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The Place of the Market in a Rawlsian Economy*

Abstract: Rawls identifies only two arrangements, the liberal socialist regime and the property-owning democracy, as being compatible with justice. Both are market-based economies, suggesting that a just society must include the market. This article questions this idea by looking at three Rawlsian arguments in favour of the market. Two arguments, which link the market to certain basic liberties, are unsound because the market is shown to be nonessential in protecting these liberties. A third argument points at the instrumental value of the market to make the least advantaged as well off as possible. It is based on an interpretation of the difference principle in which justice requires maximizing the position of the worst off within the most productive economic system. Although commonly accepted, this reading of the principle should be questioned, and thus the third argument is also inconclusive.

1. Introduction

Despite being in the midst of the worst economic crisis of our time, we continue to rely on the market as the key mechanism for economic organization. WTO agreements commit us to free trade and EU legislation has made clear that the state should not replace the market but rather participate *in* it on equal terms with private enterprise. Today, the market appears to be exempt from deliberation. This idea is echoed in the current academic debate about distributive justice. Libertarians see the market as the only mechanism capable of producing distributions that respect full self-ownership.¹ Socialists now accept that markets are superior to any planning system when it comes to allocating factors of production.² Liberal egalitarians give different arguments in favour of the

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¹ The fundamental libertarian idea is that absolute property in our persons, i.e. our body and powers, gives us absolute powers over what we own and acquire without violating others' ownership rights. This is how libertarians justify individual absolute rights to use, control, accumulate and transfer rights of things (Nozick 1973; Narveson 1988).

² What is known as *market socialism* or *liberal socialism* suggests a combination of the market economy with some kind of public or collective ownership of the means of production. This kind of socialism takes many forms which basically differ in the following aspects: a) the type of ownership of the means of production—e.g. state ownership (Lange 1936) or

market. For Ronald Dworkin, the market is essential to securing justice. His conception requires devoting an *equal* share of resources to each individual, as measured by the opportunity costs of such resources to others, that is, by what they give up in order that he or she can have *that* bundle of resources. The market becomes indispensable since it is the only device that can reveal these costs by identifying the value of what someone has taken for himself or herself in terms of others' willingness to pay for it (Dworkin 2000). Rawls' arguments supporting the market are of a different kind. His criterion of justice, the conception he calls democratic equality, does not explicitly endorse the market. Only when we examine the kind of society he envisions do we realize that the market plays a major role in it.

The two economic arrangements that are compatible with Rawlsian justice, namely the *liberal socialist regime* and the *property-owning democracy*, are market economies. Both systems use market prices to allocate scarce productive resources and to determine the price of consumer goods. The market is not used, however, to decide how much each person should have as a matter of distributive justice.³ This amount is determined by a system of tax and transfers that fulfils Rawls' second principle of justice, the difference principle (DP), according to which inequalities in the distribution of social primary goods are just when they benefit the least advantaged. The main difference between Rawls' two preferred systems concerns the kind of ownership over the means of production allowed by each of them. A liberal socialist regime will only recognize different forms of collective ownership, whereas a property-owning democracy will allow private ownership of productive resources.⁴ The legislator of each society should choose between these systems by determining which can better satisfy the demands of justice given the historical circumstances and the traditions of political thought and practice of the society in question (Rawls 1999a, 242). Since Rawls clearly excludes the possibility of achieving justice through non-market arrangements, it would appear that the legislator of a just society cannot avoid relying on the market. Should we then conclude that markets are an *essential* component of Rawls' conception of justice?

To answer this question this article will reevaluate the Rawlsian arguments in favour of the market. Its aim is not to offer a criticism of the market itself, but rather to show that it might be unnecessary to achieve Rawlsian justice. Section two describes three arguments that can be found in Rawls' work. The first two,

worker ownership (Roemer 1994); b) the scope of the market; and c) the degree of workplace democracy.

³ Following John Stuart Mill, Rawls draws a clear distinction between the *allocative* and *distributive* roles of the market (Rawls 1999a, 239–40). The former refers to allocating factors of production in order to maximize productivity and avoid waste of resources. The distributive role of the market refers to the use of market distributions to determine what people are entitled to as a matter of justice. Libertarians such as Robert Nozick defend both functions of the market but, in fact, relying on the allocative function of the markets does not commit us to use them as distributive devices (see also Freeman 2010, 929–30).

⁴ Rawls includes "the right to hold personal property" among the basic liberties but specifies that "the right to own certain kinds of property (e.g. the means of production) and freedom of contract as understood by the doctrine of laissez-faire, are not basic [liberties]; and so they are not protected by the priority of the first principle" (Rawls 1999a, 54).

which link the market to certain basic liberties, are not sound because the market can in fact be shown to be not *necessary* in protecting those liberties. The third argument points at the instrumental value of the market to maximize the economic expectations of the worst off as required by the DP. We will pay special attention to this argument because it will allow us to shed new light on the question of how to interpret the demands of the DP. As we will see, the third argument is based on a common understanding of the DP as a criterion that requires *improving the position of the worst off as much as possible within the most productive economic system*. We can refer to this reading as the *demanding interpretation* of the DP. Despite its initial plausibility, the third argument is inconclusive because the demanding interpretation is not irrefutable. Section three rejects the idea that in order to satisfy the DP economic institutions should have the highest productive output. Section four challenges the reading of the DP as a maximizing principle and argues for a *flexible interpretation* of it. Rejecting the demanding interpretation of the DP opens up the possibility of using non-market arrangements to fulfill the demands of democratic equality. Thus, a property-owning democracy or a liberal socialist regime might not be the only options in the organization of a Rawlsian society.

2. Three Rawlsian Arguments in Support of the Market

Rawls' *A Theory of Justice* (TJ) has inspired many of the philosophers who came after him. The broad acceptance of his concepts and the appeal of his ideas explain why some of them had tried to confer a Rawlsian pedigree to their own proposals. Given this context, it is important to specify which arguments may be identified as Rawlsian for the purposes of this article. In the literature one can find arguments that may be considered Rawlsian only in a broad sense. They are partly based on ideas that can be found in Rawls' work, but they have consequences that he explicitly rejects. A well-known example is the luck egalitarian argument in favour of a responsibility-sensitive criterion of justice that leads us to reject the DP.

These *broadly Rawlsian* arguments tend to dismiss relevant aspects of Rawls' conception and sometimes introduce considerations that are alien to it. Samuel Scheffler has persuasively argued that luck egalitarians ignore the centrality of Rawls' social ideal in his account of justice (Scheffler 2003). A second example is the work of John Tomasi that puts forth an argument in favor of capitalism which can be considered Rawlsian only in the broadest sense (Tomasi 2012). His claim is that economic liberties should be considered basic because they are an excellent way to develop individual moral powers and attain self-respect.⁵ Given that Rawls' list of basic liberties only comprises civic and political freedoms, accepting Tomasi's argument would imply a major amendment of it by introducing the right of capitalist economic liberty.

⁵ In his book, Tomasi makes a second argument based on the capacity of capitalist market economies to produce economic growth and benefit the worst off. This argument is implicit in Rawls' development of his conception and is analysed below.

As several critics have already pointed out, this move might have consequences that Rawls—and perhaps Tomasi as well—would have good reason to reject. For instance, union contracts tend to be ineffective when they fail to include all the workers in a company, thus Tomasi’s proposal to secure a basic right to personally negotiate the terms of their employment—and get rid of ‘obsolete’ labor regulations—is likely to translate into a serious worsening of worker conditions and subsequent worsening of well-being and self-esteem (Anderson 2012; O’Neill/Williamson 2012 (eds.)). Tomasi’s idea of a ‘market democracy’ is thought provoking and certainly deserves careful examination, however,—the present article will focus on arguments that are *strictly Rawlsian* in the sense that they are not only based on Rawls’ ideas but they are also consistent with his development of the two principles of justice.

The first Rawlsian argument in favour of the market is suggested by Rawls’ opposition to *economic planning*: “[A] command economy supervised by a one-party regime violates the equal basic rights and liberties, not to mention the fair value of these liberties.” (Rawls 2001, 138) Here, Rawls has in mind the kind of state socialism that has characterized communist economies. These systems have been typically organized according to economic plans that were designed and applied non-democratically. However, state planning does not have to be carried out by totalitarian governments as a rule. The non-democratic command economy that Rawls criticizes should be distinguished from a *planned economy*.

Economic planning is only a mechanism for resource allocation of inputs and decision making based on *direct* allocation, which contrasts with the *indirect* allocation of the market. The state—or another economic entity with jurisdiction over the means of production—makes major decisions about production, replacing the invisible hand of the market. These decisions can be democratic and respectful of individual basic rights and liberties. Although many socialists have embraced the market, some of them continue to defend the Marxist idea that an authentic socialist society cannot rely on the market as an instrument for economic coordination and have advocated for democratic control over the economy.⁶ These proposals have been called ‘democratic planned socialism’ and share two basic premises (Campbell 2002). First, decisions relating to the enterprises that produce society’s goods and services should be democratic. They have to be made by those affected by the decisions—usually the workers who produce these goods and sometimes a larger body. Second, society should establish democratic control over the interaction and coordination of the different decisions made at the enterprise level and the aggregate results.

Perhaps the most developed of these models is the *participatory economy* suggested by Albert Michael and Robin Hahnel. Their model is based on four major institutions: 1) democratic councils of workers and consumers, 2) jobs balanced for empowerment and desirability in which every individual should get empowering and non-empowering tasks, 3) remuneration according to effort as estimated by co-workers, with approximately the same salary for any hour of

⁶ Mandel 1986; Devine 1988; Albert/Hahnel 1991; Laibman 1992; 1995. An interesting debate about how democratic planning can best be structured and a description of various proposals can be found in the Spring 2002 issue of *Science & Society* 66(1).

labour, and 4) a participatory planning procedure in which councils and federations of workers and consumers “propose and revise their own activities under rules designed to yield outcomes that are efficient and equitable” using a system of proportionate vote that takes into account the degree to which people will be affected by each decision (Hahnel 2002, 282). Analysing any model of democratic planned socialism in detail goes beyond the scope of the present article, but it is worth pointing out that the differences between the different proposals are mainly related to procedural aspects. They suggest various ways of establishing democratic control of institutions and propose various procedures for the coordination and planning of the economy. Although some critics have expressed doubts about the feasibility of these proposals,⁷ no adequate theoretical case has been made to defend the view that economic planning is incompatible with economic democracy. While the empirical evidence showing that no planned economy has been able to coexist with a democratic government is indeed significant, it does not provide a sufficient argument in the context of ideal theory, where Rawls places his discourse.

In TJ, Rawls states that a significant advantage of a market system is that “it is consistent with equal liberties and fair equality of opportunity” (Rawls 1999a, 240–1). The existence of labour markets, in particular, guarantees that “citizens have a free choice of careers and occupation” (241). Rawls does not develop this line of argument. He simply adds that “in the absence of some differences in earnings as they arise in a competitive scheme, it is hard to see how, under ordinary circumstances, certain aspects of a command society inconsistent with liberty could be avoided” (241). Behind this statement the following reasoning could be made: an economic system needs some kind of mechanism to direct individual occupational choices towards the desired social outcome. Without this mechanism, such an outcome is likely to slip out of reach due to coordination problems or simply because individuals’ occupational preferences are very different from what society would like them to do. In the face of this problem, two strategies are available. The first is to use incentives to attract individuals “to positions where they are most needed from a social point of view [...] [and] to encourage them to accept the burdens of particular responsibilities” (Rawls 2001, 78). The second is to assign jobs and positions to individuals using centralized distribution of labour. The superiority of the first alternative is clear because it puts people to work in socially useful ways without curtailing their rights. Rawls implies that this endorses the market and a certain degree of the inequality produced by it.

However, there are at least two reasons to reject this conclusion. The first reason is that the free exercise of occupational choice in the labour market can produce distributions that are quite egalitarian when individuals are motivated in a certain way. G. A. Cohen has persuasively argued against Rawls, stating that in a just society people will not be guided by sheer self-interest but by an *egalitarian ethos* that prohibits the unlimited pursuit of economic self-interest

⁷ Most of these doubts involve worries about efficiency. Regarding the participatory economy model, for instance, it has been argued that rewarding effort rather than talent and balancing jobs will together produce a high level of inefficiency.

(Cohen 1997). In the same vein, Joseph Carens describes an *ethic of mutual service* that substitutes self-interest and leads individuals to want to maximize their pretax income, which is afterwards taxed and equally distributed (Carens 1981).⁸ Thus, one can acknowledge the superiority of the market in allocating jobs and still reject unequal distributions. The second reason, and more important to our purposes, is that a planned economy is perfectly compatible with a set of compensation rules—e.g. a system of differential wages or a bonus scheme—that *induces* individuals to take certain choices without forcing them. These incentive structures are different from those used in the market because the rewards are determined by the planner according to the fulfilment or over-fulfilment of the quotas fixed in the productive plan.⁹ That is, respect for individual freedom cannot be considered a distinctive advantage of the market system. Contrary to what the argument suggests, a non-market arrangement does not necessarily have to rely on public authority to allocate labour because it allows for different kinds of incentives. However, it might be argued that given the complexity of our economies, only an omniscient decision maker could elaborate an effective incentive structure in a planned economy. The large amount of information needed and the difficulties in obtaining and processing it would likely make any attempt at introducing incentives in a planned system too costly. As Philippe Van Parijs observes, it is not difficult to imagine a society “that neither curtails workers’ freedom of occupational choice nor steers their choices through the use of differentiated market wage rates but it would simply be so inefficient that it is unlikely to be sustainable” (Van Parijs 2009, 149). If this speculation turns out to be true, Rawls’ second argument can retain some force but would require the following reformulation: although the labour market cannot be considered a *necessary* means to secure individual occupational choice, in its absence we face a dilemma between violating individual liberties and accepting a loss in efficiency that could harm the least advantaged members of the society (149).

This conclusion leads to a third connection between Rawls’ conception and the market. In TJ, Rawls formulates the DP as follows: “Social and economic inequalities are to be arranged so that they are [...] to the *greatest benefit* of the least advantaged, consistent with the just savings principle.” (Rawls 1999a, 266, emphasis added) This statement is often used as textual evidence for a very *demanding interpretation* of the DP according to which justice requires maximizing the expectations of the worst off within the most productive system. Support for this interpretation can be found in one of the explanations that Rawls gives

⁸ Martin Wilkinson has expressed a similar view. He criticizes Carens’ approach for being too demanding and argues that the duty of individuals to make equality-promoting decisions should be specified as a duty to perform the work one would (or might) perform if there were no income tax (Wilkinson 2000).

⁹ In addition to economic incentives, a non-market arrangement can always rely on moral incentives, e.g. social recognition for work done, as motivation. Moral incentives play an important role in Cohen’s and Carens’ accounts, the latter stating that individuals must “derive satisfaction from performing this social duty”—i.e. that of earning as much pre-tax net income as they can—and “place the same relative values on [these] satisfactions [...] as individuals [in capitalist systems] place on the satisfactions derived from acquiring income for consumption” (Carens 1981, 25). On the question of individual ability to respond to moral incentives see Goodin 1980.

about the principle: “[T]o say that inequalities in income and wealth are to be arranged to the greatest benefit of the least advantaged members of society simply means that we are to compare schemes of cooperation by seeing how well off the least advantaged are under each scheme and then select the scheme under which the least advantaged are better off than they are under any other scheme.” (Rawls 2001, 56–60) The third Rawlsian argument favours the market on the grounds that, being more efficient than its alternatives, it allows us to confer greater benefits to the worst off. Compared to other arrangements the market gives greater economic expectations to entrepreneurs and that “encourages them to do things which raise the prospects of labouring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on.” (Rawls 1999a, 68) In a market economy, the cake we have to divide—i.e. the social product—is bigger than in any other arrangement and for that reason the smallest portions can be more generous. This argument deserves special attention for two reasons. This reasoning can be challenged in different ways. One possibility is to question the factual claim that supports the argument that the market is *always* more efficient than its alternatives. This is not the line taken in the present article, which assumes the superiority of the market in terms of efficiency.¹⁰ Our strategy is to question the demanding interpretation of the DP underpinning the argument and to claim that there is a plausible reading of that principle that allows justice to be compatible with suboptimal economic arrangements.

3. How to Distribute vs. How Much

The demanding interpretation of the DP has wide support among Rawlsian scholars. According to Samuel Freeman,

“the difference principle *does not* simply say that, given whatever economic system a society already has in existence, it should aim to maximize the position of the least advantaged within the existing institutions of that already established system. Instead, the difference principle requires that over time society seeks to institute the economic system that is ‘the most effectively designed’ in so far as the least advantaged fare better than in any other alternative economic arrangement.” (Freeman 2007, 112, emphasis added)

An important implication of the demanding interpretation is that a society with a suboptimal economic system is not fulfilling the requirements of justice because, *ex hypothesis*, it could increase economic growth and improve the conditions of the worst off. This conclusion is mistaken because the demanding reading of the DP wrongly conflates two questions that should be differentiated: *Which quantity of resources is required to fulfill the requirements of justice?* and *How*

¹⁰ However, relying on empirical grounds to defend the superiority of the market implies that a non-market arrangement should be considered if, given the circumstances of a particular society, it produces better results.

should these resources be distributed? Those who favour this interpretation tend to think that the DP expresses Rawls' answer to both questions. A just society should maximize its productive output—this is the answer to the first question—and then distribute it in a way that maximizes the economic expectations of the worst off—this is the answer to the second question. As we will see, however, the DP is better understood as an answer to the second question only. When we look at other parts of Rawls' conception of justice we realise that this reading of the DP produces unpalatable consequences, two of which are outlined below.

First, if we understand the DP as a principle that requires maximizing economic growth we end up with a very unsatisfactory interpretation of the just savings principle (JSP) used by Rawls to address the issue of intergenerational justice—i.e. “how far the present generation is bound to respect the claims of its successors” (Rawls 2001, 159). The DP only holds *within* generations.¹¹ It imposes an obligation to each society towards its least advantaged members. When applied alone, the DP seems to allow each cohort to spend all its resources and leave nothing for future generations. Every generation might have to start from scratch or, even worse, assume their predecessor's debt. The JSP prevents this by specifying that a certain amount of resources should be saved for future generations and therefore cannot be used to improve the prospects of the worst off individuals living in the present. It is important to realise that because the JSP has priority over the DP, the savings required by the former cannot be very large, otherwise the well-being of today's least advantaged will be sacrificed for the sake of future generations.¹² Rawls does not define precise limits on what the rate savings in a just society should be but he makes clear that the purpose of the JSP is to ensure for future generations the possibility of giving themselves a just social arrangement and that once just institutions have been established, net accumulation of capital may fall to 0. At this point, a society meets its duty of justice by preserving just institutions (Rawls 1999b, 107). The goal of the principle, to achieve and preserve just institutions, defines the tipping point at which justice does not require further positive saving. In order to flesh this out we need an account of justice.

Thus, we must interpret the content of the JSP by looking at the conditions that are necessary to implement Rawls' criterion of domestic justice. This criterion includes the DP which creates the problem that Hugo Seleme has pointed out. What are the exact demands of the JSP if justice requires *improving the position of the least advantaged as much as possible within the most productive economic system*? It seems that in order to meet its duty of justice, each generation should save as many resources as possible so that the next generation can provide the greatest benefit to *its* least advantaged group. Given that capital

¹¹ Rawls makes this clear in *Justice as Fairness: A Restatement* (2001, 63). Nevertheless, in *TJ* he makes a puzzling remark: “[T]he appropriate expectation in applying the difference principle is that of the long term prospects of the last favored extending over future generations.” (Rawls 1999a, 252)

¹² The difficulty here is not just the recurring problem of granting rights to *non-existing* people (Parfit 1984). Even if we could offer a response to this question, as many have tried (see Heyd 2009 for a summary of the different positions), the problem in this case is that the demands imposed on the current generation would be too burdensome.

is productive, the higher the savings of generation *G1*, the more resources will be available for the least advantaged of the next generation, *G2*. *G2*, in turn, will have to save as much as possible for the sake of the least advantaged of *G3*, and so forth. Each generation should accumulate as many savings as possible, otherwise the well-being of the least advantaged of the next generation would be below its potential (Seleme 2007). This requirement is utterly implausible. In fact, it amounts to applying the DP between generations, something Rawls explicitly rejects because of the unreasonable demands it imposes on each generation (Rawls 2001, 63–4).

A second uneasy consequence of the interpretation that the DP requires maximizing productive output is that it makes Rawls' account of justice insensitive to the cultural and historical circumstances of each society. The wealth of a given society is determined by arbitrary circumstances, such as the distribution of natural resources and natural catastrophes, but it is equally influenced by culture and history. Rawls acknowledges this fact when he says that some of "the causes of the wealth of the people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions" (Rawls 1999b, 108). The goal of maximizing economic growth is characteristic to specific cultures and may well be in contradiction with others. As Rawls himself observes, it is "the idea of the business class of a capitalist society" (107).

It is not difficult to imagine a society that rejects this idea and decides to remain pastoral because it is more coherent with the beliefs of its members in terms of quality of life and the relationship between man and nature.¹³ In fact, it is possible to find real initiatives based on this philosophy, such as the attempt by the neo-Zapatistas in Chiapas to create an autonomous region and the model of *Sumak Kawsay*—a Quechua term that refers to way of living that sees the relationship between humans and nature as holistic and harmonious—incorporated into Ecuador's 2008 constitution. In industrialized societies, the social and political movement known as *De-growth* also opposes the idea of maximizing productivity and advocates for the contraction of our economies as the solution to our environmental and distributive problems (Latouche 2009; Jackson 2009). According to the demanding interpretation, a society based on these views would not be just because it would chose to not increase its productivity and improve the economic well-being of the worst off. Thus, just societies should all share the capitalist ambition of maximizing economic growth. This is a strange conclusion for a liberal conception that claims to be compatible with a plurality of reasonable views and that aims to be morally endorsed by those governed by it. This endorsement can be difficult when there is no room

¹³ In his argument against the cosmopolitan idea that the DP applies internationally, Rawls gives a relevant example by asking us to imagine two societies that are equally well off. One decides to industrialize while the other chooses a pastoral and leisurely existence. After some time, the first society is twice as well off as the second. Rawls argues that it would be inappropriate to transfer resources from the first society to the second because it would not respect the right to self-determination of each society (Rawls 1999b, 117; see also Wenar 2006, 98).

for societies to realize the demands of justice on their own terms, that is, in the way that best suits their specific cultural and political circumstances.¹⁴

One way of avoiding these two consequences is to consider that the DP deals only with the question of *how to distribute existing resources*. According to this reading, the DP indicates what is owed to the worst off in terms of the resources currently available, not the amount of resources needed to satisfy the demands of justice. This second question can be answered by looking at the conditions Rawls considers necessary and sufficient to apply his two principles of democratic equality instead of the general conception of justice, which is essentially “the difference principle applied to all primary goods including liberty and opportunity” (Rawls 1971, 83; cf. 1999a, 73 passage omitted).¹⁵

In TJ, Rawls states that his two principles of justice apply only when economic development creates favourable conditions for effectively establishing the basic liberties protected by the first principle (Rawls 1999a, 132). Later, in *Political liberalism*, he introduces another remark that is relevant for the question we are examining: prior to applying the first principle of justice we need to ensure that individual basic needs are covered, “at least insofar as their being met is a necessary condition for citizens to understand and to be able fruitfully to exercise the basic rights and liberties” (Rawls 1993, 7; cf. 2001, n. 44). That is to say, in order to be governed by Rawls’ two principles of justice, a society should have enough resources to protect basic rights and liberties and to meet everyone’s basic needs. Rawls does not describe a threshold but emphasizes that the principles of democratic equality do not presuppose a high level of income and economic growth (Rawls 2001, 47, n.; 1999b, 107).

Restricting the DP to the question of how to distribute gives us a more plausible reading of the JSP. The threshold needed to apply Rawlsian principles is the point at which real capital accumulation may cease. Although this amount might vary depending on the context (Rawls 1999b, 107), all Western countries have clearly surpassed this threshold. Thus, these societies could carry out the duty of justice by distributing their resources justly and leaving enough for the next generation to preserve the arrangement. What interests us here is that in this interpretation of the DP justice does not demand maximizing productive output, but rather requires having only enough resources to protect basic rights and liberties and secure the basic needs of citizens. Presumably, this minimum is not very high, and therefore it might be possible for certain societies to implement non-market arrangements and remain just. Restricting the scope of the DP and negating the idea that justice requires maximizing economic growth opens up the possibility of economic arrangements that are just despite being less productive than a market economy.

¹⁴ Rawls acknowledges the importance of accommodating the specific historical and cultural circumstances of each society on several occasions. A case in point is the decision to implement a property-owning democracy or a liberal socialist regime.

¹⁵ Rawls also refers to his two principles as “the special conception of justice”. The general conception, unlike the special conception, does *not* give priority to basic liberties over the fair distribution of primary goods, namely, powers and opportunities, income and wealth, and the social basis of self-respect.

4. The Maximizing Requirement of the Difference Principle

One can agree that Rawlsian justice allows societies to choose different levels of economic development and still maintain that the DP requires maximizing the position of the least advantaged at every level. In order to achieve this result we should use our existing resources in the most optimal way, otherwise the position of the least advantaged will be worse than it could be with these resources. If one reads the DP in this way, it is still possible to defend the market arguing that it is the best means to allocate resources efficiently and, therefore, it should not be replaced by arrangements that are inferior in that respect. However, although on many occasions Rawls formulates the DP as a maximizing criterion, there is textual evidence for an alternative interpretation according to which any inequality that does not make the least advantaged worse is just.¹⁶

4.1 The Difference Principle as a Maximizing Criterion

The idea that the DP requires organizing the basic structure of our society so that the position of the least advantaged is maximized is supported by Rawls' canonical formulation of the principle: “[S]ocial and economic inequalities are to be arranged so that they are [...] to the *greatest benefit* of the least advantaged.” (Rawls 1999a, 266, emphasis added) This is also coherent with Rawls' remark that “the difference principle is, strictly speaking, a maximizing principle” (Rawls 1999a, 68). When the expectations of various social groups are close-knit—i.e. the expectations of one group cannot be improved without altering the expectations of the other groups—the situation that maximizes the expectations of the least advantaged members is the efficient distribution closest to equality (Rawls 1993c, 247; Rawls 2001, 62–3). If we take equality as the starting point, the maximizing principle requires *any* expansion in inequality that benefits the worst off until further advantages to the better off cause detriment to the worst off. This is *the* just distribution and it is the Pareto efficient point at which the difference between the expectations of the two groups is reduced most. Any other distribution takes us far from justice. However, Rawls distinguishes between two alternative possibilities: a) distributions that are detrimental to the least advantaged because they allow for a decrease in inequality that would benefit the worst off (e.g. D1 can be said to be detrimental because D2 is possible with the same resources) and b) distributions that benefit the worst off but do not maximize their expectations, that is, they allow further increases in inequality that improve the position of this group (e.g. D2).

	D0	D1	D2	D3	D4
W	10	20	25	30	30
B	10	60	55	100	120

¹⁶ The possibility of interpreting the DP as a non-maximizing criterion has recently been suggested by Andrew Williams. The next two sections elaborate on his work (Williams 2011).

It is important to distinguish between a) and b) because, according to Rawls, D1 implies a “greater fault” than D2 (Rawls 1999a, 68). Whereas the former should be avoided, the latter can be a necessary step towards the just distribution. However, D2 should not be considered fully just. A society that decides to stop there instead of advancing to D3 is not fulfilling its duty of justice because the position of the worst off may be improved.

When close-knitness fails—i.e. the situation of the better off can be improved without affecting the expectations of the worst off—it is possible to reach D4 (Rawls 1999a, 30, 120). If maximizing the expectations of the least advantaged is a *necessary* and *sufficient* condition we should condemn Pareto improvements that are not beneficial to the worst off, like D4. However, this radically egalitarian reading contradicts what Rawls states in TJ:

“[...] [I]n a basic structure with n relevant representatives, first maximizing the welfare of the worst-off representative man; second, for equal welfare of the worst-off representative, maximize the welfare of the second worst-off representative man, and so on until the last case which is, for equal welfare of all the preceding $n-1$ representatives, maximize the welfare of the best-off representative man.”
(Rawls 1999a, 72)

If it is not possible to improve the situation of the worst off, the demanding interpretation of the DP requires a lexicographical maximization of the expectations of the other groups. We should first focus on the second worst off group, then the third, and so on. Thus, besides a) and b) we should not consider fully just c) distributions that are suboptimal because they allow increases in inequality that benefit the better off and do not worsen the worst off—i.e. D3 when there is the possibility of D4. Apart from the textual evidence offered, there are other aspects of Rawls’ conception of justice that support the maximizing interpretation of the DP.

First, the maximizing requirement is coherent with the Rawlsian idea that one of the central aims of political and social justice is to arrange the basic structure of society “so that it maximizes the primary goods available to the least advantaged to make use of the equal basic liberties enjoyed by everyone” (Rawls 1993, 326). The value of these liberties to each individual depends on the absolute amount of primary goods he or she possesses. Thus, by improving the economic expectations of the worst off, we are increasing the value of their liberties. Although in some cases the demanding reading mandates inequalities in primary goods that only benefit the better off, this is not problematic from the perspective of Rawlsian justice because the motivation of the parties in the original position is to ensure that those whom they represent “have the highest index of primary social goods, since this enables them to promote their conception of the good most effectively whatever it turns out to be” (Rawls 1999a, 125). The parties are not concerned about the relative position of the citizens in the distribution of primary goods; only the absolute amount they receive is important. With this motivation in mind, and given the fact that they completely ignore the role of the represented members in a well-ordered society, a maximizing principle

appears to be a good solution. If they end up in the worst off position, the principle guarantees that their expectations will be as good as possible. But if they happen to be among the better off, they can maximally benefit from the inequalities that are not detrimental to the expectations of the worst off (Rawls 1999a, 123–5). Another consideration in favour of the maximizing requirement is that it is coherent with Rawls' idea that efficiency is an essential virtue of institutions (Rawls 1999c, 176). In TJ he states that “a perfectly just scheme is also efficient” (Rawls 1999a, 69). When the difference principle is fully satisfied, “it is indeed impossible to make any one representative better off without making another worse off” (*ibid.*). The demanding interpretation only considers distributions that are efficient to be fully just. When expectations are close-knit the just distribution is the Pareto point closest to equality. When they are not close-knit, it mandates any inequality that lexicographically maximizes the expectations of other groups.

This interpretation becomes problematic when we realise that the DP uses economic wealth as its currency. Once the other requirements of justice—i.e. protecting basic liberties and securing fair equality of opportunities—are satisfied, all remaining resources should be invested in improving individual economic expectations, with priority given to the worst off. This focus on socioeconomic positions might be too narrow, however. Apart from promoting the economic well-being of its members, societies often have other goals such as supporting the arts and different forms of leisure, protecting the environment or preserving traditions and languages that are in danger of extinction. If we consider the DP to be a maximizing criterion, there is too little room left for the pursuit of these other goals. We should conclude that whenever it is possible to improve the position of the worst off by reducing the amount of resources invested in these goods, justice requires us to do so.

Pursuing these goals is only justified when it contributes to the maximization of the lowest socioeconomic position. That will rarely happen. The decision to subsidize the arts, for example, can result in some benefits for the worst off—e.g. it can create jobs—but it almost certainly makes them worse off than if the subsidies were transferred to them. The same can be said about securing the other goods mentioned above. Devoting resources to protect the environment or to promote culture reduces the position of the least advantaged to below its potential. Thus, the DP requires abandoning all social goals that may conflict with improving the situation of the worst off as much as possible.

Is this a reasonable conclusion? Why should a society be prevented from pursuing collective goods that are democratically endorsed if it is done with an appropriate respect for its members' basic rights and liberties? Why should we give absolute priority to the economic well-being of the least advantaged over the pursuit of goods that are important for the society as a whole, including the least advantaged? Focusing on the individual's socioeconomic position can be defended by emphasizing the instrumental value of income and wealth to pursue other ends. It is important to make the least advantaged as well off as possible because by doing so we put them in a better position to choose from various life plans. In the context of a just distribution of resources, individuals can use their

fair share in the ways they consider most appropriate according to their own ambitions. They can make voluntary contributions to obtain and sustain the collective goods they consider to be of benefit to them. Thus, this interpretation of Rawls' conception does not make justice incompatible with the pursuit of collective goods such as art museums or opera houses; it simply restricts the use of compulsory taxation for these purposes.

Although an argument of this sort could be defended on liberal grounds, it is problematic. If these goods are left in the hands of individuals, they are unlikely to be achieved. Those who are willing to support a collective good will probably encounter serious collective action problems. They will experience difficulties in organizing themselves for the pursuit of that good and in some cases free riders might be almost unavoidable. At the same time, some of these goods are very expensive, making them rarely supportable by voluntary contributions. If we expect museums and theatres to be supported by their users, user fees would need to be very high to cover the costs of maintaining these cultural institutions. A lack of these goods can mean a great loss to society.

A set of basic rights and liberties and a minimum level of income are prerequisites for developing any rational life plan, but they may not be enough for complete human flourishing. Individuals require different goods to flourish depending on their ambitions and the community they live in. While some see consumption as the main road to the good life, others put more emphasis on non-material goods such as aesthetic appreciation, the preservation of nature and certain kinds of social relationships. Beyond a certain level of economic well-being, the second group of individuals will benefit more from cultural and environmental policies than from further increases in their income and wealth. For this reason, and given the difficulties these individuals might face in trying to achieve collective goods by themselves, public institutions should have some degree of autonomy to pursue these goods without compromising the realization of justice.

4.2 The Difference Principle as a Non-Maximizing Criterion

Andrew Williams has recently noted that Rawls' writings allow for another interpretation of the DP: economic inequalities are just as long as they do not harm the worst off (Williams 2011). This reading is especially supported in later formulations of the principle. Rawls states that "the difference principle expresses the idea that starting from equal division, the more advantaged are not to be better off at any point to the detriment of the less well off" (Rawls 2001, 124), and "[w]hat the difference principle requires, then, is that however great the general level of wealth—whether higher or low—the existing inequalities are to fulfill the condition of benefiting others as well as ourselves" (Rawls 2001, 64). In these formulations, the idea of maximizing the position of the least advantaged is not mentioned. Rawls merely talks about *not worsening* and *benefiting* them.

Once again, the exact implications of the non-maximizing reading vary depending on how the expectations of the different social groups are related. When

close-knitness holds and changes in expectations of the better off always affect the situation of the less well off, the non-maximizing principle considers any inequality that benefits the worst off to be just. *A fortiori*, inequalities that maximize the position of this group are just, but they are *not* required. This interpretation of the DP identifies as fully just every situation in which the expectations of the worst off will be worse if the better off are worse, but they could be better if the better off were also better—i.e. the distributions described in b) (above). It only considers unjust those distributions in which the situation of the worst-off could be improved to the detriment of the more advantaged—as seen in a) (above). When close-knitness fails, this principle allows any advantage to the better off that does not affect the situation of the worst off. The difference with the maximizing reading is that this one does not require such movements.

One of the consequences of interpreting the DP as a non-maximizing criterion is that the distributions that are fully just increase in number. Instead of identifying only *one* distribution as just, a wide range of distributions is considered to be compatible with justice. We can refer to this reading of the DP as the *flexible interpretation* because it allows us to choose from various distributions. In the examples above, D1 is the only *unjust* distribution according to this principle; the others are fully just. A society meets its duty of justice by implementing D2. It could arrange the basic structure differently and improve the benefits to its members, but justice does not require this move. The advantage of adopting this interpretation is that it leaves room to pursue different aims rather than just raising the lowest socioeconomic position. The decision of a society to invest some of its resources in funding the arts, promoting a language or preserving the rain forest is therefore not objectionable from the point of view of justice, even if that translates into less benefits for the worst off.

The argument in favour of the non-maximizing reading of the DP can be questioned by pointing out that the currency of the principle is not just economic wealth but a sophisticated index of goods that includes the last three goods on Rawls' list of primary goods, namely, powers and prerogatives associated with professional positions, income and wealth, and the social bases of self-respect (Rawls 1999a, §15; 1999c, 456).¹⁷ It is this index of goods, and not just wealth, which has to be maximized. Once we take this into account, we see that the DP can justify policies that are detrimental to the economic interests of the worst off if they still raise their index position.

Samuel Freeman and Martin O'Neill use this reasoning to defend workplace democracy within Rawls' account of justice (Freeman 2007, 113; O'Neill 2008). They argue that although economic democratization can reduce workers' income and wealth compared to what they might achieve in a system where companies are hierarchical, Rawlsian justice justifies this democratization because giving individuals control over their working conditions improves their self-respect. For these reason, in a system with workplace democracy "the index of primary goods of the least advantaged can exceed that of the least advantaged in the capitalist

¹⁷ The other primary goods—i.e. basic liberties and opportunities and opportunities to compete—are distributed by the two principles prior to the difference principle: the principle of equal liberty and the principle of fair equality of opportunity.

welfare state, even though the latter have greater income and wealth” (Freeman 2007, 113). Thus the maximizing reading of the DP does not commit us to the single goal of improving the economic well-being of the worst off, but rather it requires us to consider how to improve the lowest social position in terms of other index goods.

Two observations may be made regarding this strategy. First, not all the goals that might be legitimate for a democratic society to pursue can be justified by invoking the interests of the worst off in terms of index goods. For instance, it is hard to see how promoting sports competitions can be linked to any of the Rawlsian primary goods. Second, and more importantly, although Rawls mentions the index several times, he at no point indicates how to measure and aggregate index goods to achieve a single magnitude for each individual. Rawls avoids this problem and makes the assumption that income and wealth can be used as a proxy for other index goods. Income and wealth tend to be strongly positively correlated with powers and prerogatives and the social bases of self-respect (Rawls 1999a, 83), but Rawls has another reason to make this simplification. In several passages of his works, he explicitly states that his goal is to formulate a public criterion of justice that citizens can apply to all questions concerning distributive justice. In other words, someone with median capacities should be able to understand the content of justice and assess whether the institutions of the basic structure fulfill its demands.

The idea of publicity is far more complex,¹⁸ but what should be emphasized here is that it imposes strict requirements on the criterion of justice. To be public, this criterion should be clear to our reason and empirically verifiable. In these two respects, the economic wealth metric clearly beats that of index goods. Wealth is certainly easier to quantify; it is hard to imagine how self-respect might be measured, even roughly. Using wealth as a proxy saves us from having to do complex trade-offs between several goods that are not easy to compare given their very different nature. Even if institutions were capable of making these trade-offs in a more or less principled way, it would be very difficult to imagine simple guidelines and rules of evidence that could be used by citizens to evaluate their functioning. As Rawls himself admits, a criterion without these guidelines would be “to no effect” (Rawls 1993, 139). Although some think it is too simplistic, using economic wealth as a currency might be the best option given the importance of publicity in Rawls’ account.¹⁹ If we take wealth as a currency, the argument against the interpretation of the DP as a

¹⁸ Rawls gives several complicated definitions of the idea of publicity. A simplified and elegant reconstruction of his account can be found in Williams 1998.

¹⁹ There are several reasons why the idea of publicity is an extremely important component of Rawls’ account. First, publicity plays a crucial role in the development of our sense of justice—i.e. our disposition to act from and on principles of justice. According to Rawls, our natural tendency to reciprocity leads us to act justly when we see that justice is being done. Second, citizens are only respected as free and equal persons when they know the bases of their political arrangement and are not indoctrinated or deceived about them. Third, in *Political Liberalism* Rawls explains how citizens’ public knowledge of these bases is necessary for their political autonomy.

maximizing criterion based on the autonomy of societies to legitimately pursue several ends still holds.

The non-maximizing reading raises the following objections, however: 1) it allows the economic well-being of the worst off to be sacrificed for the sake of a collective goal and 2) it might result in large inequalities because given the choice between two unequal distributions that are not detrimental to the worst off, it does not require to adopt the more egalitarian of the two. In order to assess these objections we should evaluate the DP not in isolation but as an element of Rawls' conception that is subordinated to other requirements of justice. To do this, two aspects need to be taken into account. First, the two principles that are lexicographically prior to the DP have distributive consequences. Securing basic liberties and fair equality of opportunities limits the extent to which inequalities can exist in a Rawlsian society.

Regarding the first principle, Rawls maintains that "there is a maximum gain permitted to the most favored on the assumption that, even if the *difference principle would allow it*, there would be unjust effects on the political system and the like excluded by the priority of liberty" (Rawls 1999a, 70, emphasis added). With regard to the exclusion of the worst off in participation in public life, he states that "we cannot be sure that the inequalities permitted by the difference principle will be sufficiently small to prevent this" (Rawls 1993, 328). Similarly, institutions that secure fair equality of opportunity "are put in jeopardy when inequalities of wealth exceed a certain limit" (Rawls 1999a, 246). These remarks suggest that even if the DP were to allow great inequalities, the prior principles keep inequalities within an acceptable range. These two principles confer Rawls' conception of justice its egalitarian character. Therefore, even if 2) were correct, it should not be of particular concern. Second, we should not forget Rawls' concern about stability, which is understood to be the capacity of a conception of justice to be self-supporting by generating the right attitudes among individuals. A conception of justice is stable when those who live under it "acquire a sufficiently strong and effective sense of justice so that they normally comply with just arrangements and are not moved to act otherwise, say, by social envy and spite, or by a will to dominate or a tendency to submit" (Rawls 2001, 181).

These attitudes, social envy and spite in particular, are likely to develop among citizens when the conception of justice ruling their society is too burdensome for them or, using Rawls' term, it involves excessive *strains of commitment*. Rawls does not offer an exhaustive analysis of the problem of the strains of commitment, but he clearly says that a social minimum is absolutely necessary to avoid them. In that respect, securing basic needs is indispensable but it is not sufficient because it cannot prevent citizens from "grow[ing] distant from political society and retreat[ing] into their social world" (Rawls 2001, 128). The DP should guarantee, at the very least, an adequate amount of resources to prevent this kind of withdrawal (cf. Waldron 1986). This minimum might vary depending on the specific circumstances of each society. At no point does Rawls state that the worst off will always withdraw unless their position is maximized—such an argument is difficult to imagine. The importance of securing this minimum limits the choices of a society on how to spend its resources in pursuing goals

other than improving the economic well-being of its citizens. Thus, objection 1) should not worry us either.

5. Conclusion

Three different arguments in favour of a market economy can be found in Rawls' account of justice. The first defends the market economy on the grounds that its alternatives are undemocratic. The second stresses the importance of the market in securing individuals' occupational choices. The third argument argues that the position of the least advantaged is higher in a market economy than it would be under a non-market economy. The first two arguments do not hold up because they rely on false dichotomies. They do not take into account alternative economic arrangements that while unusual in practice are in fact conceivable. The third argument, although more promising, fails to provide a sound justification of the market because it is based on a questionable reading of the DP. This interpretation is referred to as demanding because it requires maximizing the position of the worst off within the most productive economic system.

Although this reading of the principle is very popular, it has several problems. As previously argued, this interpretation puts the essentially capitalist idea of maximizing economic growth at the core of our principles of justice and excludes the possibility of realizing certain collective goals that societies should be able to legitimately pursue. This reading also makes the demands of the JSP implausible. These problems may be avoided if we interpret the DP as a criterion that requires organizing our basic structure so that social inequalities are not detrimental to the worst off.

This demand can be satisfied at different levels of economic growth and is compatible with society's choices of how to spend collective resources on ends other than those of improving the economic position of its worst off members. If we take this flexible interpretation to be correct, the third Rawlsian argument supporting the market weakens considerably. Justice no longer requires implementing the most efficient system to generate and allocate resources. There is room for non-market-based arrangements that, despite being inferior to the market in this respect, generate enough resources to secure individuals' basic rights and liberties and the social minimum necessary to avoid excessive strains of commitment. Identifying the best non-market arrangements to meet these two conditions is an interesting challenge that goes beyond the scope of this article. It should be noted that although non-market-based arrangements have not succeeded in the non-ideal world so far, they are worthy of being explored in the context of ideal theory.

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