of the principles of justice. There are no limitations on general information, that is, on general laws and theories, since conceptions of justice must be adjusted to the characteristics of systems of social cooperation which they are to regulate, and there is no reason to rule out these facts. It is, for example, a consideration against a conception of justice that, in view of the laws of human psychology, men would not acquire a desire to act upon it even when the institutions of their society satisfied it. For in this case there would be difficulty in securing the stability of social cooperation. An important feature of a conception of justice is that it should generate its own support" (TJ 137-138/119 rev.).

reasoning and public deliberation, then it is practically irrelevant *for a democratic society* for the most part – still relevant for intellectual and educative purposes of course, but not for practical purposes (except for those with subversive interests).

In chapter 9 of my book, “Constructivism, Facts, and Moral Justification,” I address this aspect of Rawls’s theory, in responding to G.A. Cohen’s criticisms of Rawls’s factual assumptions. Rawls assumes that humans are social beings with a sense of justice and that under favorable social conditions, they normally want to justify themselves to others and do what is right and just. He seeks to discover the conception of justice that is most compatible with laws of moral psychology and our sense of justice and other natural human proclivities and general facts about moral psychology and political sociology. There are at least three reasons for this: First, if principles of justice are to impose moral requirements on our conduct that we can be reasonably expected and held responsible to comply with, they should be within the reach of our distinctly human capacities and compatible with our social capacities, including our sense of justice. Second, for Rawls principles of justice should be not simply within our reach and consistent with our sense of justice, but they should also affirm or be “congruent” with (rather than undermining) the human good, giving everyone sufficient reasons to want to do what justice requires under conditions where all are assured that others comply with its requirements. Finally, a third factual assumption about human motivation underlies the publicity condition: it is that the fundamental principles of justice that govern human relations should be *stable* under conditions where they are publicly known and serve as principles of practical reason and justification of social institutions and our social and political relations.

The problem with ideal theory which does not take into account general facts about human psychology, social cooperation, and

what we are capable of, but rather appeals only to “pure reason” and rational intuitions to discover fundamental practical principles, is that these principles place demands on persons that are not realistically possible for all to willingly comply with, even when they want to do what is right and just. Pure altruism – having impartial concern for promoting the desires or interests of everyone, regardless of one’s own interests – is a clear example of a disposition which Rawls assumes is not realistically possible. People have and it is part of their good that they have special relationships and purposes they especially value and which they conceive as essential to their individual good. Likewise it is unrealistic to assume that the least advantaged members of society can willingly accept, comply with and support utilitarian or libertarian social and economic institutions, when their well-being is being sacrificed so that those more advantaged can better realize their particular interests, such as their capacities for utility or “self-authorship” or some other perfectionist ideal.

None of this is to say that libertarian social norms are not within human capacities, but rather that uniform compliance and their general acceptability, such as it is, are at best a *modus vivendi*: one that depends on its being the product of a social contract under existing conditions, where everyone knows their circumstances and advantages and disadvantages compared with others. “To each according to their threat advantage” is not a moral conception, nor is it compatible with the human good. Ideal libertarian theory such as Nozick’s privatized nightwatchman state is utopian since its requirements could not be willingly complied with by all reasonable and rational agents. The stability of any such non-state libertarian society is neither compatible with human nature nor congruent with the human good since it denies even the basic needs of the most disadvantaged people. Anarchical libertarianism is neither feasible nor a stable social world. Given human propensities under conditions of extreme inequality without protections for

inalienability of human rights, it results in the oppression of the less advantaged and degenerates inevitably into political oppression or a Hobbesian state of war – the fate of many attempts to realize utopian theory.

IV

Methodological Issues: Reflective Equilibrium

IV.1. Rawls's assumption of a well-ordered society wherein all agree to and comply with its governing principles of justice is an ideal of social cooperation that corresponds, he contends, with certain pre-philosophical convictions of reasonable persons who are members of a democratic society. Reasonable persons for Rawls have a sense of justice and desire to cooperate on terms of reciprocity and mutual respect that all reasonable members of society can endorse and willingly comply with. The pre-philosophical "considered convictions of justice" of reasonable persons is a crucial assumption within Rawls's method of justification, reflective equilibrium, and provides the basis for Rawls's "constructivist procedure," the original position. Flanigan devotes much of her discussion to alleged problems with reflective equilibrium as a method of discovery and justification of moral principles. Flanigan raises several challenges to reflective equilibrium, which require far more discussion than I have space for here. Here I only have space to make some general remarks in response to her criticisms and hopefully will have the opportunity to revisit others later.

Rawls initially set forth reflective equilibrium to avoid the epistemic and often metaphysical commitments of rational intuitionism, which has characterized much of the history of moral philosophy since Plato. Rational intuitionism as Rawls describes it involves the appeal to certain abstract principles or reasons claimed

to be self-evident, certain, or otherwise undeniable— which then provide the foundations for further moral assumptions and conclusions.⁸² Rawls argued that reflective equilibrium is a more appropriate method of discovery and justification in moral philosophy since it avoids controversial epistemic and moral assumptions. Instead of assuming that there are any such unassailable a priori principles or non-natural moral facts, and that we have a special capacity of rational intuition through which we know them, Rawls argued that all of our reasonable considered moral convictions of justice, both general and particular, should be taken into account, organized, duly considered, and critically assessed. The most reasonable and fixed convictions among these are to be relied upon to discover the conception of justice that—after comparison with other reasonable moral conceptions—is found most compatible with our considered moral convictions in “general and wide reflective equilibrium.” This holistic account of moral justification in political philosophy is highly complex since it requires that we give due consideration and assign appropriate weight and relative importance to *all the relevant reasons*—including moral and rational principles and general facts that are relevant to arguing for and justifying principles of justice for the basic structure of a democratic society. Of course, as Flanigan emphasizes, people might disagree about these matters—as is normally the case in philosophical disagreements and this is to be expected—and the only way to resolve or narrow the scope of these

⁸² Rawls’s example of rational intuitionism is Sidgwick’s “philosophical intuitions,” which include the principle of impartial benevolence, to maximize the good impartially construed; the principle of equity, that similar cases are to be treated similarly, and the principle of no-time-preference, to have equal concern for all the parts of a life. Sidgwick relies upon these philosophical intuitions as the foundation for the classical principle of utility – “universal hedonism”— the most reasonable “method of ethics” he claims.

disagreements is through continued discussion that explains and gives reasons for one's judgments regarding the weight and relative importance one assigns to the reasons that are the source of disagreement.

IV.2. Flanigan however says reflective equilibrium is especially sensitive to pre-philosophical intuitions about cases or theories, and that different people can arrive at different conclusions without misapplying the method in any way.⁸³ It is true that reflective equilibrium starts with and relies in part on reasonable persons' unbiased pre-philosophical considered moral convictions – their “reflective intuitions” if one insists using the term – which are combined with our considered philosophical judgments at all levels of generality. There is no way to avoid appeals to considered convictions of value, right, and justice at crucial points in moral philosophy, whether they be abstract philosophical intuitions or considered convictions regarding specific cases. The important question is what one should try to do with these moral convictions. Sidgwick's argument for the classical principle of utility did not stop with his philosophical intuitions and their purported implication of the principle of utility, but in order to confirm the principle of utility he tested it against the considered judgments of common sense morality, to confirm that the utilitarian principle can explain, clarify, and justify the considered moral convictions, duties, and obligations of common sense morality. While Sidgwick's version of reflective equilibrium was not complete – the philosophical intuitions were still unassailable on his view—still

⁸³ Citing Kelly – McGrath 2010, Flanigan also says reflective equilibrium is subject to the objection that it is too conservative because it privileges widely shared judgments. Given that Rawls's conception of justice justifies an egalitarian property-owning democracy or liberal socialism, it is not clear what this objection comes to, especially when compared against Flanigan's liberal libertarianism, which largely rationalizes the reigning ideology of 19th and early 20th century laissez-faire American capitalism.

Sidgwick defended the principle of utility he claimed to derive from them by arguing that general utility is more consistent with our considered moral convictions at all levels of generality than are alternative moral conceptions.

Without some such form of at least partial reflective equilibrium, it is simply philosophical dogmatism to insist that one's abstract philosophical intuitions are self-verifying and that their implications and consequences are not to be tested against our considered moral convictions of justice. It is hard to know how to reason with someone who insists that their philosophical intuitions are not subject to being questioned or qualified when these intuitions conflict with the vast majority of other considered philosophical and common-sense moral intuitions reasonable people have. I've argued in effect that the extreme libertarian intuition that individual liberty entails absolute rights of property and freedom of contract, to the degree that these include the right to alienate all of one's basic rights and liberties and render oneself another's property to be disposed of at will, conflicts with virtually all other considered moral convictions we have regarding the dignity of persons, respect for human life, and the security, integrity and freedom of human beings. Of course, orthodox libertarians disagree and can reply with arguments that appeal to other considered moral intuitions, such as a different conception of what human dignity and respect for persons as equals involves. But then they are engaged in a process of argumentation that itself appeals to our coming to a reflective equilibrium on the moral principles they advocate and considered moral convictions and reasons we presumably share. There is no reasonable alternative to relying on reflective equilibrium at some level in moral philosophy

or in moral reasoning about justice.⁸⁴ The attempt to narrow its scope by focusing exclusively on certain philosophical intuitions and the reasons that support them, and then dismiss or exclude giving due consideration to conflicting considered moral convictions and comparisons with alternative conceptions of justice, is just to cut off philosophical deliberation and debate before it is completed.

IV.3. As an alternative to Rawls's and other comprehensive moral conceptions, Flanigan argues for a "more piecemeal" approach to political philosophy, at the level of non-ideal theory and that focuses on particular policy issues. She gives several examples of libertarian arguments against restrictions on businesses. She also notes that feminists raise similar objections, and chides me for not discussing policies in my book.⁸⁵

One way to understand Flanigan's piecemeal approach is – like many criticisms of ideal theory – as a proposal to abandon the fundamental questions of political philosophy and instead engage in philosophically informed discussions of public policy. This might seem to avoid the infuriating complexity of reflective equilibrium and of foundational questions more generally. But if philosophical discussions of public policy are to be anything more than edifying displays of moral intuitions, they must ultimately involve appeals to abstract philosophical considerations, including moral reasons, principles, and outcomes that justify policy proposals. And where do these come from, and how are we to

⁸⁴ Here I agree with T.M. Scanlon, who says: "... it seems to me that this method, properly understood, is in fact the best way of making up one's mind about moral matters and about many other subjects. Indeed, it is the only defensible method: apparent alternatives to it are illusory" (Scanlon 2003, 149).

⁸⁵ Regarding Flanigan's remarks on the dearth of philosophical discussions of policy issues in my book, I have subsequently published two recent papers in the area, one addressing severe cognitive disabilities, and the other, religious appeals in public political debate. See Freeman 2018b and 2020.

decide their relative weight and degree of importance compared with one another and when they conflict with other moral or policy considerations? Typical of the libertarianism that Flanigan defends is a kind of intuitionism that presupposes certain moral principles and reasons and that eschews both ideal theory (unlike Nozick, Gauthier, and other libertarians and classical liberals) and also eschews other abstract philosophical arguments for more general principles (as in Hayek, Gaus, Buchanan, and other classical liberals). But while her piecemeal approach within non-ideal theory may avoid the abstract philosophical arguments of ideal theory, it does nonetheless presuppose and often involves the application of abstract libertarian rights and principles. For what makes non-ideal theory “non-ideal” is that it is an application – whether knowingly or not – of the principles, reasons, and ideals within ideal theory.

I do not mean to devalue this piecemeal approach to political philosophy, for it is of great philosophical as well as practical importance. Non-ideal theory demonstrates the relevance of ideal theory to addressing and resolving the injustices of our non-ideal conditions. But it is important to recognize that a non-ideal piecemeal approach does embody a kind of method of doing philosophy that implicitly assumes and is guided by more abstract philosophical principles and reasons. Libertarian discussions are guided by their general acceptance of *laissez-faire* principles and property rights, and “piecemeal” libertarian discussions involve the application or guidance of these principles. But the more general philosophical questions of ideal theory still remain: how are we to justify libertarian *laissez-faire* property rights and economic liberties, in light of our other commitments to individual freedom for all, social equality, human welfare and well-being, and so on? There’s no escaping these questions. So, in the end the “piecemeal” approach is philosophically dependent on the more general fundamental questions of political philosophy. And how are these principles to be justified?

If one denies reflective equilibrium entirely, then philosophical intuitionism seems the default position. Even naturalism in moral philosophy (which Rawls is also criticized for incorporating into his arguments for stability) requires appeals to fixed philosophical intuitions at some point if it eschews reflective equilibrium entirely. And philosophical intuitionism is often typical of libertarian arguments. Libertarians regard absolute property rights and freedom of contract as undisputable requirements of individual freedom. So Nozick just assumes without argument that in a Lockean state of nature appropriation of unowned things, whether by first possession or investing one's labor, results in absolute property rights to a thing, without seriously considering other alternatives. Given the nature of absolute property – that it involves rights of exclusion against all the world and absolute restrictions on others' freedom—there is no serious attempt to show that absolute property rights realize individual freedom and do so better than other alternative qualified conceptions of property rights implicit in the liberal welfare state or property-owning democracy.

Flanigan and other intuitionist libertarians engage in a similar enterprise, but at a more local level. They take certain policy problems, propose libertarian solutions, and then defend them by arguing that the consequences of rejecting these libertarian solutions involve unacceptable implications, such as the violation of certain important rights, or loss of welfare to the less advantaged, and so on. But this still leaves the bigger question of how a society justifies to its members the absolute property and contract rights that are in the background of such policies and that are applied in this particular instance. Perhaps the assumption is that by assembling large numbers of piecemeal arguments, we are validating these libertarian principles. But that is a kind of partial reflective equilibrium, where the assumption is that general principles are validated by arguing that they conform to our

considered moral convictions in particular cases. It is an application of the method implicit Sidgwick's *Methods of Ethics* to libertarianism. Begin with certain philosophical intuitions about property rights and economic freedom of contract, together with other freedoms, and then verify them by arguing that they result in implications when applied that are more reasonable than alternative distributive principles of justice, such as utility, the difference principle, etc. This method may escape some of the complexities and ambiguities alleged to be implicit in Rawls's method of general and wide reflective equilibrium, which seeks to bring all relevant considered convictions of justice, general and particular, into reflective equilibrium with principles of justice. But the partial method does so at the expense of dogmatically assuming that certain abstract philosophical intuitions are simply given and unassailable.

Finally, Flanigan endorses R.M. Hare's frustration with Rawls, his claim that the argument is so "rigged" as to lead to the conclusions Rawls seeks. This resembles the contention by David Enoch that public reason philosophers such as Rawls make ad hoc assumptions. To make good on this claim, one has to show why the assumptions are "rigged" or ad hoc, and are not integral to Rawls's fundamental assumptions. Hare is frustrated because Rawls's assumptions indeed seem to lead to the conclusions Rawls says they do. Hare might make different assumptions – for example he assumes a sympathetic spectator who knows all relevant facts about persons and their desires and applies Sidgwick's principle of impartial benevolence (both of which Rawls rejects for reasons implicit to his position), then ends up concluding that the utilitarianism is the most reasonable conception of justice. The real debate here is not about whether assumptions are rigged or ad hoc, but whether the assumptions are reasonable or true and fit with other assumptions made, and whether they lead to the conclusions inferred from them, and then

fit with our considered judgments in general and wide reflective equilibrium better than other reasonable alternatives. Rawls contends that on this score, utilitarianism does not fare well. I believe the same is true of libertarianism.

4

Reply to Alexander Kaufman

I

Kaufman on the Significance of Fair Equality of Opportunity

Alex Kaufman in his contribution focuses on the fair equality of opportunity principle, which he regards as occupying a central place in Rawls's account of distributive justice. He develops this claim at length in his important book, *Rawls and Egalitarianism*. Kaufman contends that the difference principle has a more limited role in Rawls's account of distributive justice than is customarily understood. He rightly contends that the difference principle is not an allocative or prioritarian principle of the kind John Roemer envisions, which directs society to maximize the income and wealth going to the least advantaged. In Section 2 of his paper, "Reasoning about the Justice of Social Institutions," Kaufman justifiably claims that to merely focus on the difference principle as Rawls's standard of distributive justice falsifies Rawls's theory. Though Kaufman later suggests that I am guilty of doing this, I think he makes an important point. In this connection, it's important to note that Rawls himself refers to the difference principle as addressing "distributive justice in the narrow sense," which suggests that the difference principle does not seek to address all requirements regarding the just distribution of income and wealth in a democratic society. As Kaufman makes clear, both the first principle and fair equality of opportunity imposed significant distributive requirements and constraints. The fair value of political liberties requires mitigation of economic inequalities

that undermine equal rights of political participation with equal opportunity for political influence—here Rawls discusses the important role of inheritance and wealth taxes to mitigate the concentration of wealth (TJ 246-247 rev.). Moreover, the principle of basic needs is presupposed by the first principle and imposes a social minimum independent of the difference principle that guarantees a minimum “level of social and material well-being and of training and education.” (PL 166) It is a “constitutional essential” Rawls says that is required to guarantee adequate resources to enable society’s members to effectively exercise their basic liberties and take part in political and social life. (PL 7, 166, 228-229) As I contend in my reply to Salvatore and Thomas, under ideal conditions Rawls does not seem to think of this guarantee of basic needs as a demogrant or universal guarantee to a basic income granted to all; rather it is regarded as a “principle of redress” (a term he uses elsewhere) that addresses the needs of all who are unable to adequately support themselves for reasons of disability, bankruptcy, age, etc.⁸⁶

Rawls is also clear that the just savings principle conditions the social minimum required by the difference principle, (TJ 266 rev.) as apparently does the duty of assistance of burdened peoples (LP

⁸⁶ See here TJ 244 rev., where Rawls, in discussing the distributive institutions of a property-owning democracy, says “the transfer branch guarantees a certain level of well-being and honors the claims of need.” Earlier he says, TJ 243 rev. “Finally, the government guarantees a social minimum either by family allowances and special payments for sickness and employment, or more systematically by such devices as a graded income supplement (a so-called negative income tax).” This is ambiguous, since in TJ, unlike later works, Rawls normally uses ‘social minimum’ in connection with the difference principle; but then family allowances and special payments for sickness also would seem to apply to people who are unable to work, whereas graded income supplements would seem to apply under the difference principle to those who work but whose combined income from wages and shares of wealth do not rise to the social minimum set by the difference principle.

106-113). But Kaufman puts his greatest emphasis on the principle of fair equality of opportunity (FEO) as a distributive principle of justice. Kaufman, like Scanlon and others (including myself in chapter 3) contend that: given that FEO aims to even out the effects of the social class individuals are born into, then in order to give those born with similar natural talents the same chances of education and culture and to compete for social and economic positions (IJ 245 rev.), FEO requires fair distribution of not simply educational and job training resources throughout citizens' careers, but also prenatal care, universal child care and development benefits to less advantaged families; a universal health care system, and other resources, to enable all citizens to develop and exercise their capacities so that they can take fair advantage of the educational, employment and cultural opportunities available to them throughout their lifetimes.

I agree with all this, as I think chapters 3-4 and elsewhere in my book make clear.⁸⁷ Kaufman's striking thesis however is that these requirements of the fair equal opportunity principle are so substantial that they significantly delimit the difference principle's role in the ultimate determination of the fair distribution of income and wealth in a democratic society. This is where Kaufman distinguishes his position from mine. He contends that I overemphasize the role of the difference principle, and underestimate the significant distributive requirements of the basic-needs principle and fair equality of opportunity. As Kaufman says:

⁸⁷ More generally, see the lengthy half page list of page references under "fair equality of opportunity" in the index to my book, where FEO is addressed nearly 60 times throughout the book.

Freeman in some instances treats the requirements of a social minimum and fair equality of opportunity as mere preconditions to the application of the difference principle to questions of justice. To the extent that he isolates his analysis of the institutional requirements of the difference principle from his discussion of the other two requirements of distributive justice, Freeman slights the integrated character of Rawls's approach to reasoning about justice. In addition, I will argue, Freeman underestimates the scope of the requirements of fair equality of opportunity (Kaufman 2020, 109).

Later Kaufman says that, though I endorse the many requirements of fair equality of opportunity, still I regard it as merely a supplement to the difference principle. By contrast, Kaufman says of the fair equality of opportunity principle: "This principle does not set out requirements of justice *supplementary* to the difference principle. Rather the equal opportunity principle sets out the *primary requirements* of distributive justice in institutions." Here I disagree. Fair equality of opportunity gains a secure footing only once the economic system required by the difference principle is determined and in place.

II

The Respective Roles of Fair Equality of Opportunity and the Difference Principle

II.1. To assess Kaufman's criticisms of my position, it would be helpful to review what I take to be the respective roles of the fair equality of opportunity principle and the difference principle. I do not see FEO as merely supplementary to the difference principle, but rather as *complementary* to the difference principle and also to the first principle of justice. Like the first principles' guarantee of equal basic liberties and fair chance for equal political influence,

FEO plays a major role entirely independent of the difference principle in establishing the *social equality* of democratic citizens, regardless of natural or social characteristics or economic position.⁸⁸ Though rarely realized in practice, open positions with formal equality of opportunity is a fundamental precondition of social equality. Fair equality of opportunity presupposes formal equality of opportunity, and adds that for it to be fair, a society must go to considerable lengths to take substantive measures that guarantee similar chances of child development, education, training, and cultural benefits for persons similarly motivated, so that all may occupy open social positions and offices solely on grounds of qualities and efforts reasonably related to relevant duties and tasks of these positions. (TJ 245-246) I agree with Kaufman that FEO has substantial distributive effects in this and in other respects – not simply in the fair distribution of child development, educational, job training, and cultural benefits to citizens, but also in imposing restrictions on economic inequalities which reinforce and may even add to those restrictions required by the fair value of the political liberties. (TJ 246 rev.)

Furthermore, fair equality of opportunity presupposes the primary good of “*diverse opportunities*, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.” (JF 58). To provide such diverse opportunities a complex variety of public goods are required or otherwise justifiable by fair equality of opportunity (Freeman 2018a, 121-122). In addition to the usual stock of public goods (national defense, public safety, courts and trials and the legal system itself,

⁸⁸ See TJ 91 rev. where Rawls says “We can associate the traditional ideas of liberty, equality and fraternity with the democratic interpretations of the two principles of justice as follows: liberty corresponds to the first principle, *equality to the idea of equality in the first principle together with fair equality of opportunity*, and fraternity with the difference principle” (emphases added.)

including the law of property and contract and means of civil redress, etc.) there are the public education system and educational subsidies for universities and their students, universal child care and early childhood development programs, public health, water and waste disposal works, also a complex modern transportation infrastructure, medical and scientific research, and so on, all of which are preconditions for the possibility of the “diverse opportunities,” fair access to which is required by the fair equal opportunity principle. Moreover, FEO sets the conditions for the fair distribution of social and economic offices and positions that involve the exercise of “powers and prerogatives of office and positions of authority and responsibility.” These are all an impressive array of requirements and social benefits that are subsumed under fair equality of opportunity, and Kaufman is right to emphasize their central importance to justice as fairness.⁸⁹

In all these respects, FEO should be regarded as a principle of distributive justice in a broad sense, that it concerns the fair distribution of diverse opportunities and the many benefits this requires to all members of society. Nonetheless, on my view, Rawls himself did not primarily conceive of FEO as a distributive principle “in the narrow sense” of the fair distribution of income and wealth among society’s members in exchange for their contributions to social and economic activity. Instead, first off, he regarded FEO as a *principle of social equality* in the following sense: In the fair distribution of diverse opportunities for child

⁸⁹ In addition to all this, I go one step further than both Rawls and Kaufman in my book to suggest that FEO should be expanded to guarantee not only the fair opportunity *to compete* for open positions that exercise powers and prerogatives, but also the fair opportunity for all *to exercise* certain guaranteed economic powers, prerogatives and responsibilities within one’s place of work. Therewith FEO guarantees to all working citizens certain rights of economic agency. See Freeman 2018a, 159-163. I discuss this aspect of FEO in connection with my comments on Edmundson’s, Thomas’ and Salvatore’s papers.

developmental, educational and cultural benefits and in the competition for social and economic positions, FEO eliminates formal class distinctions and prohibits unjust discrimination on the bases of race, ethnicity, gender, religion, nationality, sexual preference and other morally irrelevant criteria. Secondly Rawls regarded the fair distribution of formally equal opportunities as a precondition for economic justice and the fair distribution of the remaining primary goods of income and wealth and powers and prerogatives according to the difference principle.⁹⁰ It is in this latter connection that he says: “The role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range” (TJ 76 rev.). I assume Rawls is referring here to distributive justice “in the narrow sense,” by which he means distributions in conformity with the institutions that comply with the difference principle. On my understanding of Rawls, though FEO requires and controls the distribution of opportunities to occupy social and economic offices and positions, and also access to public goods and many social benefits (such as education, health care), the principle is not itself a distributive principle “in the narrow sense” that specifies substantive standards for the *fair distribution of the primary goods of income, wealth, and economic powers and prerogatives among socially productive citizens themselves*. (Again, this is Rawls’s understanding, unlike my “friendly amendment” to FEO, which does impose distributive conditions in the narrow sense in that it guarantees to all citizens certain fundamental economic powers

⁹⁰ Here I assume that the final primary social good Rawls specifies – the social bases of self-respect – is conditioned by distributions and the basic structure of institutions that conform to all three principles as well individuals’ compliance with their natural duties of justice, mutual respect, and so on. It is then the institutions of the basic structure of society in conformity with the principles and other requirements of justice that provide the social bases of self-respect.

and prerogatives.) Rather if FEO is to be regarded as a principle of distribution for Rawls, then its role is to specify the substantive *preconditions for the fair distribution of “diverse opportunities”* to provide citizens access to the “offices and positions” that exercise social and economic powers, prerogatives and responsibilities, and also diverse opportunities to enjoy the “benefits of culture.” FEO then regulates the fair distribution of diverse opportunities and of the social benefits (child care, public education and health care) to specific individuals that make it possible for them to develop and educate their capacities and fairly compete for and take fair advantage of these diverse opportunities themselves mandated by fair equal opportunity. FEO is for Rawls to be sure a *precondition* of economic reciprocity among productive citizens and the fair distribution to them of income and wealth, powers and prerogatives according to the difference principle in exchange for doing their “fair share.” But fair equal opportunity is not itself a substantive principle of distributive justice of these primary social goods in the “narrow sense” that Rawls addresses with the difference principle.

II.2. Now I’d like to say some more about how I conceive the distinctive role of the difference principle:

A. *First Role of Difference Principle.* The difference principle addresses the fair distribution of income and economic wealth that results from the social product jointly created among productive economic agents. Moreover, for Rawls it also addresses the fair distribution among economic agents of economic powers and prerogatives exercised with respect to economic resources and in the production of income and wealth. Here is where the difference principle determines questions of ownership and control of the means of production, and the fair distribution of workers’ and other economic agents’ rights, powers, and prerogatives in their employment. This is the first fundamental role of the difference

principle. In order to fulfill this its primary role—the fair distribution of income, wealth, and economic powers and prerogatives – the difference principle must assume a second fundamental role.

B. *Second Role of Difference Principle – Economic Justice and “The Choice of a Social System”*. Rawls’s position is distinctive, as Alan Thomas and Alex Kaufman emphasize, in that the fair distribution of income and wealth among socially productive agents is not an allocative question, but rather is one of pure procedural justice. This means that the difference principle, in order to fill its role as a principle of distributive justice, also takes on the more general role as a principle of economic justice to be applied to determine “the choice of a social system,” (as Rawls says). In the comparison of alternative social and economic systems the difference principle serves as the criterion that decides what is the most just economic system for a particular society: it is the system that makes the least advantaged better off than any alternative. We can surely recognize unjust distributions without the difference principle – they are all around us. But we cannot finally ascertain what a fair distribution of income and wealth, or economic powers and prerogatives is – until we first know the social and economic system and institutions that make the least advantaged members of society better off in their share of the relevant primary social goods than all alternative systems. Once such a system is in place and economic agents have fully complied with its rules and done their fair share within the institutions of that economic system then distributive shares are fully just. These institutions and their distribution provide the standards by which to assess the institutions and justice of distributions within existing economic systems in non-ideal circumstances. This fundamental role of the difference principle – in determining “the choice of a social system” – is I fear underestimated within Kaufman’s position.

C. Third Role of Difference Principle – The Justice of Social and Economic Positions. FEO provides the standard by which to assess the fair distribution of opportunities to occupy the social and economic offices and positions that exercise powers and prerogatives, authority and responsibilities, as well as educational and child development benefits necessary to that fair distribution. But assuming the first principle and FEO are satisfied, it is the difference principle that ultimately determines the justice of the social and economic system itself within which individuals compete for these positions and receive these benefits. In doing so, the difference principle decides *the justice of these social and economic offices and positions themselves, the nature and scope of the powers and prerogatives that attend them, and the fair distribution of these powers and prerogatives among social and economic positions.* For example, in non-ideal conditions such as our own – a non-ideal system located somewhere between Liberal Equality and the System of Natural Liberty according to Rawls’s typology in TJ § 12 – people of all social ranks might conceivably one day very roughly approximate fair equal opportunities to compete for and occupy social and economic positions under the FEO principle, assuming that the necessary substantial educational and developmental benefits were made available to all. (Recall that Rawls envisioned the combination of FEO with the principle of efficiency in the system of Liberal Equality). Still, the US puts no restrictions on economic inequalities and only very few on the concentration of economic powers and prerogatives. Accordingly many of the positions individuals might have fair equal opportunity to compete for in our capitalist system are themselves unjust because occupants of these positions possess such extraordinary powers and prerogatives of economic control, and they are legally permitted to exercise them in ways that disadvantage not just workers and employees but also the least advantaged members of society. Among such positions, for example, are those that have sole or monopoly ownership of

large economic conglomerates which exercise extraordinary social and economic powers (such as Amazon, Walmart, Fox News, Microsoft, Facebook, and so on); or membership on corporate boards that exclude representatives of workers or the public; or corporate executives and officers with nearly unfettered control over assets and employees; or hedge fund or corporate managers who exercise powers to dismiss all employees and dissolve profitable businesses to sell off their assets for hundreds of millions of dollars. None of these offices and positions, nor the economic positions necessary to sustain them would exist in a social-economic system that complies with the difference principle—whether property owning democracy, liberal socialism, or a social democratic welfare state.

It is then not simply the fair distribution of income and wealth among productive economic agents that is at issue under the difference principle. The difference principle also determines the nature, scope, and limits of the legitimate powers, prerogatives and responsibilities that attend the many offices and positions that are themselves to be fairly distributed according to the FEO principle. It is because the fundamental question of the structure and justice of the economic system itself – including questions of the justice of ownership and control of means of production, the distribution of economic powers and prerogatives among economic agents, and the kinds of legitimate social and economic positions themselves that are open for competition under conditions of FEO – that I regard the difference principle as of such fundamental importance in Rawls's theory of justice. Rather than being an appendage to fair equality of opportunity and other distributive principles, as Kaufman seems to suggest, the difference principle defines the just social and economic framework within which economic agents cooperate, and specifies the legitimate rights, powers, prerogatives and the many social and economic positions subject to conditions of fair equal opportunity

of access within a just economic system. Even were the benefits of the fair equal opportunity principle to be specified and realized as far as possible across different economic systems – welfare-state capitalism, property-owning democracy and the social democratic welfare state, liberal and command economy socialism – we could not assess the justice of each of these social and economic systems, their legitimate offices and social and economic positions, and the fair distribution of income, wealth, and powers and prerogatives among these positions independent of the difference principle.

It is for these reasons that I devote substantial attention in chapters 3 and 4 to the application of the difference principle under ideal and non-ideal conditions, and its application to capitalism and the welfare state, property-owning democracy, and liberal socialism. Kaufman contends that I devote too much attention to the difference principle and its distributive effects, slighting the importance of the fair equal opportunity principle. But here, I aim to follow Rawls himself, who defines the primary role of the fair equality of opportunity principle in relation to distributive justice narrowly construed in terms of the difference principle. Here too it's relevant that Rawls wrote over 120 pages on the difference principle in his many works, and made over 170 references in the indices, with no more than 30 pages and fewer than 50 index references on fair equal opportunity.⁹¹ Were fair equality of opportunity to have the predominant role as a principle of distributive justice within Rawls's account of justice, it seems Rawls would have devoted far more attention and discussion to working out its details than he did. Instead, he left FEO and its implications unclarified in many respects, as he did with the distributive implications of the fair value of political liberties, and focused his

⁹¹ See TJ, § 14, 73-78; § 46, 264-266; § 77, 447-448.

attentions primarily on the complex roles of the difference principle.

III

Remarks on Kaufman's Interpretation of Fair Equality of Opportunity

Now Kaufman is not unmindful of the crucial role of the difference principle. He says: “[T]he difference principle, while lexically subordinate to the principle of fair opportunity, nevertheless transforms both the operation of the fair opportunity principle and the proper understanding of its aims.” But he elaborates this sentence not to bring out the structural implications of the difference principle in “the choice of a social system,” including property owning democracy or liberal socialism, but rather in its distributive effects with respect to fair equality of opportunity. Kaufman says:

For example, while the fair opportunity principle, considered in isolation, would seem to require equal attention to inequalities of opportunity at every level of income and wealth, consideration of the factors that justify the difference principle requires the conclusion that “to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions” (IJ 86).

I understand the referent of the clause Kaufman quotes from Rawls here differently. Put in context, Rawls's statement here refers, not to the difference principle, but to the principle of redress, which Rawls contrasts with the difference principle. In

particular, in discussing the difference principle, Rawls says (here I italicize the entire sentence that Kaufman quotes from):

[T]he difference principle gives some weight to the considerations singled out by *the principle of redress*. This is the principle that undeserved inequalities call for redress, and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for. *Thus, the principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions.* The idea is to redress the bias of contingencies in the direction of equality. In pursuit of this principle greater resources might be spend on the education of the less rather than the more intelligent, at least over a certain time of life, say the earlier years of school.

The principle Rawls is referring to in this (italicized) sentence is not I believe the difference principle, but rather the principle of redress. It is then the principle of redress, not the difference principle, that is said by Rawls to require giving “more attention to those with fewer native assets and to those born into the less favorable social positions.” Rawls goes on to say immediately afterwards:

Now the principle of redress has not to my knowledge been proposed as the sole criterion of justice, as the sole aim of the social order. It is plausible as most such principles are as only a prima facie principle, one that is to be weighed in the balance with others (TJ 100-101 orig./86 rev.).

Here it is noteworthy that the principle of redress is in effect a luck egalitarian principle. For as Rawls says: “The idea is to redress the bias of contingencies in the direction of equality.” In a sentence that shortly follows, Rawls explicitly rejects the principle of redress as the correct reading of the difference principle: “Now the difference principle is not of course the principle of redress.”

Then, on the following page, Rawls says of the difference principle:

It does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race. But the difference principle would allocate resources in education, say, so as to improve the long-term expectations of the least favored. *If this end is attained by giving more attention to the better endowed, it is permissible; otherwise not.*” (TJ 101/87 rev., emphases added)

Here Rawls does not mention fair equality of opportunity but says that the difference principle would allocate educational resources to improve the position of the least favored, and suggests that to achieve this end, devoting greater educational resources to the *better endowed* is permitted –but *only* if that improves the prospects of the least advantaged, “otherwise not.” This is hard to reconcile with Kaufman’s claim that “The difference principle therefore qualifies the application of the fair opportunity principle to require that in providing education and other services to ensure equal opportunity, society should devote more immediate attention to the needs of the least advantaged.” Rawls, as I understand him, holds that, unlike the luck egalitarian principle of redress, neither FEO nor the difference principle *requires* compensating the naturally and socially disadvantaged with greater educational benefits than the more advantaged may have. He

clearly thinks that educational resources are to be allotted “according to their worth in enriching the personal and social life of citizens, including here the least favored,” and that directing resources for this purpose becomes more important as a society progresses (TJ 92 rev.). But still this does not exclude allotting resources “according to their return as estimated in productive trained abilities” (TJ 92 rev.). As he says earlier, so long as this improves the long-term prospects of the least favored, it is *permissible* to devote more resources to the education of the better endowed. One example here might be publicly funding higher education, especially medical, engineering, and natural and social science education and research that benefits the less advantaged as well as everyone else.

On these points, Kaufman and I seem to disagree in our understanding of Rawls: I do not think that either the fair equal opportunity or difference principle *require* that *greater* educational resources be devoted to the natural and social disadvantaged than is devoted to the rest of society. Still I agree with Kaufman that the fair equality of opportunity principle and the difference principle combined *require* society to devote substantial child developmental, educational, job training and retraining, and health care benefits to the naturally and socially disadvantaged, so that they can fully develop their capacities and enjoy the benefits of culture, and do so in such a “way as to provide for each individual a secure sense of his own worth” (TJ 101/87 rev.). This may indeed result in a society, particularly in non-ideal circumstances of extensive poverty and vast inequalities such as in the US, having to devote greater resources to enable the naturally and socially disadvantaged to take advantage of educational, employment, and cultural opportunities. I agree with Kaufman’s interpretation here, and his work magnifies the crucial importance of this fact. I only disagree with the contention that a society *must* provide the naturally and socially disadvantaged with comparatively greater

opportunity benefits, since that in effect makes fair equality of opportunity and the difference principle both luck egalitarian principles of redress and compensation for disadvantage. If that were the required interpretation of Rawls's second principle, it would imply that society could satisfy the principle of redress interpretation of FEO by devoting greater educational resources to increase the opportunities of the less endowed than to the better endowed. But by increasing the opportunities of the least advantaged in this particular way, the tradeoff is that the less advantaged are worse off in absolute terms than they otherwise would be in their share of income, wealth and economic powers and prerogative – the primary goods that come under the difference principle. For society has neglected to devote sufficient educational and other resources to developing the talents and skills of the better endowed “so as to improve the long term expectations of the least favored.” (*ibid.*)

In saying that “society should devote more immediate attention to the needs of the least advantaged” (Kaufman 2020, 111), Kaufman seems to interpret the fair equal opportunity principle similar to the way that luck egalitarians understand substantive equality of opportunity: as being in effect a luck egalitarian principle that compensates the less advantaged with greater developmental, educational and employment opportunities, independent of questions of the economic benefits of income, wealth, and economic powers and prerogatives this brings for them. Perhaps Kaufman's point is that fair distribution of these primary social goods according to the difference principle will take care of itself so long as fair equal opportunity is guaranteed, with opportunities being distributed in ways that favor the least advantaged. But I see little reason to have that degree of confidence. We can imagine a public educational system that provides no benefits to the more advantaged but requires them to pay full tuition to cover their complete costs, while putting all

public funds into educational and child development benefits for the less advantaged. Such extensive affirmative action for the less advantaged might result in greater equalization of substantive opportunities, but it would not be to the greatest advantage of the least advantaged in terms of their share of income, wealth, and economic powers and prerogatives. There is a tradeoff in maximizing substantive opportunities for education and employment for the LAG, and it comes in the substantially reduced shares of income, wealth, and economic powers and prerogatives that otherwise would go to them.⁹²

Conclusion

Kaufman says in concluding his discussion, “The difference principle ensures that institutions assign priority to realizing opportunity for the least advantaged persons, that opportunity is understood in terms of the chance to realize equal citizenship, not the opportunity to leave others behind...” (Kaufman 2020, 116).

⁹² Kaufman’s argument is not helped by the priority rule Rawls sets forth for non-ideal conditions: “an inequality of opportunity must enhance the opportunities of those with lesser opportunity.” This is not a principle that says LAG are themselves due *greater* substantive opportunities than those with greater advantages, but rather just the opposite, that in circumstances where they have fewer opportunities than the more advantaged, the inequality of opportunities must benefit them. From the preceding page it is clear that Rawls is here talking about nonideal circumstances of a hierarchical class society like the privileged land-owning classes Burke and Hegel argue for, which denies even formal equality of opportunities; or more familiar to us, a society that denies women or racial minorities equal opportunities to compete for open positions. Rawls says the only way to justify such an unequal arrangement is to show not only that everyone including those with fewer opportunities benefit from inequality of opportunity, but also demonstrate that they would be worse off under conditions of equal opportunity, and that “a wider range of more desirable alternatives is open to [those with lesser opportunities] than would otherwise be the case” under conditions of equal opportunity (I] 265).

This is the important point that Kaufman's view brings out – that in the position combining the difference principle with FEO – Democratic Equality – the difference principle qualifies the Liberal Equality interpretation of FEO, such that greater focus on opportunities of the least advantaged class is required, and FEO is not guided by the principle of efficiency to create a meritocratic society that leaves the least advantaged behind. I agree with this important point, which Kaufman underscores so well. But neither the difference principle nor FEO require “assign[ing] priority to realizing opportunity for the least advantaged persons” (*ibid.*), since, as Rawls says, the difference principle is not the compensatory principle of redress – a luck egalitarian principle. Opportunities to occupy diverse social and economic positions is but one of the primary social goods, whose distribution is regulated by the second principle—the fair equality of opportunity principle. By focusing primarily on the fair distribution of diverse opportunities regulated by fair equality of opportunity principle, to the exclusion of the fair distribution of income, economic wealth, and economic powers and prerogatives among all working members of society, Kaufman's interpretation neglects the fundamental role of the difference principle in determining “the choice of a social system” – whether property-owning democracy, liberal socialism, or the capitalist welfare state – and its essential role in deciding the fair distribution of income, wealth, economic powers and prerogatives, therewith ownership and control of the means of production and their fair distribution. On my interpretation of Rawls's second principle, none of these are questions are to be determined by the fair equality of opportunity principle.

5

Reply to Ingrid Salvatore

In chapter 4 of my book, entitled “Property-Owning Democracy and the Difference Principle,” I reconstruct and expand upon Rawls’s argument against what he calls “welfare-state capitalism.” He argues that WSC cannot satisfy any of the three essential requirements of his principles of justice.

Welfare-state capitalism... rejects the fair value of the political liberties, and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands. And although, as the name ‘welfare state capitalism’ suggests, welfare provisions may be quite generous and guarantee a decent social minimum covering the basic needs, a principle of reciprocity to regulate economic and social inequalities is not recognized. (Rawls, JF, 2001, 137-138)

Later Rawls says:

In welfare-state capitalism the aim is that none should fall below a decent minimum standard of life, one in which their basic needs are met, and all should receive certain protections against accident and misfortune, for example, unemployment compensation and medical care. The redistribution of income serves this purpose when, at the end of each period, those who need assistance can be identified. Yet given the lack of background justice and inequalities of income and wealth, there may develop a discouraged and depressed underclass many of whose members are chronically dependent on welfare. This

underclass feels left out and does not participate in the public political culture” (*ibid.*, 139-140).

I contend in my book that a primary reason Rawls argues that WSC, so conceived, cannot satisfy his principles of justice is that he sees the “guiding goals and principles” of WSC as grounded in restricted utilitarianism.⁹³ Rawls says, “it seems safe to assume that if a regime does not try to realize certain political values, it will not in fact do so” (JF 137). Regardless how much confidence its advocates put in the invisible hand, the workings of a capitalist economy geared towards maximizing aggregate or weighted utility is not going to make the least advantaged members of society better off (measured in terms of their share of income, wealth, social and economic powers, and the bases of self-respect) than they would be in an economy that is intentionally designed to satisfy the principles of justice.

A sizable literature defending some form of welfare state capitalism on non-utilitarian grounds has appeared in the thirty

⁹³ Rawls says that restricted utility’s “concept of a minimum as covering the needs essential for a decent human life is a concept for a capitalist welfare state.” (JF 129) Edmundson challenges my (and I believe Rawls’s) understanding of WSC as grounded in restricted utilitarianism. In my reply to him I discuss several reasons for interpreting Rawls’s account of WSC as grounded in restricted utility. For example, Rawls says in TJ that “the term ‘welfare’ in ‘welfare economics’ suggests that the implicit moral conception is utilitarian.” (TJ § 41, 229) Moreover, immediately after referring to restricted utility’s conception of the social minimum in the capitalist welfare state, Rawls alludes to his subsequent comparison (in JF, Part IV) between welfare state capitalism and property-owning democracy, which suggests that there too he regards WSC as being based in restricted utilitarianism.

years after Rawls last addressed these issues in the early 1990's.⁹⁴ Most notable is Ronald Dworkin's Kantian luck egalitarian account, and also defenses by Jeremy Waldron, Bruce Ackerman, Philippe van Parijs's arguments for universal basic income, and others. I say in my discussion in chapter 4 that Rawls did not consider these alternative conceptions of the welfare state – in part this is because they were developed after 1990, when he last wrote on these issues – and I left open the question whether these non-utilitarian accounts were susceptible to his criticism as the utilitarian conception of the welfare state he addressed. (Freeman 2018a, 144). In the past several years, other defenses of welfare state capitalism have arisen in response to Rawls's criticisms. Many of these argue that if we understand the welfare state differently than Rawls – either as not grounded in utilitarianism but in some other conception of justice (including justice as fairness itself),⁹⁵ or not grounded in capitalism but rather in social democracy⁹⁶ – then welfare-state capitalism better realizes the requirements of the principles of justice than does either property-owning democracy or liberal socialism. Libertarian liberals such as John Tomasi and Jason Brennan thus contend that, since capitalism maximizes wealth, it is in the best position to maximize the position of the least advantaged members of society. These accounts rely on (an overly-sanguine if not Panglossian understanding of the benefits

⁹⁴ Though *Justice as Fairness: A Restatement* was published in 2001, it was largely written in the late 1980's and completed in the early 1990's, as the editor Erin Kelly says in the *Editor's Foreword*, xii, before the publication of *Political Liberalism* in 1992. Also, the Preface for the 1999 Revised Edition of *A Theory of Justice*, where Rawls discusses property owning democracy and the welfare state, was prepared for and published in the 1987 French translation.

⁹⁵ For example, John Tomasi, Jason Brennan, Kevin Vallier, and Jessica Flanigan, also Bill Edmundson's comment in this symposium.

⁹⁶ Martin O'Neill, Christian Schemmel, Jeppe von Platz, and also Ingrid Salvatore in this volume, among others.

of) the capitalist invisible hand, and thus deny Rawls's contention that if a regime does not seek to realize the difference principle, it will not in fact do so. (JF 137). Others contend that Rawls is mistaken in contending that WSC cannot guarantee the fair value of political liberties or fair equal opportunity, and that with a substantial enough social minimum WSC should also be able to satisfy the difference principle.⁹⁷ They argue that the social democratic welfare state of the kind achieved in Nordic democracies, especially Sweden (at least prior to the neo-liberal turn in the 1990's) is best situated to realize Rawls's principles of justice.

Ingrid Salvatore's contribution is among those who contend that a social democratic interpretation of the welfare state is in as good if not better position to realize Rawls's principles than does the alternatives Rawls defends. Salvatore accepts my interpretation of Rawls's understanding of the welfare state as grounded in restricted utility, but contends that Rawls focuses only on the "residual" welfare state that is characteristic of fundamentally capitalist economies, such as in the United States and in some respects in Britain. The residual view is grounded in capitalism and sees the welfare state as an appendage to it. It descends from the English Poor Laws, she contends, and confers its welfare benefits on the "losers" within a capitalist economy, primarily on people who are unintentionally impoverished or have fallen into poverty because of unemployment, disabilities, or retirement. She contrasts the "residual" with the "inclusive" European welfare states in both Northern and Southern Europe, which were not designed to address (only) the inevitable problems of poverty within a fundamentally capitalist economy. Rather, European welfare states at their best had a more egalitarian aim and were designed to

⁹⁷ See O'Neill 2012; Christian Schemmel 2015; Schefczyk 2013; von Platz (forthcoming).

prevent people from falling into poverty in the first place, by putting in place complex networks of social insurance programs that guarantee the well-being of all members of society. Inclusive welfare states, especially the social democratic variety, provide social-insurance measures with universal benefits for all citizens – health care, high quality public education, child care, retirement pensions, etc.⁹⁸ Inclusive welfare states arose Salvatore contends either as “corporativist” responses to socialism, as in Germany, Italy, perhaps France and other southern countries; or they were designed to realize social democratic egalitarianism, as in Nordic countries, especially Sweden.

I think Salvatore’s and others’ distinction between the residual and the inclusive welfare state is very helpful in understanding important differences within the welfare state. Inclusive welfare states are not consciously designed to comply with utilitarianism, but are influenced to some degree by more egalitarian positions such as socialism. But I hesitate to identify Rawls’s characterization of welfare state capitalism only with the residual welfare state, or with the welfare state that once existed and still exists though to a lesser degree in the U.S. The residual welfare state is patterned on the classical liberal model of the “social safety-net” state. On Rawls’s account by contrast the capitalist welfare state can provide a “quite generous social minimum,” which is not true in the United States or in so-called ‘residual’ welfare states where the social minimum is conceived as a “safety net” for those who have fallen into or always been in a state of poverty. Moreover, even the US has a “bargain basement social democracy,” as Thomas Piketty

⁹⁸ See Schemmel 2015, who contends the social democratic welfare state does better than POD in meeting many requirements of the difference principle, and that democratic socialism does better than POD in providing for worker autonomy.

says.⁹⁹ Certain welfare state institutions in the US were when instituted and still are to a large degree inclusive or “universal,” including the Social Security pension and disability system, Medicare for everyone over 65, the earliest universal 12-year public education system in the world, subsidized post-secondary grants or educational loans, and unemployment insurance. Moreover between 1932 and 1980 the US had among the most progressive income and inheritance tax systems in the world. (Piketty 2020, 448-449, 453). The US does not however have universal health care or universal child care and other programs that exist in more inclusive welfare states. The US has instead a patchwork system, with Medicare which covers everyone over 65 years, Medicaid for the poor and those with serious physical and mental disabilities, and under “Obamacare,” subsidies for those who cannot afford private insurance.

Salvatore and other advocates of social democratic welfare states are surely correct in arguing, as history shows, that the inclusive welfare states of Western Europe, especially in Nordic countries, have fared far better than the increasingly ragged “safety net” approach that has come to typify the American welfare state. This is reflected in the fact that the US total tax receipts have never risen over 31% of national income, which they currently are, while they are 40% in the UK, 45% in Germany, and over 50% in France and Sweden (Piketty 2020, 457). Unlike the U.S., in European welfare states economic inequalities are not as great, representative democracy is not as tethered to promoting the interests of the wealthy, universal health care enables citizens to take advantage of employment and cultural opportunities, workers have more control and privileges within their work, and the least advantaged have greater protection through a variety of social insurance programs. Rawls recognizes that there are intermediate economic

⁹⁹ Piketty 2020, 490.

systems between POD and liberal socialism. As Salvatore emphasizes, the same is true of welfare state capitalist systems such as the social democratic welfare state, that are intermediate between POD or liberal socialism and the restricted utilitarian version of WSC that Rawls considers. As Salvatore, Schemmel, von Platz, and others argue, the social democratic welfare state is much more akin to property-owning democracy in providing social insurance measures that approximate the requirements of Rawls's principles of justice. Still the question remains whether a welfare state that is not grounded but is still *merged* with a capitalist economy can overcome the objections Rawls raises. I am still skeptical, for the following reasons.¹⁰⁰

I

Political Inequality and Welfare State Capitalism

In *Political Liberalism*, Rawls says one “guideline for guaranteeing fair value seems to be to keep political parties independent of large concentrations of economic wealth in a private property democracy, and of government control and power in a liberal socialist regime” (PL 328; repeated in JF 150). Society must then bear a large part of the cost of organizing and regulating the conduct of elections, Rawls says, and not rely on private funding of political campaigns. Notice that here Rawls is talking about insuring fair value in a property-owning democracy and liberal socialist regime, not in a capitalist welfare state. He does not mean to imply that these regulations of financing political campaigns would be sufficient to guarantee the fair value of political liberties

¹⁰⁰ See Thomas 2017, chapter 7, “Rawls’s Critique of Welfare State Capitalism,” which provides persuasive arguments against social democratic versions of the welfare state and in defense of Rawls’s position. My remarks have benefitted from his critical assessment.

in a welfare state capitalist society. Five sections later, Rawls mentions several measures “essential to maintain the fair value of political liberties”: among these are “public financing of political campaigns and election expenditures, and various limits on contributions and other regulations” (PL 357), with “the prohibition of large contributions from private persons or corporations to political candidates...” (*ibid.*, 358). He adds “more even access to public media; and certain regulations of freedom of speech and of the press (but not restrictions affecting the content of speech” in the *Restatement*. (JF 149). Rawls then condemns the U.S. Supreme Court’s decision in *Buckley v. Valeo*, striking down the 1974 Campaign Reform Act provisions that limit private contributions to political campaigns on grounds they violate freedom of political speech. Rawls claims these decisions were serious mistakes of justice that undermine citizens having “roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class. It is precisely this equality which defines the fair value of the political liberties” (PL 358).

It is easy to conclude from Rawls’s discussion of campaign finance legislation in the U.S., as some have, that Rawls thought here too that these measures were sufficient to guarantee the fair value of political liberties in the American capitalist welfare state. But Rawls implicitly denies these measures are adequate in his assertion (quoted above) of welfare state capitalism’s inability to realize the fair value of the political liberties. Rawls conceived of capitalist economies as concentrating wealth predominantly in the hands of a class of private owners, and thought that there is little possibility of insulating democratic politics from the influence of such concentrated wealth. This is one of the primary reasons for effectively dissolving the capitalist class by the protective measures of a property-owning democracy and liberal socialism. He did not think that the prophylactic measures he endorsed in *Political*

Liberalism, designed to insulate politics from the influence of concentrated wealth, were ever going to be adequate to that purpose in any capitalistic economy. As I discuss in my book (Freeman 2018a, 144-145) even if direct interference in elections by wealthy interests is neutralized by public financing of campaigns and prohibitions on private contributions, there are too many indirect ways for them to gain unequal access to the political forum and influence campaigns and the political agenda which the average person, and especially the less advantaged, do not have at their disposal. As in the U.S. the wealthiest individuals and corporations employ “experts” to deny climate change, and fund institutes, foundations, university programs, and business and law schools to relentlessly promote their libertarian economic interests.¹⁰¹ Wealthy people own and control the content of newspapers, TV and radio stations, and entire communications networks that explicitly advocate their political and economic position, enabling them to largely “control the course of public debate” (IJ orig. 225). The campaign finance measures Rawls, Dworkin, Walzer, Gutmann, and others advocate address a portion of the problem that the deleterious effects of vast wealth inequalities have in capitalist economies on citizens’ equal access to the public political forum and fair political influence. “The wide dispersal of property... is a necessary condition, it seems, if the fair value of the political liberties is to be maintained” (IJ orig. 277/245 rev. ed.).

The question raised by Salvatore’s and others’ defense of the inclusive welfare state is, what is so different about the social

¹⁰¹ See Jane Mayer’s book on the extraordinary influence of the Koch Brothers, the Olins, Mercers, Schaifes, Rupert Murdoch, and other super-wealthy Americans, on politics, the press, non-profit think tanks like the Heritage Foundation and the Cato Institute, and also universities. *Dark Money: The Hidden History of Billionaires Behind the Rise of the Radical Right*, New York, Doubleday 2016)

democratic welfare state that would allow it to overcome these problems of the distorting influence of concentrated wealth and economic inequality to guarantee the fair value of the political liberties? In its favor, the inclusive welfare state is not an appendage to capitalism like the residual welfare state, so it is not driven as much by private and public policies to maximize overall wealth at the expense of the well-being of workers, the environment, public health, and less advantaged members of society. Still, if not an appendage to capitalism, the social democratic welfare state is nonetheless an economy that *merges* capitalism with social insurance programs, and as a result still tolerates large inequalities and the concentration of wealth in a capitalist class. As Piketty says, though “social democratic society may be less unequal than other societies. . . .it remains a highly hierarchical society in economic and monetary terms.” (Piketty 2020, 492). Sweden is the most egalitarian society in the world, Piketty says, and has far less inequality of *income* than the United States because of its high marginal income tax rates,¹⁰² but Sweden still tolerates gross inequalities in ownership of property in economic *wealth*. The top 10% in Sweden still own nearly 60% of economic wealth, while the bottom 50% are far less advantaged with below 10% ownership of economic wealth. This is similar to other welfare state economies in Europe (Piketty 2020, 196, 422-423). These inequalities are not as exaggerated as in the U.S. where the top 10% now have 74% of wealth (*ibid.*, 422), but still they are not so widely different as to guarantee that all citizens’ have a fair opportunity to equally influence a democratic political process. Granted that a more substantial difference exists between the top 1% in the U.S. who have 38% of wealth, while the top 1% in

¹⁰² In 1980 the top 10% of the population in Sweden received 23% of income, and the top 1% received only 4%; whereas in the U.S. in 2018 the top 10% received 48% of income and the top 1% received 22%, almost as much as the top 10% in Sweden. See Piketty 2020, 30, 261-262.

Sweden have but 20% of economic wealth. So clearly there are good reasons to expect better protection for equal political liberties with fairer outcomes in more egalitarian social democratic welfare states like the Nordic countries. But so long as the social democratic welfare state is merged with a capitalist economy that only mildly restricts concentrations and wide disparities of wealth, how likely is it that fair value of political liberties can be realized within a deliberative democracy that concentrates its efforts on promoting justice and the common good? It is in the nature of a capitalist economy, even the social democratic welfare state, not to mitigate the concentration of wealth and equalize its distribution anywhere near the degree as a property-owning democracy that requires the widespread distribution of economic wealth across all members of society.¹⁰³

The point is that a just society has to make conscious efforts to *guarantee* the fair value of political liberties, as a matter of design.¹⁰⁴ It's not sufficient to achieve fair political value because of a fortuitous set of political circumstances. Even if it be assumed that Sweden or Norway are sufficiently egalitarian that they come close to achieving equal chances for political influence, still the basic structure of neither society is designed to ensure equal opportunity of political participation and influence for all citizens. It is only because of a set of contingent circumstances that Swedish politics were dominated by the Social Democratic Party for many years, which pursued legislation to help promote economic equality.¹⁰⁵

¹⁰³ Liberal and democratic socialism eliminate private concentration of wealth, but this does not guarantee the non-concentration of economic power and control since it is now prone to fall prey to the concentration of political and bureaucratic powers. See my reply to Bill Edmundson.

¹⁰⁴ I am indebted to Pierce Randall for this and the following paragraph.

¹⁰⁵ The Swedish Social Democratic Party formed a governing coalition in 18 of the 22 elections from 1932 to 2006, with the exceptions of 1928, 1976, 1979, 1991.

The same is true of the effects of steeply progressive taxes during the Democratic Party's political predominance from the New Deal in the 1930's through the 1960's Great Society Programs and until the eventual election of Ronald Reagan in 1980. These examples show that no basic structure can count on a permanent political majority of left- or center-left political parties. Since globalization in the 1990's and financial liberalization, Sweden has reversed many of its social democratic policies, and inequality has increased considerably. There is no reason, given current trends, to believe that Sweden's more egalitarian distribution of income is a permanent feature of its basic structure rather than a contingent outcome of rare electoral success by a particular political party.

The basic tendency Rawls identifies is that capitalist countries, whether or not they have a generous welfare state, will concentrate political power largely in the hands of capitalists, and there will be continual pressure downward to decrease government transfers and upward to privatize government functions and increase the role of markets in distributing wealth. That trend is going on in all capitalist countries currently, because there are structural features of capitalism, in ways it organizes the basic structure of society, that encourage it.

Finally, Salvatore contends that one way that residual welfare states clearly differ from inclusive ones is that the least advantaged are not politically despondent in inclusive welfare states, and have more reason to actively engage in political life. Rawls's claim – "This underclass feels left out and does not participate in the public political culture" – does not then apply in a society where social insurance programs benefit the middle class as well as the less advantaged and mitigate the need for safety net poverty programs addressed only to the poorest. This seems an accurate comparison between the residual and inclusive welfare states. But it still does not address the problems of the unequal influence the wealthy

have on elections and the political agenda in a capitalist society, and the public's knowledge of such unequal and unfair political influence.

II

Fair Equality of Opportunity and Powers and Prerogatives of Social Positions

Among the primary social goods are those Rawls describes as “powers and prerogatives of offices and positions of authority and responsibility.” The distribution of these social goods is to be determined by the second principle of justice, including both fair equality of opportunity and the difference principle. Under FEO Rawls discusses measures designed to guarantee citizens, regardless of social class, the fair opportunity to compete for offices and positions of authority and responsibility, as well as gaining fair access to educational opportunities to develop their capacities, knowledge, and skills, and take advantage of the benefits of culture. He regards universal access to health care as among the measures required for citizens to take advantage of fair equality of opportunities. As emphasized in Alex Kaufman's comment and my reply, FEO requires a high-quality public educational system, substantial support for colleges and universities with subsidies for post-secondary education, childcare and child development programs, job training and retraining throughout worker's lifetime, and other measures. These measures are or can be provided by the social democratic welfare state as well as POD and liberal socialism. The respects in which social democracy merged with a capitalist welfare state would fall short of the requirements of Rawls's principles of justice is in its failure to sufficiently mitigate economic inequalities required by fair equality of opportunities and the fair value of political liberties, and by not guaranteeing fair

economic reciprocity required by the difference principle. Since I've discussed the mitigation of inequalities elsewhere in my replies, I won't go into that further here, but will discuss the fair distribution of "powers and prerogatives."

Rawls says little about the distribution of "powers and prerogatives" themselves apart from the "offices and positions of authority and responsibility" they accompany. He means social and economic powers and prerogatives – the distribution of political powers is covered by the first principle's requirement of equal political liberties and rights of participation. Rawls says, significantly, "Powers and prerogatives of offices and positions of responsibility are needed to give scope to various self-governing and social capacities of the self".¹⁰⁶ This implies there are strong reasons to guarantee all citizens, including the least advantaged workers, at least an adequate share of powers and prerogatives in economic institutions, including their workplace. I contend in my book that social and economic powers, prerogatives, and responsibilities include powers of economic agency and that the second principle requires their fair distribution. This includes powers to exercise some degree of discretionary control over one's time and responsibilities at work, as well as workers' participation in decisions regarding the firm, such as co-determination rights.

Rawls says questions of the private vs. public democratic ownership and control of means of production should be left up to determination by application of the second principle of justice to a society's historical and cultural circumstances. There are at least three questions here. First, what are many social and economic offices and positions that exercise economic powers and prerogatives that individuals have fair equal opportunity to compete for and occupy? Second, what are the economic powers,

¹⁰⁶ Rawls, "Kantian Constructivism in Moral Theory," in Rawls 1999, 313

prerogatives and responsibilities that go with each of these positions? Third, what is a fair distribution of powers, prerogatives and responsibilities among those who occupy these many social and economic positions? One way to specify the many social and economic positions as well as the powers, prerogatives, and responsibilities that attend them is according to the demands of the economic system that best comports with the requirements of the difference principle. Assuming that freedom of economic contract and economic association is guaranteed by the difference principle to a suitable degree, many of these questions will be settled by it and considerations of economic efficiency. But this still does not settle what might be meant by the fair distribution of powers and prerogatives themselves to specific individuals, as opposed to the offices and positions that exercise them. Rawls speaks of an “index of primary social goods” as the distribuend of the difference principle, which includes powers and prerogatives along with income and wealth and the social bases of self-respect.

How are these powers and prerogatives to be specified and how are we to understand their fair distribution? One way to conceive of their specification is according to the demands of the offices and social positions that are permitted by the difference principle and that are distributed and occupied according to the FEO principle. The least advantaged are conceived as occupying a particular social position, that of the least skilled, least paid workers. Given Rawls’s claim that powers and prerogatives are necessary “to give scope to various self-governing and social capacities of the self,” as well as his suggestions that “meaningful work” is a basis for self-respect,¹⁰⁷ surely a fair distribution of economic powers and prerogatives under the difference principle

¹⁰⁷ This is one way to understand Rawls’s several references to “meaningful work” in *A Theory of Justice*. See, TJ 290/257 rev. Also, in connection with the Aristotelian Principle see TJ orig. 425/373 rev., and Social Union, TJ 529/464.

would guarantee the least advantaged a social minimum that includes certain fundamental powers, privileges and responsibilities in their work – discretion regarding breaks, rotation of tasks, and other decisions about how they spend their workday.

According to the traditional common law *laissez-faire* labor contract that is still the default assumption in the U.S., workers have no protections or even safety guarantees and only those powers, privileges and responsibilities employers allow them to exercise – normally none at all for most unskilled labor positions (migrant farm workers, cleaning and janitorial work, meat packing, etc.). Rawls says that in a well-ordered society, “the worst aspects of the division [of labor] can be surmounted: no one need be servilely dependent on others and made to choose between monotonous and routine occupations which are deadening to human thought and sensibility” (TJ 529/ 464 rev.). One reason for this is the guarantee of certain fundamental powers and prerogatives in the workplace: if they are made part of the basic minimum guaranteed by the difference principle, the *laissez-faire* employment contract would be incompatible with the second principle. If this is not guaranteed by the difference principle itself then it can be through the fair equality of opportunity principle, which has priority over the difference principle and economic efficiency. As I’ve discussed in reply to Edmundson and Thomas, I suggest in chapter 4 of my book¹⁰⁸ that the fair distribution of economic powers and prerogatives required by the difference principle include a basic minimum of discretionary powers at work that is guaranteed for the least advantaged by fair equality of opportunity principle itself – which means that this basic minimum is not subject to political or economic trade-offs or bargaining for the sake of greater income and wealth, even for the least advantaged themselves. There are better ways to guarantee fully

¹⁰⁸ See also my earlier books Freeman 2007a, 106-107; Freeman 2007b, 135.

adequate shares of income and wealth to the least advantaged – by income supplements and family allowances – than by allowing workers to alienate their powers of economic agency in the labor contract in exchange for greater income. Fair equality of opportunity then would guarantee to all citizens fair opportunities to compete for and occupy open social and economic *positions*, and in addition the fair opportunity to exercise certain fundamental powers and prerogatives of economic agency in their employment, during work, in both their day to day tasks and also in having a voice in determining the policies within the firm for which they work. Given the priority of fair equality of opportunity over the difference principle and economic efficiency, the fundamental powers and prerogatives it guarantees and that go with each social and economic position would not be subject to economic bargaining typical of laissez-faire capitalist employment contracts, nor would they be subject to collective bargaining within labor contracts in a social democratic welfare state. I discuss these issues further in my replies to both Edmundson and Thomas and will not go further into them here.

Whether guaranteed by the difference principle, FEO, or the combination of these principles, workers having discretionary powers and responsibilities are a crucial requirement of the second principle, and should be regarded as a crucial feature of property-owning democracy and liberal socialism. Without powers of discretionary control, workers are, as Elizabeth Anderson makes vividly clear in her book *Private Government*, simply the tools of their employers to be exploited for their employers' benefit. The capitalist wage contract in the U.S. is, with few exceptions,¹⁰⁹

¹⁰⁹ The exceptions regulating employment are mainly OSHA health and safety requirements on workplaces. There are also protections against employment discrimination on grounds of race, color, religion, nationality, and gender, and against sexual harassment, under Title VII of the Civil Rights Act.

grounded in 19th century common law laissez-faire law of contract, where the default assumption is that the employer has complete control over the time, activities, and responsibilities of workers during the workday, and can even monitor and restrict the workers' activities outside of work, and dismiss them for any reason. For many low wage workers, the workplace is, as Anderson explains, a virtual dictatorship during the workday, with no relief except a right of exit, with most workers having no other options except to move on to the same circumstances with another employer.

One reason I emphasize for interpreting fair equality of opportunity as guaranteeing workers some degree of economic powers, privileges and responsibility in their workplace is that it is a condition of the primary good of self-respect. In this connection Salvatore says, "For Freeman, the relation between work and self-respect, as well as the sense in which having a meaningful job is among the human goods, must be taken as a true fact of human nature, an empirical claim supported by "psychological laws" (LDJ, 162). By "human nature" she is referring here to my appeal to Rawls's "Aristotelian Principle," (TJ § 65) the "psychological law" he mentions to explain why meaningful work is among the "human goods." Of course, as Salvatore and others note, the value assigned to work is in large part cultural, and surely people can be conditioned to regard work as repugnant and live quite well, as elites so often do, but only so long as others do the necessary burdensome and repugnant work for them. But the intellectual, artistic, and other cultural activities often valued by elites itself involve a kind of labor, since they require educating and exercising distinctly human capacities. "Meaningful work" engages one's developed capacities, and excludes the deadening, exploitive and alienating work Anderson discusses, where workers have virtually no discretionary powers or responsibilities.

Salvatore and others rightly contend that the focus on workers/employees exercising powers, prerogatives, and responsibilities is a crucial feature of the social democratic welfare state, and that this is one of the major contrasts with welfare state capitalism as Rawls conceives of it. It is a major reason cited as to why the social democratic version of the welfare state satisfies the requirements of Rawls's principles of justice as well as does POD (which according to Salvatore has problems of its own that the SDWS does not have.) The powers exercised by labor unions in collective bargaining, including worker co-determination or co-management rights – to be represented and have rights to participate and vote in decisions regarding a firms' policies and personnel decisions – are among the crucial guarantees that protect the economic agency of workers and employees in the social democratic welfare state, property owning democracy, and liberal socialist regime.

I recognize that the protections and benefits workers potentially exercise in social democratic welfares states are parallel to those in a property-owning democracy or liberal socialism. But given that such benefits are often contingent upon the bargaining power of labor unions, which are subject to change and economic contingencies, I do not see grounds for the claim that social democratic benefits exceed or can even match the guaranteed powers and prerogatives of the economic systems Rawls defends. Nor is the welfare state normally associated with workers generally having ownership shares of the firms they work in and/or equity in others firms or ventures, as in POD. This is a major difference between property-owning democracy and the social democratic welfare state. POD encourages worker partial ownership of firms in a way that the welfare state does not. By receiving a share of firm profits workers acquire the added powers and prerogatives of ownership interests in the firms they work in, on top of those they already have in their capacity as employees. Workers then will be

able to identify more closely with their work and their product, and will be in some sense working for themselves, not simply for capitalist owners.¹¹⁰ Unlike a welfare state capitalist society, a society with substantial worker ownership and control of firms will not have permanent class divisions. So, it seems that, without further argument, that even on grounds of workers' powers, prerogatives and responsibilities, property-owning democracy and liberal socialism are better situated than the social democratic welfare state.

Finally, worker-owned and self-managed firms are one way to realize property-owning democracy as well as liberal socialism. Even if co-management, union representation, and collective bargaining are part of the social democratic welfare state, worker self-management and control of this magnitude is not generally associated with or encouraged by capitalism that merges with the social democratic welfare state. In a property-owning democracy worker-managed firms are supported by government and are given a fair chance to establish themselves, by temporary subsidies and other means. So, at least under ideal conditions of a well-ordered society, I do not see how the social democratic welfare state can be in a *better* position to provide greater opportunities for worker control and exercise of powers, prerogatives and responsibilities in the workplace.

III

Democratic Reciprocity and the Difference Principle:

Rawls says that in welfare state capitalism, “[although] welfare provisions may be quite generous and guarantee a decent social minimum covering the basic needs, a principle of reciprocity to

¹¹⁰ Thanks again to Pierce Randall for making this point.

regulate economic and social inequalities is not recognized. (Rawls 2001, 137-138). The barebones benefits of the social “safety net” are not intended to be “quite generous” in the American or other residual welfare states – instead they are intentionally kept to a minimum to induce recipients to join the minimum-wage workforce. On the other hand, welfare provisions can be and often are quite generous in the inclusive welfare states Salvatore discusses, especially the social democratic welfare states of Nordic countries. Rawls says that, even if welfare provisions are generous, still a principle of reciprocity to regulate economic and social inequalities is not recognized in WSC. It might be argued, however, that within the social democratic welfare state, some degree of reciprocity is realized through collective bargaining measures with labor unions which require that workers receive a greater share of income from industries they work within, and also that they exercise certain economic prerogatives within the workplace and co-determination rights within firms.¹¹¹

It’s questionable however whether collective bargaining and other measures within inclusive welfare states can be said to conform by design to an *egalitarian* principle of reciprocity – at least not the democratic reciprocity required by the difference principle. For the difference principle requires not just that economic income but also economic wealth, along with economic powers and prerogatives, be fairly distributed to maximally benefit the least advantaged. A welfare state which sought by design to structure its economy to achieve this result could hardly be called ‘capitalist,’ – not if Rawls is right and the principles of justice require either POD or liberal socialism, where the capitalist class has effectively

¹¹¹ See Jeppe von Platz’s forthcoming paper “Democratic Equality and the Justification of Welfare State Capitalism” in *Ethics*, who makes such an argument, though he denies that the social democratic welfare states should seek to realize the difference principle.

evaporated due to public or universal private ownership of economic wealth. Here again, the assumption is that, as history shows, the invisible hand, even if it “spontaneously” realizes the benefits of economic efficiency, does not “spontaneously” realize the requirements of the difference principle; they can only be achieved by intentional design. Nor can even the redistribution of income in the social democratic welfare state – through such measures as progressive taxation, income supplements, family allowances, universal health care, generous educational benefits, and other social insurance programs – adequately realize the difference principle; for economic wealth is still concentrated among a small percentage of the population, together with their predominant exercise of economic powers and control of the economy.

Salvatore discusses luck egalitarian foundations for the welfare state, which raises the question whether luck egalitarians seek a distinctive kind of reciprocity in competition with the difference principle. I contend in my book that luck egalitarian conceptions are not intended to achieve reciprocity. They are, as Scheffler and Anderson contend, fundamentally non-relational conceptions of distributive justice which do not conceive of distributive justice in terms of social cooperation among free and equal persons. Nor, I argue, do they require productive reciprocity, or “reciprocity among socially productive citizens”: that members of society contribute their fair share in exchange for the benefits of economic reciprocity. (Freeman 2018a, 149-150) Instead, luck egalitarians regard distributive justice as a matter of redress – compensating the unlucky and assisting the unfortunate, without regard to the social and economic process of production. As Salvatore says, “Their view, we can say, is purely distributive, and does not concern production” (Salvatore 2020, 154).

Salvatore also discusses the luck egalitarian “welfare-without-work view.” She says,

Anything that creates differences among us and that depends on these arbitrary elements of sheer luck, or that does not depend on our genuine choices, is morally unjustified. However, so the argument would proceed, if the reason why we redistribute equally is that people are in fact morally equal, then there can be no reason for distinguishing workers from non-workers (*ibid.*, 160).

But we can distinguish non-workers from workers, even within a luck-egalitarian view, when non-workers freely choose not to make a fair contribution to the joint social product. That is a crucial difference in Rawls’s view, which assumes productive reciprocity as a precondition of the social minimum under the difference principle. This however assumes that government guarantees full employment and serves as employer of last resort. The problem however is non-ideal conditions, where to qualify for the social minimum non-workers may be required to do work that undermines their well-being or does not draw on their special skills – which raises different problems. We have to balance making fair contributions with there being meaningful work available that people feel at home with – otherwise we are exploiting people for reasons of efficiency, as do “workfare” requirements that condition welfare on recipients’ working or looking for work and taking whatever is available.

Many of the benefits associated with welfare state social insurance programs that Rawls accepts are not tied to the reciprocity requirement of the difference principle and conditioned upon working or willingness to work during a substantial period of one’s adulthood. Earned income supplements, unemployment

insurance, retirement benefits, childcare benefits while working all are. But family allowances are designed to benefit children and cover the costs of childrearing and would not be conditioned upon work outside the family itself. Also, universal health care, including disabilities benefits throughout one's lifetime, are conditions of fair equality of opportunity and the principle of basic needs, and apply to all citizens regardless whether they work, as do educational and job training and re-training benefits. Programs designed to address inadequate income or poverty among those who are unable or no longer able to work – housing programs and vouchers, nutrition assistance, and “negative income tax” benefits – also would be guaranteed by the principle of basic needs that is a precondition of the first principle of justice and the effective exercise of basic rights and liberties.

What is not guaranteed by the second principle of justice, or so it would seem, is a universal basic income that is paid to all members of society regardless of income, to those who work, have no need to work, or are unwilling to work. “[T]hose who surf all day off Malibu,” as Rawls notably says “must find a way to support themselves and would not be entitled to public funds” (Rawls 1999, 455 n.7). Salvatore mentions Philippe van Parijs’ countering argument that the absence of compulsory work is part of “real freedom” (Salvatore 2020, 162, n.60). UBI both frees those who do not want to work from having to work, and also has the effect of raising the minimum wage employers must pay low-wage workers, thereby freeing workers from having to acquiesce in coercive working conditions which they have no choice but to accept along with low market wages in a capitalist labor market that puts little value on their labor because of a surfeit of less advantaged workers. The universal basic income seems to be a reasonable response to non-ideal conditions within a capitalist economy such as the United States, with deteriorated social insurance and welfare programs, meager wage supplements, and a

low minimum wage. UBI under such non-ideal conditions does not conflict with the requirement of productive reciprocity under ideal conditions, where the state is the “employer of last resort,” there are adequate social insurance programs in place, workers exercise basic powers and prerogatives in their work, and the economic opportunities of POD or liberal socialism are realized. These, I believe, are the background conditions that Rawls thought must be in place if society is to condition the social minimum under the difference principle on the requirement that individuals must make a fair contribution within the workforce. Rawls did not then advocate “workfare” under non-ideal conditions, especially in a capitalist society such as our own where positions for unskilled workers pay below poverty wages, and workers have virtually no protections or discretionary powers but are treated as instruments of production. When the ideal conditions that would obtain in a just POD or liberal socialist society are not in place, then I think Rawls’s position can allow for a universal basic income of the kind van Parijs suggests – assuming that it is necessary in order to persuade those who are better off to accept a basic income for the less advantaged. A non-universal basic income for the less advantaged whether they work or not would be even more preferable than UBC under non-ideal conditions; for it achieves all the advantages of UBC and does not maintain the same egregious levels of inequality between the most and least advantaged as does a universal basic income.¹¹² I think this should respond to Salvatore’s concerns with the problem of workers being increasingly squeezed and left out of the workforce under conditions of neo-liberal globalization.

¹¹² See Thomas Piketty’s remarks on the reasons for a basic income for the less advantage instead of a universal basic income for all (Piketty 2020, 1002 and 1002n).

Rawls's position should then be amenable to a UBI under non-ideal conditions of a capitalist welfare state, as a workable response to the unfairness of the capitalist labor market, and the resentful attitudes of those who are more advantaged towards programs designed to benefit the less advantaged. In an unjust capitalist economy with its inevitable gross inequalities – including the capitalist safety-net welfare state – which neither rewards workers the fair value of their labor nor provides reasonable income supplements, a universal basic income is a reasonable way to increase the social minimum required by the difference principle. This is especially so given the resistance by the more advantaged to increasing the social minimum in a welfare state capitalist economy. Like the universal retirement benefits guaranteed by the Social Security Program in the US, a UBI is more likely to be widely accepted by middle class members of a capitalist society than would greater welfare payments to the unemployed, or income supplements and other programs that address only less advantaged workers and poorer unemployed members of society.

This develops a central point of my discussion in 'Distributive justice and the Difference Principle' in chapter 3. The requirements of the difference principle differ in non-ideal conditions of a capitalist economy from measures that would apply under ideal conditions of a well-ordered society. Obviously, many measures that would be mandated by the principles of justice within a well-ordered property-owning democracy or liberal socialist economy – such as widespread private or public ownership and control of economic resources – cannot be practicably realized in non-ideal conditions of an existing laissez-faire or welfare state capitalist economy. In order to put into place measures designed to predominantly benefit the less advantaged, a society has to work within the constraints imposed by its existing institutions and public political culture, and make only reforms to the existing basic structure that citizens will tolerate. If a universal basic income is a

more pragmatic way to achieve the purposes of the second principle of justice in a capitalist economy like the US (where the majority of citizens do not accept the difference principle, or apparently any redistributive principle that does not benefit them), then the principles of justice themselves require that society adopt UBI and other practicable measures more likely to maximally benefit least advantaged members of society under those unjust circumstances.

Contrary to G. A. Cohen and others' criticisms of the difference principle, the conditions that would justify universal basic income rarely if ever justify other Pareto improvement measures in non-ideal conditions which are designed *primarily* to benefit the most advantaged – such as tax cuts for the wealthy. These measures are not designed to *maximally benefit* the least advantaged as required by the difference principle, nor do they have such an unintended effect. At best tax cuts for the wealthy have “trickle down” effects of marginally benefitting the least advantaged, in the course of maximally benefitting the most advantaged – thereby realizing “the principle of design” implicit in a capitalist economy devoid of redistributive measures. UBI may then be what justice requires to respond to an unjust economic system predominantly geared towards economic efficiency, distributions according to the contingencies of the invisible hand, and maximizing overall wealth in society. UBI may also be a suitable response within social-democratic welfare state capitalism as well, given the concentration of ownership of capital and the likely resentment of programs designed to exclusively benefit the least advantaged. But just because justice under non-ideal conditions tolerates or requires awarding a basic income to both the wealthy and the poor, the working and voluntarily non-working members of society alike, does not make UBI a measure that should apply in a more just society with the widespread private or public ownership and control of economic wealth whose least advantaged members are

better off than in any alternative economic system. Under ideal conditions, UBI is not simply superfluous; it is unfair to the less advantaged who have paid a share of their income for economic benefits for those who are most advantaged.

IV

Redistribution vs. Predistribution

As suggested in the preceding section, one contested feature of Rawls's difference principle is that its benefits extend to "fully cooperative citizens," which Rawls assumes are those who make economic contributions. "We are not to gain from the cooperative efforts of others without doing our fair share" (TJ 301). At one point he suggests its benefits extend only to those who work or have worked during a substantial portion of their lives (JF 179).¹¹³ A property-owning democracy is structured in such a way that economic wealth is fairly distributed among working citizens; so there will be no class of wealthy persons who live *only* off returns to capital without working during a substantial part of their lives. The "least advantaged" are then assumed to be the least paid workers, those who generally are the least skilled and least educated. Since workers all have a share of economic wealth in a well-ordered property-owning democracy, a portion of their income should normally derive from the returns to the economic assets that they own, whether in the firms they work for or in other investments. The "widespread ownership of productive assets and human capital (that is education and trained skills" (JF 139) are primary among the predistributive measures Rawls refers to. Because of predistributive measures POD does not, unlike welfare state capitalism, need to rely on "the redistribution of income to

¹¹³ I discuss this aspect of the difference principle in chapters 3, 130-131, and ch. 4 of my book (Freeman 2018a).

those with less at the end of each period” but instead guarantees its benefits “at the beginning of each period” (*ibid.*).

Salvatore in her conclusion questions the effectiveness of the predistributive aspect of Rawls’s position. She says, in referring to the evolving global economy where unemployment becomes increasingly likely:

As uncertainty becomes pervasive and the family no longer represents a safety net, managing our own affairs may become a very risky business, making the welfare state and its long-lasting commitment to individual protection the only viable choice. In this sense, POD appears to me as an old-fashioned idea, inextricably embedded in the golden era of industrialism (Salvatore 2020, 168-169).

This implies that the inclusive welfare state will protect the least advantaged working and non-working members of society and others from the risks of unemployment in a global economy by providing many social benefits and services, whereas POD, Salvatore seems to suggest, is not structured to provide such protections. Perhaps the thought here is that, since the POD is predominantly if not exclusively geared towards pre-distribution rather than redistribution, it cannot address problems of unemployment and economic recessions/depressions anywhere near as effectively as the inclusive welfare state capitalism.

I do not interpret Rawls to hold that property-owning democracy is exclusively pre-distributive, in the sense that no portion of the social minimum derives from redistribution of market outcomes to pay for social benefits to the less

advantaged.¹¹⁴ In *Theory*, Rawls clearly conceives of graded income supplements, family allowances, and sickness and unemployment benefits for those who work as requirements of the second principle, (IJ 243 rev.).¹¹⁵ In his discussion of the family, he envisions that the currently unpaid labor of parents, normally women, and caretakers should be compensated, since it is “socially necessary labor” (PL 595-596, 600, JF 167). Also, the social minimum guaranteed by the principle of basic needs which is presupposed by the principle of equal basic liberties is a “constitutional essential” that applies to persons unable to provide sufficient means enabling them to effectively exercise their basic liberties; this too requires taxes and redistribution necessary to meet people’s essential needs for these purposes. (PL 7, 228; JF 44 n.7) And, as for enduring states of unemployment due to economic recessions/depressions, or fluctuations in the global economy, Rawls sees government as not only providing unemployment insurance payments, but also having an obligation to serve as an “employer of last resort,” to address unemployment, which is damaging to the self-respect of democratic citizens.

¹¹⁴ There is a sense of ‘predistribution’ that Alan Thomas and I discuss that connects it with benefits which individuals are entitled to as a matter of pure procedural justice. In this sense, one can contend that in a property-owning democracy or liberal socialism, all entitlements are predistributive as a matter of pure procedural justice – so long as it is recognized that this sense of predistribution presupposes both taxation and redistribution of market outcomes, and that individuals do not have complete rights to all market and other consensual transfers of their income and wealth in a society that conforms to the principles of justice. In this sense, predistribution of entitlements presupposes redistribution of income and wealth to which individuals are entitled.

¹¹⁵ As Thomas Piketty says, in the labor market, the equilibrium price for labor (wages) is “literally a matter of life and death for flesh-and-blood human beings” primarily least advantaged workers in Rawls’s sense (Piketty 2020, 470).

The point then is that predistributive measures should predominate over redistribution of market outcomes in a POD or liberal socialism, not that there is no need for redistributive measures at all. Clearly taxation to pay for public goods, social insurance and basic needs, and other legitimate government functions is redistributive of consensual transfers of income and wealth, but the relevant question in deciding if taxation is redistributive is whether it involves redistribution of pre-existing entitlements. Here it's significant that social insurance programs such as universal health care, social security pensions, and unemployment insurance are predistributive in the sense that (working) citizens are entitled to them when they pay their fair share for these programs during their working life, normally prior to taking advantage of them. In this regard they differ from purely redistributive programs that meet the basic needs of non-working members of society who are unable or unwilling to work. Finally, the predistributive/redistributive dichotomy is itself ambiguous and controversial, but (unlike Alan Thomas perhaps) I do not think that anything crucial rides on it in Rawls's discussion of distributive justice.

Moreover, questions of the likelihood of unemployment of the least advantaged in a global economy is not the issue that should decide between WSC and POD or liberal socialism. Property-owning democracy and liberal socialism are not barred from providing any of the social insurance measures that are characteristic of inclusive welfare state programs. Rawls is concerned with addressing the *capitalist* welfare state, but this does not mean that the social insurance measures typical of the welfare state cannot also apply also in economies that are not capitalist, including property-owning democracy and liberal socialism.¹¹⁶

¹¹⁶ The same is true of democratic socialism and command economy socialism – which also can provide greater, or fewer, social welfare benefits.

Given redistributive measures that provide everyone with a fair share of economic wealth from which they earn income, extensive educational and training benefits to build up human capital, and other measures, redistributive measures should not be as extensive or necessary in these economies as in welfare state capitalism. But what is most significant about POD and liberal socialism for Rawls, I believe, is not simply redistribution resulting in fewer redistributive social welfare programs, but rather the preconditions for democratic redistribution among all members of society: namely, it eliminates the need for a capitalist class that predominantly owns and controls productive resources, with the resulting severe political, economic, and social inequalities and unfairness this inevitably involves.

Conclusion

In concluding I will note a related point regarding redistribution that Salvatore makes: her claim that what is basically wrong with welfare state capitalism is not simply that it does not satisfy fair political value and that its social minimum is set too low to satisfy the difference principle. The added problem rather is that since it is entirely redistributive of pre-existing entitlements, any benefits to the least advantaged is in the form of welfare payments that tend to undermine the self-respect of the LAG. So, we might even grant the argument that under ideal conditions the capitalist welfare state can maximize income going to the least advantaged better than POD. Still the problem remains that WSC undermines the sense of self-respect of the least advantaged, in part because it is redistributive and capitalism affords them no economic powers or prerogatives. What is distinctive about Salvatore's version of this argument is that she rests it, not simply on self-respect but on maintaining the motivation of the least advantaged to vote and take advantage of their political liberties. The problem with welfare

state capitalism is not simply vast inequality and the fact that the most advantaged dominate the political agenda. It's that *because* of redistribution and gross inequality the least advantaged are dispirited and have no will to take part in politics. *Redistribution itself undermines the fair value of political liberties.* This is not an argument that has occurred to me. I would respond that it is only in a predistributive property owning democracy or liberal socialist society that the fair value of the political liberties can be guaranteed. But Salvatore takes a different path and brings her own argument into question, saying that it's not intrinsic to the welfare state that it has this consequence of undermining political equality and fair political value. It is rather a *failure* of the welfare state in non-ideal conditions, and especially of the residual welfare state which permits the accumulation of wealth in too few hands.

Ingrid Salvatore raises many other significant arguments I wish I could address here. I greatly appreciate her contribution and having the opportunity to respond to many of her comments. I am grateful especially for all the time and effort that she has devoted to making this symposium possible.

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References

Ackerman, Bruce and Alstott, Anne. 1999. *The Stakeholder Society*. New Haven: Yale University Press.

Anderson, Elizabeth. 2017. *Private Government. How Employers Rule Our Lives (and Why We Don't Talk about It)*. Princeton: Princeton University Press.

Cohen, Gerald Allan. 2008. *Rescuing Justice and Equality*. Cambridge (MA): Harvard University Press.

Cordelli, Chiara. 2019. "Privatization," *Nomos* LX. Edited by Jack Knight and Melissa Schwartzberg. New York: NYU Press, 113-144.

Edmundson, William A. 2017. *John Rawls: Reluctant Socialist*. Cambridge: Cambridge University Press.

_____. 2020. "The Choice of a Social System. Reflections on a Property-Owning Democracy and the Difference Principle," *Philosophy and Public Issues* 10 (1): 23-42.

Flanigan, Jessica. 2020. "The Rawlsian Mirror of Justice," *Philosophy and Public Issues* 10 (1): 67-97.

Freeman, Samuel. 2007. *Justice and the Social Contract Essays on Rawlsian Political Philosophy*. Oxford: Oxford University Press.

_____. 2007b. *Rawls*. London – New York: Routledge.

_____. 2013. "G.A.Cohen's Critique of Rawls's Difference Principle," *Harvard Review of Philosophy* 19: 23-45.

_____. 2018a. *Liberalism and Distributive Justice*. Oxford: Oxford University Press.

_____. 2018b. "Contractarian Justice and Severe Cognitive Disabilities," in *Disability and Practice*. Edited by Thomas

Hill and Adam Cureton. Oxford: Oxford University Press, 174-203.

Freeman, Samuel. 2018c. "Liberal and Illiberal Libertarians," in *The Routledge Handbook of Libertarianism*. Edited by Jason Brennan, Bas van der Vossen, David Schmidtz. New York: Routledge, 108-124.

_____. 2020. "Democracy, Religion, and Public Reason," *Daedalus* 149 (3): 37-58.

Hayek, Friedrich. 1973. *Law, Legislation, and Liberty*, 3 vol. Chicago: University of Chicago Press.

Kaufman, Alexander. 2020. "Reasoning About Distributive Justice. Justice as Fairness and Basic Social Institutions," *Philosophy and Public Issues* 10 (1): 99-118.

Kelly, Thomas and McGrath, Sarah. 2010. "Is Reflective Equilibrium Enough?," *Philosophical Perspectives* 24: 325-359.

Kolodny, Niko. 2014. "Rule Over None II: Social Equality and Democracy," *Philosophy and Public Affairs* 42 (4): 195-229.

Meade, James E. 1993. *Liberty, Equality, and Efficiency*. New York: Palgrave MacMillan.

Murphy, Liam and Nagel, Thomas. 2002. *The Myth of Ownership: Taxes and Justice*. Oxford and New York: Oxford University Press.

O'Neill, Martin. 2012. "Free and Fair Markets without Capitalism," in O'Neill – Williamson 2012, 75-100.

O'Neill, Martin – Williamson, Thad. 2012. *Property-Owning Democracy: Rawls and Beyond*. Wiley-Blackwell: Malden (MA).

van Parijs, Philippe – Vanderborght Yannick. 2017. *Basic Income: A Radical Proposal for a Free Society and a Sane Economy*. Cambridge (MA): Harvard University Press.

Piketty, Thomas. 2014. *Capital in the 21st Century*. Cambridge (MA): Harvard University Press.

_____. 2020. *Capital and Ideology*. Translated by Arthur Goldhammer. Cambridge (MA): Harvard University Press.

von Platz, Jeppe. Forthcoming. “Democratic Equality and the Justification of Welfare State Capitalism,” *Ethics*.

Randall, Pierce. 2019. *Egalitarian Liberalism and Economic Freedom*. Doctoral Dissertation, University of Pennsylvania.

Rawls, John. 1971. *A Theory of Justice*. Original Edition, revised edition 1999. Cambridge (MA): Belknap Press.

_____. 1993. *Political Liberalism*. New York: Columbia University Press.

_____. 1999. *Collected Papers*. Edited by Samuel Freeman. Cambridge (MA): Harvard University Press.

_____. 1999b. *Law of Peoples*. Cambridge (MA): Harvard University Press.

_____. 2001. *Justice as Fairness. A Restatement*. Cambridge (MA): Belknap Press.

_____. 2008. *Lectures in the History of Political Philosophy*. Edited by Samuel Freeman. Cambridge (MA): Harvard University Press 2008.

Rothbard, Murray. 1977. *Power and Market. Government and the Economy*. Kansas City: Sheed, Andrews and McMeel.

Salvatore, Ingrid. 2020. “Work in Property-Owning Democracy: Freeman, Rawls, and the Welfare state”, *Philosophy and Public Issues* 10 (1), 119-172.

Scanlon, Thomas M. 2003. "Rawls on Justification." In Samuel Freeman (ed.), *The Cambridge Companion to Rawls*. Cambridge (MA): Cambridge University Press: 139-167.

Schefczyk, Michael. 2013. "Background Justice Over Time: Property-Owning Democracy versus a Realistically Utopian Welfare State," *Analyse & Kritik* 35: 193-212.

Schemmel, Christian. 2015. "How (Not) to Criticize the Welfare State," *Journal of Applied Philosophy* 32: 393-409.

Sen, Amartya. 2009. *The Idea of Justice*. Cambridge (MA): Harvard University Press.

Thomas, Alan. 2017. *Republic of Equals. Predistribution and Property-Owning Democracy*. Oxford: Oxford University Press.

_____. 2020. "Freeman on Property-Owning Democracy," *Philosophy and Public Issues* 10 (1): 43-66.

Tomasi, John. 2001. *Liberalism Beyond Justice: Citizens, society and the Boundaries of Political Theory*. Princeton: Princeton University Press.

_____. 2012. *Free Market Fairness*. Princeton: Princeton University Press.

LIBERALISM AND SOCIAL JUSTICE



THE *SH*POLITICS QUESTION
TO POLITICAL REALISM AND
PRACTICE-DEPENDENT THEORY

BY

CARLO LUDOVICO CORDASCO

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The *Shpolitics* Question to Political Realism and Practice-Dependent Theory*

Carlo Ludovico Cordasco

Introduction

Political Realist theorists reject Political Moralism. In particular they reject approaches to political theory establishing a certain “priority of the moral over the political” (Williams 2005, 2), and suggest to theorize around justice or legitimacy by starting from within the realm of politics, in an effort to give greater autonomy to distinctively political thought.¹ In a similar vein, Practice-

* The author wishes to thank two anonymous reviewers for their brilliant suggestions on a previous draft.

¹ See, in particular, Williams 2005, 8: “We reject Political Moralism, which claims the priority of the moral over the political. This is to reject the basic relation of morality to politics as being that represented either by the enactment model or by the structural model. It does not deny that there can be local applications of

Dependent theorists reject practice-independent theorizing with respect to justice. In particular, they reject approaches to political theory which are insensitive to institutions and social practices of a particular order to which our normative theorizing is meant to apply. In fact, they regard institutional and cultural aspects to play a major role in shaping “the content, scope, and justification of a conception of justice” (Sangiovanni, 2008, 138).

Political Realist and Practice-Dependent (from now on PRPD) theorists posit emphasis on widely diverse sets of political facts as major sources of normativity in their theorizing, or rank them differently in shaping their accounts of justice or legitimacy. In this respect, Rossi (2019, 643) provides a useful taxonomy that allows us to distinguish types of realism according to the nature of facts and constitutive features of politics that PRPD theorists take at the core of their theorizing.² Particularly, Rossi highlights three main political facts, or constitutive features of politics – existing cultural and political institutions, facts about how to provide political order and facts about power relations and belief formation – that define three distinct PRPD approaches – respectively, ordorealism, practice-dependence and radical realism. However, in spite of these differences, PRPD theorists seem to share a core commitment to an inherently political “political theorizing”.³ In fact, all those traditions stress that requirements of justice or legitimacy ought to be shaped by anchoring our theorizing to the realm of politics and to its constitutive features. PRPD ways of theorizing are often presented in sharp contrast to ‘moralist’ or

moral ideas in politics, and these may take, on a limited scale, an enactment or a structural form.” See also Geuss 2008; Jubb 2015; Hall 2015; Newey 2010; Philp 2007; Rossi 2012; Rossi and Sleat 2014; Sleat 2012, 2016a, 2016b; Waldron 2013).

² On a more in-depth analysis about what counts as a constitutive feature of politics see, in particular, Burelli 2019.

³ See, in particular, Waldron (2016).

‘practice-independent’ approaches, which are said to take as main sources of normativity for their theorizing moral values that lack anchorage to the constitutive features of political orders and, thus, to consider principles of justice or requirements of legitimacy to be ultimately fact-independent (Cohen 2003).

In this article, I reconstruct the rejection of Political Moralism and Practice-Independent (from now on PMPI) theorizing as motivated by two main connected worries. First, PRPD theorists suggest that PMPI’s reliance on moral values that lack anchorage to the constitutive features of a given political order posits an epistemological concern. In particular, PRPD theorists claim that a theory of justice or legitimacy that takes as major sources of normativity moral values that find no counterpart in the constitutive features of a political order would fail to meaningfully apply to that particular order, as it would omit or misconstrue its constitutive features (Sleat 2016a). Second, PRPD theorists suggest that PMPI’s reliance on moral values that lack anchorage to the constitutive features of a political order also posits a meta-ethical problem. In particular, theories of justice or legitimacy grounded in moral values that find no counterpart in the constitutive features of politics may fail to motivate those who do not internalize such values to comply with their requirements (Rossi and Sleat 2014). In this respect, PMPI approaches would come at the cost of ‘arbitrariness’ from the perspective of the agent who fails to internalize such values.⁴

PRPD theorists seem to offer a strikingly elegant solution to these worries, as they suggest that by maintaining our fidelity to the constitutive features of politics, thus responding to the

⁴ The usage of arbitrariness is borrowed from Enoch (2006) in addressing objections to meta-ethical realism.

epistemological worry, we are able to develop theories of justice or legitimacy that successfully overcome the meta-ethical worry.⁵ The underlying thought is that, if a common interpretative understanding of the constitutive features of a particular order can obtain, and if we are able to extract from it a unique set of normative requirements of justice or legitimacy, our theorizing would cease to be arbitrary, thus responding to the meta-ethical worry.

One crucial challenge that PRPD theories face consists in securing a common interpretative understanding of the constitutive features of politics and a common account of the normative requirements that can be singled out from such constitutive features. In fact, people may disagree on what counts as a constitutive feature of a political order, or on how to rank the relevance of different features, or on what sorts of requirements ought to be extracted.

This sort of conceptual disagreement would bring the meta-ethical worry back into the picture. In fact, if one is able to show that multiple sound interpretative understandings of the constitutive features of a political order are compossible, and that they give rise to incompatible accounts of justice or legitimacy, one would have also shown that PRPD approaches, although able to overcome the epistemological worry, by virtue of defining a set of theories that are consistent with the constitutive features of politics, cannot overcome the worry about arbitrariness, for people may still single out diverse and possibly incompatible normative requirements. If this line of critique is successful, PRPD proponents would be in need to show that such a conceptual disagreement is different in kind, and somehow less burdensome, than moral disagreement.

⁵ This specific proposal is particularly spelled out in Sleat (2016a).

In this article, though, I elaborate on a challenge that comes after one successfully responds to the problem posed by conceptual disagreement. In particular, I shall attempt to show that, even granting that a unique shared understanding of the constitutive features of a given political order can be secured, and that a unique set of normative requirements can be singled out from it, one may still fail to form reasons to comply with such normative requirements.

The same problem has been hinted by Maynard and Worsnip (2018) in their systematic analysis on the possibility of a political normativity that is distinct from moral normativity. The underlying claim is that theories of justice or legitimacy, grounded in a shared understanding of the constitutive features of a political order, do not automatically equip us with reasons to comply with their normative requirements. In fact, one may plausibly agree on what the constitutive features of a political order are, and on which requirements ought to be singled out from them, and yet be unwilling to comply with them.

In this respect, following up on Maynard and Worsnip (2018), I subject to systematic scrutiny a scenario in which conceptual disagreement has been resolved. Assume, indeed, that we form a shared and epistemologically sound understanding of the constitutive features of a particular order; assume further that we acknowledge that such an interpretative understanding calls for a unique set of normative requirements: why should we comply with them? In fact, one may ask, why should we engage with the enterprise of politics at all? Why shouldn't we rather look for more attractive enterprises, whose constitutive features call for different sets of normative requirements? Why not *shpolitics*? The *shpolitics* question, originally known as the *shmagency* question, developed by David Enoch (2006, 2010) with reference to constitutivist theories about agency, demands PRPD theorists to provide reasons for why

one should engage with the enterprise of politics, in an effort to respond to the meta-ethical worry.

In fact, failure to provide such reasons would make one's engagement with the enterprise of politics dependent on agents' motivations. As such, theories of justice or legitimacy, grounded in a shared understanding of the constitutive features of politics, far from successfully overcoming the meta-ethical worry, would bring arbitrariness back into the picture. For if politics is optional, the normativity of its requirements is contingent on our motivation to engage with it.

However, it seems that, in order to provide such reasons, theorists must resort to values that are external to the enterprise of politics. For any attempt to extract reasons to engage with the practice of politics from the constitutive features of politics would ultimately fail to respond to the *shpolitics* question.

Such a solution, however, seems to be ruled out by PRPD approaches, which suggest that our theorizing about justice or legitimacy should start from within the enterprise of politics itself.

In this article, I outline two plausible strategies to respond to the *shpolitics* question. The first strategy consists in showing that politics is *inescapable*, in that we cannot but engage with it. As such, any attempt to forfeit on its normative requirements would be misplaced.⁶ The second strategy consists in giving up on full-blown normativity and limit the normative reach of one's theorizing to those who are already motivated to engage with the enterprise of politics.⁷ Both proposals, I attempt to show, face substantive challenges. A viable strategy for PRPD approaches, I will suggest,

⁶ Such a strategy insists on a form of Aristotelian Political Naturalism and seems consistent with the approach undertaken by Rossi (2010).

⁷ Such a strategy is consistent with Geuss' skepticism on the sharp distinction between descriptive and normative. See Geuss 2008.

is to accept that reasons for engaging with the enterprise of politics must lie outside the political domain, while insisting on the relevance that the constitutive features of politics ought to play in singling out normative requirements of justice or legitimacy.

I

Fidelity to Politics and Arbitrariness

PRPD theorists claim that the political sphere does not lend itself to be straightforwardly regulated by the moral sphere.⁸ This is for two main reasons: first, because people widely disagree about what morality demands; second, because the political domain is separate from the moral sphere, and, as such, it poses its own normative demands which are distinct from the demands of morality.⁹ These two main rationales for rejecting the priority of the moral over the political could be aptly framed in terms of

⁸ See, in particular, Philp 2007, 34: “The integrity of the good life in which ethics and politics are effortlessly linked seems a utopian aspiration [...] Political virtue is not only not rooted in the good life, it is in its nature exposed to demands that may compromise some of our most cherished commitments.” See, also, Rossi 2013, 559: “Realist political philosophy cannot be a branch of applied ethics. Rather, it tries to carve out some space for action-guiding political theory within an analysis of the actual meaning and purpose of politics in a given context. This is to say that it proceeds from an empirical informed analysis of a society's political culture, and, on that basis, tries to produce the most appropriate political prescriptions, which may well not be those that are morally optimal *sub specie aeternitatis*. In fact, most realists would deny that we can determine what would count as morally optimal without a prior understanding and interpretation of the relevant political context.”

⁹ As a matter of clarification, PRPD theorists do not dismiss the fact that the political sphere posits moral demands. However, they suggest that such demands are distinctively political (Sleat 2016a). In this respect, political morality would constitute a definite subset of the realm of morality.

worries that PRPD approaches share toward PMPI accounts of justice or legitimacy. In particular, on the one hand, there is a worry concerning the arbitrariness of accounts of justice or legitimacy that are straightforwardly grounded in moral values or principles that lack anchorage to the political domain. In fact, given the existence of ineradicable and ubiquitous disagreement about the demands of morality, one may worry that PMPI accounts of justice or legitimacy would fail in motivating those who do not internalize the moral values from which one starts to theorize.¹⁰

In order to illustrate such a worry, imagine that Bob grasps the relevance of the value of free and equal moral personhood, and extracts a set of normative requirements of justice or legitimacy from it. Betty, however, believes that Bob's choice to start from the value of free and equal personhood is ultimately arbitrary as she fails to grasp its relevance. In fact, she would rather start from the moral ideal of self-ownership, from which she extracts a different set of normative requirements. The arbitrariness that is implied in picking their moral premises makes them unable to converge on a shared basis for their theorizing, and, as a result, their accounts of justice or legitimacy fail in being fully intelligible to one another.

The worry about arbitrariness is two-fold: first, there is a non-ideal concern expressed by the fact that those who internalize different moral values would not *actually* comply with the normative requirements one lays out; second, there is a meta-

¹⁰ See, in particular, Rossi and Sleat 2014, 691: "We need politics in part precisely because of the ubiquity of moral disagreements about what we collectively should do, the ends to which political power should be put, and the moral principles and values that should underpin and regulate our shared political association. As such, politics cannot be a domain that is straightforwardly regulated by morality."

ethical concern according to which those who internalize different moral values would *fail to form reasons* to comply with one's theory of justice. PRPD theorists, I suggest, are mostly concerned with the meta-ethical objection, and claim that we need politics precisely because of the inevitable arbitrariness taking place within the moral domain, giving rise to unsolvable disagreement in laying out our accounts of justice or legitimacy.¹¹

On the other hand, the rationale underpinning the separateness of the moral and the political domain, can be framed as an epistemological worry about the fidelity to the enterprise of politics. In particular, one might suggest that, since the political and the moral sphere constitute two distinct domains, normative theories of politics grounded in values which lie outside the political sphere, or which find no counterpart in the constitutive features of politics, would fail to apply to actual political orders, as they would fail in being theories of politics at all.¹²

¹¹ On moral disagreement as positing a meta-ethical puzzle, see Rossi 2013, 560, where he claims that realists observe that the function of politics is precisely to overcome our disagreement about ethics.”

¹² Sleat, I believe, offers the best characterization of the epistemological worry: “Politics is a practice characterized by disagreement, authority, and legitimate coercion. It may be characterized by much else besides, but these are at least some of the characteristics of the human practice or activity that political theories seek to be about, and the context in which political values are asserted, claimed, debated, critiqued, and so on. Being constitutive of politics, political values must take them as fixed features of the political domain. This means that for a value to be a value for politics it must be fully consistent with their presence. It cannot be incompatible with the general conditions such that a belief about a value is inconsistent with any particular constitutive feature of politics (for example, political freedom is the absence of political authority), nor, as an assumption built into the understanding of the value itself, can it depend upon the general conditions being overcome for their realization in practice. In such cases the value would not be a value for the political domain but for a

Sleat has an analogy that may be of help in clarifying the epistemological worry:

Imagine a scenario in which a precocious young scientist claims to have discovered that all previous theories of how and why hydrogen (in its most common isotopic form) reacts the way that it does with other elements are incorrect, and that she, during her doctoral research, has developed a better theory. When she published her research, however, it turns out that the theory only works if we assume that hydrogen has two protons, two neutrons, and two electrons. What would the right response to her theory be given we know that in reality hydrogen has only one proton, no neutrons, and a single electron? The theory might have the virtue of being internally coherent on its own terms, free from any contradictions, awed reasoning, or inconsistencies. But even if that were true we would nevertheless insist that it is still a bad theory, though bad in the very special sense that it is not a theory of hydrogen because of what we know to be true of the composition of hydrogen atoms: it fails to qualify as a theory of hydrogen at all (Sleat 2016a, 265-266).

Although Sleat's analogy concerns an alternative and descriptive domain, we could frame the epistemological worry also in normative and political terms. In fact, suppose, once again, that Betty lays out a set of normative requirements grounded in the moral ideal of self-ownership, which, we assume, finds no counterpart in the constitutive features of the particular political order to which her theory is meant to apply. PRPD theorists would aptly object that such a theory, by virtue of neglecting the

world in which politics or the need for politics is absent (which is, whatever else we might think about the attractiveness of such a world, not our own). It would not be a value suitable for the activity of politics" (Sleat 2016a, 258).

constitutive features of politics, fails to qualify as a sound political theory as it starts from premises that omit or misconstrue the main object of her investigation.¹³ Betty's theory, in other words, is based on moral values that are not anchored to the constitutive features of the political order she analyzes and to which her theory is meant to apply.

Surely, Betty, along with theorists developing PMPI accounts of justice or legitimacy, would plausibly respond that PRPD's concerns are ultimately misplaced. In fact, one may suggest that moral values or principles, on which one grounds accounts of justice or legitimacy, are not arbitrary, in that their normative relevance is not contingent on the constitutive features of a community. In this regard, the fact that certain moral values lack consistency with the constitutive features of a political order does not undermine the normative standing of the moral value. Yet, whether one accepts PMPI's plausible response to PRPD's worry, one should not underestimate the appeal of what PRPD approaches promise to deliver, which is to lay out accounts of justice or legitimacy that would be able to respond to the moral disagreement that is ubiquitous within pluralistic societies. In fact, if one accepts that the moral and the political domain are separate, and that our theorizing around justice or legitimacy is ultimately bound to start from an accurate investigation of the constitutive features of actual political orders, we are offered with a shared basis for our theorizing, which rules out the sort of arbitrariness that is implied in starting from moral premises over which we profoundly disagree. As such, the normative requirements we single out from a shared understanding would also overcome the meta-ethical

¹³ In this regard, it is worth looking at Jubb 2015, 680, where the author claims that the value of equality could be plausibly internalized by realist accounts of legitimacy precisely because its normative standing is not arbitrary but rather derived from "widely experienced and understood harms of status."

worry, for everyone would find such requirements intelligible, by virtue of stemming from shared premises.

Suppose, indeed, that we gather around a table in order to define a set of normative requirements that a particular political order is supposed to meet. Instead of resorting to moral values that that find no counterpart in the political order to which these requirements are meant to apply, and over which we inevitably disagree, we attempt to form a common and accurate interpretative understanding of the constitutive features of the specific political order, which would serve as a shared basis for our theorizing. Such a strategy would allegedly solve the worry about arbitrariness by responding to the epistemological worry.

In fact, once we accept that the main sources of normativity of political theorizing lie in certain constitutive features of politics, we rule out much of the arbitrariness implied in picking moral premises that are detached from such constitutive features.

In order to show how such an approach could be plausibly made to work, let us consider Sangiovanni's careful illustration of the procedure entailed by practice-dependent accounts:

Consider the higher level moral principle that all human beings should be treated with equal, ultimate, and general moral concern (let us call it principle P). Must an institutionalist deny this to be the case? It may seem that he must, since P has global scope, applying to persons as such and independently of institutions. This would, however, be a mistake. The institutionalist can (a) affirm P, but argue that the reasons for endorsing first principles of justice for which P is a premise (call them J1, J2, ..., Jn) cannot be derived from P alone, and (b) claim that those further reasons must (in part) derive from an interpretive understanding of the institutional contexts to which Jn is intended to apply (C1, C2, ..., Cn). Though the practice-independent theorist need not deny (a) – first principles of justice can be derived

from P in conjunction with other higher-level moral values – he does deny (b). For him, there is no independent layer of first principles Jn: there is only P, principles that can be directly derived from P and other higher-level moral values (P*), and different contextual applications of P* to Cn.

The above quoted passage helps us in highlighting how PRPD approaches may overcome the two worries. In fact, by confining the premises of political theorizing to values or principles that can be validated through an interpretative understanding of the institutional context, PRPD theorists allegedly form a shared basis for their theorizing. Such a shared basis, in turn, rules out much arbitrariness concerning the premises of political theorizing. In fact, the interpretative understanding of the institutional context rules out values or principles that do not find political counterparts. Moreover, Sangiovanni helps us in clarifying that PRPD approaches, may not rule out moral values qua moral. In fact, what matters is that these values we take as a starting point for our theorizing are consistent with the constitutive features of the political order to which our theory is supposed to apply. As such, whether they are purely political or also belong to the moral domain should not concern us. In fact, provided that such values are consistent with the constitutive features of politics, their moral origin should not bring back arbitrariness into the picture.¹⁴

¹⁴ This clarifies that moral values can be political values as well. On this particular aspect see also Sleat 2016a.

II

The *Shpolitics* Question

In spite of a wide variety of objections advanced against PRPD approaches,¹⁵ critics have largely neglected one of the main obvious challenges that PRPD face, which consists in securing a shared interpretative understanding of the constitutive features of politics, and in extracting a unique set of requirements of justice or legitimacy from it.

In fact, these enterprises may give rise to conceptual disagreement at various levels. First, one might worry that a common account of the constitutive features of a certain political order is somewhat chimeric, as we may disagree on what counts as a constitutive feature. For instance, one may suggest that people's beliefs about justice or legitimacy, by virtue of being subject to a process of continuous change, should not count in laying out our shared basis for singling out normative requirements of justice or legitimacy, whereas practices and institutions, by virtue of being more stable, should be taken into account. On the contrary, one might suggest that practices and institutions are more stable by

¹⁵ PRPD approaches are subject to a wide range of criticisms, mostly of two main kinds: on the one hand, they are accused of resorting to pre-political moral values or principles in laying out their accounts of justice or legitimacy (Erman and Möller 2013, Larmore 2013); on the other, it is argued that if pre-political moral values are taken out of the picture, PRPD approaches are bound to accept accounts of justice or legitimacy that are consistent with despicable practices (Erman and Möller 2015). These critiques, I suggest, are rather unpromising. In fact, even if we could show that PRPD accounts of justice or legitimacy, so far formulated, resorted to pre-political moral values, we would not have shown that such an enterprise is, indeed, impossible. On the other hand, to claim that PRPD approaches are bound to cope with accounts of justice or legitimacy that are consistent with despicable practices, does not really constitute an objection. Surely, it may be a hard price to pay, but that is exactly what PRPD approaches amount to.

virtue of path-dependence. As such they do not necessarily tell us anything substantive about shared values underpinning them. Second, we may disagree on how to rank the relevance of such constitutive features. For instance, one may suggest that practices, social institutions and beliefs about justice should all count but to different extents. Third, we might disagree on which values are consistent with our shared understanding of the constitutive features of a given political order, and last, but not least, we could disagree on which requirements ought to be extracted.

All these instances of conceptual disagreement could prove fatal to PRPD approaches, for if we could show that different, though epistemologically sound, interpretative understandings of the constitutive features of a certain political order can be offered, or that different and incompatible values are consistent with it, or that incompatible sets of normative requirements can be extracted from shared values, we would have failed in overcoming the worry about arbitrariness.

In fact, if multiple interpretative understanding are consistent with the constitutive features of a political order, arbitrariness takes place in the form of our choice among diverse interpretative understandings. If, on the other hand, we are able to secure a shared interpretative understanding but incompatible values are consistent with it, arbitrariness takes place in the form of our choice among diverse values from which we start our theorizing. If we are able to converge on similar values, but incompatible sets of normative requirements can be extracted from them, arbitrariness takes place in the form of our choice among diverse sets of normative requirements.

However, one may suggest that PRPD approaches, by virtue of responding the epistemological worry, already rule out much of the arbitrariness which is embedded in PMPI's reliance on moral values over whose normative relevance we substantively disagree.

In fact, if our disagreement is confined to diverse, though epistemologically sound, interpretative understandings of the constitutive features of a political order, or to the relevance of values that are consistent with our shared understanding of what politics is, or to which sets of normative requirements we should extract from our shared values, arbitrariness is very much reduced. In this regard, although PRPD approaches may not be able to rule out entirely our disagreement, they equip us with tools that are of the utmost importance if one cares about developing accounts of justice or legitimacy that robustly respond to the meta-ethical worry.

However, for the moment, I set the problem of conceptual disagreement on what politics is aside.¹⁶ In fact, I wish to suggest, there is a further challenge that PRPD approaches face, which does not rest on our failure in reaching a shared basis for laying out our accounts of justice or legitimacy. In fact, I assume that these difficulties could be somehow successfully overcome. The challenge that I wish to present consists in that our ability to form a shared understanding of the constitutive features of a political order, and to develop a unique theory of justice or legitimacy that is meant to apply to it, does not implicitly equip us with reasons to comply with such normative requirements.

Suppose, indeed, we form a shared understanding of the constitutive features of politics, and that we agree on how to rank their relevance, such that we are able to single out a unique theory of justice or legitimacy that is meant to apply to a given political order: have we really solved the worry about arbitrariness? My suggestion is that resolving our conceptual disagreement about what politics is and what it entails does not tell us anything substantive about what we should do. In fact, one may be willing

¹⁶ I will return to it in the final section.

to ask: why should those requirements matter? Why should I engage with politics in the first place? Why not *Shpolitics*?

The *shpolitics* question, originally known as the *shmagency* question, has been developed by David Enoch in relation to constitutivist theories about agency such as Korsgaard (2009), Rosati (2003) and Velleman (2009). In particular, Enoch's claim is that any attempt to extract meaningful normative requirements from what is constitutive of the enterprise of agency is bound to be only conditionally normative on our willingness to engage with that enterprise, unless we provide binding reasons for why we should engage with it in the first place. If we fail in providing these reasons, there is no way to respond to those who lack motivations for engaging with agency and rather prefer to be *shmagents*.

Classify my bodily movements and indeed me as you like. Perhaps I cannot be classified as an agent without aiming to constitute myself. But why should I be an agent? Perhaps I can't act without aiming at self-constitution, but why should I act? If your reasoning works, this just shows that I don't care about agency and action. I am perfectly happy being a *shmagent* – a nonagent who is very similar to agents but who lacks the aim (constitutive of agency but not of *shmagency*) of self-constitution. I am perfectly happy performing *shmactions*-nonaction events that are very similar to actions but that lack the aim (constitutive of actions but not of *shmactions*) of self-constitution. (Enoch 2006, 176).

The challenge posed by the *shmagency* question, I suggest, can be aptly extended to PRPD approaches, as they could be plausibly regarded as constitutivist theories about politics. In fact, their aim is to lay out requirements of justice or legitimacy from the constitutive features of political orders. The basic idea, indeed, is that we do not need to resort to pre-political moral values in laying

out our theories of justice or legitimacy, as a shared understanding of the constitutive features of politics would already provide enough basis for our theorizing. Moreover, by ruling out moral values that do not find actual political counterparts, we also rule out moral disagreement that would be stemming from our reliance on such values.

However, the challenge highlighted by the *shpolitics* question consists in that even a unanimous agreement on what politics is and what it entails does not equip us with reasons for engaging with the enterprise of politics. For we may reach a consensus on what a certain enterprise is and what it entails without necessarily being willing to engage with it. For instance, I may agree on what the game of football is, and on how its constitutive aims point to the appropriateness of its current set of rules, without necessarily being willing to engage with it. In fact, why should I pick football over tennis? Or why should I not give up on sports? If we fail in providing reasons for why one should engage with a certain enterprise, its rules or requirements would ultimately be contingently normative on our willingness to engage with it.

However, reasons for engaging with a particular enterprise cannot come from within the enterprise itself, for its constitutive features or aims are silent with respect to why we should engage with it in the first place. For instance, we may agree on that the constitutive aims of football embody a desire to unveil players' physical and technical potential in an effort to entertain the public, yet this would not provide binding reasons for why we should play or watch football games. In the same way, we may agree on that the constitutive aim of politics is to respond to Williams' first political question, which is that of "securing of order, protection, safety, trust, and the conditions of cooperation" (Williams 2005, 3), and yet, we may be motivated to engage with other kinds of enterprises that embody different constitutive aims, or that employ

different devices in order to respond to the first political question. Perhaps, the enterprise of *shpolitics* would offer answers to the first political question which one would find more appealing; or, perhaps, we are not that persuaded by the urgency or the relevance of Williams' first political question.

Essentially, binding reasons for engaging with a certain enterprise cannot come from its constitutive features, but should rather come from outside the enterprise itself. For instance, one may suggest that securing the conditions for cooperation is morally binding, and show that politics would constitute the best means to achieve this end. As such, we would possess binding reasons for engaging with the enterprise of politics and comply with its requirements, singled out from our shared understanding of its constitutive features. However, such an enterprise would plausibly be ruled out by PRPD approaches, which would deem such a strategy as an instance of the enactment model, which is championed by PMPI theorizing.¹⁷ In fact, such a strategy would ultimately make our political theorizing around justice or legitimacy as ultimately dependent upon a pre-political ideal to which politics is meant to respond. As such, we would be somehow stuck with PMPI's claim according to which the political domain would ultimately constitute a sub-set of the moral sphere.

¹⁷ The model is that political theory formulates principles, concepts, ideals, and values; and politics (so far as it does what the theory wants) seeks to express these in political action, through persuasion, the use of power, and so forth (Williams 2005, 1).

III

The *Inescapability* Thesis

Among the responses that constitutivist theorists offer to the challenge posed by the *shmagency* question there is one that deserves particular attention as it may partially apply to PRPD accounts. Such a response is known as the *inescapability thesis* and, in its simpler formulation, claims that agency is inescapable, in that we cannot but engage with it. Ferrero 2009, indeed, argues that agency possesses two unique features that make it different from ordinary enterprises. First, agency is special in that all ordinary enterprises fall under its jurisdiction (e.g. love, friendship, politics, etc.), insofar as they all require agency for us to engage with them; second, agency is unique in that it is the only standpoint from which we can evaluate whether or not to engage with agency itself. In fact, it is claimed that even choosing to be a *shmagent* requires us to be agents in the first place.¹⁸

¹⁸ Here is the full quote from Ferrero 2009, 309: “Agency is special in two respects. First, agency is the enterprise with the largest jurisdiction. All ordinary enterprises fall under it. To engage in any ordinary enterprise is ipso facto to engage in the enterprise of agency. First, intentional transitions in and out of particular enterprises might not count as moves within those enterprises, but they are still instances of intentional agency, of bare intentional agency, so to say. Second, agency is the locus where we adjudicate the merits and demerits of participating in any ordinary enterprise. Reasoning whether to participate in a particular enterprise is often conducted outside of that enterprise, even while one is otherwise engaged in it. Practical reflection is a manifestation of full-edged intentional agency but it does not necessarily belong to any other specific enterprise. Once again, it might be an instance of bare intentional agency. In the limiting case, agency is the only enterprise that would still keep a subject busy if she were to attempt a “radical re-evaluation” of all of her engagements and at least temporarily suspend her participation in all ordinary enterprises.” Further

There are, I argue, three main ways in which PRPD may attempt to import arguments from the inescapability thesis. The first, which takes the form of an Aristotelian Political Naturalism, consists in claiming that, although many enterprises fall out of the political jurisdiction, politics is essential in securing the conditions for cooperation and coordination that are crucial to many ordinary enterprises, including human flourishing. Hence, politics could be seen as a hub-enterprise, in that it is often a pre-condition in order to engage with many other enterprises. As such we would have binding reasons to engage with it.¹⁹

There are, however, two main concerns with this strategy. First, as already suggested by Cross (2018), there might be alternative – non-political – viable options to secure the conditions for coordination and cooperation. For instance, one may follow theorists of the spontaneous order in claiming that repeated interactions, within non-political contexts, can make us converge on conventions and norms that would allow us to solve coordination and cooperation problems. Second, even granting to politics its role as a hub-enterprise and its best suited position in securing the conditions for cooperation and coordination, we may worry about the sources of normativity of PDPR theories. In fact,

developments of the inescapability thesis can be found in Ferrero (2018), Silverstein (2014) and Katsafanas (2013).

¹⁹ See, in particular, Rossi 2010, 507: “The very nature of the human condition, rather than the conclusion of a rational argument, necessitates political authority. In this way we no longer need a rational, ‘external’ justification for the need of authority, but the need for authority is still just as inescapable, so the rest of the Hobbesian position continues to hold. On this realist and naturalist reading Hobbesian authorization, then, affords an account of political normativity without reliance on pre-political ethical commitments. The normative work is done by what it means to have a form of political authority at all, and by the fact that we cannot escape the need for the exercise of political power.”

one may plausibly object that our reasons for engaging with practice of politics would then come from other enterprises, which are not necessarily internal to the political realm. For instance, if our binding reasons for engaging with the enterprise of politics come from the fact that it constitutes the only available means to develop meaningful human relationships, the normativity of our accounts of justice or legitimacy would ultimately depend upon the moral worthiness of developing meaningful relationships.²⁰

The second strategy would consist in claiming that PRPD accounts of justice or legitimacy are not supposed to make us reflect about whether we have reasons to engage with the practice of politics, but merely to adjudicate the legitimacy of already existing orders. This strategy has some intuitive advantages in that it seems to annihilate the problem of lacking reasons to engage with politics. In fact, one would assume that, by virtue of being already within a political scenario, we have implicitly sorted out the problem of motivations for engaging with politics, such that we can articulate our normative theories as if politics were in fact inescapable.

The problem with such a strategy consists in that having already engaged with a given enterprise, or finding oneself already involved in it, does not prevent us from failing to form reasons to continue engaging with it at later stages. In fact, imagine Bob and I are going out for a drink. He, then, begins to tell me about his latest romance with Betty, and of how Betty left him without any motives. After five minutes I start to find his laments annoying and refuse to continue the conversation. Bob, then, claims that it is my duty to

²⁰ Cross 2018, 94, also suggests that such a strategy is based on an unwarranted assumption according to which individuals always seek to “pursue what is necessary to attain their ends.” If such an assumption does not hold, we cannot reliably claim that political institutions act as a hub-enterprise, as individuals may seek for alternative arrangements to politics in attaining their ends.

listen and help. After all, we have been friends for a long time. However, I reply that our existing friendship does not prevent me from forming reasons to stop being his friend. In fact, I now lack reasons to continue being his friend and I would rather become his *shfriend*. Conveniently enough, *shfriendship* entails going out for drinks, having fun, travelling, etc., but does not impose on us any duty to help in relation to one's romantic delusions. I have looked into what friendship with Bob is, agreed on what it entails, and I simply do not want to get involved anymore.

Bob's case may be easily framed in the terms of the *shpolitics* question. In fact, most of us are born or chose to live in political scenarios. As such, one may be tempted to point out that the problem of having reasons to engage with the practice of politics has been sorted out at the very outset. However, simply finding oneself in a political scenario or having had reasons to engage with the practice of politics in the first place does not prevent one from forming reasons to disengage with it or to engage with alternative and widely diverse enterprises at later stages.

Hence, the second strategy fails to show that politics is inescapable simply by virtue of having already engaged with it. In fact, one may always form reasons to engage with non-political enterprises or to endorse theories of justice or legitimacy based on moral premises that are not anchored to the constitutive features of politics.

The third strategy, on the other hand, suggests that any form of social organization is political. As such, all our communities are instances of political order and any theory of justice or legitimacy must be grounded in an accurate interpretative understanding of the constitutive features of each of them. In this regard, politics seems inescapable as citizens are not given any exit options. Citizens, indeed, can only move from one social organization to another but cannot really escape politics.

Although this strategy is successful in making politics inescapable, it cannot really solve the worry about arbitrariness by means of solving the epistemological worry.

In order to illustrate this, suppose that Bob carefully observes certain constitutive features of community *x* and concludes that the moral ideal of free and equal personhood is consistent with its institutions. Betty, on the other hand, observes the constitutive features of a widely different community *y*, which are consistent with the moral ideal of self-ownership. As a result, they lay out substantively different theories of justice or legitimacy. Both theories are grounded in accurate interpretative understanding of certain constitutive features of these communities and, therefore, may respectively apply to the communities in which such institutions are found.

However, what prevents citizens of *x* to form reasons to endorse requirements of justice or legitimacy that apply to *y*? After all, citizens of *x* may reasonably converge on shared interpretation of what the constitutive features of *x* are, agree on that such features entail certain requirements of justice or legitimacy, and yet be unwilling to continue being ruled by such requirements. In fact, they may find theories of justice or legitimacy grounded in the constitutive features of *y* much more appealing in a number of different ways.

The third strategy, thus, fails to show why citizens should be compelled to form reasons to endorse requirements of justice or legitimacy that are grounded in moral values consistent with the constitutive features of their community. In fact, although politics is inescapable, nothing prevents them from endorsing theories of justice or legitimacy that are grounded in constitutive features of other political orders that they find more appealing.

In some regards, the objections to the inescapability approach set out an impossibility theorem for PRPD normative theorizing. In fact, on the one hand, by restricting the meaning of politics we are able to reduce arbitrariness by virtue of delimiting the set of constitutive features of politics that can be picked to justify one's moral premises. However, at the same time, by restricting the meaning of politics, we also make conceptual room for the existence of nonpolitical orders, thus making individuals' engagement with politics, and the normative reach of requirements of justice or legitimacy, conditional on their motivations.

On the other hand, by stretching the meaning of politics, such that it encompasses all forms of social organization, we make politics inescapable insofar as individuals cannot but engage with it. However, at the same time, we bring back arbitrariness by virtue of enlarging the set of constitutive features of politics that can be picked to justify one's moral premises. In fact, individuals may cherry-pick constitutive features of other political orders in order to justify their moral premises.

As a consequence, PRPD theorists seem either forced to grant that the normativity of their theorizing is contingent on people's motivation to engage with politics, or to admit that the worry about arbitrariness cannot be solved by means of fact-sensitive accounts of justice or legitimacy, thus, stripping away what sets their proposal apart from PMPI theorizing.

IV

Justice and Legitimacy without Full-Blown Normativity

If the latter route seems not worth pursuing, the former looks somewhat similar to the one undertaken by authors such as Geuss

2008, who are skeptical of the descriptive/normative dichotomy.²¹ Perhaps, indeed, some PRPD proponents are not seeking to develop full-blown normative accounts of justice or legitimacy. Maybe, what they are up to is lay out some requirements aimed at people who already have independent reasons for engaging with politics and who continue to exhibit them. It does not really matter whether these reasons are grounded in moral values which are external and prior to the political realm, as long as these values are not provided by the theorist, as one cannot be accused of political moralism for letting people resort to moral values in order to evaluate whether or not to engage with a certain enterprise.

In this respect, PRPD theories might leave out of the picture those of us who are not willing to engage with politics, but this should not be worrisome given how many people already live and continuously choose to live within political associations. Although such an approach would not grant to politics the status of inescapable, it certainly seems to scale back the relevance of the *shpolitics* question. For one may, indeed, be tempted to argue that the *shpolitics* question relates mainly to meta-ethical concerns but does not really say anything interesting about the world we live in, insofar as nobody is really interested in *shpolitics*. In this regard, PRPD theorists may be happy to concede that the normativity of their theorizing is contingent on people's motivations to engage with politics, so long as the large part of the world population would find politics to be the only viable option for our social organizations.

This is, I believe, a plausible strategy for PRPD theorists to pursue but we should be careful in delimiting the relevance of the *shpolitics* question to abstract, and politically irrelevant, meta-ethical

²¹ On Geuss' skepticism on the descriptive/normative dichotomy see also Rossi 2010.

discourse. In fact, *shpolitics* defines the set of all possible and alternative enterprises to politics. This is to say that, although PRPD accounts could come up with a certain specific definition of politics from which to single out theories of justice or legitimacy, there is a large, possibly infinite, number of slightly/largely different enterprises, with their own constitutive features, from which to select slightly/largely different normative requirements.

Essentially, although many of us would be, broadly speaking, keen on engaging with politics, our accounts of politics and, consequently, the requirements of legitimacy that we extract from them, may diverge to different degrees. This particular fact brings us back to the problem of conceptual disagreement about what politics is and what it entails, which I have outlined previously.

In fact, if our understanding of what politics is and what it entails are substantively different, we cannot be sure that we will converge on similar requirements of justice or legitimacy, as individuals would pick widely different constitutive features of politics to justify their moral premises.

PRPD proponents may reply that any meaningful account of justice or legitimacy is to be based on the actual constitutive features of politics and that any attempt to theorize around the political by omitting or misconstruing its constitutive features would fail to respond to the epistemological worry, and, as such, undermine the relevance of our accounts of justice or legitimacy. Essentially, the PRPD response consists in delimiting the concept of politics, and its constitutive features, so as to reduce arbitrariness in cherry-picking moral values from which to extract our accounts of justice or legitimacy.

However, if we narrow down the concept of politics too much, we cannot be sure that the supposedly widespread motivation to engage with political forms of social organization will remain

unaffected. In fact, the more we narrow down the concept, the more we annihilate the people's motivation to engage with politics.

Essentially, the objection to accounts of justice or legitimacy without full-blown normativity consists in that such a strategy could plausibly overestimate the extent to which our willingness to engage with politics translates into a shared account of what politics, and its requirements, should be. In fact, when we give up on full-blown normativity, the simple fact of meeting the epistemological *desideratum* tells us very little about which enterprises we should be engaging with, as it only tells us which requirements apply to which enterprises. I take this to be the main claim behind Estlund's defence of utopian theorizing:

A lot of work is being done in this objection by a definition. A theory's subject matter is asserted to lie outside of politics unless it grants a substantial role to laws, police, criminal courts, and so on. Consider a theory that gave compelling arguments for the conclusion that a society could not be characterized by political justice, or authority, or legitimacy in conditions where there was a substantial role for laws, police, and courts. On the definition of politics in question, this would not be a political philosophy. But that is only because politics has been defined out from under it. Fine, let it not count as a political philosophy. This would leave entirely intact its claim to have the correct theory of justice, authority, and legitimacy. (Estlund 2014, 231).

Estlund, here, is happy to concede that what he is doing is not political philosophy. In fact, *shpolitical* philosophy could have better insights on what our social orders should look like.

Conclusion

The *shpolitics* question, I believe, does not undermine the relevance of PRPD approaches towards justice or legitimacy, as it does not annihilate, nor it reduces, the role that the constitutive features of political orders should play in shaping our accounts of justice or legitimacy. In fact, the *shpolitics* challenge tackles merely the possibility of extracting, from the constitutive features of politics, binding reasons to engage with it, but is silent with respect to how are we to single out our normative requirements.

In this regard, the two main *desiderata* emerging from PRPD theorizing should still remain valid, for if one cares about singling out theories of justice or legitimacy underpinning institutional arrangements that would allow us to respond to widespread moral disagreement, PRPD approaches have crucial insights that cannot be ignored.

A viable option, I suggest, would be to accept that reasons for engaging with the enterprise of politics lie outside the political realm, and to resort to the ideal of securing the conditions for peaceful cooperation among members of a given community and at a meta-community level, in order to provide binding reasons for taking the requirements of justice or legitimacy one singles out as normative. For if we take such an ideal as normatively binding, and we are able to show that politics, with its own requirements emerging from its constitutive features, is the best means to secure the condition for peaceful cooperation, our engagement with the enterprise of politics would cease to be conditionally normative.

Reasons for engaging with politics and complying with its requirements would then be stemming from the moral ideal of peaceful cooperation, thus undermining the independence of the political domain from the moral realm, but such a strategy would not reduce the political to the moral, nor it would assume that the

constitutive features of politics are silent with respect to our theorizing.

This approach, I suggest, would possess three main merits: first, the moral ideal of securing the conditions for peaceful cooperation would eliminate the normative contingency our accounts of justice or legitimacy; second, it would also serve as to establish the relevance of the constitutive features of politics in laying out the requirements that a political order must meet, thus responding to the epistemological worry; third, it would deliver accounts of justice or legitimacy that are very much keen on dealing with the problem of ubiquitous disagreement that is pervasive within pluralistic societies.

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References

Burelli, Carlo. 2019. A Realistic Conception of Politics: Conflict, Order and Political realism. *Critical Review of International Social and Political Philosophy*: 1-23.

Cohen, Gerald A. 2003. "Facts and principles," *Philosophy and Public Affairs* 31 (3): 211-245.

Cross, Ben. 2018. "Naturalist Political Realism and the First Political Question," *Ratio* 31 (1): 81-95.

Enoch, David. 2006. “Agency, Shmagency: Why Normativity Won’t Come from What Is Constitutive of Action,” *The Philosophical Review* 115: 169-198.

_____. 2010. *Shmagency Revisited*. In Michael Brady (Ed.). London: Palgrave MacMillan, 208-233.

Erman, Eva – Möller, Niklas. 2013. “Political Legitimacy in the Real Normative World: The Priority of Morality and the Autonomy of the Political,” *British Journal of Political Science* 45 (1): 215-233.

_____. 2015. “Why Political Realists Should Not Be Afraid of Moral Values,” *Journal of Philosophical Research* 40: 459-464.

Estlund, David. 2014. “Utopophobia,” *Philosophy and Public Affairs* 42 (2), 113-134.

Ferrero, L. (2009). “Constitutivism and the Inescapability of Agency,” *Oxford Studies in Metaethics* 4: 303-333.

:_____. 2018. “Inescapability Revisited”, *Revista Internacional de Filosofía* 41 (4): 113-158.

Freedon, Michael. 2012. “Interpretative Realism and Prescriptive Realism.” *Journal of Political Ideologies* 17 (1): 1-11.

Geuss, Raymond. 2008. *Philosophy and Real Politics*. Oxford: Princeton University Press.

Hall, Edward. 2015. “Bernard Williams and the Basic Legitimation Demand: A Defence,” *Political Studies* 63 (2), June: 466-480.

Katsafanas, Paul. 2013. *Agency and the Foundations of Ethics*. Oxford: Oxford University Press.

Korsgaard, Christine M. 2009. *Self-Constitution: Agency, Identity, and Integrity*. Oxford: Oxford University Press.

Larmore, Charles. 2013. "What is Political Philosophy?," *Journal of Moral Philosophy* 10 (3): 276-306.

Newey, Glen. 2010. "Two Dogmas of Liberalism," *European Journal of Political Theory* 9 (4): 449-65.

Philp, Mark. 2007. *Political Conduct*. Cambridge (MA) – London: Harvard University Press.

_____. 2012. "Realism without Illusions," *Political Theory* 40 (5): 629-49.

Rosati, Connie. 2003. "Agency and the Open Question Argument," *Ethics* 113: 490-527.

Rossi, Enzo. 2010. "Reality and Imagination in Political Theory and Practice: on Raymond Geuss's Realism," *European Journal of Political Theory* 9 (4): 504-512.

_____. 2012 "Justice, Legitimacy and (Normative) Authority for Political Realists," *Critical Review of International Social and Political Philosophy* 15 (2): 149-164.

_____. 2013. "Consensus, compromise, justice and legitimacy," *Critical Review of International Social and Political Philosophy* 16 (4): 557-572.

_____. (2019). "Being realistic and demanding the impossible," *Constellations* 26(4), 638-652.

Rossi, Enzo and Sleat, Matt. 2014. "Realism in Normative Political Theory," *Philosophy Compass* 9: 1-13.

Rossi, Enzo and Jubb, Robert. 2015a. "Political Norms and Moral Values," *Journal of Philosophical Research* 40: 455-458.

_____. 2015b. “Why Moralists Should Be Afraid of Political Values. A Rejoinder,” *Journal of Philosophical Research* 40: 465-468.

Sangiovanni, Andrea. 2008. “Justice and the Priority of Politics to Morality,” *Journal of Political Philosophy* 16 (2): 137-164.

Silverstein, Matthew. 2014. “The Shmagency Question,” *Philosophical Studies*: 172 (5): 1127-1142.

Sleat, Matt. 2012. “Legitimacy in a Non-Ideal Key: A Critical Response to Andrew Mason,” *Political Theory* 40 (5): 650-656.

_____. 2016a. “What is a Political Value? Political Philosophy and Fidelity to Reality,” *Social Philosophy and Policy* 33 (1-2): 252-272.

_____. 2016b. “Realism, Liberalism and Non-Ideal Theory: or, Are There Two Ways to do Realistic Political Theory?,” *Political Studies* 64 (1): 27-41.

Velleman, J. David. 2009. *How We Get Along*. Cambridge: Cambridge University Press.

Waldron, Jeremy. 2013. “Political Political Theory: An Inaugural Lecture,” *Journal of Political Philosophy* 21 (1): 1-23.

Williams, Bernard. 2005. *In the Beginning was the Deed*. Edited by Geoffrey Hawthorn. Oxford: Princeton University Press.

LIBERALISM AND SOCIAL JUSTICE



RAWLSIAN ANTI-CAPITALISM AND
LEFT SOLIDARITY

BY

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Rawlsian Anti-Capitalism and Left Solidarity*

Jon Garthoff

Introduction

Two prominent traditions of leftist political thought are socialism and left-liberalism. Though these traditions are neither exhaustive of leftism nor exclusive of each other, they operate with considerable independence from – and often, antagonism to – one another. This is true both in academic contexts and in broader sites of conversation and activism.¹ In

* I thank Georgi Gardiner, Douglas Garthoff, and especially Yannig Luthra for extremely valuable comments on an earlier draft of this essay. I also thank two anonymous reviewers for *Philosophy & Public Issues*; their thoughtful, constructive feedback also prompted important and necessary improvements to the essay.

¹ There are of course many exceptions here, including David Schweickart (1993) and John Roemer (1994).

this essay, I provide a summary explanation of how in present political conditions the broad aims of these two traditions are consonant and complementary, also of how each is strengthened and enriched by engagement with the other.² The essay thus works toward remedying the separation and opposition of these traditions by articulating commitments common to both and characteristic of the type of leftism needed today. It also helps explain why some political orientations and policy proposals, notably including meritocracy and universal basic income, are poor bases for left solidarity.

The principal intellectual figure of the socialist tradition is of course Karl Marx, while in our context the principal intellectual figure of the liberal tradition is John Rawls. In emphasizing the potential for solidarity among (some) socialists and (some) liberals, the essay also emphasizes consonance of themes between these two great political theorists. I focus attention especially on Rawls's anti-capitalism, which – notwithstanding the important contributions of Samuel Freeman and William Edmundson – has not received due consideration.³

One important aspect of Rawls's anti-capitalism, rightly emphasized by Freeman, is his strong association between capitalism and utilitarianism. Neither entails the other, but capitalist economic systems and utilitarian philosophy share an instrumental understanding of rationality, emphasis on putative measures of welfare, aggregation as the measure of group welfare, and the aim to grow welfare thus putatively measured and aggregated. These features leave utilitarians poorly situated to diagnose and criticize capitalism's most fundamental failings: that

² On this broad point it may help to compare and contrast this essay with Simone Chambers (2012).

³ See Freeman (2011, 2013) and Edmundson (2017).

capitalist elections are exercises in consumer choice and that capitalist markets treat human labor as a mere commodity. I discuss affinities between capitalism and utilitarianism in Section 3C below.⁴

Rawls's anti-capitalism is not limited to his opposition to utilitarianism, however, and my discussion does not focus on affinities between these positions. In what follows I articulate a left position comprising three core positive commitments and three core critical commitments. I do so with special emphasis on anti-capitalist features of Rawls's view, since these mutually support themes that are more prominent within the socialist tradition. The aim is not to assess the relative significance of the two traditions, but rather to emphasize their consonance, despite disagreement on some important matters. Articulating this consonance is intended to help encourage sympathy and solidarity between those attracted to these respective traditions. It is intended also to enhance the appeal of each by incorporating themes more fully developed in the other.⁵

My aim in this essay thus also differs from that of Edmundson, who argues a Rawlsian conception of justice requires a socialist economic macrostructure.⁶ In my judgment Edmundson argues effectively that a socialist economic system

⁴ While I will not pursue the issue here, I think this relation is important not only for understanding leading intellectual justifications for capitalism, but also for understanding the persistent influence of utilitarianism. In my view the doctrine has been multiply refuted in both ethical theory and political philosophy, and yet it lives on as a "zombie doctrine". For classical refutations see Rawls 1971, Bernard Williams 1973, and Samuel Scheffler 1982.

⁵ For early discussions of the relationship between Rawls and Marx, see Richard Miller 1974 and Arthur DiQuattro 1983; for a more recent discussion see Daniel Brudney 2013.

⁶ See Edmundson 2017, especially Chapter 10.

more securely satisfies the requirements of justice as Rawls understands these, provided this socialist economic system can gain purchase in a society's public political culture. Edmundson does not discuss at length, however, what I take to be both the greatest challenge to his primary conclusion and the most likely reason Rawls did not elaborate a socialist position: that the ideas needed to sustain socialism – even a liberal socialism of the sort Rawls views as compatible with justice – might be sufficiently alien from a society's public political culture that a socialist socioeconomic system might be less stable within that political culture, notwithstanding the greater relative stability of such a system within a different culture.⁷ This concern is perhaps most pressing in Rawls's home country of the United States, where the socialist tradition has been marginalized.

In my view, which I conjecture accords with Rawls's views of these matters, we do not now know whether socialism is in that way alien to the political cultures of the United States or other developed economies. Accordingly my recommendation is neither to advocate for socialism nor to advocate against it, but instead to advocate for major institutional reforms to realize what Rawls (unfortunately, given the term's distinct use by Margaret Thatcher) labels a "property-owning democracy".⁸ We should do

⁷ Rawls distinguishes liberal from "command" socialism in Rawls 2001, especially Sections 41-42. As he presents these two socioeconomics systems, both involve societal ownership of the means of production. In a liberal socialist society, Rawls writes, "economic power is dispersed among firms ... [that] carry out their activities within a system of free and workably competitive markets"; he writes further that within a liberal socialism "[f]ree choice of occupation is also assured". See Rawls 2001, 138.

⁸ Rawls provides his fullest account of the socioeconomic system he calls "property-owning democracy" in Rawls 2001, especially Sections 41-42. For further exposition see Martin O'Neill 2009, 2012 and Alan Thomas 2016. See

so not with confidence such a socioeconomic system is most just, however, but instead with the more open-ended attitude that future generations will be better positioned to judge whether to pursue additional major institutional reforms realizing socialism.⁹

Thus the position I articulate here is not opposed to Edmundson's most important claims, but it refrains from endorsing his claim that Rawlsian justice requires socialism. Nevertheless it agrees with much of the spirit of Edmundson's book, including in particular his claim that much of the power of Rawls's work remains latent, despite its enormous influence and the voluminous literature of commentaries it has inspired.¹⁰ The position I articulate here also agrees with both Freeman and Edmundson that, regardless of what we make of socialism as an ultimate political ambition, it is crucial in the current political environment to advance a politics that is full-throated in its critique of capitalism.

I

The Three Positive Commitments

In this section I describe what I take to be the core positive commitments of any adequate leftism today. I do this relatively

also note 34 below, and more generally Section 3. I do not weigh in here on the details of what property-owning democracy consists in, except insofar as is necessary to differentiate it from other socioeconomic types. A relatively generic understanding of the idea suffices for the broad aims of this essay.

⁹ I do endorse, however, Waheed Hussain's claim that justice requires "democratic corporatism": workers and other societal stakeholders must have representatives within economic structures that empower them to shape major decisions. For development of this idea see Hussain 2012.

¹⁰ See Edmundson 2017, especially Chapter 3.

briefly, since the most interesting and controversial features of these commitments are best explored in the context of their negative implications. The point of this section is not to fully elaborate, still less to fully defend, the broad leftist position I endorse. It is instead to provide fundamental orientation that helps explain the more controversial negative claims that follow in Section 3.

Many people think they hold leftist political views when in fact they do not, so there can be value in policing the boundaries of leftism. Such policing is not, however, my main ambition. The claims I articulate here are not primarily descriptive; I am interested less in defining leftism as such, and more in enunciating a broad but substantive account of what makes a leftism today worthy of the name. The main conclusion is a prescription about how to approach questions of large-scale socioeconomic structure within today's politics. I also think it important at present to advocate for left solidarity transnationally, but my focus here is on how leftism is best articulated within domestic politics.

1A: Social Egalitarianism

The first and most important positive commitment of leftism is to be democratic, where this involves commitment not only to voting procedures with a broad franchise but also more strongly to creating and sustaining a public political culture that realizes a fundamental *social equality* of all persons.

Such social egalitarianism suffuses the work of both Marx and Rawls. The *Manifesto of the Communist Party* famously declares the ambition to “raise the proletariat to the position of the ruling

class to win the battle for democracy”.¹¹ To the extent Marx and Engels had reservations about democracy, this was because they thought that some societies lack adequate institutions to support democratic reform (so a violent revolution establishing communism might be justified) or because they thought the state itself might eventually “wither away” and become unnecessary.¹²

Regardless of the prospects for improving non-democratic societies using (internally) violent means, the former reservation is moot in the contemporary context. No socialist should advocate large-scale violence in contemporary politics, and no one of any political orientation should think widespread violence is likely to produce anything other than a powerful and anti-progressive reaction.¹³

The latter reservation is not best understood as an importantly antidemocratic strand in Marxian thought, since it is predicated on achievement of democracy’s fundamental goal – the equal social standing of all people – through non-state means. I tend (with Rawls) to doubt that this goal is achievable in that way. I also think future people will be better positioned to judge the issue, however, and furthermore that it is important to maintain solidarity with leftist anarchists within the current political environment. The view I articulate here is thus noncommittal about both the feasibility and the desirability of a stateless society

¹¹ Marx and Engels 1848, 26; and see also Engels 1847. For fuller discussion of the complex role of democracy in Marxian thought, see Richard Wolff 2000.

¹² See Chapter 2 of Engels 1878 and Chapter IX of Engels 1884; see also Marx 1872, 1891.

¹³ I say “widespread” violence so as to remain neutral about whether smaller-scale acts of violence might be justified, and perhaps even constructive, when performed by members of especially harshly oppressed groups in response to ongoing structures of oppression. The main points of this essay do not rely on any particular view about that question.

in the distant future. I help myself to the assumption that in the medium term, however, even anarchists should not advocate abolishing the state.

Rawls's commitment to democracy, in the full-throated sense of social equality of all persons, is absolute bedrock in his view.¹⁴ It is deeper even than his commitment to liberalism, since he justifies core liberal commitments in terms of their necessity to maintain the social equality of genuine democracy, rather than the other way around.¹⁵ The extreme depth of Rawls's commitment to democracy and social equality can be missed in a cursory reading of his work, for he does not attempt to defend democracy directly; indeed he does not even articulate at length the virtues of democratic societies with respect to other political systems. Rawls refrains from such positive defenses of democracy, however, only because he takes a commitment to social equality to be definitional of his enterprise. More specifically, it is only in the context of a public political culture aspiring to democratic equality that Rawls claims his account of justice has purchase.¹⁶

This section should not be taken to imply that Marx and Rawls were in agreement about what an ideal society would look like. Rawls explicitly rejects the aim of creating a communist

¹⁴ See, for example, Rawls 2001, 33-35. For further comment and elaboration on Rawls's egalitarianism, see O'Neill 2008, Andrew Mason 2015, and Christian Schemmel 2015a.

¹⁵ One place where this order of argument is explicit is Rawls 2001, 197. The priority of equal political liberty over economic considerations is a paradigm liberal commitment, and Rawls argues for this claim in part on the ground that it conduces to a better-functioning and more stable democracy; see Lecture VII of Rawls 1993 and Section 30 of Rawls 2001. For discussion see Joshua Cohen 2003.

¹⁶ See, for example, Rawls 2001, 18-38.

society within which the “circumstances of justice” no longer hold.¹⁷ In Rawls’s view reasonable disagreement about what makes life fulfilling will persist in an ideally just society, for example, and human benevolence will always remain limited in its motivational efficacy.¹⁸

IB: Structural Emphasis

The second positive commitment of any leftism worthy of the name is to a *structural* understanding of political and economic systems. One mark of an emphasis on structure is focus on the social milieu against which political action takes place, a milieu that is itself dynamically recreated by that same action.

In Marxian thought there is special emphasis on power structures, including in particular economic power structures. From the beginning, however, Marx and his followers displayed cognizance of the complex interplay between economic power and cultural understandings. Thus Engels famously introduces the term “false consciousness” to denote the internalization by the working classes of cultural understandings inimical to their social empowerment.¹⁹ Later theorists would provide far more detailed accounts of this interplay, while retaining the original

¹⁷ Rawls’s clearest summary account of the circumstances of justice is found in Section 24 of Rawls 2001. See also Section 22 of Rawls 1971, and for the idea’s source see Book III of Hume 1739.

¹⁸ I thank an anonymous reviewer for suggesting these differences between Marx and Rawls be highlighted.

¹⁹ See Engels 1893.

emphasis on structures of power that guide and sustain the evolution of a political culture.²⁰

In Rawls' commitment to structural analysis manifests in his idea of the "basic structure of society", the large-scale institutional framework that constitutes cooperation among citizens at the societal level.²¹ This structure is responsible for securing "background justice", which is justice in the ground rules against which important social transactions like elections and labor markets take place.²² It is to this basic structure that a conception of justice, in Rawls' understanding, in the first instance applies.

Rawls' emphasis on the basic structure of society contrasts with a focus on the pedigree of the status quo. Rawls associates focus on pedigree with Lockean, commonly right-libertarian, political thought.²³ Rawls' emphasis on the basic structure also contrasts with emphasis on the outcomes produced by actions or policies as such, as is prominent in both utilitarian and luck-egalitarian political thought.²⁴

²⁰ Antonio Gramsci 1971 merits special mention; also important is Louis Althusser 1970.

²¹ See Section 2 of Rawls (1971), Lecture VII of Rawls (1993), and Section 4 of Rawls (2001).

²² See Section 14 of Rawls (1971) and Sections 14-16 of Rawls (2001). As Brudney (2013) notes, Rawls thus (like Marx) focuses on the production of goods in his account of distributive justice.

²³ See Section 15 of Rawls (2001). Rawls names Robert Nozick (1974) as an exemplar of this approach; see John Locke (1689) for the historical inspiration.

²⁴ For defenses of luck-egalitarianism see Richard Arneson 2000 and Kok-Chor Tan (2008); for criticisms see Elizabeth Anderson 1999 and Susan Hurley 2001. For an interesting juxtaposition of this piece by Anderson with Edmundson's book, see Kristina Meshelski 2019.

Emphasis on the basic structure of society also contrasts with focus on the attitudes and choices of individuals. In Rawls's approach critiques of social injustice should focus neither on the consumer choices of individuals, for example, nor on the investment decisions or rent-seeking behavior of specific businesses. The background system of rules and understandings that permits and encourages these decisions and behaviors to undermine social equality is instead the focus.

These respective structural emphases are, in my view, importantly complementary. They share a focus on how society is presently constituted, rather than on how it came to be that way. The Marxian emphasis is on the power structures of institutions, and on how these dynamically recreate themselves in an ongoing way. This helps bring out the importance of widespread and effective economic agency, of workers not being vulnerable to exploitation by capitalists. It also helps bring out the importance of energetic agonism in the face of such exploitation, of the need to defeat the interests of would-be exploiters. The Rawlsian emphasis is instead on the fairness of institutions that underlie major social transactions. Rawls also emphasizes the ideas that publicly regulate these institutions, and how these ideas dynamically recreate themselves. While Marx and Rawls are of course not in agreement about all important matters, for the most part the emphasis each provides does not compete with that provided by the other.²⁵ Theorists may disagree on the relative importance of the structural emphases found in Marx and Rawls, but those favoring one should acknowledge that the other provides a helpful accounting of important aspects of political dynamics not as fully developed by the other.

²⁵ Rawls criticizes Marx most explicitly in Section 52 of Rawls 2001.

IC: Transformational Change

The third positive commitment is to a *transformational* understanding of what is needed in the present political circumstances. Unlike the first two commitments, this third commitment is not characteristic of the leftism needed in all historical conditions. At present, however, any left political position should regard society as in need of an overhaul both in its broad socioeconomic institutions and in its broadly animating political ideas.

It perhaps goes without saying that not only Marx in particular but the entire socialist tradition endorses transformational changes to contemporary politics and economics. The core socialist claim is that ownership of the largest-scale means of production, and accordingly the capacity to make society-defining investment decisions, must lie in the hands of the public rather than in the hands of any private individual or association.²⁶ In socialist systems the public must control the “commanding heights” of the economy.²⁷ To achieve this goal would require a radical change from the status quo. At present these means of production are held, and these investment decisions are made, by large corporations.

Talk of “transformational” change opposes incremental approaches to politics and public policy. It also deliberately shoots the gap between leftists who regard themselves as reformers and those who regard themselves as revolutionaries. Reform is necessary but not sufficient, since major changes to

²⁶ For an account of socialism in the context of Rawlsian political thought, again see Edmundson 2017.

²⁷ See Sections 41-42 of Rawls 2001 for Rawls’s notion of “command”, and for further discussion of the idea of “commanding heights” of the economy see Edmundson 2017, especially Chapter 2.

existing power structures are needed to ensure positive reforms are not undone. A revolution in how we think about politics and economics is needed, but not a violent revolution that overthrows the government. Transformation is change not just in extent but also in kind, and the transformation leftists should advocate is toward a non-capitalist economic order; but this talk of transformation need not suggest violence.

Rawls lacks the radical style of many Marxians. In part for this reason, he is sometimes accused – in my view mistakenly – of an insufficiently radical or progressive agenda.²⁸ In my view this accusation is blunted by the fact that Rawls explicitly rejects not only *laissez-faire* but also welfare-state capitalism, also by his contention that we must develop and specify a non-capitalist social system distinct from these.

Rawls regards *laissez-faire* capitalism as a complete non-starter, since it does not even purport to bind the citizenry together into a cooperative unity.²⁹ Its ideology is instead one of competitiveness, extolling rather than lamenting the fact that capitalist economies inevitably produce winners and losers, permitting rather than mitigating the fact that unregulated capitalist economies generate terrible life circumstances for large numbers of citizens. *Laissez-faire* economies also involve minimal investment in public goods, exacerbating the plight of those within them who fare worst.

²⁸ See, for example, Charles Mills 2005. For avowedly radical Rawlsianism, see Anthony Laden 2001.

²⁹ Rawls discusses *laissez-faire* capitalism in Section 41 of Rawls 2001. In Edmundson's apt paraphrase of Rawls's critique, "what does not at least aim to realize the two principles will not succeed in doing so"; see Edmundson 2017, 77.

Laissez-faire economic systems furthermore characteristically subject large portions of the population to the tyranny of “private government”.³⁰ People are largely dependent on private enterprises for goods essential to survival, and so are subject to extreme forms of domination in their workplaces. Both the monopolistic tendency of capitalist economies and the strong tendency of monopolies to capture and control the government proceed unchecked within a laissez-faire capitalist regime.

Welfare-state capitalism is a vast improvement over laissez-faire capitalism. Guaranteed retirement income, unemployment insurance, and health insurance greatly improve the prospects of working people in welfare-state systems. Free public education and massive infrastructure projects greatly enhance the opportunities open to citizens in general. Public campaign finance, aggressive antitrust enforcement, and extensive government regulation both to enhance market competition and to protect public goods like clean air and water prevent the worst tyrannies of capitalism’s private governments.³¹

Notwithstanding the world-historical improvements that the welfare state-establishing structural transformations constituted, and notwithstanding the need to defend existing welfare state institutions in a time of re-ascendant monopolism and corporate capture of government, Rawls flatly rejects the welfare state as a potentially just economic system.³² It is crucial to the primary

³⁰ For much more on this idea see Anderson 2017.

³¹ As this list attests, in the United States construction of the welfare state was never completed. Neither the New Deal nor its extensions in the postwar era achieved public health care or campaign finance; indeed the specific reformist route pursued on these matters served only to enhance the influence of large corporations on the lives of the citizenry at large.

³² See Sections 41-42 of Rawls 2001, where Rawls emphasizes the failure of the welfare state to engender reciprocity among citizens. Like publicity, reciprocity

purposes of this paper to consider his reasons for rejecting welfare-state capitalism in some detail, also to expand on these with an eye toward unifying them with socialist grounds for rejecting capitalism. I undertake that task in the following section, using three central negative commitments of the “synthesized” leftism I recommend as an organizational structure.³³

II

The Three Negative Commitments

I begin this section by briefly articulating features of the socioeconomic system Rawls favorably juxtaposes with welfare-state capitalism, property-owning democracy.³⁴ In so doing I elaborate the first negative commitment of this essay’s synthesized leftism, its commitment to antiauthoritarianism. This involves opposition not only to totalitarian or antidemocratic politics, but also opposition to totalitarian and antidemocratic economics.

I then turn to a more controversial negative commitment of this left position, namely its antimeritocracy. Rawls is explicit about his antimeritocratic commitments, and these are crucial to his case for rejecting welfare-state capitalism. Especially

figures in Rawls’s thought both as a consideration in its own right and as a constituent of stability. On Rawls’s conception of stability, see Jon Garthoff 2016.

³³ I use the label “synthesized” because the broad view outlined in this paper synthesizes prominent features of socialism with prominent features of left-liberalism.

³⁴ For more on property-owning democracy, again see Sections 41-42 of Rawls 2001 as well as Freeman 2007, 219-236, Freeman 2013, and Chapter 2 of Edmundson 2017. See also note 8 above.

important is the connection between antimeritocracy and reciprocity. A welfare state does not constitute or express the worth of all citizens by emphasizing the need for each citizen to contribute to political and economic life. It instead emphasizes that citizens are fitting recipients of society's concern.³⁵

The third and most controversial negative commitment is to antiwelfarism. Rawls is explicitly antiwelfarist, but his discussion of the issue focuses mainly on problems of publicity, the difficulty of identifying both when an adequate provision of welfare has occurred and where above that threshold it is permissible to tolerate inequalities for the sake of expanding the total quantity of welfare produced.³⁶ In what follows I go beyond this discussion while remaining in a Rawlsian spirit, emphasizing (like Freeman) the affinities between capitalism and utilitarianism. These affinities are present not only in laissez-faire but also in welfare-state capitalism. They are not limited to total and average utilitarianism, moreover, but extend also to restricted versions of utilitarianism. (Restricted utilitarianism rules out as unacceptable, prior to any application of the principle of utility, social arrangements involving either the extreme deprivation of failing to meet basic needs or the extreme domination of slavery or caste-based subordination.³⁷) As I explain below, capitalism and utilitarianism each lack an adequate understanding of the human person as a locus of respect, and so each is unable stably to sustain fully satisfactory social relationships.

³⁵ Brudney 2013 includes illuminating discussion of the distinction between concern and respect in the context of the work of both Marx and Rawls.

³⁶ See Section 38 of Rawls 2001.

³⁷ Rawls defines the "principle of restricted utility" in Section 34 of Rawls 2001, and in the following four sections he argues that his favored conception of justice, justice as fairness, is superior to this principle.

2A: Antiauthoritarianism

The first and perhaps least controversial critical commitment is to be *antiauthoritarian*. This commitment flows directly from the social equality of left politics. This is of course a mark of liberal thought in general, and Rawls is no exception, including especially his placement of political liberties above other goods in his conception of justice.³⁸ As a tradition socialism is more mixed in its attitude toward political liberties, and is also more mixed in its tolerance of strongly centralized economic authorities. With Rawls I assume that for contemporary societies with fully developed economies strongly centralized economic planning is not recommended.³⁹ Thus the only forms of socialism we should seriously consider are ones that are liberal in that they rule out such centralized authority in their socioeconomic arrangements.

Liberalism in this broad sense is relatively uncontroversial, but the antiauthoritarianism of synthesized leftism extends beyond this. This position opposes authoritarian political regimes, to be sure; but it also opposes authoritarianism inside the economic sphere, and further supports increased democratization of the workplace. At a minimum this includes protection of workers' rights to unionize, aggressive antitrust enforcement, and extensive mandatory representation of workers on the boards of large corporations.⁴⁰

All these are important features of property-owning democracy. They distinguish it from welfare-state capitalism by empowering workers and by aggressively resisting monopolies. A

³⁸ See Chapter IV of Rawls 1971, especially Section 39.

³⁹ Rawls briefly discusses command economies, and then dismisses them, in Section 41 of Rawls 2001.

⁴⁰ See Hussain 2012.

property-owning democracy must also have other features not present in welfare-state capitalism, however, if it is to be a candidate for a just economic system. It must include policies of taxation and transfer, for example, beyond what is needed to secure a “social safety net” or “suitable social minimum” for all citizens.⁴¹ The defining feature of property-owning democracy is its broad dispersal of productive assets; the tendency of markets to consolidate economic power requires robust policies of tax and transfer to maintain that dispersal over time.⁴²

Property-owning democracy does not, however, entail mandatory worker ownership of at least a substantial part of large private productive enterprises. Such a requirement would suffice for a socialist regime by any reasonable definition; socialism does not entail all property is owned by the government. Since property-owning democracy is by definition not a socialist economic system, it does not mandate this.

As was indicated in the introductory section, the synthesized left position I articulate here is – like Rawls’s conception of justice – noncommittal regarding whether worker ownership (or management, in the case of public enterprises) of large private productive enterprises is required by justice. Since this

⁴¹ Rawls discusses the “suitable social minimum” in Section 34 of Rawls 2001.

⁴² Edmundson labels this tendency the “fact of domination”; see Edmundson 2017, especially Chapter 3. He also notes the interesting fact that Rawls introduces a notion of “periodicity” with the idea of property-owning democracy, since there must be some interval after which the fact of domination is remedied in a non-socialist system, to maintain broad dispersal of wealth. Edmundson plausibly sees this as an important vulnerability of a property-owning democracy, one that generates publicity and reciprocity issues broadly analogous to those generated by welfare-state capitalism’s need to specify a suitable social minimum. See Edmundson 2017, especially Chapter 10.

requirement is a main tenet of socialism, it may seem to prevent the view from serving as a basis for a left solidarity encompassing socialists. But this is not correct, for in contemporary societies the best route to worker ownership of large private productive enterprises is plausibly to first achieve property-owning democracy. If this is right, then in present conditions socialists too should advocate for institutions of a property-owning democracy in the medium term, even if they do so in the belief that their achievement must be followed by additional efforts to realize socialism.⁴³

The point of remaining noncommittal about socialism in the present context, moreover, is not merely the political goal of enabling a broad coalition that includes both socialists and non-socialists. It is also the epistemic claim, which I think all on the left should accept, that citizens in a property-owning democracy would be much better positioned to know whether socialism is a requirement of justice. The question of socialism is not a matter of mere speculation, but it is one about which we all should recognize our fallibility.

Before leaving the topic of antiauthoritarianism, I must mention the feature of property-owning democracy and liberal democratic socialism that Rawls most emphasizes when arguing for the superiority of these systems to welfare-state capitalism: that they are compatible with realizing the “fair value” of the political liberties. This idea is sometimes glossed as the thought that political liberties must be guaranteed not only in form but in

⁴³ It may help to bear in mind here that, as Nien-hê Hseih emphasizes, it is not sufficient to realize property-owning democracy that there be widespread dispersal of wealth. Available work must also be meaningful, and workers must have significant say about the conditions of their work. For further development of these points see Hseih 2012, and see also Hussain 2012.

substance, also as the thought that citizens must not only have liberties but be in a position to exercise them meaningfully.

These glosses are helpful, but they do not capture the full idea of the fair value of the political liberties. It may help, in explaining why, to compare the political liberties under laissez-faire capitalism with the political liberties under welfare-state capitalism.⁴⁴ Under laissez-faire capitalism there is a legal right to think, speak, publish, assemble, and associate politically. For many citizens, however, this right cannot even be meaningfully exercised. The system permits extreme deprivations, such that finding food or shelter may dominate the lives of many who live under the regime. In such circumstances it is an understatement to characterize possession of political liberties as hollow. Indeed under such circumstances the political liberties themselves become a major vehicle of social inequality, since those who can meaningfully exercise them wield far greater political influence than those who cannot.

In welfare-state capitalism all citizens can, in at least some important sense, meaningfully exercise the political liberties. No one is forced by lack of luck or talent to live in a condition of utter deprivation, so some opportunities are present for the voices of all citizens to be heard. All citizens are, we might say, recognized as fully empowered to participate in political

⁴⁴ Rawls discusses liberties at length in Chapter IV of Rawls 1971, and he later revises his account in light of criticism due to H. L. A. Hart 1973. Rawls compares the role of liberties in these two capitalist systems in Sections 45-46 of Rawls 2001.

discourse.⁴⁵ There is accordingly substance, and not only merely form, to political liberties in a welfare-state capitalist regime.

But this is still a far cry from realizing the fair value of the political liberties. This occurs not when all citizens are in this minimal sense meaningfully able to exercise substantial liberties, but rather when all citizens can impact and influence political decisions on an equal footing.⁴⁶ The great disparities of wealth and income permitted by welfare-state capitalism prevent this sort of equality.⁴⁷ All citizens are recognized in political discourse, but they are not all respected as co-determiners of the policies and actions to be implemented or undertaken.⁴⁸

Synthesized leftism agrees with Rawls in insisting on achieving the fair value of political liberties for all citizens, also in his view that capitalism is incompatible with realizing this goal. In this way synthesized leftism incorporates both the liberal's sensitivity to the erosion of individual liberty through the consolidation of political power (whether by the government or large private

⁴⁵ This is arguably not true in the present United States, another mark of the fact that in the United States construction of the welfare state was never completed.

⁴⁶ Rawls discusses the fair value of political liberties in Sections 45-46 of Rawls 2001; this discussion was prompted in part by Norman Daniels 1975. See also Daniels 2003.

⁴⁷ For a different way of situating the fair value of political liberties with respect to the comparison between property-owning democracy and welfare-state capitalism, see O'Neill (2012), especially 81-84.

⁴⁸ Thus I endorse the contention advanced by Stuart White (2012) that Rawls is appropriately understood as a republican theorist; see also, in this connection, Thomas (2012). White's contention dovetails with a view defended in Hussain (2012), namely that we should expect greater political involvement by workers with a greater say over their working conditions.

interests) and the socialist's sensitivity to the authoritarian control characteristic of concentrated economic power.⁴⁹

2B: Antimeritocracy

The second – and perhaps more surprising – critical commitment of the leftism advocated here is to be *antimeritocratic*. There are multiple reasons this commitment may surprise. One is that a genuine meritocracy would be far more just than present social arrangements. In the case of the United States, the lack of a meaningful estate tax is enough to condemn the society as failing to enable fairness in the background of its social transactions. Even more damaging is differential quality of available education and health care, with class, race, and location unfairly determining both quality and access. The fact that meritocracy would be a great improvement over the status quo does not, however, establish that meritocracy is compatible with justice. Full realization of the welfare state, including especially high-quality health care and education for all, would be a great improvement; but it would not suffice for justice as a leftist in contemporary circumstances should understand it.

A second and related reason is that many who regard themselves as on the political left also regard themselves as advocates for meritocracy. Again the fact that the welfare state is not fully realized helps explain how this is possible. Our outrageous inequalities appropriately focus the attention of the left on the unfair and antimeritocratic advantages of the wealthy,

⁴⁹ Socialists are also more sensitive, and appropriately so, to the tendency of capitalist economic systems to devolve into fascist regimes. It is unfortunate that Rawls does not include a right-totalitarian system among the socioeconomic paradigms he discusses in Sections 41-42 of Rawls (2001).

which entail justice could be enhanced by moving toward meritocracy.⁵⁰ That a genuine meritocracy would be more just than the status quo again does not entail a meritocratic system is compatible with the ideals of justice most appropriate to our circumstances.

Rawls clearly opposes meritocracy. Regardless of whether merit is understood in terms of ethical virtue or economic productivity, it is in Rawls's view insufficiently publicly assessable to form the basis for shared cooperative activity.⁵¹ Public assessability is crucial to Rawls because it enables broad cognizance of when institutions and citizens live up to the demands of justice as they understand them, which in turn mutually assures citizens of good faith and thereby stabilizes the system of cooperation.⁵²

Though not emphasized in the same way by Rawls, a related concern is that meritocratic understandings of justice are highly vulnerable to being coopted by the already powerful. People are reluctant to believe that the social positions of others are mostly due to luck. Those who are relatively successful are reluctant to believe their relative success is mostly due to luck, moreover, even the luck of one's circumstances of birth. Thus those who occupy positions of greater power due to luck (or worse) are

⁵⁰ Rawls in particular is often mistaken for a meritocrat by non-experts, in part because his style is that of a professional academic rather than that of an agitating activist. These misunderstandings also stem from the fact that many actual liberals endorse meritocracies incompatible with Rawls's conception of justice.

⁵¹ In Rawls's taxonomy meritocracy is a type of perfectionism, which he considers and rejects in Section 50 of Rawls (1971). Meritocracy also runs directly afoul of the Rawlsian conviction that inequalities must redound to the benefit of the least advantaged.

⁵² Rawls discusses the problem of assurance in Section 42 of Rawls (1971).

commonly able to encourage widespread belief that talent, effort, or virtue played a much larger role than in fact it did in determining their position in society.⁵³

These are telling objections to meritocracy, arguably decisive against the view. But more profound is the fact that meritocratic political understandings are incompatible with fundamental social equality, since they apportion social power in accord with features not shared equally by citizens. Broadly speaking, social power correlates strongly with economic power. This does not mean social equality entails economic equality, but it does entail economic inequalities must be carefully regulated and must be given special justification. Rawls asserts his difference principle to regulate permissible inequalities, and the justification for this principle is that the inequalities it permits redound to the advantage of the least advantaged, thereby expressing deep reciprocity and minimizing the “strains of commitment” of belonging to the least advantaged group.⁵⁴ Nothing to do with talent or virtue figures in this justification, so Rawls can comfortably claim natural talents are a “common asset”.⁵⁵ This expresses the idea that talents are to be marshalled for the common good, rather than the idea that those with talents are to be rewarded for having and using them by being accorded greater social power.

⁵³ Meritocracy is thus appropriately associated with elitism, which is a major political drawback of the idea in a democracy.

⁵⁴ In Section 39 of Rawls (2001), Rawls argues the difference principle is to be preferred to the principle of restricted utility on the ground that it involves fewer “strains of commitment”. Alexander Kaufman (2018) rightly emphasizes the importance of this ground in Rawls’s case for the difference principle.

⁵⁵ Rawls refers to natural talents as a common asset in Section 17 and Section 29 of Rawls (1971). Indeed he says this idea encapsulates the spirit of both the difference principle and justice as fairness as a whole.

I have focused this section on Rawls's anti-capitalism, spending relatively little space discussing socialism. This is mainly because Marx's anti-meritocracy is obvious. It is most baldly witnessed by his adoption of the famous socialist dictum "from each according to his ability, to each according to his needs" as the fundamental distributive principle of a communist society.⁵⁶

It should be noted that earlier in the same work Marx observes that the principle "to each according to his contribution", which was also popular within the socialist tradition of his day, is appropriate to a society in transition from capitalism to communism.⁵⁷ This principle can be read in a meritocratic way, and G. A. Cohen's Marxian luck-egalitarianism is similar in this respect.⁵⁸ Still, since both Marx and Marxians like Cohen overwhelmingly emphasize social egalitarianism, there is strong pressure to understand their commitment to principles that are open to meritocratic interpretations as subordinated to a more fundamental antimeritocratic position.⁵⁹ And regardless of how Marx or Cohen thinks socialism is best understood, meritocratic socialist views – no less than meritocratic liberal views – should be rejected for the reasons articulated previously within this subsection.

⁵⁶ See Part I of Marx (1891). Regardless of whether socialism is correct, I (like Rawls) do not endorse this as a principle of distributive justice.

⁵⁷ See Part I of Marx (1891). Here again I would join Rawls in rejecting this as a principle of distributive justice for societies at any stage of development.

⁵⁸ See Cohen (1989) for the germ of his luck-egalitarianism.

⁵⁹ I thank an anonymous reviewer for encouraging acknowledgment of the movements of socialist thought that can be heard in a meritocratic key.

2C: Antiwelfarism

The third – perhaps most surprising – critical commitment is to be *antiwelfarist*. As has already been observed, this commitment consists in part in rejection of the welfare state as the model for an ideal socioeconomic system. Welfare state provisions such as guaranteed retirement income, unemployment insurance, health care, and education are of course great improvements over laissez-faire policies and are to be defended against those who would reduce or eliminate them in the name of fiscal responsibility. But left politics must articulate a conception of society differing not only in extent but also in kind from the welfare state. And in so doing, it must also articulate a conception of broad socioeconomic activity differing in kind from capitalism.

One major problem with the welfare state is specifying the level of welfare provision in a way satisfying to the public. This is in part a problem of disagreement, since what constitutes the “suitable social minimum” of welfare is sensitive to context and may vary among reasonable citizens. It is also in part a problem of publicity, since even if we stipulate unanimity about the level of welfare to be provided, welfare is notoriously inscrutable. It will be difficult to discern, even at the level of broad socioeconomic groups, when that level has been reached and so other political values may be invoked to shape the production and distribution of resources.⁶⁰

⁶⁰ See Section 38 of Rawls (2001). It is characteristic of Rawls to emphasize publicity considerations of this sort at every turn. He deploys such considerations to oppose utilitarian invocations of welfare, happiness, or desire-satisfaction as a currency of justice. He also uses them to oppose Amartya Sen’s proposed currency of justice: if capabilities are functions from resources to welfare, happiness, or desire-satisfaction, then they are also

But as occurred in the last section with meritocracy, there is a problem with welfarism more profound and fundamental than its inscrutability. In this case the objection is that welfare state institutions fail to constitute the citizenry as reciprocal producers of social goods. Instead they are characteristically experienced as redistributing, in a pejorative sense, fruits of productive activity. These institutions thereby encourage a reactionary conception of economic activity as comprising “makers” and “takers”.⁶¹

Any proposal to replace existing welfare state programs with universal basic income reinforces these reactionary social understandings, and is for that reason alone to be resisted. The fact that universal basic income is not means-tested, and so is not narrowly tailored to address problems of need, does not preclude a social understanding according to which that is its primary purpose and justification. (Compare the fact that the mortgage interest tax deduction in the United States benefits the wealthy, for example, yet is understood to be justified by its promotion of home ownership by the middle class.) I expect this sort of putative justification for universal basic income to become far more prevalent, as this policy proposal is increasingly conjoined with the worry that mechanization and automatization of the

problematically inscrutable. See Sen (1987, 1992), and see Section 51 of Rawls (2001).

⁶¹ There is a strong tendency in capitalist economic systems to lionize leading capitalists; consider the near-cult status of billionaires Steve Jobs, Bill Gates, Warren Buffett, and Elon Musk. This fuses a meritocratic rationale for capitalist institutions with these institutions’ understanding of productive activity as primarily individualistic rather than reciprocal. Thus these figures are not only to be rewarded for their supposedly greater talent, virtue, or productivity with a greater share of social power; those who are not rewarded are meant to admire them and to be grateful to them for their use of their talent, virtue, or productivity. These complexes of ideas are to be rejected utterly.

economy will fail to generate enough jobs.⁶² Wherever possible, the means-testing of aid programs is to be avoided for similar reasons.

Proposals to augment existing programs with a universal basic income are more difficult to assess, as these could form part of the basis of a new socioeconomic system. But even these proposals are fraught, since they discourage conceiving of economic production as reciprocally cooperative.⁶³ Accordingly I think universal basic income should be supported only as part of a broader package of progressive policies, notably including large increases for the wealthy in capital gains, income, and estate taxes.⁶⁴

Left opposition to welfarism should extend beyond this, furthermore, in denying the adequacy of the welfare state as a model for socioeconomic cooperation. It should reject welfare itself as the metric by which social institutions are most fundamentally assessed, and not only because of its inscrutability. As Rawls emphasizes, social provision of welfare without deeper reciprocity engenders political alienation and apathy.⁶⁵ As Marxians emphasize, social provision of welfare without meaningful ways to exercise economic agency engenders social

⁶² Thus this concern would also apply to what Schemmel terms a “universal welfare state”; see Schemmel (2015b). This is of course different from a rationale for universal basic income that emphasizes its potential to enable all citizens to participate fully in democratic politics.

⁶³ Rawls was mindful of the potential such proposals have to undermine reciprocity in social cooperation, hence his (somewhat notorious) remark: “Surfers must somehow support themselves.” See Section 53 of Rawls (2001).

⁶⁴ For a more promising set of policy proposals, see Thad Williamson (2012a, 2012b).

⁶⁵ Rawls articulates this sentiment in Section 39 of Rawls (2001).

alienation.⁶⁶ These characteristic byproducts of reactionary economic conceptions are not only dispiriting, they corrode social bonds and thereby threaten stability. They are also vulnerable to exploitation by demagogues and xenophobes who would correlate the supposed classes of makers and takers with membership in religions, ethnic groups, and political parties.

One way to capture what these all concerns have in common is to say that welfare-state capitalist societies fail to live up to their understandings of citizens as sharing in human dignity. Like utilitarianism understood as a moral doctrine, a politics that aims most fundamentally at welfare or desire-satisfaction cannot capture what is most important in our social lives as human beings. Welfare is at best an appropriate focus of human social relations with lower animals.

This is inadequate even as account of our relations with higher animals.⁶⁷ These animals have capacities for comprehension and for reasons-response. Accordingly we can relate to them with mutual recognition, acknowledging not only that their welfare is a matter of genuine worth rather than indifference, but also that their appreciation of their own treatment matters in its own right. This enables not just mutual intelligibility but also mutual accountability. In a welfare state we at least achieve this level of mutual esteem in social relations with others, provided that the welfare state includes equal (if not fair) political liberty.

More than this is required for fully adequate social relations with other human persons. Not only must we not be indifferent

⁶⁶ Marx's fullest account of alienation (*Entfremdung*) is found in Marx (1932).

⁶⁷ Accordingly laissez-faire is not an adequate account of human social relations with conscious animals in general, even if it is appropriate to leave most wild animals alone.

to one another, and not only must we not be unintelligible or unaccountable to them, we must also relate to them on terms of mutual consent, as reasonable social equals.⁶⁸ This equality must include, as socialists often emphasize and as Rawls does too with the notion of the fair value of political liberties, roughly equal social power when deciding matters of societal importance.

Yet even roughly equal social power does not fully capture what is needed for a fully adequate political and socioeconomic system. This rough equality of social power must flow from a social understanding of each of us as respectable beings and must be grounded in a political culture that dynamically recreates that social understanding across new circumstances and across generations.⁶⁹ Only a society like that reliably and stably elicits engagement and affiliation that secures just social cooperation indefinitely. If the reflections of this essay are on the right track, capitalism is incompatible with such a society. I do not think any of us knows with certainty whether socialism is the best framework for understanding what such a society looks like. But regardless of the answer to that question, we must fill out Rawls's sketch of property-owning democracy (perhaps eschewing the label), since if we are to progress transformatively then that socioeconomic system will likely be at least an important stage in the progression.

⁶⁸ Though these distinctions are not identical, there is a parallel between the distinction I draw here between responsibility and reasonableness and that drawn in Rawls (1999). There is furthermore a parallel between both of these distinctions and the distinction between the second and third levels of Lawrence Kohlberg's scheme of moral cognitive development. See Chapter VIII of Rawls (1971), Kohlberg (1973), and see also David Reidy (2017). I hope to investigate these parallels in future work.

⁶⁹ Rawls discusses self-respect in Section 67 of Rawls (1971).

As left-liberals sometimes remind us, economic goods are not the be-all and end-all of justice. Political liberties are at least as important, provided we bear in mind not just that merely formal liberties can be useless but also that there are multiple gradations of meaningful exercise of political liberties. Not only are we not mere tools for promoting welfare, as both capitalism and utilitarianism too often suggest, but our welfare is not the most important thing about how we relate to others politically.⁷⁰ Nor even is mutual responsibility, as crucial as it is for us to be both intelligible and accountable in our social relations with others. Mutual consent and equality are the only social relations worthy of our social and political nature.

As socialists sometimes remind us, these social understandings are only successful, and are only sustainable, when backed by matching power relations. All the indispensable notions for characterizing successful human social relations – including justice, fairness, consent, equality, freedom, accountability, and welfare – can be coopted and can be replaced with simulacra. Unlike Marx in his more critical moments, I think it would be an error to jettison or radically reunderstand these crucial notions.⁷¹ But as we preserve and develop these notions to help guide and animate our political life, we must guard against their being used, knowingly or otherwise, for reactionary purposes. Furthermore – as Marx and Rawls were careful to note – even good versions of these ideas are not sufficient. We need a leftism where these ideas

⁷⁰ For further discussion see Freeman (2011) and Brudney (2013). I think these considerations are serious enough to entail not only that the principle of restricted utility is inferior to justice as fairness, but also that it cannot join with justice as fairness as part of a shared family of reasonable conceptions of the good. For the idea of such a family of conceptions of justice, see Rawls (1997).

⁷¹ See Marx (1844, 1891). For discussion see Allen Wood (1981), Section 52 of Rawls (2001), and Rawls (2007), 335-353.

and the social power relations that ensure their positive deployment are mutually reinforcing. To succeed, this leftism must draw on both the left-liberal and socialist traditions. My hope is that this dynamic synthesis engenders and deepens respect and solidarity across what is arguably the most prominent fissure in left politics.

Conclusion

The leftism emerging from these reflections is broad and substantive, encapsulating major themes of both the left-liberal and the socialist traditions. It criticizes the institutions of contemporary welfare-state capitalism while making progress toward articulating a superior socioeconomic model. It is noncommittal, however, on the important question of whether private ownership of most wealth is compatible with this new model. Accordingly it leaves open whether the ultimate goal is property-owning democracy, liberal democratic socialism, or even a form of anti-authoritarian communism (if such is possible).⁷²

As has been emphasized above, however, the failure of leftism to articulate a consensus ambition at that level need not constitute an obstacle to leftists unifying around it. All leftists should oppose both Soviet-style command economies and the violent overthrow of the current political regimes, since each would engender a worse authoritarianism than presently obtains. What is needed now is a common vision to channel righteous outrage about today's injustices into a feedback loop of democratic advance rather than into a feedback loop of

⁷² For further discussion of varieties of socialist reform and their historical roots, see Axel Honneth (2017).

authoritarian retreat. This vision is no mere *modus vivendi*; it is a major step along a common path.

Accordingly I think advocates both for and against socialism should adopt a more relaxed attitude toward their dispute. Both sides are fallible. Neither side needs to know who is correct to make common cause for both immediate and medium-term goals.⁷³ An opportunity is presented by the passage of political power to generations more removed from the cold war and more open to ideas drawn from the socialist tradition. With the global climate worsening and transnational right-authoritarianism rising, the opportunity is one we cannot afford to miss.⁷⁴

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⁷³ Thomas Piketty (2013) makes important observations about the atypical character of the postwar period that enabled it to combine economic growth with reduced inequality. This could be interpreted as evidence against the stability of property-owning democracy, since it suggests private ownership of society's means of investment is not normally compatible with leftward progress. This could also be interpreted, however, as evidence that the historical record is idiosyncratic and so a limited guide to what is possible both inside and outside of socialist economic structures.

⁷⁴ At the time of this writing, moreover, the COVID-19 global pandemic is raging.

References

Althusser, Louis. 1970. *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses*. Translated by G. M. Goshgarian. Edited by Jacques Bidet. New York, New York: Verso Books.

Anderson, Elizabeth. 1999. "What Is the Point of Equality?" *Ethics* 109 (2): 287-337.

_____. 2017. *Private Government: How Employers Rule Our Lives (And Why We Don't Talk about It)*. Princeton (New Jersey): Princeton University Press.

Arneson, Richard. 2000. "Luck Egalitarianism Interpreted and Defended," *Philosophical Topics* 32 (1/2): 1-20.

Brudney, Daniel (2013). "The Young Marx and the Middle-Aged Rawls," in *A Companion to Rawls*. Edited by Jon Mandle and David Reidy. Hoboken (New Jersey): Wiley-Blackwell.

Chambers, Simone. 2012. "Justice or Legitimacy, Barricades or Public Reason? The Politics of Property-Owning Democracy," in *Property-Owning Democracy: Rawls and Beyond*. Edited by Martin O'Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

Cohen, Gerald Allan. 1989. "On the Currency of Egalitarian Justice". *Ethics* 99 (4): 906-944.

Cohen, Joshua. 2003. "For a Democratic Society," in *A Cambridge Companion to Rawls*. Edited by Samuel Freeman. Cambridge (UK): Cambridge University Press.

Daniels, Norman. 1975. “Equal Liberty and Unequal Worth of Liberty,” in *Reading Rawls*. Edited by Norman Daniels. New York, New York: Basic Books.

_____. 2003. “Democratic Equality: Rawls’s Complex Egalitarianism,” in *A Cambridge Companion to Rawls*. Edited by Samuel Freeman. Cambridge (UK): Cambridge University Press.

DiQuattro, Arthur. 1983. “Rawls and Left Criticism,” *Political Theory* 11 (1), 53-78.

Edmundson, William. 2017. *John Rawls: Reluctant Socialist*. Cambridge (UK): Cambridge University Press.

Engels, Friedrich. 1847. *Principles of Communism*. Open source material at: <https://marxists.architexturez.net/history/usa/pubs/lrlibrary/03-LRL-princip-of-comm.pdf>.

_____. 1878. *Anti-Dühring*. Open source material at: <https://www.marxists.org/archive/marx/works/1877/anti-duhring/>.

_____. 1884. *Origin of the Family, Private Property, and the State*. Open source material at: https://www.marxists.org/archive/marx/works/download/pdf/origin_family.pdf.

_____. 1893. “Letter to Franz Mehring”. Open source material at:

<https://www.marxists.org/archive/mehring/1893/histmat/app.htm>.

Freeman, Samuel. 2007. *Rawls*. New York, New York: Routledge Publishing.

_____. 2011. "Capitalism in the Classical and High Liberal Traditions," *Social Philosophy & Policy* 28 (2): 19-55.

_____. 2013. "Property-Owning Democracy and the Difference Principle," *Analyse & Kritik* 35 (1): 9-36.

Garthoff, Jon. 2016. "Rawlsian Stability," *Res Publica* 22 (3), 285-299.

Gramsci, Antonio. 1971. *Selections from the Prison Notebooks*. Translated and Edited by Quintin Hoare and Geoffrey Nowell Smith. New York: International Publishers. Written from 1929 to 1935.

Hart, Herbert Lionel Adolphus. 1973. "Rawls on Liberty and Its Priority," *University of Chicago Law Review* 40 (3), 534-555.

Honneth, Axel. 2017. *The Idea of Socialism*. Cambridge (UK): Polity Press.

Hsieh, Nein-hê (2012). "Work, Ownership, and Productive Enfranchisement," in *Property-Owning Democracy: Rawls and Beyond*. Edited by Martin O'Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

Hume, David. 1739. *A Treatise of Human Nature*. Open source material at: <https://www.gutenberg.org/files/4705/4705-h/4705-h.htm>.

Hurley, Susan. 2001. "Luck and Equality," *Proceedings of the Aristotelian Society* Supplemental 75 (1): 51-72.

Hussain, Waheed. 2012. "Nurturing the Sense of Justice: The Rawlsian Argument for Democratic Corporatism," in *Property-Owning Democracy: Rawls and Beyond*. Edited by Martin O'Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

Kaufman, Alexander. 2018. *Rawls's Egalitarianism*. Cambridge (UK): Cambridge University Press.

Kohlberg, Lawrence. 1973. "The Claim to Moral Adequacy of a Highest Stage of Moral Development," *The Journal of Philosophy* 70 (18), 630-646.

Laden, Anthony. 2001. *Reasonably Radical*. Ithaca (NY): Cornell University Press.

Locke, John. 1689. *Second Treatise of Government*. Open source material at: <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.

Marx, Karl. 1844. *On the Jewish Question*. Open source material at: http://fs2.american.edu/dfagel/www/Class%20Readings/Marx/Marx,%20_On%20the%20Jewish%20Question_Edited%20version%20from%20Tucker.pdf. Written 1843.

_____. 1872. *La Liberté Speech*. Open source material at: <https://www.marxists.org/archive/marx/works/1872/09/08.htm>.

_____. 1891. *Critique of the Gotha Programme*. Open source material at: https://www.marxists.org/archive/marx/works/download/Marx_Critique_of_the_Gotha_Programme.pdf.

_____ (1932). *Economic and Philosophic Manuscripts of 1844*. Open source material at: <https://www.marxists.org/archive/marx/works/download/pdf/Economic-Philosophic-Manuscripts-1844.pdf>. Written 1844.

Marx, Karl and Friedrich Engels. 1848. *Manifesto of the Communist Party*. Open source material at: <https://www.marxists.org/archive/marx/works/download/pdf/Manifesto.pdf>.

Mason, Andrew. 2015. "Justice, Respect, and Treating People as Equals". In *Social Equality: Essays on What It Means to Be Equals*. Eds. C. Fourie, F. Schuppert, and I. Walliman-Helmer. Oxford, United Kingdom: Oxford University Press.

Meshelski, Kristina. 2019. "Rawls's Socialism and Pure Procedural Justice". *Ethical Perspectives* 26 (2): 343-347.

Miller, Richard. 1974. "Rawls and Marxism," *Philosophy & Public Affairs* 3 (2): 167-191.

Mills, Charles. 2005. “‘Ideal Theory’ as Ideology.” *Hypatia* 20 (3): 165-184.

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York, New York: Basic Books.

O’Neill, Martin. 2008. “What Should Egalitarians Believe?” *Philosophy & Public Affairs* 36 (2), 119-156.

_____. 2009. “Liberty, Equality, and Property-Owning Democracy,” *Journal of Social Philosophy* 40 (3), 379-396.

_____. 2012. “Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy,” in *Property-Owning Democracy: Rawls and Beyond*. Edited by Martin O’Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

Piketty, Thomas. 2013. *Capital in the Twenty-First Century*. Translated by Arthur Goldhammer. Cambridge (Mass.): Harvard University Press.

Rawls, John. 1971. *A Theory of Justice*. Cambridge (Mass.): Harvard University Press.

_____. 1993. *Political Liberalism*. New York: Columbia University Press.

_____. 1997. “The Idea of Public Reason Revisited,” *University of Chicago Law Review* 64 (3): 765-807.

_____. 1999. *The Law of Peoples*. Cambridge (Mass.) Harvard University Press.

_____. 2001. *Justice as Fairness: A Restatement*. Cambridge, Massachusetts: Harvard University Press.

_____. 2007. *Lectures on the History of Political Philosophy*. Edited by Samuel Freeman. Cambridge (Mass.): Harvard University Press.

Reidy, David. 2017. “Moral Psychology, Stability, and the *Law of Peoples*,” *Canadian Journal of Law and Jurisprudence* 30 (2): 363-397.

Roemer, John. 1994. *A Future for Socialism*. Cambridge (Mass.): Harvard University Press.

Scheffler, Samuel. 1982. *The Rejection of Consequentialism*. Oxford (UK): Oxford University Press.

Schemmel, Christian. 2015a. “Social Equality – Or Just Justice?,” in *Social Equality: Essays on What It Means to Be Equals*. Edited by C. Fourie, F. Schuppert, and I. Walliman-Helmer. Oxford (UK): Oxford University Press.

_____. 2015b. “How (Not) to Criticize the Welfare State,” *Journal of Applied Philosophy* 32 (4): 393-409.

Schweickart, David. 1993. *Against Capitalism*. Cambridge (UK): Cambridge University Press.

Sen, Amartya. 1987. *Commodities and Capabilities*. Oxford (UK): Oxford University Press.

_____. 1992. *Inequality Reexamined*. Cambridge (Mass.): Harvard University Press.

Tan, Kok-Chor. 2008. “A Defense of Luck Egalitarianism,” *The Journal of Philosophy* 105 (11), 665-690.

Thomas, Alan. 2012. “Property-Owning Democracy, Liberal Republicanism, and the Idea of an Egalitarian Ethos,” in *Property-Owning Democracy: Rawls and Beyond*. Edited by Martin O’Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

_____. 2016. *Republic of Equals: Predistribution and Property-Owning Democracy*. Oxford (UK): Oxford University Press.

White, Stuart. 2012. “Property-Owning Democracy and Republican Citizenship,” in *Property-Owning Democracy: Rawls and Beyond*. Edited by Martin O’Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

Williams, Bernard. 1973. “A Critique of Utilitarianism,” in J. J. C. Smart and Bernard Williams (eds.), *Utilitarianism: For and Against*. Cambridge (UK): Cambridge University Press.

Williamson, Thad. 2012a. “Realizing Property-Owning Democracy: A 20-Year Strategy to Create an Egalitarian Distribution of Assets in the United States,” in *Property-Owning Democracy: Rawls and Beyond*. Edited by Martin O’Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

_____. (2012b). “Is Property-Owning Democracy a Politically Viable Aspiration?,” in *Property-Owning Democracy: Rawls*

and Beyond. Edited by Martin O'Neill and Thad Williamson. Chichester (UK): Blackwell Publishing.

Wolff, Richard. 2000. "Marxism and Democracy," *Rethinking Marxism* 12 (1): 112-122.

Wood, Allen. 1981. *Karl Marx*. London: Routledge and Kegan Paul.