

Justiça e Libertação: A Tribute to John Rawls

Cristina Foroni Consani, Julia Sichier Moura, Nythamar de Oliveira (Organizadores)

A presente obra conjunta, intitulada "Justiça e Libertação: A Tribute to John Rawls", reúne 25 trabalhos em português, espanhol e inglês apresentados no evento. Os artigos trazem contribuições em torno de três grandes temas: i) análises e interpretações de conceitos da obra de Rawls, tais como construtivismo, democracia, educação, a inclusão de pessoas com deficiência, questões atreladas a desigualdades genéticas, meio ambiente, razão pública e o papel da reconciliação; ii) análise de críticas dirigidas a Rawls por Dupuy, Dussel, Fraser e Mouffe; iii) análise das questões afetas à justiça e libertação a partir do debate de temas como injustiças climáticas e colonialismo, justiça social e gênero, justiça e progresso, justiça e reconhecimento e pensamento crítico latino-americano. Aos nossos leitores, desejamos boa leitura e bom proveito.

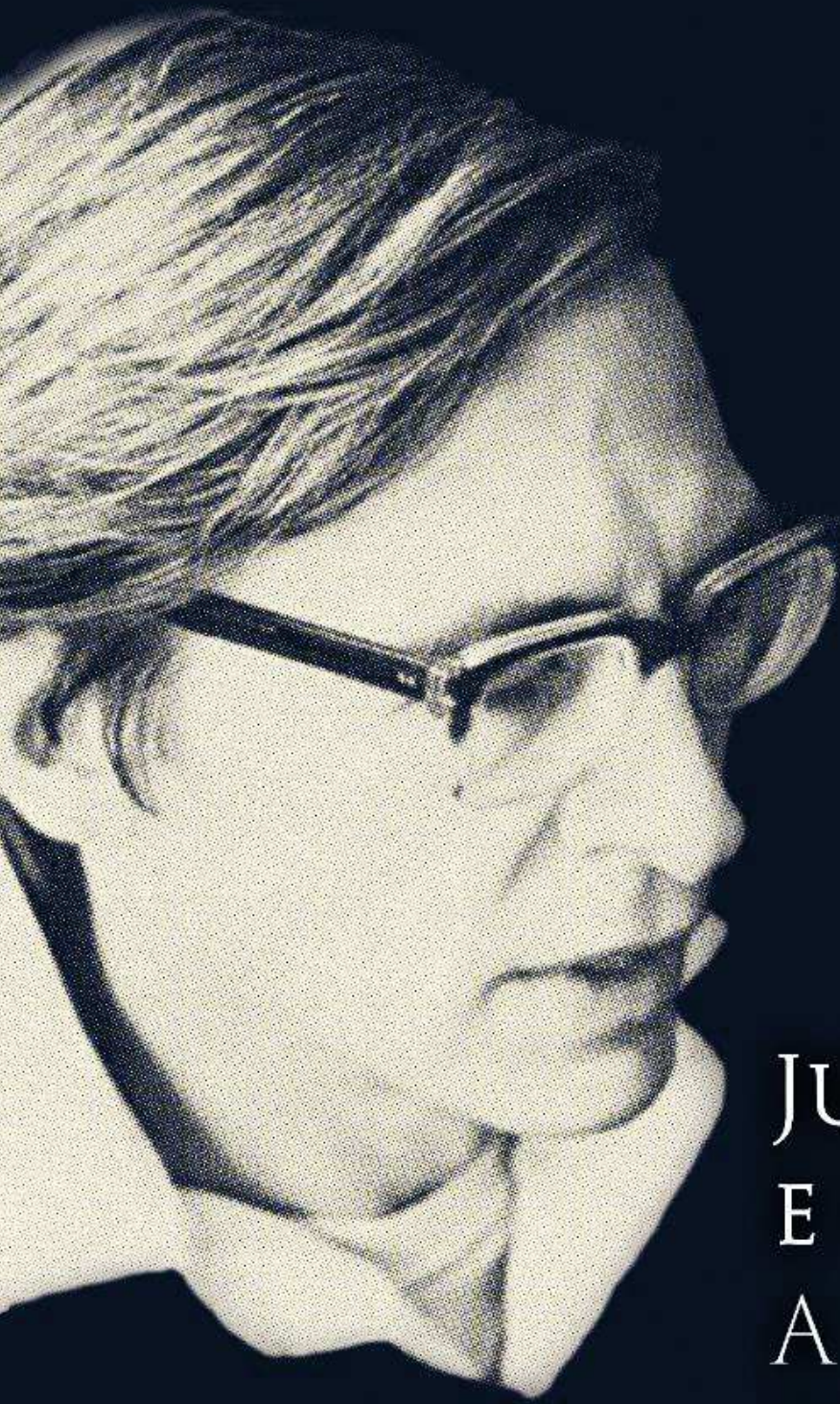
Os organizadores

582p.

ISBN – 978-65-81110-48-2

<https://doi.org/10.36592/9786581110482>

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Os Organizadores.



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Editora Fundação Fênix

Porto Alegre, 2021

Direção editorial: Agemir Bavaresco
Diagramação: Editora Fundação Fênix
Concepção da Capa: Editora Fundação Fênix

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Este livro foi editado com o apoio financeiro do Ministério das Relações Exteriores da República Federal da Alemanha através do Serviço Alemão de Intercâmbio Acadêmico (DAAD).



Série Filosofia – 86

Dados Internacionais de Catalogação na Publicação (CIP)

CONSANI, Cristina Foroni; MOURA, Julia Sichieri; OLIVEIRA, Nythamar de. (Orgs).

CONSANI, Cristina Foroni; MOURA, Julia Sichieri; OLIVEIRA, Nythamar de. (Orgs). *Justiça e Liberdade: A Tribute to John Rawls*. Porto Alegre, RS: Editora Fundação Fênix, 2021.

582p.

ISBN – 978-65-81110-48-2



<https://doi.org/10.36592/9786581110482>

Disponível em: <https://www.fundarfenix.com.br>

CDD-100

1. Justiça. 2. Liberdade. 3. Ética. 4. Cidadania.

Índice para catálogo sistemático – Filosofia e disciplinas relacionadas – 100

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20. RAWLS' DEMOCRATIC EQUALITY AND THE IDEA OF CO-AUTHORSHIP



<https://doi.org/10.36592/9786581110482-20>

Nunzio Ali¹

Abstract

Since the publication of *A Theory of Justice* in 1971, the distributive justice debate has tried to offer the best interpretation of a fundamental normative idea, namely, when people are entitled to a certain distribution, this distribution must be accommodated by distributive rules that cannot be considered as arbitrary. Based on John Rawls' notion of democratic equality, in a society of free and equal citizens, non-arbitrary rules of social justice are those that eliminate both the arbitrariness of the social and natural lotteries. Over these 50 years, Rawls' democratic equality was (re)interpreted according to three main normative ideas: *impartiality*, *reciprocity* and *co-authorship*. Inspired by Rainer Forst's reading, this paper focuses on this last interpretation. The idea of co-authorship is grounded on an intersubjective, procedural and non-comprehensive reading of Kant's notion of autonomy, according to which justice always demands an order of social relations free from arbitrary rule of some over others. From this perspective, this paper interprets Rawls' democratic equality as a normative idea that prescribes that citizens must not be deprived or cannot receive a smaller share of resources, or better social primary goods, than others than is necessary and indispensable to enable them to participate on fair terms in establishing and shaping the basic structure of society. Or, in other words, the idea that a just or fair distribution should be assessed by taking into account the fundamental question of whether people have the power to be co-authors of the basic structure of society.

Keywords: Democratic equality; Co-authorship; Political Liberties, Economic Inequality; Difference Principle.

There is a main reason to still consider Rawls' *Justice as Fairness* the best starting point for the discussion on distributive justice.² Precisely, Rawls introduced the contemporary view that the idea of social justice consists of some forms of substantive egalitarianism insofar as material inequality between people always requires a 'special' justification to those who might not benefit (or be damaged) by it. In a nutshell, Rawls' theory of justice on this 'special' justification is enacted by the

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ORCID: <https://orcid.org/0000-0002-8270-978X> Funding: HORIZON2020-Marie Skłodowska-Curie Actions-RISE-2017 – “Kant in South America – KANTINSA” 777786.

² Rawls (1971, 2001/a, 2005).

idea of 'democratic equality' according to which, in a society of free and equal citizens, non-arbitrary rules of social justice are those that eliminate both the arbitrariness of the social and natural lotteries.³ Therefore, Rawls defines his egalitarianism as democratic equality (or democratic citizenship), and it is the result of the two principles of justice (ordered lexicographically) chosen by the parties placed in the original position and behind the veil of ignorance. The two principles of justice establish how the basic structure of society must fairly distribute an index of primary social goods which is composed of rights, liberties, powers and opportunities, income and wealth, and the social bases of self-respect.

More precisely, the first principle concerns the just distribution of basic liberties and rights:

- a. Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.⁴

Instead, the second principle establishes the permissible social and economic inequalities.

- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society.⁵

The second principle of justice is composed of two parts. The first part is what Rawls calls the "fair equality of opportunity" (or FEO), and the second is called "the difference principle". The point is, how exactly can we identify the least favored, and

³ Here I follow Daniels (2003: 245, 248–49) and von Platz (2020: 7, note 6) in taking the ideal of democratic equality as expressed by Rawls' all component of the two principles of justice together, rather than to only refer to the principles of fair equality of opportunity and the difference principle as is presented in *A Theory of Justice* (1971).

⁴ Rawls 2005: 5.

⁵ Rawls 2005: 6.

how can we measure the benefit that socioeconomic inequalities must bring to them. To solve this problem, Rawls introduces the 'special conception', in alternative to the general conception in which the difference principle is applied to all primary goods including liberty and opportunity, with no lexical constraints. According to special conception, the greatest benefit to the least-advantaged is identified in the following manner:

In a well-ordered society where all citizens' equal basic rights and liberties and fair opportunities are secure, the least advantaged are those belonging to the income class with the lowest expectations. To say that inequalities in income and wealth are to be arranged for the greatest benefit of the least advantaged simply means that we are to compare schemes of cooperation by seeing how well off the least advantaged are under each scheme, and then to select the which the least advantaged are better off than they are under any other scheme.⁶

Over these 50 years, Rawls' democratic equality has been (re)interpreted according to three main normative ideas: impartiality, reciprocity and co-authorship. Each of these three main ideas have different consequences for the ways in which we understand the terms of wealth and income distribution.

According to the ideal of moral impartiality, the arbitrariness of social and natural circumstances or factors is determined by the fact that their 'distribution' is not driven by an impartial moral point of view. The way in which Rawls rejects the "system of natural liberty" seems to confirm this reading. He says that "the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view."⁷ Alternatively, Rawls argues that "there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune".⁸ From this perspective, the two main parts of the second principle of justice – the fair equality of opportunity and the difference principle – are thought to eliminate or compensate respectively the social and the natural lotteries. In the

⁶ Rawls 2001/a: 59-60.

⁷ Rawls 1971: 72.

⁸ Rawls 1971: 74.

current debate, some authors have suggested a different way to satisfy the idea of moral impartiality. For them, in order to respect the impartial point of view, justice requires the compensation of individuals in situations for which they cannot be held responsible. This normative position is commonly called Luck Egalitarianism.⁹ In any case, the terms of economic distribution shaped according to the idea of an impartial moral point of view provides distributive orientations that are concerned only with people's absolute levels, rather than with inequality between people. Most importantly, it does not address another moral and political reason as to why natural 'distribution' of individual endowments can be considered arbitrary - a reason usually associated with the idea of reciprocity.

The idea of reciprocity captures the most adequate explanation of the arbitrariness of natural endowments according to Rawls; that is, "what is just and unjust [in the natural lottery] is the way that institutions deal with these facts"¹⁰ From this perspective, what matters is that individual endowments, such as abilities and talents, are institution-dependent in the sense that they depend in large part on existing social arrangements.¹¹ This means that whichever individual talents and abilities are the most economically valuable depends on the goals of the social institutions and on the way in which these institutions are organized. According to the idea of reciprocity, the terms of distribution of the benefits and burdens of social cooperation must allow only reciprocal advantages. Therefore, according to Rawls, any economic inequality that benefits the most advantaged without maximizing (under any feasible alternative) the absolute share of the worst-off is a violation of reciprocity because it allows the best-off to benefit at the expense of others. In other words, any deviation from the line of perfect economic equality should be of maximum benefit to the least advantaged. However, beyond this strong commitment to equality, the idea of reciprocity applied to the difference principle is unable, by itself,

⁹ About luck egalitarianism, see: G. A. Cohen (1989); Arneson (1989, 2004); Dworkin (2000); Segall (2010). Luck egalitarianism has been initially formulated as an extension and generalization of a fundamental insight in Rawls' conception of justice: the issue of individual responsibility; but this assumption is hardly contested, see: Scheffler (2003); Daniels (2003). However, luck egalitarianism is currently presented as a conception of justice or idea of equality on its own. Also, in this case, it has received serious objections, see: Anderson (1999); Scheffler (2003); Forst (2020). I also share the contents of these objections.

¹⁰ Rawls 1971: 102.

¹¹ For this reading, see: Scanlon (2018).

to put a constraint on the magnitude of economic inequality. Indeed, in the maximin logic that underpins the difference principle it would be unreasonable to discard a distribution that maximizes the economic resources of the worst-off simply because it generates a great distance between the resources of the best-off. Increasing inequality, *other things being equal*, is permissible if it improves (or better maximizes) the position of the worst-off. I call this feature the problem of 'indeterminateness' of economic inequality that characterizes the difference principle. Rawls himself confirms this normative point, 'the difference principle specifies no definite limits within which the ratio of the shares of the more and less advantaged is to fall.' In addition, "we should leave this ratio to fall where it may, as the outcome of pure background procedural justice".¹² But, things are more complicated than this. For example, we must take into serious account that under the special conception we can implement the difference principle only after the first principle and fair equality of opportunity are satisfied. In other words, it is the background procedural justice that might impose limits on the magnitude of economic inequalities. There are, at least, two elements in Rawls' theory that might block an indefinite increase of inequality: a) the idea of the fair value of political liberties, that Rawls includes as a requirement of the first principle of justice and b) the constraints to which the institutional background is subject for the sake of compatibility with the two principles of justice.¹³ However, if these are true, it means that there is a moral and political background idea inscribed into Rawls' democratic equality. I believe that this idea is that of co-authorship.¹⁴ This paper focuses on this last interpretation. Rainer Forst explicitly adopts this idea to provide a broad reading of Rawls' theory of justice.¹⁵ Here, I will follow Forst's intuition to specifically interpret Rawls' democratic equality. Thus, from this perspective, it is possible to interpret Rawls' democratic equality as a normative idea that prescribes that citizens must not be deprived or cannot receive a smaller

¹² Rawls 2001/a: 68.

¹³ Another element that can constrain economic inequalities admitted by the difference principle is the fair equality of opportunity. I do not have the space here to deal with this element. For the discussion on this point see Ali (2021).

¹⁴ The idea of co-authorship between free and equal people is endorsed and elaborated by some authors in the Critical Theory camp; see for example: Habermas (1990), Benhabib (2012); Forst (2012, 2014).

¹⁵ See: Forst (2007, 2012, 2014, 2020).

share of resources, or better primary social goods, than others than is necessary and indispensable to enable them to participate on fair terms in establishing and shaping the basic structure of society. Or, in other words, the idea that a just or fair distribution should be assessed by taking into account the fundamental question of whether people have the power to be co-authors of the basic structure of society.

This paper proceeds as follows. In the first section, I will argue that it is more adequate to understand Rawls' theory of justice as a relational theory of justice. On this interpretation, we can read democratic equality from the point of view of an intersubjective, procedural and non-comprehensive reading of Kant's notion of autonomy according to which "justice always demands an order of social relations *free from arbitrary rule* of some over others"¹⁶; or, in other words, citizens who have the power to be co-authors of the basic structure of society. In the second section, I will reject the famous G. A. Cohen's objection to Rawls' difference principle.¹⁷ Once we have understood in which sense Rawls' justice as fairness is a non-comprehensive political conception of justice, it is easy to realize why the difference principle cannot depend on some kinds of egalitarian ethos. Therefore, we need to find another way to face the problem of 'indeterminateness' of economic inequality that characterizes the difference principle. Finally, in the third section, I will defend that both the idea of the fair value of political liberties and the constraints of institutional background seem to provide the best Rawls' defense against excessive economic inequalities. And this line of defense is strengthened when we interpret Rawls' democratic equality according to the idea of 'co-authorship'.

I. Rawls' political conception of justice

In the current debate, we can observe two different ways to conceive social justice that correspond to what Young and more recently Forst call the two pictures of justice: the allocative-distributive conception of justice and the relational conception of justice.¹⁸ The former adopts a distribution-centered and a recipient-

¹⁶ Forst 2007: 260.

¹⁷ G. A. Cohen (2008).

¹⁸ Young (1990); Forst (2014).

oriented point of view, and thus the basic question is what 'goods' you have. Although there can be different interpretations of what goods (welfare, resources, capabilities) should be distributed, and according to which criterion or principle (for example, prioritarian or sufficientarian), once we adopt a purely goods-focused view the just distribution is assessed in absolute terms of what people have. The relational conception of justice, on the contrary, focuses on how people are treated in terms of intersubjective relations rather than in terms of what people have or receive. As Forst puts it: "justice is not only a matter of which goods, for which reasons and in what amounts, should legitimately be allocated to whom, but in particular of how these goods come into the world in the first place and of who decides on their allocation and how this allocation is made".¹⁹ Given the fundamental importance of social primary goods in Rawls' theory, one might have reasons to consider his theory within the allocative/distributive paradigm. But, on the contrary, I agree with Forst that it is more adequate to understand Rawls' theory as a relational theory of justice, "the one which accords priority to social structures and relations and the social status of the individual".²⁰

We can observe some important elements in Rawls' theory that authorizes this interpretation. First of all, we can underline the Kantian background of Rawls' theory. Since *A theory of Justice to Political liberalism*, through the fundamental article of "Kantian Constructivism"²¹, Rawls emphasized certain Kantian elements meanwhile rejects many others. However, what remains central in Rawls' normative thought is the Kantian character of the autonomy of free and equal persons.²² In this sense, we can exclude the possibility that, according to Rawls, persons are passive recipients of justice; in contrast, they are "able to regard the principles of justice as morally self-given; hence, the citizens view the social basic structure which is grounded in this way as the social expression of their self-determination".²³ So, we can understand in which sense Rawls asserts that "the original position may be viewed, then, as a procedural interpretation of Kant's conception of autonomy and the categorical

¹⁹ Forst 2014: 34.

²⁰ Forst 2014: 31.

²¹ Rawls (1980).

²² Rawls 1971: 251-257.

²³ Forst 2014: 31.

imperative".²⁴ According to Rawls, persons are regarded as free and equal in virtue of the two powers of moral personality: 1) the capacity for a sense of justice, and 2) the capacity for a conception of the good. Moreover, these two powers are associated with the idea of society as a fair system of cooperation. Cooperation is guided by publicly recognized rules and procedures that those who cooperate accept; therefore, cooperation involves the idea of fair terms of cooperation which specify an idea of reciprocity. Clearly, the difficulty is to find a point of view from which the fair terms of cooperation could be determined to avoid moral arbitrariness. According to Rawls, this point of view is the original position with what he calls the veil of ignorance, which permits us to "abstract from and not be affected by the contingencies of the social world", and therefore "eliminating the bargaining advantaged that inevitably arise within the background institutions of any society from cumulative social, historical, and natural tendencies".²⁵

Now, in order to inscribe Rawls' theory in the family of relational conception of justice, we should ask ourselves the fundamental reason that moves Rawls in considering social inequalities and, above all, natural endowments as arbitrary circumstances in allocating any legitimate advantages in the social cooperation. What is important to clarify is that the arbitrariness of the social and natural contingencies is neither a criterion of allocative distribution grounded on a certain idea of equality, nor is it the result of rigorous 'moral geometry' in the relation between the original position and the two principles of justice. By contrast, the arbitrariness of the social and natural contingencies, and the consequent inequalities, is due to a way in which the basic structure of society deals with such contingencies. Rawls is clear about this point.

The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts. Aristocratic and caste societies are unjust because they make these contingencies the ascriptive basis for belonging to more or less enclosed and privileged social

²⁴ Rawls 1971: 256.

²⁵ Rawls 2005: 23.

classes. The basic structure of these societies incorporates the arbitrariness found in nature.²⁶

From this point of view, according to Rawls, when we speak about social justice, we refer to how all major social institutions that together compose the basic structure that affect individuals.

By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start (Rawls, 1971, p. 7).²⁷

From this point of view, Rawls distinguishes what can happen to an individual by reason of his own particular circumstance, and what by reason of the imposition of a certain basic structure.²⁸ It is not a case that the least advantaged are always identified as representative of social groups, and not as a single individual. Otherwise, it would be impossible to prove the political and social dimension of a certain claim of (social) justice that satisfies the criteria of reciprocity and publicity. In *Justice as Fairness: A Restatement*, Rawls is much clearer in rejecting the idea of allocative justice "as incompatible with the fundamental idea by which justice as fairness is organized: the idea of society as a fair system of social cooperation over time".²⁹ Therefore, in Rawls' conception of justice, the problem of distributive justice nowise concerns "how a given bundle of commodities is to be distributed, or allocated, among various individuals whose particular needs, desires, and preferences are

²⁶ Rawls 1971: 102.

²⁷ Rawls 1971: 7; See also Rawls 2005: 258.

²⁸ Rawls 1971: 54.

²⁹ Rawls 2001/a: 50.

known to us, and who have not cooperated in any way to produce those commodities".³⁰

Now, the fundamental question is how the two principles of justice chosen in the original position guarantee that everyone engaged in the basic structure of society, as a public system of rules, can consider these rules and his participation in the activity as they are defined by the result of a reasonable agreement.³¹ In other words, how do the two principles respect (or better, do not violate) the idea of autonomy as free and equal people? And, above all, what kind of autonomy is that? In answering these questions, we should detach the most important differences between Kant's moral constructivism and Rawls' political constructivism, in doing so we can appreciate the main features of Rawls' political conception of justice as non-metaphysical or non-transcendental and non-comprehensive.³² These features also have strong consequences in addressing the problem of distributive justice.

Here, I focus on two main differences. First of all, in Kant's view, the basic conceptions of person and society have a foundation in his transcendental idealism.³³ On the contrary, in other words, Rawls rejects the transcendental and metaphysical foundation. In this sense, we can understand why Rawls defines the original position as a "device representation" which does not presuppose any particular metaphysical conception of the person.³⁴ In this respect, the justification of the original position also depends upon whether it adequately represents our considered moral judgments as these are established in a process of reflective equilibrium. Secondly, the other difference is connected to the previous ones concerned with the distinct aim of Kant's moral constructivism view and Rawls' political constructivism view. Rawls says that "justice as fairness aims at uncovering a public basis of justification on questions of political justice given the fact of reasonable pluralism".³⁵ It means that Justice as fairness is presented in *Political Liberalism* as a non-comprehensive conception of (political) justice, differently from *A Theory of Justice* in which it was understood as

³⁰ Rawls 2001/a: 50.

³¹ Rawls 1971: 55-56.

³² For a broad discussion and overview about this point see: Forst (2017).

³³ Rawls 2005: 100.

³⁴ Rawls 2005: 27.

³⁵ Rawls 2005: 100.

a comprehensive (even if liberal) conception of justice. With this last difference, Rawls extends his earlier idea of independence of moral theory from epistemology and metaphysics. As Freeman notes:

Political liberalism goes one step further than this: it means that a significant part of morality— 'the domain of the political' (PL, 38)—is independent, not just of epistemology and metaphysics, but of comprehensive moral conceptions as well (including Kantian morality and the value of moral autonomy).³⁶

Some scholars³⁷ have understood this 'political' shift in the normative ground of Rawls' theory as a discontinuity between *Political Liberalism* and *A theory*, in the sense that in *A Theory* Rawls tries to answer the fundamental question of social justice, whereas in the *Political Liberalism* the fundamental question is the tolerance that exists in the liberal democracy. According to this interpretation, the focus on the socioeconomic inequalities, for example, would become secondary to the issue of democratic tolerance. Rawls always rejected this interpretation, and *Justice as Fairness: A restatement* was an attempt to interplay his two most important works. The point is that Rawls continues answering the fundamental question of social justice, but in *Political Liberalism* he realizes that one of the three main kinds of conflict among citizens, pluralism of comprehensive doctrines, can only be mitigated but not completely eliminated, "since comprehensive doctrines are, politically speaking, irreconcilable and remain inconsistent with one another".³⁸ It implies an important change in the justification of conception of justice and in the idea of stability. However, here, I am simply interested in exploring the main consequences concerning the problem of distributive justice, once Rawls presents his conception of justice as political and non-metaphysical and non-comprehensive; and, in doing so, showing the deep difference between Kant's moral constructivism and his political constructivism. In this way, we can appreciate the 'political' (albeit, always moral)³⁹

³⁶ Freeman 2007: 233.

³⁷ See: Salvatore (2004); Van Shoelandt and Gaus (2018).

³⁸ Rawls 2005: lviii.

³⁹ See: Rawls 2005: xlvi, 395.

grounds of the difference principle, and therefore we can reject the famous G. A. Cohen's objection.

II. Rejecting G. A. Cohen's objection: the difference principle cannot depend on some kinds of egalitarian ethos

First of all, in avoiding conceiving the basic conception of person and society from a metaphysical and transcendental point of view, Rawls avoids one of the most serious flaws in Kant's idea of (social) justice. As it is well-known Kant's *noumenal* view of the human being leads him to underestimate the importance of material social conditions in such a way that according to him the equal treatment that all people are entitled under the law of the state is entirely coherent with a huge inequality in possessions.⁴⁰ By contrast, Rawls does not conceive human beings and society in formal terms. Instead, following Rousseau, he takes "men as they are".⁴¹

Secondly, Rawls clarifies that his conception of justice is not comprehensive, and for this reason it is 'political'. In the original position, the veil of ignorance is thick rather than thin in order to not allow the parties to know people's comprehensive doctrines: moral, religious and also philosophical.⁴² It means that Rawls also considers people's deep disagreement between, for example, an egalitarian and libertarian 'philosophical' comprehensive conception of justice. It also has a strong consequence on the argument that leads people to reasonably choose the two principles of justice and in particular the difference principle. For example, it is evident that the idea of equality, as well as the concern for efficiency, plays a less relevant task than it was supposed to in many interpretations. To many, the difference principle is appealing "for the demand that the advantages enjoyed by the least advantaged should be as generous as (sustainably) possible provides a transparent and elegant way of articulating an egalitarian impulse and a concern for efficiency".⁴³ Then, the debate on the difference principle was, and is, characterized by the

⁴⁰ Johnston 2011: 162. For a possible objection to economic inequality from a Kantian view see: Ali and Pinzani (2022 forthcoming).

⁴¹ Rousseau (1997); Rawls 2001/b: 7.

⁴² Rawls 1980: 549; Rawls 2005: 24, note 27.

⁴³ Van Parijs 2003: 200.

fundamental question of how much social and economic inequalities the principle permits, once it prescribes to maximize the well-being of the least advantaged. In the debate, the answer seems to depend on the weight, and priority, that we might attribute to the egalitarian appeal or the socioeconomic efficiency. According to those who advocate the *leximin* (or Pareto efficient) difference principle what matters is to maximize the advantage of the least advantaged group under any other feasible arrangement. Once we have maximized the position of the worst off, they cannot deny any further increasing in economic inequality if it still represents the socioeconomic scheme in which the position of the worst off is maximized under any other feasible arrangement; unless the least advantaged group would appeal to a certain egalitarian value. By contrast, those who defend a more egalitarian interpretation of the difference principle sustain that any further increasing in economic inequality impose (re)distributive duties to the most advantaged in the sense that such increasing is allowed if, and only if, it improves for a certain amount and also the position of the worst off.⁴⁴ Only in this way, they sustain, the difference principle is compatible with the idea of reciprocity, and it can realize the value of fraternity, as in Rawls' intention.⁴⁵ Here we can contextualize the well-known G. A. Cohen's critique of Rawls. Cohen's central argument is that approving (special) economic incentives to motivate talented producers means to accept the difference principle in its lax form. According to Cohen, there are two understandings of the difference principle:

In its strict reading, it counts inequalities as necessary only when they are, strictly, necessary, necessary, that is, apart from people's chosen intentions. In its lax reading, it countenances intention-relative necessities as well. So, for example, if an inequality is needed to make the badly off better off but only given that talented producers operate as self-interested market maximizers, then that inequality is endorsed by the lax, but not by the strict, reading of the difference principle.⁴⁶

For this reason, Cohen believes that the subject of social justice is not primarily the basic structure of society, as Rawls sustains, rather a criterion of distributive

⁴⁴ However, I said, also in this case, it leaves open how much this amount range should be.

⁴⁵ Rawls 1971: 105.

⁴⁶ Cohen 2008: 69.

justice that should also be applied to individual behaviors, preferences and attitudes. However, Cohen is aware of the kind of political problem that governments should face to implement such egalitarian ethos, and how it might mean rejecting freedom of choice of occupation. In order to avoid these kinds of problems, Cohen suggests what he calls "ethical solution".⁴⁷ This means that individuals, simply by reason of their egalitarian ethos, 'voluntarily' choose the occupation in which they are more talented without requiring any special economic incentives for it.⁴⁸ It is easy to clearly observe all of the main differences between Cohen's egalitarian conception of justice and Rawls' political conception of justice. For Cohen, it is not problematic to assume the ethical solution, and therefore a comprehensive conception of justice, since his idea of justice is both metaphysical and transcendental. This means that, for Cohen, justice is not a normative regulatory idea, and it does not prescribe "rules of social regulation".⁴⁹ Therefore, Cohen's main purpose is not to provide a conception of justice that serves, also and mainly, as a standard of political justification. Instead, it is Rawls' fundamental purpose.⁵⁰ Given the existence of irreconcilable conflicts that can only be mitigated, we can hope (in the best case) in the existence of an overlapping consensus among reasonable doctrines that holds the political conception of justice, but we cannot exclude the presence of unreasonable doctrines. Therefore, although Rawls does not explicitly offer a theory of power, the way we ought to justify and legitimate the 'coercive' use of power emerges as one of the fundamental questions that *Political Liberalism* tries to answer.

Now, taking seriously the meaning of Rawls' conception of justice as political and non-metaphysical and non-comprehensive, we should discard any hypothesis that the economic distributive implication prescribed by the difference principle depends on some kinds of egalitarian ethos. Nonetheless, it does not mean that the *leximin* or Pareto efficient is the only coherent and possible interpretation of the difference principle. On the contrary, the continuity between *A Theory* and *Political*

⁴⁷ Cohen 2008: 189.

⁴⁸ In this way, according to Cohen 2008: 189, the egalitarian trilemma among equality, freedom, and Pareto efficiency is dissolved.

⁴⁹ Cohen 2008: 302.

⁵⁰ About the specific way in which Rawls understands normative political theory, see also de Vita (2017).

Liberalism reinforces the hypothesis that the most fundamental justification for the difference principle does not rely on a certain notion of equality, rather it is grounded on the idea that the difference principle –together with the previous parts of the second principle of justice as a whole – is the only way to guarantee, first, the effectiveness of liberty in order to not be purely formal, and, second, to guarantee full (political) autonomy as free and equal persons. In particular, we can understand full autonomy (political and not ethical) as the power that every person should effectively own, and feel himself as a cooperating member of society, or to be a person free from any kind of relation of domination.

In order to adequately capture these aspects, we do not have to commit one of the most common interpretive errors: taken in isolation the content of the Second Principle and in particular that of the Difference Principle. As Daniels stresses, what Rawls defines as *democratic equality* requires reference to all parts of the two principles of justice taken as a whole, even if lexicographically ordered.⁵¹ Unfortunately, this common interpretative error was instigated by Rawls himself in separating quite rigidly, at least at the first insight, the two principles of justice. Indeed, Baynes might be right when he suggests that:

The distinction between the two principles of justice and the claim for the priority of the first – the heart of what Rawls calls the ‘special conception’ – corresponds to a fundamental division in the basic structure, namely, the distinction between the public and the private, between political and civil rights (guaranteed by the first principle) and social and economic inequalities (regulated by the second principle).⁵²

For this reason and in order to avoid this ambiguity, it is fundamental to take into account a certain interpretation of Rawls’ democratic equality, what I suggest to be the idea of ‘co-authorship’. The aim of the two principle of justice is, primary and mainly, to allow citizens to participate in equal (or fair) terms in establishing and shaping the basic structure of society. In this way, Rawls’ theory of justice achieves

⁵¹ Daniels 2003: 245.

⁵² Baynes 1991: 161.

in a more compelling way some of its main normative pretensions: 1) offer a better reconciliation of liberty and equality; and therefore, avoiding one of the most relevant objections to liberal tradition, i.e. the system of liberties is commonly taken alone and it is purely formal,⁵³ 2) mitigate the problem of 'indeterminateness' of economic inequality that characterizes the difference principle. The points 1) and 2) are strictly linked with each other. For this perspective, although I have also detected into Rawls' formulation of the difference principle what I call the problem of 'indeterminateness', I identify this problem for different reasons than Cohen ones and therefore I defend a different solution.⁵⁴

III The idea of the fair value of political liberties as a constraint to excessive economic inequalities

As I have already noted, although the difference principle permits an increase in economic inequality if, and only if, it entails as much as possible improvement for the worst off, according to the difference principle, the size of economic inequality between the most and least advantaged does not seem to matter. This doubt becomes stronger once I clarified how the justification of the two principles of justice must be political and, therefore, it cannot endorse an ethical justification, even an egalitarian one. In this sense, the problem of 'indeterminateness' is connected with an important contradiction between the distributive criterion that the difference principle seems to prescribe and Rawls' strong egalitarian pretension against the great and excessive economic inequality. In this respect, on one hand, the difference principle, as Rawls admits himself, neither specifies limits to the economic inequality ratio between the more and less advantaged, nor does *Justice as fairness* offer a further criterion to judge this gap.⁵⁵ But on the other hand, Rawls declares that the two principles of justice are only compatible with an institutional background in

⁵³ Rawls (2005: lvi, note 34) agrees with Hegel, Marx and other socialist thinkers in moving this critique.

⁵⁴ Cohen (2008) argues that the difference principle permits unjustified economic inequality because it does not maximize equality and does not fully realize the value of fraternity and so people's moral nature. Actually, it is the other way around, I focus on the problem of 'indeterminateness' from a deontological point of view, rather than from a teleological point of view as Cohen does.

⁵⁵ Rawls (2001/a: 68, note 36) himself admits it.

which, among other things, economic inequality is not excessive in a way that the ownership of wealth and capital are sufficiently dispersed. Here, we can argue that in Rawls' theory, the key concept to solve this contradiction is the worth or value of liberty.

Before introducing in detail the concept of the worth of liberty, I need to say something about the conception of liberty adopted by Rawls. For sure, Rawls does not share the conception of negative liberty, as the absence of external interference and obstacles, familiar to the liberal tradition; rather he adopts an idea of liberty as self-determination closer to the positive conception. Without entering in the classic controversy between the negative and positive conception of liberty, it is worthy to underline that Rawls' conception of liberty is not 'positive' in the sense that it entails some references to the idea of self-realization.⁵⁶ By contrast, Rawls maintains a deontological formulation and, at the same time, he tries to bypass the classical controversy following the triadic definition of social freedom by Oppenheim and MacCallum.⁵⁷ This means that Rawls' conception of liberty is not formal because it implies a certain dimension of power, i.e. the means to achieve something. I think that the worth of liberty is the notion that much more emphasizes this dimension. Rawls introduced the worth of liberty in *A theory*, but it gained centrality in his following works.⁵⁸

Thus liberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional to their capacity to advance their ends within the framework the system defines. Freedom as equal liberty is the same for all; the question of compensating for a lesser than equal liberty does not arise. But the worth of liberty is not the same for everyone. Some have greater authority and wealth, and therefore greater means to achieve their aims. The lesser worth of liberty is, however, compensated for, since the capacity of the less fortunate members of society to achieve their aims would be even less were they

⁵⁶ See: Berlin (1969).

⁵⁷ Oppenheim (1961); MacCallum (1967).

⁵⁸ About the fair value of political liberty, see: Rawls 1971: 201-205, 222-234, 278; Rawls 2005: 5-6, 324-331.

not to accept the existing inequalities whenever the difference principle is satisfied. But compensating for the lesser worth of freedom is not to be confused with making good an unequal liberty. Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice.⁵⁹

Rawls guarantees the worth of liberty by means of different normative prescriptions. First of all, Rawls lists some essential prerequisites that may protect the basic liberties and prevent social and economic inequality from being excessive.⁶⁰ The social minimum and other more specific institutions such as basic health care assured to all citizens, a certain fair equality of opportunity especially in education and training, and public financing of elections are considered by Rawls as “constitutional essential”.⁶¹ However, Rawls is explicit in asserting that these institutions do not fully satisfy the principles of justice as fairness. This means, for example, that the difference principle is more demanding than a social minimum providing for the basic needs for all citizens.⁶² It is important to note that some of these policies and institutions available to protect citizens from absolute deprivation are not subordinated to the basic liberty principle in the same way than the second principle of justice and the difference principle are.⁶³ So then, it is valid to assume that Rawls guarantees the worth of liberty in a more ambitious way than he does through these essential prerequisites. The hypothesis is that the difference principle should be properly the normative mean to achieve this aim. However, here arises one of the most important ambiguities in Rawls' theory, one that should be solved in order to overcome the problem of indeterminateness of the difference principle.

Given what I have said so far about the worth of liberty, we can assume that it depends on the level of resources available to a person. At the first insight, the difference principle could be considered a normative criterion to also maximize the

⁵⁹ Rawls 1971: 204.

⁶⁰ Rawls 2005: lvii.

⁶¹ Rawls 2001/a: 47.

⁶² Rawls 2001/a: 48.

⁶³ Rawls 1971: 245.

worth of liberty since the difference principle states that inequalities in the distribution of primary goods are justified only to extent that they result in the greatest amount of these goods for the worst off (taking into account any possible alternative institutional arrangements of the basic structure). But this assumption is not pacific. Daniels was the first author who problematizes in detail this aspect arguing that the “worth of liberty is especially sensitive to relative differences in the index of social primary goods and is not a simple monotonic function of it”.⁶⁴ Daniels focuses on the incompatibility between equal liberty and unequal wealth and power, and therefore between the first and second principles. In order to fully appreciate this fundamental critique, we should remember the manner in which the two principles of justice maximize the social primary goods: rights, liberties, powers and opportunities, income and wealth, and the social basis of self-respect. According to Rawls, by means of this index of primary goods we are able to make interpersonal comparisons and identify the position of the worst off among any alternative arrangements of basic structure. However, as Rawls himself admits, it would be very difficult to develop the index itself.⁶⁵ Thus, Rawls tries to simplify this problem in two ways. First of all, he assumes that the two principles of justice are serially ordered.⁶⁶

This means that it is given priority to the principle of basic liberty and that it can be restricted only for the sake of liberty.⁶⁷ That is, neither the extent nor the equality of liberty can be traded away for other social goods. The only problem that remains is to define who the least advantaged group is. So, Rawls introduces another simplification: the representative of the least advantaged group is specified only by the level of income and wealth, by reason of the hypothesis that “these primary social goods are sufficiently correlated with those of power and authority”.⁶⁸ What Rawls does not seem to capture is that the worth of liberty is a function of an individual's relative position in the distribution of resources; i.e. the worth of each of the basic liberties does not depend on the absolute material wealth rather it depends on the relative dimension of material wealth. Daniels focuses properly on this point.

⁶⁴ Daniels 1975: 271.

⁶⁵ Rawls 1971: 93.

⁶⁶ Rawls 1971: 93.

⁶⁷ Rawls 1971: 302.

⁶⁸ Rawls 1971: 97.

If worth of liberty is not included among the goods indexed, then Rawls appears to be authorizing a trade-off between it and the social primary goods which are indexed, since he claims that the lesser worth of liberty of the worst-off is compensated for by maximization of their index.⁶⁹

This means that:

The very inequality of wealth and powers which, we are assuming, acts to increase the index of the worst-off individuals can at the same time act to decrease his worth of liberty [...] This effect is decisive where worth of liberty is affected by comparative access to those resources and institutions such as qualified legal counsel or the mass media, which are needed for the effective exercise of liberty. The result is that the worst-off, despite their increased indices, may be in a relatively worse position to effectively exercise their liberty.⁷⁰

Daniels suggests to Rawls two main alternatives. One is that in which "Rawls could reject the claim that significant economic and social inequalities cause inequalities in liberty or worth of liberty".⁷¹ This is an implausible assumption from a theoretical and empirical point of view, and it would contradict other fundamental parts of Rawls' theory.⁷² Another alternative, one that Daniels advocated, is to attempt reconciling the First and Second Principles by refusing to allow any inequalities in wealth and powers that can cause inequalities in worth of liberty. "Since liberty has priority over other social goods, no trade-off can be allowed between worth of liberty and the index of primary goods".⁷³ Rawls' subsequent reformulations in his account of the basic liberties matched, at least partially, with this alternative. First in "The Basic Liberties and Their Priority" and then in *Political Liberalism*, Rawls emphasizes the special role of the equal political liberties since he includes the worth (or the fair value) of these liberties, and only these, in the first principle of justice.⁷⁴

⁶⁹ Daniels 1975: 270.

⁷⁰ Daniels 1975: 271.

⁷¹ Daniels 1975: 280.

⁷² See: Rawls 1971: section 36, 43.

⁷³ Daniels 1975: 279. In this line of thought, Daniels suggested a special Liberty-Restricted Difference Principle (LRDP).

⁷⁴ Rawls 1982: 42-45; 2005: 5.

The fact that Rawls includes the value of political liberties in the first principle of justice leaves open the question whether this solution is effectively able to avoid what I call the problem of 'indeterminateness' that characterize the difference principle. Here I follow the interpretation of many authors⁷⁵ according to which the fair value of political liberties is the criterion that limits the economic inequality permitted by the difference principle. Baynes exemplifies well the point.

Perhaps the difference principle is really quite radical: It requires that *after* social and economic inequalities are restricted so that they do not upset the fair values of political liberty – including the fair value of forming and expressing public opinion – such inequalities are *still* only permissible if they benefit the least advantaged.⁷⁶

Nonetheless, this interpretation is not free of troubles. Indeed, this 'strong egalitarian interpretation' of the difference principle depends on the way in which Rawls defines political liberties, and consequently it affects how their worth should be secured. Rawls seems to rely as the primary tool of ensuring the fair value of the political liberties on a certain kind of institutional background to avoid an excessive economic inequality and, above all, the concentration of wealth in private hands.

Already in *A Theory*, Rawls seems to prescribe the background institutional strategy as indispensable to guarantee the worth of liberty, in particular political liberties. In many passages Rawls suggests the limitation of economic inequality and economic concentration in order to guarantee the fair value of liberty, in particular political liberties.⁷⁷ Moreover, in a wider picture, Rawls links the violation of fair equality of opportunity with the loss of value of political liberty.

Fair equality of opportunity means a certain set of institutions that assures similar chances of education and culture for persons similarly motivated and keeps positions and offices open to all on the basis of qualities and efforts reasonably

⁷⁵ For example, see: Cohen (1989); Baynes (1991); de Vita (2007); Freeman (2013, 2018); Forst (2012; 2014, 2020); Werle (2014); Thomas (2017); Edmundson (2017).

⁷⁶ Baynes 1991: 160.

⁷⁷ Rawls 1971: 225-226.

related to the relevant duties and tasks. It is these institutions that are put in jeopardy when inequalities of wealth exceed a certain limit; and political liberty likewise tends to lose its value, and representative government to become such in appearance only.⁷⁸ (*ibidem*, p. 278).

However, the problem is that Rawls seems to point out these institutional devices as simple suggestions because this kind of questions, according to him, “belong to political sociology”.⁷⁹ He wants to make clear that “the theory of justice does not by itself favor either form of regime”.⁸⁰ In this sense, Rawls makes a sharp distinction between the theory of justice and a theory of political system. Thus, one might be inclined to suppose that the kind of background institutions is only part of the latter, and the theory of justice in its ideal arrangement must not prescribe anything of that; and therefore, neither of the two principles of justice with the difference principle. Fortunately, in *Justice as Fairness: A Restatement*, Rawls reshapes this distinction in a more flexible way, specifying what kinds of regime as social system are compatible with the two principles of justice. Rawls distinguishes:

Five kinds of regime viewed as social systems, complete with their political, economic, and social institutions: (a) laissez-faire capitalism; (b) welfare-state capitalism; (c) state socialism with a command economy; (d) property-owning democracy; and finally, (e) liberal (democratic) socialism.⁸¹

So, in answering the question which of these regimes satisfy the two principles of justice, he asserts that each of the first three kinds of regimes, (a) to (c) violate them in at least one way; by contrast, the regimes, (d) e (e) property-owning democracy and liberal socialism, satisfy the two principles of justice. It is extremely interesting to recall the motivations that make (b) welfare-state capitalism incompatible on the contrary of (d) and (e).

⁷⁸ Rawls 1971: 278.

⁷⁹ Rawls 1971: 227.

⁸⁰ Rawls 1971: 280.

⁸¹ Rawls 2001/a: 136.

Welfare-state capitalism also rejects the fair value of the political liberties, and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands. And although, as the name 'welfare-state capitalism' suggests, welfare provisions may be quite generous and guarantee a decent social minimum covering the basic needs (§38), a principle of reciprocity to regulate economic and social inequalities is not recognized.⁸²

Therefore, although Rawls is clear in underlining that *Justice as fairness* does not decide between a property-owning democracy and liberal socialist, he seems to have a preference for a property-owning democracy.

The background institutions of property owning democracy work to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy, and indirectly, political life as well.⁸³

In this way, Rawls not only suggests to protect the fair value of liberty by means of the background strategy, which limits both economic inequality and economic concentration, but he also suggests a social system (as property-owning democracy) that does not structurally permit that this kind of economic inequalities arise. Thus, Rawls prefers an *ex ante* socioeconomic distribution rather than an *ex post* redistribution. As Thomas observe, the emphasis on the ownership of wealth and capital dispersion can be considered another important reason to suppose that Rawls mainly and primarily adopts the background strategy. In addition, Rawls explicitly appeals to the idea of domination when he says that a reason:

for controlling economic and social inequalities is to prevent one part of society from dominating the rest. When those two kinds of inequalities are large, they tend to support political inequality. [...] This power allows a few, in virtue of their

⁸² Rawls 2001/a: 137-138.

⁸³ Rawls 2001/a: 139.

control over the machinery of state, to enact a system of law and property that ensures their dominant position in the economy as a whole.⁸⁴

In this passage, we can find the echo of a classical idea of domination which means to obey the foreign wills of others as opposed to 'obeying only oneself' or 'being his own master'.⁸⁵ Here, I think that we could say that, for Rawls, domination occurs when a citizen does not have adequate economic and political power with respect to others to be co-authors of the basic structure of society. From this perspective, both the idea of the fair value of political liberties and the constraints of institutional background seem to provide the best Rawls' defence against excessive economic inequalities. However, I hope to show that the plausibility of this solution is strengthened when we interpret Rawls' democratic equality according to the idea of 'co-authorship'.

Conclusion

In this paper, I defended the idea that co-authorship is the most adequate interpretation of Rawls' democratic equality. The idea that a just or fair distribution should be assessed by taking into account the fundamental question of whether people have the power to be co-authors of the basic structure of society provides the most compelling explanation why Rawls' theory of justice cannot tolerate excessive economic inequalities. In this way, we can offer a plausible answer to what I call the problem of 'indeterminateness' that characterizes the difference principle; namely the fact that it does not prescribe any limit range of economic inequalities between the worst-off and the best-off. This problem can be mitigated if we take into account the main manner in which Rawls advocates to ensure the fair value of political liberties; that is, he prescribes a certain kind of institutional background to avoid an excessive concentration of wealth in private hands. Nonetheless, to conclude, I need to admit that an important contradiction related to what I call the problem of 'indeterminateness' still remains at stake. Namely, once we have proved that the

⁸⁴ Rawls 2001/a: 130-131.

⁸⁵ See respectively: Rousseau (1997) and Kant (1996).

magnitude of economic inequality between the worst-off and the best-off is so important, why does the difference principle not explicitly sanction this normative assumption? Although many could be untroubled by this normative deficit, I think that it might be relevant. For this reason, I recently proposed an alternative distributive principle called: 'the principle of proportionality' which introduces limits to income and wealth inequalities between the best-off and worst-off.⁸⁶ I believe that, for example, if the difference principle was understood as a normative criterion that explicitly prescribes a certain range (or ratio) limit of permissible economic inequalities, it would be able to, first of all, more adequately reconcile the first and second principles of justice, and secondly, to effectively exemplify the intuitive idea of how procedural justice treats the question of distribution, i.e. "to design the social system so that the outcome is just whatever it happens to be, at least so long as it is within a certain range".⁸⁷ I admit that this understanding can represent a radical reinterpretation of the difference principle, as Rawls presented it and how it is understood by the vast majority of philosophers. Thus, I leave this possibility open and postpone a plausible defense of this reading until another time.

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⁸⁶ Ali and Caranti (2021/a); Ali and Caranti (2021/b); Ali (2022 forthcoming).

⁸⁷ Rawls 1971: 85.

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