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Property-Owning Democracy and the Circumstances of Politics

Abstract: The article argues that Rawls's property-owning democracy should not be understood as a necessary standard of democratic legitimacy. This position contradicts Rawls's own understanding to some extent, but a rejoinder with elements of political liberalism is possible. He concedes that justice as fairness is a 'comprehensive liberal doctrine' and that a well ordered society affirming such a doctrine 'contradicts reasonable pluralism'. Rawls makes clear that reasonable pluralism in combination with the burdens of judgment lead to rare unanimity in political life and to the necessity of majority and plurality voting procedures.

1. Introduction

Property-owning democracy (POD) can be understood in a weaker and a stronger sense, that is, as an institutional description of a just society we can reasonably defend, or as the necessary standard of democratic legitimacy we cannot reasonably reject.[1] The weaker understanding is fairly obvious, in any event, I don't intend to focus on it in this article. Furthermore, I consider it unproblematic that if political agreement is reached on POD in open elections or constitutional vote, the realization of POD is legitimate. The question I address concerns the stronger understanding: If an institutional setting is confirmed by majoritarian legislation yet is not a POD (nor market socialism), would it have to be considered illegitimate from a democratic point of view? I argue that the POD is worthy of serious consideration, but should not be considered a necessary standard of democratic legitimacy. POD emerges as one of the well-argued conceptions of a just society, but must compete with other reasonable conceptions within a democratic framework. Such a framework can produce less or more demanding instantiations of justice than conceived in Rawls's POD. These potential instantiations of justice via open and reversible voting are democratically legitimate given the profound disagreement among reasonably arguing defenders of different conceptions of justice, and given the profound injustice of guardianship that would follow if the debate were to be closed by coercion and inalterability. This

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[1] I do not allude to Scanlon's 1998 contractualist standard to judge the moral rightness of an action. Rather, I speak of elements actors cannot reasonably reject in establishing binding collective decision-making procedures.

of course applies to all the rival conceptions of justice that are being discussed
as alternatives to POD.

The plausibility of this argument can be illustrated by the fact that the idea
of a POD is controversial (see Williamson/O'Neill 2009) even among egalitarian
philosophers who share many of Rawls's assumptions, but who, for instance,
do not subscribe to his critique of the welfare state (Krouse/McPherson 1988;
O'Neill 2012), have a different idea of the market, property, and democratic
socialism (Schweickart 1979; DiQuattro 1983), or who share the goal of POD
but question its feasibility (see John Roemer in this issue). POD is also based
on another controversial idea: the difference principle. For some, this principle
compromises liberty for equality (Nozick 1974), for others it is not sufficiently or
not effectively egalitarian, even if combined with equal opportunity and the first
principle of justice. At best it does away with some symptoms of injustice in so-
ciety but does not effectively compensate individuals for unchosen disadvantages
(Cohen 2008).

In *section 2* of the article, I show that Rawls understands his theory of jus-
tice as also being a theory of democracy. In *sections 3 and 4*, I demonstrate
that Rawls's view is too narrow from the point of view of political legitimacy
and that a different standard of democracy is needed in order to accommodate
political disagreement pertaining also to non-religious and yet very conflicting
conceptions of justice within a theory of democratic legitimacy. This position
however, does not have to be understood as being in total conflict with Rawls.
In many parts of his work, particularly in his revisited account on public reason,
Rawls concedes that justice as fairness is presented by him as a "comprehensive
liberal doctrine" and that a well ordered society affirming such a doctrine "con-
tradicts reasonable pluralism" (Rawls 1997, 807). Contrary to this particularistic
liberal account, political liberalism concedes that conflicting accounts of justice
are to be considered by justice as fairness or by other reasonable conceptions of
justice. Rawls makes clear that reasonable pluralism in combination with the
burdens of judgment lead to the situation of rare unanimity in political life and
therefore/thereby to the necessity of majority and plurality voting procedures
(Rawls 1997, 798, 805). In his account of public justification and public reason
Rawls focuses heavily on the question of compatibility of religious comprehensive
doctrines and democracy. He rather neglects the question of adversarial, non-
religious conceptions of justice and conflicting notions of democracy. He sees
these conceptions as part of a "family" that is held together by the "limiting fea-
ture" of reciprocity (Rawls 1997, 773–4). But I think that Rawls overestimates
the family harmony that reciprocity can create among conflicting non-religious
conceptions of justice. In this article, I confront POD with the question of the
democratic framework of adversarial conceptions of reciprocity and justice and
with the related question of the political principles that guide a framework that
incorporates conflicting conceptions of justice into democratic decision-making.
In sum, my point is that POD is a thoughtful theory of democracy but not a
necessary standard of democratic legitimacy.

2. Rawls's Theory of Justice as Theory of Democracy

2.1 Rawls on the Relation of Justice and Democracy

John Rawls never developed a full-fledged theory of democracy. He is the author of an influential theory of justice. However, his conception of justice is nothing short of a general design of democratic society. Already in the preface to the first edition of *A Theory of Justice* (TJ), Rawls states that his conception of justice as fairness "constitutes the most appropriate moral basis for a democratic society" (Rawls 1971, xviii). In the preface to the second edition, Rawls writes that the ideas and aims of justice as fairness are "those of a philosophical conception for a constitutional democracy" which will "seem reasonable and useful, even if not fully convincing, to a wide range of thoughtful political opinions and thereby express an essential part of the common core of the democratic tradition" (Rawls 1999, xi). Rawls sees a broad connection between his conception of justice as fairness and democracy. The constitutional principles of democracy are not identical with the philosophical principles of justice, but they form the foundational principles of a democratic constitution. Not only does the conception of justice involve both of Rawls's principles of justice and their complex relation, the close connection of justice as fairness to democracy also implies a systemic combination of these two principles (Daniels 2003, 245). According to Rawls it is the combination of the two principles of justice that constitutes the basis of a liberal democratic regime and a democratic society at large that meets the needs of free and equal citizens via fair terms of cooperation (Cohen 1989).

In chapter two of TJ, Rawls specifies more precisely what he means by the 'core' of the democratic tradition. He clearly aims at a particular egalitarian conception of democracy that is closely, albeit not exclusively, tied to a just distribution of wealth and income ("Democratic equality and the difference principle"). Although much could be said about democracy and a free democratic society from the point of view of pluralism, freedom of choice, free market, and procedural fairness along Rawlsian lines, Rawls himself, from very early on, links the qualification 'democratic' directly and specifically to the necessary conjunction of the principle of fair equality of opportunity and the difference principle. The latter two regulate the socio-economic distribution of wealth and income within the basic structure as a fair system of cooperation. Without the inclusion of these systemic elements a society cannot be a *democratic* society, formal rights of participation notwithstanding.

More precisely, Rawls uses the term 'democratic' to qualify one of four possible interpretations of distributive justice and affirms that all other interpretations, including the liberal interpretation, are "defective" (Rawls 1971, 73). In chapter II.13 of TJ, the term 'democratic' stands for a particular interpretation of equality that is more ambitious than the system of equal formal liberty and the liberal interpretation of fair equality of opportunity. 'Democratic' stands for the necessary conjunction of the principle of fair equality of opportunity with Maximin. It stands for an effective safeguard of the capabilities of citizens (Daniels 2003, 270). Social positions must be open to all in a fair and not just

formal manner, and the distributive consequences of their occupation must be to everyone's advantage (Rawls 1971, 83).

Rawls insists that the difference principle expresses a conception of reciprocity; it is a principle of mutual benefit (Rawls 1971, 102). Inequalities are justifiable if and only if more benefit is thereby produced *and* everybody gets a fair share. "B can accept A's being better off since A's advantages have been gained in ways that improve B's prospects. If A were not allowed his better position, B would be worse off than he is." (103) According to Rawls, such a system can be justified to everyone, in particular to those who are least favored (103). Rawls seems to therefore call this system democratic because it aims at justifying at least the most basic distributive outcomes to everyone, to the people at large, as opposed to a qualified group of privileged *or* underprivileged within society. The democratic society is characterized by a "harmony of interests" (104), by the understanding that in a cooperative society benefit has to be mutual if the order is to be justifiable. The difference principle strives for the inclusion of everyone in mutually advantageous societal arrangements, regardless of their native endowments.

To express the relation of his theory of justice to the common core of democratic theory Rawls reconnects with the term 'fraternity' that complements liberty and equality. According to Rawls, the difference principle offers an interpretation of the principle of fraternity that, as he sees it, has been neglected by democratic theory (105). The principle of fraternity does not define specific democratic rights. Rather, it conveys

> "certain attitudes of mind and forms of conduct without which we would lose sight of the values expressed by these rights. Or closely related to this, fraternity is held to represent a certain equality of social esteem manifest in various public conventions and in the absence of manners of deference and servility. No doubt fraternity does imply these things, as well as a sense of civic friendship and social solidarity, but so understood it expresses no definite requirement." (105)

Rawls believes that, in addition to the attitudinal dimension of fraternity, the difference principle expresses the core idea of fraternity by stating "the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off". The difference principle substantiates fraternity with a more concrete requirement. A democratic society guided by fraternity is an extended family in the sense that no one is willing to move ahead without taking everybody along at least to a certain extent. Furthermore, a connection between the principle of fraternity and the difference principle has the advantage of not promoting an unrealistic, sentiment driven face-to-face fraternity among citizens. Rawls thinks that the difference principle establishes a general requirement that makes fraternity a feasible standard and a necessary complement of any democratic society deserving its name. Rawls himself has given an accurate summary of his view of the relation between justice and democracy:

> "we can associate the traditional ideas of liberty, equality, and fraternity with the democratic interpretation 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 equality of opportunity, and fraternity to the difference principle." (106)

2.2 Democracy in Rawls's Conception of POD

What does an analysis of Rawls's idea of POD add to this account of Rawls's notion of democracy? I will first try to show that Rawls's account of POD mainly tells us something new about the relation of democracy to the first principle. As mentioned in the introduction, Rawls and others have said much about the distinction between POD and the utilitarian welfare state as well as the difference between socialism and a private-property economy. These are not the subject matters that I focus on here. I am interested in the implications of Rawls's statements for democratic theory and for a coherent understanding of 'democracy' in 'POD'.

According to Rawls's standard account, in a POD private ownership of productive assets and human capital would be widely dispersed *ex ante* and against the background of equal basic liberties and fair equality of opportunity. Rawls's idea is "to put all citizens in a position to manage their own affairs and to take part in social cooperation on a footing of mutual respect under appropriately equal conditions" (Rawls 1999, xv). Rawls insists on the term 'citizen'—as opposed to 'human individual'—as owner of productive means and thereby treats the question of distribution of assets in a political context within the basic structure. Dispersal of private ownership of productive assets has to be steady and sustained over time by laws of inheritance and bequest. In this manner only citizens become fully cooperating members of society over time. The aim is to realize the economic autonomy of all citizens, the lack of which undermines political autonomy and fair democratic procedure. Again, according to Rawls, democracy is at the heart of the matter. Welfare state capitalism only brings the worst-off to a certain level but leaves untouched the great economic inequalities that are, according to Rawls, "incompatible with the fair value of political liberty" (xv).

In this account of Rawls, the difference principle still plays a role, but the argument in favor of the wide dispersal of property of productive assets and human capital is sufficiently determined by the first principle as expressed in the fair value of equal political liberty in a democratic society. In other words, POD refers to equal liberty, which is lexically prior to the difference principle and for which there is a stronger argumentative basis than for the difference principle according the Rawls of the second edition of TJ (Rawls 1999, xiv).

According to Rawls, the theory of justice does not and cannot determine whether the private-property economy or market socialism with public ownership of productive assets better corresponds to the requirements of justice. The answer to this question depends on "traditions, institutions, and social forces of each country, and its particular historical circumstances" (Rawls 1999, 242;

2001, 139). In other words, the decision and correction of the proportion of public and private ownership is a matter of constant democratic debate and revision within a democratic framework that is not predetermined by POD. According to Rawls, such a decision has to follow "just procedure for choosing between governments and for enacting just legislation" (243). He probably thinks that a private-property economy better corresponds to the US-American tradition, but in theory this is up for change in the future. Be that as it may, any change in system would have to be decided by democratic procedures that are open to but not determined by POD. There is no natural right to the ownership of productive assets just like there is no natural right to worker-owned and managed firms. In other words, according to Rawls, the decision of how to best organize society is to be determined by a fair democratic procedure.

An important element of such a fair procedure is the guarantee of the "fair value political liberty" (Rawls 1999, 245; 2001, 139–40). From the Rawlsian democratic point of view, it is not enough to just prevent everybody from falling bellow a certain minimum threshold of a decent life if this does not ensure the fair value of political liberty at the same time. Here again, the importance of the first principle of equal liberty, including equal political liberty, is obvious for a Rawlsian account of democracy. In order to preserve the fair value of political liberty, the distribution branch of government must correct the distribution of wealth, for instance by applying the progressive principle, in order to prevent concentrations of power that are detrimental to political liberty. Consequently, a wide dispersal of private property is a necessary condition of the fair value of political liberty, which in turn is part of a fair political procedure in democracy (Rawls 1999, 245). In a non-ideal environment, taxation of inheritance and income at a progressive rate as well as legal constraints to property rights might ensure equal liberty in a POD (Rawls 1999, 247). The aim of all branches of government is to establish and preserve a "democratic regime in which land and capital are widely though not presumably equally held. Society is not so divided that one fairly small sector controls the preponderance of productive resources." (247) If these criteria of wide dispersal of private property of productive assets are met, the socialist criticisms of the market economy are unfounded and hence the decision between a private property society and market socialism in which firms are publically owned and managed by workers councils etc. becomes one of tradition rather than justice (248).

In this sense, it is interesting to see that Rawls defends the market for both POD and socialism as a requirement of justice. His defense includes a negative and a positive argument. On the negative side, Rawls questions the possibility and quality of control of all economic activity by a government, whose decisions are to completely replace the market. A society in which this would be possible is not a just society but a society "beyond justice", a society that has already eliminated the conditions under which it is necessary to appeal to justice (249). On the positive side of the argument, Rawls mentions freedom of choice, especially freedom of choice of occupation. Abandoning the market system violates the first principle expressed as equal freedom of choice (Rawls 1999, 231, 240–1; 2001, 138).

Within the context of his discussion of the economic institutions of a POD, Rawls mentions, at the end of the chapter, that he does not think that the difference principle ought to be explicitly stated in constitutions and enforced by courts. It is not possible "to settle with exactness" whether the principle is met. Rather, Rawls appeals to democratic consent to mention the principle in a non enforceable preamble of the constitution as an aspirational principle (Rawls 2001, 162).

The result of this section is twofold: firstly, Rawls sees POD as being in legitimate democratic competition with market socialism. This democratic competition needs to be more formal and procedural than the conditions of POD imply; secondly, he does not consider the difference principle to be enforceable. Both points beg the question according to what standards that do not already presuppose POD or justice as fairness could decisions be taken legitimately. How does society come to legitimately enforceable decisions regarding POD vs. market socialism and regarding the realization of the difference principles or other competing moral principles of justice?

3. POD and Political Liberalism

Rawls's view of POD leads to the critical observation that Rawls has, or at least should make explicit, two conceptions of democracy. One is implied in political liberalism and not further explained by Rawls. It leaves room for the democratic competition of different conceptions of justice and different concrete modes of implementation. Rawls's other conception of democracy, the one he makes explicit in his theory of justice and POD, is much more narrow and, according to many critics, not sufficiently democratic in the sense that it does not seem to portray democracy as an open system of deliberation and collective choice among a broader spectrum of deliberate societal models. I will call this objection the democracy-objection (Waldron 1999; Cohen 2003; Klosko 2004; Reidy 2007). It holds, that the substantive constitutional constraints suggested by justice as fairness would preempt a free democratic discussion and decision process on the very issues of justice and fairness. Rawls, so the argument, subordinates democracy to his own conception of justice and reciprocity.

Joshua Cohen traces this objection back to Habermas. He distinguishes and identifies the institutional subordination-problem, the denigration-problem, and the 'mistrust of citizens'-problem (Cohen 2003, 111–31). The problems of institutional subordination and denigration consist in the point that the idealized process of collective decision making represents a guardian-like position that subordinates democratic decision making to the judgment of an epistemic elite and thereby "denigrates the importance of public argument and political participation". It also implies a mistrust of citizens (Cohen 2003). Cohen points to the fact that the problem is not Rawls's substantive claim to justice as fairness as a moral standard of democracy. Any moral theory is entitled, if not required, to make standards of justice available in its own right. Rawls's problem, according to Cohen, is the lack of a plausible account of *political* disagreement.

Rawls fails to recognize and idealizes that not everyone holds the same moral conception of justice, that there is no moral consensus, no unanimity, no 'general will' regarding a conception of justice (Cohen 2003, 115, 128–31). Along a similar line of argumentation, David A. Reidy diagnoses that Rawls problematically underestimates the extent of reasonable disagreement (Reidy 2007, 259ff.).

Whether this objection is correct depends on the underlying account of reasonable political disagreement and political notion of democracy. The latter can still have normative elements, but in order to satisfy the democracy-objection it needs to represent a different reciprocal agreement as it tries to accommodate different conceptions of justice and relate them to a broader conception of democratic legitimacy. In such a conception, Rawls's notion of democracy and his idea of an overlapping consensus have to be put into relation with a more open and more formal notion founding the conditions of a democracy in which Rawls's conception of justice and POD are only a reasonable position among other reasonable and thoughtful positions. They cannot predetermine the conditions of the debate, let alone be implemented by coercive means. In other words, the consensus about democracy as a political institution rests on a wider notion of democracy, in which the Rawlsian notion is proposed and debated.

It is obvious that Rawls himself acknowledges reasonable pluralism and reasonable disagreement in theory and in relation to his own positions. Reasonable pluralism refers to "the fact that a plurality of reasonable comprehensive doctrines, religious, philosophical, and moral, is the normal condition of democratic culture given its free institutions" (Rawls 2005, xxxvi, n. 3). Even more importantly with regard to Cohen's objection, Rawls thinks that his conception of justice is a "political conception" that can regulate reasonable pluralism of comprehensive doctrines. He states that the distinction between his political conception of justice from comprehensive doctrines is the crucial idea of political liberalism (Rawls 2005, xxxvi). Rawls claims to present a "political conception of political justice for a constitutional democratic regime that a plurality of reasonable doctrines, both religious and non-religious, liberal and non-liberal, may freely endorse, and so freely live by and come to understand its virtues" (Rawls 2005, xxxviii). On a second level of reflection, Rawls includes factual or possible disagreement and plurality with regard to his own conception of justice. He indicates that his arguments, especially the ones on the difference principle, are 'less evident', do not meet general acceptance and are not constitutionally enforceable. From the start, Rawls leaves room for disagreement on his conception of justice and democratic equality when he says that his arguments "seem reasonable and useful, even if *not fully convincing*, to a wide range of thoughtful political opinions" (Rawls 1999, xi, emphasis added). Given such consideration of thoughtful disagreement and given the insistence on the political status of his theory, the objection that Rawls leaves no room for political disagreement or underestimates the extent of reasonable disagreement is true for his account of justice as fairness but requires further explanation regarding political liberalism.

The central question is what could be meant by reasonable *political* disagreement. We can assume that moral disagreement is about value judgments and leave this question to the side for our purposes (Raz 1994, 97ff.). Political

disagreement can be understood as a disagreement about which position, moral or non-moral, the political community should enforce. This disagreement is reasonable if the solution to this problem is sought on grounds of a mutually acceptable political process of decision making (Waldron 1999, 37). But Rawls is more ambitious. He does not accept, or at least claims, to go beyond the *modus vivendi* of mutual interest as a way of coping with political disagreement. He thinks that his political conception of justice and idea of overlapping consensus can accommodate political disagreement within a philosophical theory while other conceptions cannot because they are either too comprehensive, and thereby mutually exclusive, or they are not morally demanding and only based on happenstance and balance of relative forces.

Is it a problem for political liberalism and public reason that Rawls states that his political conception of justice is "itself a moral conception" (i.e. comprehensive) and is stable on grounds of the recognition of moral principles (Rawls 2005, 147)? Not really, because comprehensive doctrines are not forbidden in public justification. Rather, the adherents of comprehensive doctrines need to argue their case in terms of political values and principles others can accept (Rawls 1997, 776). The real problem is Rawls's rather narrow interpretation of reciprocity, the latter being the criterion of reasonableness of different but politically acceptable conceptions of justice (Rawls 1997, 774, 797). Reciprocity is not reducible to a peaceful *modus vivendi* arbitrated by majority voting or mere mutual advantage from an objective observer's point of view. Rather it is the attitude of an actor A who excepts mutual advantage as a desired outcome even if he or she could settle for greater advantage to the disadvantage of B. Reciprocity *à la Rawls* is accepting to switch to the point of view of all the others and only accepting what is justified from all perspectives, it is reciprocity of justification (Reidy 2007, 248–9). Rawls's liberal conception of political legitimacy as reciprocity in public justification depends on the original position, not political settlement. And the only conception of justice acceptable in the original position is justice as fairness.

Furthermore, according to Rawls only POD and market socialism correspond to justice as fairness as political conception of justice. Hence any democratic decision that is taken under circumstances that differ from these models or with a different outcome is more or less illegitimate due to a lack of 'justice as fairness'-pedigree. Little to no room is left for free democratic choice and constant revision in successive elections and votes in which competing conceptions of justice and societal models are constantly enacted and corrected. Marxists, libertarians, communitarians and so forth need to be considered in unreasonable disagreement with political liberalism because communitarians and Marxists give priority to the good over the right while libertarians mistakenly make dyadic transactions the first subject of justice. The political disagreement that Rawls's model of political liberalism is able to accommodate is limited to some form of property-owning or social democracy, because, as Waldron puts it, "Rawls's model assumes all the fundamental work has been done in the Original Position" (Waldron 1999, 72).

Furthermore, he states that "in political philosophy, we should not wish away the fact that we find ourselves living and acting alongside many with whom there is little prospect of our sharing a view about justice, rights or political morality" (Waldron 1999, 154). This rightly means that permanent disagreement is likely to exist not only with regard to comprehensive doctrines, but also regarding conceptions of justice and the scope of the overlapping consensus itself. Beyond that, it concerns many issues on which a community urgently needs to share a common view or take collective action. The political condition of a community is its need to take coercive collective action on issues over which its members are divided. But as I have indicated from the beginning, Rawls himself concluded that the claim of first priority of the principles of justice was inconsistent with the fact of reasonable pluralism (Rawls 2005, xlii–xliii).

As I have shown, we cannot ease the tension between Rawls's notion of democracy based on justice as fairness and political liberalism by referring to to Rawls's account of public reason as a different idea of justification. Granted, the idea of public reason requires that questions of constitutional essentials and matters of basic justice be settled by appealing to political values (Scanlon 2003, 161). Such values are not part of reasonable comprehensive views, but include substantive ideas of justice, including basic rights, liberties, opportunities, and substantive ideas of public inquiry and civic debate. However, as is obvious from Rawls's notion of reciprocity and as Scanlon pointed out, Rawls does not spell out a full set of political values and, more importantly, he does not recede from his commitment to the conception of justice in his determination of the criterion of political acceptability (Scanlon 2003, 162). In other words, Rawls's distinction between justice as fairness as a comprehensive doctrine and his account of political liberalism implies two notions of democracy: one developed within the Rawlsian account of justice and one developed on the grounds of reasonable pluralism. POD, as presented by Rawls, is part of the first notion of democracy.

4. Democratic Legitimacy, Political Liberty and Reciprocity

One might ask whether this judgment still stands when confronted with the demands of political liberty, more broadly understood than in freedom of speech, and economic reciprocity. After all, democracy—even in its minimal notion—is modeled as a contract of citizens. Liberty and reciprocity are necessary conditions of contract. The non-economic dimensions of political community notwithstanding, nobody enters a contract rationally to gain nothing or to be permanently worse off in material terms. If cooperative economic gain is real, all partners are entitled to a share; if sacrifice is necessary, it needs to be distributed evenhandedly among the partners of the contract. Such are the demands of the basic contract of democracy. Along a similar line of thought, political liberty is a basic condition of democracy. If it is deficient, democratic legitimacy is jeopardized because no meaningful participation of citizens is possible under conditions lacking basic political liberty. In other words, reciprocity regarding

the distribution of cooperative gains and political liberty seem to be part of the core notion of democracy. Consequently, the question that needs to be addressed regarding the theme of this article is if economic reciprocity and political liberty as conceived within the notion of POD are part of the inner core of democratic legitimacy, or if weaker or different versions of these conditions apply. Again, I will argue that a different interpretation of these principles applies in a notion of democratic legitimacy.

4.1 Political Liberty and Democratic Legitimacy

I will start with political liberty since it is part of the first and lexically prior principle of equal basic liberties according to Rawls. Within the notion of POD, the principle of equal political liberty possibly restricts permissible inequalities of income and wealth that might otherwise be allowed by the difference principle (Rawls 2001, 46, n. 10). Rawls's line of thought is the following: In welfare-state capitalism and laissez-faire types of capitalism, private ownership and control of production are concentrated in the hands of a minority. Consequently, there are large inequalities, not only of income and wealth, but also in the exercise of effective political power and influence over the political agenda. According to Rawls, laissez-faire capitalism and welfare-state capitalism both reject the fair value of political liberty by tolerating extreme inequalities. The latter are structurally tolerated or even necessary in the institutional descriptions of capitalist systems. As such they cancel the fair value of political liberty (Rawls 2001, 137–8). If political liberty is not ascertained, so one could argue, democratic legitimacy is jeopardized and extra-constitutional resistance against such a regime is as legitimate as against an authoritarian regime. It follows from this conclusion that the wide individual distribution of productive assets, as proposed in the idea of POD, is a core demand of democratic legitimacy also within what I have called the second, genuinely political notion of democratic legitimacy.

There are two possible external arguments against this line of thought, which I will briefly mention but do not want to pursue further in this article. One external argument against Rawls is the distinction between liberty and power. Rawls obviously identifies 'fair value of political liberty' with some degree of economic power and influence, not with the right to speak freely, to freely associate with others, and to vote without being constrained or forced. Thus, one could argue that Rawls, like many others, confuses liberty with power. The debate concerning this issue is stimulating, but an assessment of the argument on these grounds would most likely be predicated by the choice of a negative, positive or combined conception of freedom and thereby carry the burdens of proof attached to whatever choice is made (Berlin 2002; MacCallum 1967; Sen 1988; Sudgen 2004). It is preferable and, as I will show, possible to bring the argument further without such additional argumentative burdens.

The second external argument against Rawls could be to accuse him of reducing influence to affluence. Political influence depends on a large number of factors. The direct availability of economic means to an individual is only one of them and arguably not the most important one under many circumstances.

Political influence is conditioned by the dynamics of collective action (Olson 1971; Becker 1983; Banfield 2003). The over-determined and essentially collective nature of political influence leads to a myriad of possibilities of compensations and trade-offs between the factors responsible for this phenomenon. Secondly, influence is always directed at someone regarding a subject matter. An actor A does not simply have influence; A has influence over an individual or a group B regarding the subject matter X. This means that the question if income and wealth of an actor is decisive for his or her political influence depends on the person or group over which this influence is exercised and on the subject matter. If the subject matter at stake in a political conflict has to do with deep feelings of identity and recognition, economic influence will be less important than in regard to questions of minimal salary, working hours, etc. None of these arguments are decisive arguments against Rawls's objection against excessive economic inequality, but they show that going down the road of the affluence-influence argument we get sidetracked into an empirical argument about the complex circumstances of political influence in which, at least in some cases, it can be assumed that factors other than individual wealth are decisive.

For the reasons mentioned in the two former paragraphs I will not pursue the two external arguments against Rawls any further. For the time being, I will accept Rawls's notion of political liberty as including some degree of equality of power and influence. Given such a presupposition, I will show that Rawls's own conception of liberty demands a different kind of condition than individual equality of economic resources assured by fairly equal private property of productive means.

Rawls's idea is that the economic and social equality brought about by POD or liberal socialism guarantees the fair value of political liberty by giving individuals a more equal share in income and wealth. According to the institutional description of a POD, a small societal group ought not to be able to control neither the economy nor political life. But note that the argument, even on Rawlsian grounds, is not and cannot be strictly individualistic. Free political action is individual action and/or group action (Daniels 2003, 242). Hence, even if individuals were strictly equal regarding income and wealth, some could permanently overpower others by forming stable groups of collective action. Under conditions of freedom of association and freedom of pooling resources, even the strictest material equality of all individuals does not assure political liberty understood as fairly equal power. If A, B, and C are materially equal and B and C team up, A is overpowered and, in order to prevent this, A would have to be twice as powerful as B and C. Individual equality of economic resources is no guarantee of political liberty understood as individual power.

In order to solve the problem of the missing political power of the worst off, what has to be prevented is that the worst-off individuals can no longer form a group sufficiently powerful to avoid total control of the political institutions by the best-off group or any other intermediary group. It seems to me that some passages in Rawls, where he considers the social position of groups rather than individuals as such, also point into this direction (Rawls 1999, xiv). In sum, even strict individual equality of economic power could not ascertain individual

influence over the political agenda under conditions of freedom of association, because under such conditions individual citizens can still form groups to over-power others. Hence, the demand of an argument that relates political liberty and economic power in view of achieving fair value of political liberty cannot be individual economic equality. The argument that aims at ascertaining fair value of political liberty as influence over the political agenda and concedes freedom of association and pooling of resources at the same time, demands an institutional design in which the permanent economic domination of any societal group is avoided. This means that the fair value of political liberty within a political notion of democratic legitimacy is ascertained if the collective power of the group of the worst-off does not go below the point where its exercise of meaningful influence over the political agenda becomes impossible. In other words, according to a political and liberal notion of democracy, the fair value of political liberty is strict equality of formal liberties combined with the avoidance of excessive inequality that leads to the impossibility of effective political action of the worst-off.

4.2 Reciprocity and Democratic Legitimacy

Behind the veil of ignorance, reciprocity is spelled out in the form of the two principles of justice. As I have argued, we cannot presuppose that the argument about the principles of justice is settled behind the veil of ignorance. One of the tangible advantages of democracy is the periodic revision of the gains and losses by all actors via the constant repetition of elections and/or votes. Morally ambitious reciprocity in a one-shot agreement behind the veil of ignorance, as in Rawls's public reason, is replaced in political democracy by the reasonable assumption of reaching diffuse reciprocity via the periodic repetition of elections and votes. This, of course, raises an empirical question about the circumstances that will favor or hinder reciprocity and reversibility. Nevertheless, it is fair to say that in case diffuse reciprocity does not come about over time, the democratic consensus will break apart. A real contract under conditions of reasonably complete information about one's actual and future social position will only take place if the worst-off see some gain in being part of a cooperative arrangement. This will not lead to maximin but to some form of advantage gained over time even by the worst-off during a process of repeated assessment of gains and losses in electoral cycles. That is probably the institutional reason why majoritarian legislation, over time, has ushered in the welfare state in many democracies.

Note that such a demand might go beyond Klosko's fifth basic principle of the liberal consensus (distribution according to merit and equality of opportunity) because democratic procedure possibly gives leverage to those who do not necessarily have merit (Klosko 2004). In other words, democracy as majoritarian rule of law most certainly does not provide a one-shot maximin outcome, but the democratic contract is premised upon the economic gain of all participants over time and it provides for the assessment of diffuse gains and losses by the periodic repetition of elections and votes. In this sense, diffuse reciprocity is a basic condition of democracy. The real progress of majoritarian legislation,

pointed out by Waldron (Waldron 1999), has only been possible because of some degree of diffuse reciprocity of interest in the distribution of economic gains. In sum, the procedural realization of diffuse reciprocity is ascertained by the prescription of periodical repetition of decision procedures and a periodical option of reversibility.

5. Conclusion

The theory of POD is a reasonable theory of justice, but the term 'democracy' needs clarifications substantiated in this article. A theory of POD is in fact democratic as long as: a) it does not pretend to fully represent the unique ideal standpoint and b) does not claim that its standard implies the license for coercive implementation without going through the filter of majoritarian legislation. Within such a model of democracy, a broad scope of doctrines and interpretations of justice are discussed by citizens and it needs to be possible for citizens to adopt doctrines more to the 'left' or more to the 'right' of POD and to periodically revise any adoption they have made in the past.

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