

Alberto De Luigi

**LIBERALISM AND THE PRINCIPLE  
OF DIFFERENCE:  
RAWLS TESTED BY LARMORE'S  
THEORY • PART II**

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Centro Einaudi • Laboratorio di Politica Comparata e Filosofia Pubblica  
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## KEYWORDS

John Rawls, Charles Larmore, political liberalism, difference principle, neutrality, theory of justice

## ABSTRACT

**LIBERALISM AND THE PRINCIPLE OF DIFFERENCE:  
RAWLS TESTED BY LARMORE'S THEORY • PART II**

John Rawls' *Political Liberalism* (1993) is considered a turning point in the theory of the famous author, but certain elements of his theory, as they were presented in his previous work *A Theory of Justice* (1971), might appear unclear under a liberal perspective, in particular with regard to the interpretation of the highly debated difference principle. In the first part of this paper—published in this WP-LPF Series—, it is exposed the theory of political liberalism, with particular attention to the concept of neutrality as formulated by Charles Larmore; this precedes the analysis of the principles of justice in Rawls' philosophy: an important aim of this work is to offer a key to understand the revision of *Theory*, which can be found reading Charles Larmore's *Patterns of Moral Complexity* (1987), a book also studied and commented by Rawls. Starting from the common elements which bind the two said authors, it is explained why Rawls borrows a lot from the theory of the younger philosopher, even underlining the references they make to each other's works. The whole second part would focus on this thesis: how the difference principle, as proposed by Rawls in *A Theory of Justice*, could conform itself to the features of political liberalism theory.

## LIBERALISM AND THE PRINCIPLE OF DIFFERENCE: RAWLS TESTED BY LARMORE'S THEORY • PART II

### INTRODUCTION

Charles Larmore rises some doubts about the justifiability of the difference principle: in order to justify it, it is necessary to abandon the idea that the principle expresses our deepest personal ideals (conception that Rawls seems to embrace in *Theory*, instead). Larmore continues:

A more promising approach might be to base the neutrality of this principle on more purely political considerations [...]. Everyone agrees that the state must play some role in regulating the distribution of wealth, and so such intervention must be neutral with regard to the interests of rich and poor. Whether this will suffice to ground the difference principle, of course, is a more complex question, involving both normative and economic considerations. My aim is not to answer it here (indeed, it is rightly controversial whether this particular welfarist principle should be upheld, and the answer may be negative). My aim is to indicate how the question should best be discussed. (Larmore 1987, 129)

It is possible to neutrally justify the difference principle in the perspective of political liberalism, and this is the main issue dealt with in this essay. Explaining how to justify John Rawls's principle under a liberal perspective is a necessary premise in order to justify Rawls's political liberalism, since his revisited theory in *Political Liberalism* maintains the same fundamental principles of *A Theory of Justice* almost unchanged. This means that elements already present in *Theory*, like the difference principle and the conception of primary goods, can be understood in a neutral way with respect to comprehensive conceptions of the good life. The interpretation provided in this paper outlines a clearer and lucid vision of Rawls' theory of justice as fairness.

### 1. STRICT AND LAX READING OF THE DIFFERENCE PRINCIPLE

The second principle of justice states that “the social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all” (Rawls 1971, §11,

60). Rawls later specifies (§46, 302) that the point (a) refers to “the greatest benefit of the least advantaged” (members of the society): this coincides with the difference principle. As Valeria Ottonelli (2010, 107) writes in *Leggere Rawls*, this means that “egalitarian measures need to be implemented to the point where any further step in the direction of egalitarian order would be counter-productive, in the sense that would worsen the condition of the lower classes rather than improve it”. The affirmation is correct, but the problem is that the limit above which additional measures become counter-productive (for those situated in the worst conditions) would leave a redistribution leeway much smaller than assumed by the interpreters more fascinated (or frightened) by the tension of the egalitarian theory of Rawls. Secondly—and this is the crucial point—the “condition of the lower classes” is understood in complex terms and not as a single dimension (like income or wealth in monetary terms), nor as a single dimension at a time—even in the practical application of the principle!—but is considered “as a whole”. Therefore it is necessary to analyse what should be the correct interpretation of the principle of justice.

It is first necessary to distinguish between a “weak” and a “strong” reading of the difference principle.<sup>1</sup> This distinction is already outlined by Andrea Villani in *Giustizia Distributiva e Scelte Collettive*, who refers to the difference principle writing:

... the strong reading that inequalities (e.g. in the distribution of income) shall be allowed providing that they result in only an aid to disadvantaged, or rather in the weak sense [...] that inequalities are permissible providing that they result *also* (necessarily, but not only!) in an aid to the disadvantaged, which is radically different. (Villani 1988, 204, translation mine)

Villani explains why he supports the second interpretation, starting from the analysis of the “principle of redress”: it would be related with the difference principle because the last “gives a certain weight to the consideration singled out by the principle of redress” (Rawls 1971, §17, 100). Rawls explains that, according to the principle of redress, “undeserved inequalities call for a redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for” (p. 100). But, in spite of what seems to be derived

<sup>1</sup> It is even the opinion of Cohen in *Rescuing Justice and Equality*, who speaks about the “strict” and “lax” readings of the principle, underlining the “ambiguity” of Rawls: “... the difference principle, which endorses all and only those social and economic inequalities that are good for the worst off or, more generously, those inequalities that either make the worst off better off or do not make them worse off: in this matter there is a certain ambiguity of formulation in Rawls. [...] We confront here two readings of the difference principle: in its strict reading, it counts inequalities as necessary only when they are, strictly, necessary, 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. I shall argue that each of these incompatible readings of the principle is nourished by material in Rawls’s writings, so that he has in effect two positions on the matter” (Cohen 2008, 29, 69).

from the general principle, Rawls argues with an example that “in pursuit of this principle greater resources might be spent on the education of the less rather than the more intelligent, at least over a certain time of life, say the earlier years of school” (p. 100). Furthermore, the difference principle does not require that natural endowment to be levelled off: it doesn't require that “the society attempts to abolish disability, as if everyone should run the same race from a fair starting point” (p. 100). This approach seems very evasive and restrictive compared to the enormous subversive tension of the values inherent in the principle of redress. Nevertheless, Villani insists that strictly speaking also a principle of justice like the redress one does not seem to bring equality, like Rawls says (in the above mentioned quotation) and also like Plattner thinks. Quoting Mark Plattner (1979), Villani concludes that “despite the egalitarian premises and opposition to the merits, in fact the expectation (made explicit) [in *Theory*] is towards a society not much different from the present USA one” (Villani 1988, 112). In the following pages it would be explained why the only possible way to understand the difference principle is through the comprehension of what Villani called weak reading. A different interpretation (like the strong reading) would lead to the conclusion that Rawls cannot be an exponent of the liberal tradition, and this for sure would be a serious mistake.

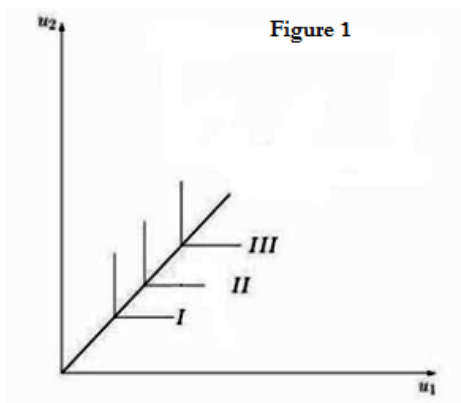
## 2. INCONSISTENCY BETWEEN MAXIMIN RULE AND DIFFERENCE PRINCIPLE

The “Rawlsian social welfare function”, as it is commonly known by economists and reported in textbooks<sup>2</sup> (graph in Figure 1), is not suitable to explain Rawls's ideas; on the contrary, if used with this purpose, it would be absolutely misleading. If we conceive a conception of justice based on Figure 1, we would upset what expressed in *A Theory of Justice*, where the illustration of the difference principle is more complex (see Figure 2 in paragraph 5, taken directly from Rawls) and combined with some basic considerations that are not negligible. It is necessary to immediately clarify that the difference principle and the maximin rule are two distinct elements, and confusing one with the other is incorrect. As Rawls states, “Despite the formal resemblance between the difference principle as a principle of distributive justice and the maximin rule as a rule of thumb for decisions under uncertainty [...], the reasoning for the difference principle does not rely on this rule. The formal resemblance is misleading” (Rawls 2001, §27, 94-95). In note (n17) he adds: “the failure to explain this was a serious fault in *Theory*.” And again: “it is not essential for the parties to use the maximin rule in the original position. It is simply a useful heuristic device. Focusing on the worst outcomes has the

<sup>2</sup> For example *Scienza delle Finanze*, by Harvey S. Rosen and Ted Gayer (third Italian edition 2010, ed. Chiara Rapallini), refers to Rawls and the original position, reporting at p. 142: “he also states that in the initial situation the citizens would choose a social welfare function based on the criterion of the maximin, because this is a kind of insurance against the most disastrous outcomes” (translation mine) and draws a graph similar to that shown in Figure 1.



advantage of forcing us to consider what our fundamental interests really are when it comes to the design of the basic structure” (Rawls 2001, §28.3, 99). As Rawls himself points out, various authors mixed up the topic: “the maximin rule was never proposed as the general principle of rational decision in all cases of risk and uncertainty, as some seem to have thought. For example, see J.C. Harsanyi, in his review essay, «Can the Maximin Principle Serve as a Basis for Morality?»” (Rawls 2001, §28, 97, n19); and again: “Instead of «the difference principle», many writers prefer the term «the maximin principle» [...] But I still use the term «difference principle» to emphasize first, that this principle and the maximin rule for decision under uncertainty (§28.1) are two very distinct things; and second, that in arguing for the difference principle over other distributive principles [...] there is no appeal at all to the maximin rule” (Rawls 2001, §13, 43, n3). All the passages mentioned are extracts from *Justice as Fairness*, but they even apply to *A Theory of Justice*; in fact, as Rawls states, the difference principle does not change: “The revisions in the second principle are merely stylistic” (Rawls 2001, §13.2, 43).



Analysing the graph in Figure 1, the incompatibility between the actual Rawlsian principle and its incorrect representation comes easily to light. Assume that  $u_1$  is the utility of the individual who is better,  $u_2$  of the one who is worse; I, II and III are indifference curves (for the same level of social welfare). If a curve is higher than the other, it expresses a greater social welfare. The distribution of goods in society would determine a point within the quadrant, located on one of the indifference curves of

social welfare, and which identifies a given utility for the individual corresponding to  $u_1$  and for the one corresponding to  $u_2$ . For the present, we assume the hypothesis that what is represented is utility, in general terms. Actually for Rawls is not so, as widely explained hereinafter, since he doesn't deal with utility, but primary goods. To simplify, we can speak of utility “if we assume utilities to be linear in indexes of primary goods” (Rawls 2001, §62, 62). Now, according to the chart, you notice that:

1. if the utility of the individual who is worse decreases because of the increasing utility of the individual better situated, you move on a curve located below. Therefore, to maximize social welfare, it is not possible to increase the utility of an individual if this is at the expense of the individual who is worse;
2. it is indifferent, in the calculation of social welfare, increasing  $u_1$  if this increase does not correspond to an increase of  $u_2$ . This is because the social welfare is equal to the utility of the individual who is worse.

This seems directly deductible from the second principle of justice, for this reason it is often equated to the maximin. But according to Rawls's discussion of the dif-

ference principle, for each point listed above you should make an important observation:

1. Rawls assumes that it is not possible (at least “up to a certain point”) increasing  $u_1$  (who is better situated) without even  $u_2$  increases;
2. since it is not possible increasing  $u_1$  without a resulting increasing of  $u_2$ , it would never be different increasing  $u_1$ , since this increase would always benefit the individual who is worse, at least “up to a certain point”.

Rawls's assumption is absolutely fundamental. He states what follows:

as we raise the expectations of the more advantaged the situation of the worst off is continuously improved. Each such increase is in the latter's interest, up to a certain point anyway. For the greater expectations of the more favored presumably cover the costs of training and encourage better performance thereby contributing to the general advantage. (Rawls 1971, §26, 158)

The principle doesn't force to an egalitarian arrangement. Rawls doesn't consider as indifferent (as instead it would result from the maximin) an increasing of  $u_1$  on equal terms of  $u_2$  (who is worse off), which enhances inequality between the two. Rather, he states that, precisely in virtue of the principle, “it must be reasonable for each relevant representative man [...] to prefer his prospects with the inequality to his prospects without it” (Rawls 1971, §11, 64). The same concept is repeated in *Justice as Fairness*, §18.2, and again: “This is because over time the greater returns to the more advantaged serve, among other things, to cover the costs of training and education, to mark positions of responsibility and encourage persons to fill them, and to act as incentives”; and further: “plainly the difference principle [...] recognizes the need for inequalities in social and economic organization, of which their role as incentives is but one” (Rawls 2001, §19.2, 68). These passages are the foremost confirmation of Andrea Villani's idea of weak reading of the principle: “inequalities are permissible providing that they result *also* (necessarily, but not only!) in an aid to the disadvantaged”.

### 3. LONG TERM EXPECTATIONS AND CONTRACTUALIST THEORY

The reason why increasing utility of the individual who is better off would lead to an improvement of those who are worse off can be more accurately explained as follows. Of course, if we had a cake to be shared between two individuals, and we start giving more slices to those who are better off, as a consequence it would remain less available to those who are worse; but the assumptions behind Rawls' considerations are very different, since the condition of representative<sup>3</sup> individuals must be considered under these circumstances:

<sup>3</sup> “When principles mention persons [...] the reference is to representative persons [...] I assume that it is possible to assign an expectation of well-being to representative individuals

1. by means of a reasoning that takes into account the expectations in the long term, not the immediate allocation of resources;
2. in complex terms, through an index of primary goods.

Rawls doesn't deal with utility, but only with expectations. To clarify what he means with the term "expectations", he introduces the concept of primary goods.<sup>4</sup> In *Justice as Fairness* he specifies that "the index of primary goods [that are the subject of the distribution] is an index of expectations for these goods over the course of a complete life" (Rawls 2001, §51.5, 172). If expectations are meant for the whole of life, certainly justice as fairness doesn't treat the question of immediate allocation of income. In addition, as would be discussed hereinafter, the choice between different distributions of primary goods is restricted to the choice of some different schemes of cooperation (i.e. anarcho-capitalist system or a more regulated welfarist system). These schemes of cooperation may include anarcho-capitalist systems as well as more regulated welfarist systems. In this sense, to choose the right scheme is a different issue with respect to the choice on how to allocate resources already available.

Anyway, it can be demonstrated that, with regard to the distribution, even considering only the mere income rather than an index of primary goods (thing that even Rawls does in some exemplifications), the criterion of maximin is not appropriate to explain the difference principle. The reason is that the legislator (or anyway the one who chooses how to redistribute) must be in the original position to deliberate. The veil of ignorance implies that the "persons in the original position have no information as to which generation they belong. These broader restrictions on knowledge are appropriate in part because questions of social justice arise between generations as well as within them" (Rawls 1971, §24, 137). Therefore it is sufficient to consider the conditions imposed by the original position to conclude that it's improper to raise an argument concerning only the short term. Instead, it's correct to subsume a variety of topics that go far beyond the pure economic ones, even when the decision is right on the redistribution of income, rather than an index of goods. In fact, the psychology and the motivational law (taken into account under the veil of ignorance, as Rawls himself states (Rawls 1971, §24, 137-138)) leads to formulate policies far more complex than the immediate monetary (or material) compensation for the disadvantaged.

In a broader view, deducting wealth (even just in the monetary sense) from the rich to give to the poor may, in the long run, damage (right in monetary terms) the poor themselves. The ambition, the hopes of reaching a better condition or the benefits of competitive struggle are elements that play a crucial part in this

[...]. This expectation indicates their life prospects as viewed from their social station. [...] neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names" (Rawls 1971, §11, 64).

<sup>4</sup> In fact the §15 (p. 90) of *A Theory of Justice* titles "Primary Social Goods as the Basis of Expectations".

context. A strong redistribution can increase the utility of those who are worse off (and therefore the social welfare) in the short term, but it could also worsen the situation in a broader context. In this sense, the limit for which more egalitarian measures would be counter-productive becomes much lower than what assumed in “the strong reading” of Rawls’s principle of justice. An excessive state aid can lead, over time, to a loss of utility of individuals who are just immediately advantaged (or only for the present). In this regard, as Rawls says: “I shall not consider how far these things are true. The point is that something of this kind must be argued if these inequalities are to be just by the difference principle” (Rawls 1971, §13, 78). For these reasons, Figure 1 is not pertinent in order to consistently explain the difference principle. Rawls in fact raises an entirely different issue, for which the criterion of maximin is totally inadequate:

the difference principle is not intended to apply to such abstract possibilities. As I have said, the problem of social justice is not that of allocating *ad libitum* various amounts of something, whether it be money, or property, or whatever, among even individuals. Nor is there some substance of which expectations are made that can be shuffled from one representative man to another in all possible combinations. (Rawls 1971, §26, 157-158)

To allocate *ad libitum* a certain quantity of goods is instead a matter of allocative justice (see even *Justice as Fairness*, §14 titled “The Problem of Distributive Justice”). To allocate resources between individuals with given preferences concerns utilitarianism rather than the contractualist theory of justice as fairness. Villani makes this point clear when he refers to the analysis of Salvatore Veca in “Utilitarismo e contrattualismo. Un contrasto tra giustizia allocativa e giustizia distributiva”: “Veca defines utilitarianism as a theory of allocative justice and contractualism a theory of distributive justice [...] The allocative justice subsumes, we can say, an «instantaneous» way of giving resources, concerning individuals (i.e. preferences) with no space for their history, nor the relations between them” (Villani 1988, 235-236, translation mine). Therefore, unlike utilitarianism, which tries to allocate resources or goods between individuals with given preferences and in a precise moment, the question posed by the theory of justice as fairness instead leads to evaluating the principles that form a stable cooperation between individuals or groups over time. The condition of the community, which in case of utilitarianism, or allocative justice, is assumed, in case of contractualism, or distributive justice, is central because it is itself a subject of social choice (see Veca 1986, 114). The choice on the “condition of the community” implies a way to weigh individual preferences, that is defining legitimate and illegitimate interests of citizens. This could also suits various utilitarians: in fact, as noted by Villani, all utilitarians but Bentham, including Harsanyi, tended in some way to weigh individual preferences before including them in the “social calculation”.<sup>5</sup> However Villani (1988, 234) says that normally utilitarians pose no formal criteria to define legitimate and illegitimate interests, and to distinguish between them. Veca states:

<sup>5</sup> “Calcolo sociale” in the original.

The contractualist theory proposes, in other words, to answer the question remained open for utilitarianism of preferences of Harsanyi: can you find a criterion of legitimacy about preferences and interests? [...] It is not the simple fact that we have preferences, or that we are centres of pleasure or pain and we have goals, but the fact that we are able to reason about preferences that we happen to have, and while doing so, we recognize the others as similar to us, and therefore worthy of equal respect:<sup>6</sup> recurring issues of distributive justice are at the core of a contractualist approach”. (Veca 1986, 108, 116, 117, translation mine)

Rawls provides afterwards good evidence to confirm Veca and Villani’s insights—they wrote in the eighties, before the publication of *Political Liberalism*, hence their reference was only *A Theory of Justice*. In *Justice as Fairness*, he writes: “Observe that particular distributions cannot be judged at all a part from the claims (entitlements) of individuals earned by their efforts within the fair system of cooperation from which those distributions result. In contrast to utilitarianism, the concept of allocative justice has no application” (Rawls 2001, §14.2, 50-51); and then specifies: “the two principles of justice incorporate the concept of pure background procedural justice and not that of allocative justice” (Rawls 2001, §51.4, 170-171).

In conclusion, it’s possible to say that contractualism lies “upstream” of utilitarianism, namely it rises issues that have priority on the matters posed by utilitarianism and which are very constitutive of the basic patterns of morality (and the basic structure of society). It is first necessary to establish what is the condition of the community and what are the legitimate or illegitimate interests; once established that, the foundations laid down by the theory of justice as fairness, then the issues raised by utilitarianism can be put under consideration or to the vote. Utilitarianism would be considered as one of the various comprehensive conceptions of good, to which the doctrine of political liberalism must remain neutral, ensuring coexistence with other comprehensive conceptions.

#### 4. COMPLEX TERMS CONDITION AND PRIMARY GOODS

The above was the discussion on the first assumption of the difference principle: the fact of taking into account the expectations in the long term. The second assumption that shall be analysed is the conditions considered in complex terms, through an index of primary goods. In the theory of justice as fairness, with regard to the problems of distributive justice, Rawls makes use of the concept of expectation, not utility. The expectations are not composed by the satisfaction that citizens believe they are capable to get through the available goods. If so, the index of primary goods should embrace all persons’ conceptions of good. Instead, primary

<sup>6</sup> It can be excluded that Veca refers to Charles Larmore’s ideal of equal respect (*Patterns of Moral Complexity* is published afterwards, in 1987), but it is very interesting to note how the basic intuition is exactly the same.

goods are not determined on the basis of an amount of satisfaction they yield when employed, so they don't depend on specific conceptions of good, nor they determine conceptions in any way. They are only means that citizens, in the measure they can get them, can use (or not, if they prefer not to) to pursue their own conception of good. Primary goods are, in a nutshell, the social values of "liberty and opportunity, income and wealth, and the social bases of self-respect" (Rawls 1971, §11, 62). So the condition of the least advantaged is meant in complex terms, not about a single dimension (for example only income or properties), and the way inequality can be "redressed" concerns the redistribution of all these social values as a whole.

However, it might be objected that, applying the redistribution considering in complex terms all dimensions at the same time (income, self-esteem, fundamental liberties, etc.), there's a risk of reducing Rawlsian principles of justice to total indeterminacy. Therefore, while applying the second principle of justice, it's plausible to distinguish among different dimensions and apply it limited to a single dimension at a time. Sometimes, for practical purposes, it may happen to consider only one dimension at a time, like income, but certainly it's not the case when is presented any objection to proceed in this way. A good argument against an application of the principle calculating only one dimension at a time is suggested by the analysis of §51 of *Justice as Fairness*: "The flexibility of the index of primary goods", where Amartya Sen's ideas—exposed in *Choice, Welfare, and Measurement* (Sen 1986, 353-356)—are commented by Rawls: "primary goods themselves should not be viewed as the embodiment of advantage, since in fact advantage depends on a relation between persons and goods" (Rawls 2001, §51, 168). Here Rawls emphasizes that the index of primary goods he proposed "does not take into account, and does not abstract from, basic capabilities" (Rawls 2001, §51.2, 169); on the contrary, it "fully recognizes the fundamental relationship between primary goods and persons' basic capabilities. In fact, the index of those goods is drawn up by asking what things, given the basic capabilities included in the (normative) conception of citizens as free and equal, are required by citizens to maintain their status as free and equal" (Rawls 2001, §51.2, 169-170), including civil and political liberties and so on. Provided this, if the worth of a good is based on the ability of an individual, and if those capabilities also depend on other goods like liberty or opportunity (as it is intuitive), unlikely it would be completely abstracted from the overall vision of the index of goods and considering a dimension at a time. Moreover, considering that the choice of the society is restricted to different feasible schemes of cooperation (as explained below), it would be absurd to grant to a representative individual a combination of primary goods formed by an amount of income and social bases of self-respect defined *ad libitum*. These goods would be closely connected to each other within a certain scheme of cooperation and therefore only certain combinations would be achievable, namely the one given (or feasible) for each scheme. Rawls takes a stand to support these arguments:

Yet it seems extraordinary that the justice of increasing the expectations of the better placed by a billion dollars, say, should turn on whether the prospects of the least fa-

voured increase or decrease by a penny. [...] Part of the answer is that the difference principle is not intended to apply to such abstract possibilities. The possibilities which the objection envisages cannot arise in real cases; the feasible set is so restricted that they are excluded. The reason for this is that the two principles are tied together as one conception of justice which applies to the basic structure of society as a whole (Rawls 1971, §26, 157-158).

## 5. REPRESENTATION OF THE DIFFERENCE PRINCIPLE

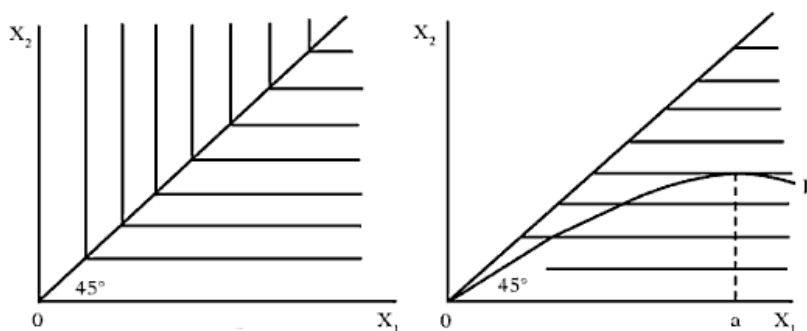
As just mentioned in the quotation above, the two principles are tied together as one conception of justice applying to the basic structure of society as a whole. In fact, one last point to underline is that the difference principle cannot be considered independently from the other principles of justice. The principle of equal liberty in general is already implicitly included in the difference principle, since liberty is one of primary goods. The first principle comes into play only when it is necessary to give liberty an order of priority over other primary goods and “this priority rules out exchanges («trade-off», as economists say) between the basic rights and liberties covered by the first principle and the social and economic advantages regulated by the difference principle” (Rawls 2001, §13.5, 47). The first principle could simply be a kind of clause of the second, which specifies that, among primary goods, fundamental liberties have a “utility” so great that, whatever combination of goods is obtained, the individual deprived of liberty is considered the one worse off.

This particular view of the two principles helps a better comprehension of how the difference principle operates. In fact, thanks to this explanation, it’s easier to imagine both Rawls’ principles as illustrated in the next figure that would be analysed (the illustration of the difference principle, see Figure 2) and thus to convey a broader outlook over the Rawlsian theory of justice. The clause, anyway, is relevant since it is not absurd to speak about utility of liberties or other elements of primary goods, like Rawls does: “these liberties are the same for all citizens (are specified in the same way) and the question of how to compensate for a lesser liberty does not arise” (Rawls 2001, §45.1, 149). In fact, Rawls distinguishes between the freedom as “equal liberty” and the “worth of liberty”<sup>7</sup> (Rawls 1971, §32, 204), just as if it couldn’t be assigned any worth to “equal liberty”. On the contrary, the

<sup>7</sup> In a nutshell, we can say that the concept of equal liberty defines a balanced scheme of fundamental liberties (which are political ones, as it is wider explained in *Justice as Fairness* (Rawls 2001, §45, 148 and following): to ensure a particular liberty requires to restrict or regulate another, so it is necessary to organize a system of liberties that depends on the totality of limitations they are subjected to. This system is guaranteed as exactly alike for all, according to the first principle. Instead the worth of liberty can vary, for example: the ones who are richer can take more advantage of their own liberty of opportunity, in this sense it has a greater worth. The worth of liberty depends on the index of primary goods and is governed by the difference principle.

hypothesis supported in this paper is that, focusing the attention on a single principle of justice (the second, plus the clause derived by the first), the worth of “equal liberty” would simply be so high that it cannot be compared to the “value of liberty” nor the one of other primary goods. Now, it is clear that Figure 1 (introduced above and related to the maximin criterion) is not suitable to illustrate the difference principle at all. Therefore, below is shown the illustration of the difference principle as it appears in *A Theory of Justice* (or *Justice as Fairness*, where there is only the graph on the right, see Figure 2). The path followed up would be useful in order to immediately understand the mechanics in the chart. Initially it was introduced the hypothesis that improving the expectations of the more advantaged, the level of those who are worse off rises continuously. Furthermore, for each relevant representative individual “must be reasonable to prefer his own prospects with the inequality rather than his prospects without it” (Rawls 1971, §11, 64) and “the difference principle [...] recognizes the need for inequalities” (Rawls 2001, §19.2, 68). Therefore, starting from the picture of the criterion of maximin, we have to consider only the part of the figure consisting in those points (assuming that  $x_1$  is the individual who is better) that are located to the right of the bisector, which corresponds to all points of perfect equality. It makes no sense to consider indifferent that our own condition is placed in whatever point on the curves of social welfare shown by the graph on the left (see Figure 2), as implied by the maximin. In fact, we know that increasing utility (meant as a linear function of primary goods) of  $x_1$ , then even utility of  $x_2$  improves, thus leading the society to a curve of greater social welfare.

Figure 2



The curve OP (P stands for production) is given for a certain scheme of cooperation. There are different curves OP, more or less efficient, among which the society can choose. For example, we can imagine a libertarian and anarcho-capitalist scheme of social cooperation, or at the opposite a welfarist scheme more inclined to state aid policies, each of them with its own curve OP. The fact that the choice is restricted to different “schemes of social cooperation” (i.e. different OP curves) excludes that it’s possible to choose among different allocations *ad libitum*. In fact, even  $x_1$  and  $x_2$  are “specified by reference to their shares in the output and not as particular individuals identifiable independently of the scheme of cooperation” (Rawls 2001, §18, 63). The problem of distributive justice and the contractualist



doctrine of justice as fairness is precisely to identify which scheme, or curve OP, is more efficient and to reach the higher point “a” on this curve. The term “scheme of cooperation” used by Rawls is rather generic, but we may assume that a curve can vary from one to another simply thanks to the introduction of a legislative reform. In order to choose the best alternative, we know that one “scheme is more effective than another if its OP curve always gives a greater return to the less advantaged for any given return to the more advantaged” (Rawls 2001, §18, 63). The return, as seen above, can be measured as utility, that is a linear function of the primary goods in complex terms, taking into account that the choice of cooperation excludes those systems which do not guarantee fundamental liberties, according to the priority of the first principle. In other words: utility would fall dramatically if these liberties were not guaranteed, excluding in this way that particular scheme rather than others. It may be that the priority of the first principle does not appear justifiable in certain cases. The first principle about priority of liberty, in fact, can be considered (although Rawls doesn’t express the concept in these terms) part of the difference principle, as a clause stating that the utility attributed to fundamental liberties is so high that they are not exchangeable with other primary goods. Under certain conditions, it appears unreasonable and it may prevent the principles of justice from being justified in certain societies, like for example those in which there is an extreme lack of resources, since there it might seem justifiable to exchange some liberties with other primary goods. In fact, in conditions of extreme need in which it is difficult to ensure the survival of individuals, it might appear unfair to prevent someone from the voluntary exchange of some liberties for other primary goods (like food). But it should be noted that Rawls’ principles of justice suite only a society which remains in a condition of moderate scarcity. This is an assumption of the whole Rawls’s theory: “the circumstances of justice obtain whenever mutually disinterested persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity. Unless these circumstance existed there would be no occasion for the virtue of justice” (Rawls 1971, §22, 128). This is a fundamental point, without which it would be difficult to justify, aiming to an overlapping consensus, the principles of justice, especially the priority of liberty.

In order to choose the fairest scheme, we have to look at which one reaches the highest line among the “equal-justice lines” (Rawls 2001, §18.1, 62) that are the part of the indifference curves situated at the right of the bisector. When utility of the individual who is better off grows too much, then “even though the index [of primary goods] increases for the more advantaged group [...] the reciprocity implicit in the difference principle no longer obtains” (Rawls 2001, §18.1, 62-63). As Rawls specifies (p. 62), the alternatives in which the total utility is higher (where is maximized the sum of utilities, the Bentham point, or the product, the Nash point) do not represent the best result for the theory of justice as fairness nor for the difference principle. In fact, when a curve OP begins to fall after having reached the highest point (i.e. after touching the line of higher justice), it means that an increase of utility of those who are better off no longer leads also to an

improvement of those who are worse. Beyond this point (the threshold), if the individuals who are better off enrich themselves more, it would be necessary to redistribute their income to those who are worse off (*ceteris paribus* for what regards the other primary goods, and therefore assuming that the fact of the redistribution doesn't harm the fundamental liberties). In order to identify the threshold, it is necessary to understand exactly what primary goods are in practice.

## 6. INDETERMINACY AND THE FOUR-STAGE SEQUENCE

Rawls offers a list of primary goods rather generic, and in *Justice as Fairness* (Rawls 2001, §51) confirms the flexibility of the category. The application of the difference principle to concrete cases would lead to unpredictable consequences if the index of primary goods is considered as a whole, rather than one dimension at a time (i.e. income, liberties and so on). H.L.A. Hart (1975) criticizes the indeterminacy in Rawls's concept of liberty and, as stated by Valeria Ottonelli in *Leggere Rawls*, he "pointed out that the principle remains completely undetermined: it is not clear which liberty should be guaranteed, and to what extent, until the citizens of a well-ordered society (and the parties in the «original position») will specify a list of purposes and activities that should enjoy special protection" (Ottonelli 2010, 95, translation mine). The reference is to Rawls' first principle of justice, but, as said, if the liberties of the first principle are not accurately determined, this applies exactly in the same way to the difference principle, given that liberty is part of primary goods. Such criticism highlights even more how much Rawls's concept of primary goods appears obscure and, consequently, problematic in practice.

Actually, the indeterminacy of the index is not a problem in Rawls's theory, but a fundamental feature of it, without which the theory of justice as fairness would be even contradictory. In fact Rawls replies to Hart's criticism specifying a list of fundamental liberties (Rawls 1993, VIII, §1, 292) that can be achieved in two ways: historically and analytically. Nevertheless, the key point is not the list itself, since "the discriminating power of philosophical reflection at the level of the original position may soon run out. When this happens we should settle on the last preferred list and then specify that list further at the constitutional, legislative, and judicial stages, when general knowledge of social institutions and of society's circumstances is made known" (Rawls 1993, VIII, §1, 293). Thus the liberty would be specified in different stages and so, by analogy, even the rest of primary goods (and in general the index as a whole) could be specified in this way.

This idea of various stages resembles the "four-stage sequence", namely the framework that Rawls adopts in order to "simplify the application of the two principles of justice" (Rawls 1971, §31, 195). Therefore it's plausible that the index of primary goods should be determined by a gradual development of the four stages in a practical way.

Each stage is to represent an appropriate point of view from which certain kinds of questions are considered. Thus I suppose that after the parties have adopted the principles of justice in the original position, they move to a constitutional convention [...] It is at this stage that they weigh the justice of procedures for coping with diverse political views. Since the appropriate conception of justice has been agreed upon, the veil of ignorance is partially lifted. (Rawls 1971, §31, 196-197)

The four stages are: the original position, the constitutional convention, the legislative stage, while the last is “the application of rules to particular cases by judges and administrators, and the following of rules by citizens generally” (p. 199). It is important to note that at this last stage “everyone has complete access to all the facts. No limits on knowledge remain since the full system of rules has now been adopted and applies to persons in virtue of their characteristics and circumstances” (p. 199).<sup>8</sup> Therefore primary goods, basically, would be determined in light of all general economic and social facts of a particular society, in a given situation. The veil of ignorance is already partially lifted in the constitutional convention stage, and even more, when the difference principle is applied in the other stages, contingent situations should be carefully considered, including the presence of various conceptions of good in the society and their own features.

The argument supporting the four-stage sequence is that “men’s judgments and beliefs are likely to differ especially when their [of the citizens] interests are engaged. Therefore secondly, a citizen must decide which constitutional arrangements are just for reconciling conflicting opinions of justice” (Rawls 1971, §31, 195-196). Rawls’s theory offers a method to mediate among these interests (namely among different conceptions of the good) without proposing an alternative to these conceptions, as it might be a very specific list of primary goods. The purpose of the theory is in fact more general: ensuring neutral conditions so that the index of goods may actually be the result of a social agreement, in which the contracting parties can assert their opinions and conceptions of the goods. In fact, pure procedural justice (such as the original position<sup>9</sup>) does not intend to express a certain conception of good, but the political process shall be considered “as a machine which makes social decisions when the views of representatives and their constituents are fed into it”; the purpose of this machine is to “rank procedures for selecting which political opinion is to be enacted into law” (Rawls 1971, §31, 196). And

<sup>8</sup> Rawls associates the first principle of justice to the stage of the constitutional convention, the second to the legislative one: “The first principle of equal liberty is the primary standard for the constitutional convention. [...] Thus the constitution establishes a secure common status of equal citizenship and realizes political justice. The second principle comes into play at the stage of the legislature. [...] At this point the full range of general economic and social facts is brought to bear. [...] Thus the priority of the first principle of justice to the second is reflected in the priority of the constitutional convention to the legislative stage” (Rawls 1971, §31, 199).

<sup>9</sup> The original position is a “case of pure procedural justice”, as Rawls explicates in *Political Liberalism* (1993, II, §5.2, 73). The subject is widely treated in the *Theory* §14, where it is specified that the justice as fairness intends to “apply the notion of pure procedural justice to distributive shares” (1971, §14, 86).

these opinions, as observed, are determined by the conceptions of the good: judgments, beliefs and interests. For this reason, primary goods are determined by the social contract. This method perfectly suits the idea of neutrality as exposed in Charles Larmore's political liberalism. Therefore, in order to apply the index of primary goods in a factual context, we must move to further steps beyond the original position, up to the point where we have to vote (decide by voting) on the matter in question in a particular case.<sup>10</sup> Even at the legislative stage the "proposed bills are judged from the position of a representative legislator who, as always, does not know the particulars about himself" (Rawls 1971, §31, 198), therefore a partial veil of ignorance remains. However, the representative legislator must choose, or mediate, among "proposed bills", which comes from citizens (or their representatives) with different conceptions of good. In some cases, we may even consider that what is called here "representative legislator" could be simply a machine that counts votes, and the measure that has the majority passes, provided that the statutes meet "not only the principles of justice but whatever limits are laid down in the constitution" (p. 198).

The concept of index of primary goods therefore remains undetermined, but it could not be otherwise, if the theory of justice as fairness shall remain coherent. As Rawls says: "on many questions of social and economic policy we must fall back upon a notion of quasi-pure procedural justice [...]. This indeterminacy in the theory of justice is not in itself a defect. It is what we should expect" (Rawls 1971, §31, 201). There is disagreement among liberal and reasonable thinkers even on constitutional principles, while the difference principle, which should not appear even in a constitution (it cannot have legal value, and it must be a sort of preamble to the constitution instead<sup>11</sup>), can be compared to a kind of aspiration—so to speak—which would inspire the legislature. The only stages in which there is no reasonable disagreement are: the original position (where each conception of the good is excluded from the veil of ignorance), the overlapping consensus (by definition), the general formulation of the principles of justice and, consequently, the idea of using the primary goods, rather than utility or other parameters, as an

<sup>10</sup> In *Justice as Fairness* Rawls proposes the case of a parliamentary measure that allots public funds to preserve the beauty of nature in certain places. According to the principles of political liberalism, it is possible that arguments in favour of such a measure can be sustained on the basis of specific conceptions of good, as they could be perfectionism or utilitarianism: "some arguments in favour may rest on political values [...] political liberalism with its idea of public reason does not rule out as a reason the beauty of nature as such or the good of wildlife achieved by protecting its habitat. With the constitutional essentials all firmly in place, these matters may appropriately be put to a vote" (Rawls 2001, §46.2, 152, n26).

<sup>11</sup> Rawls in *Justice as Fairness*: "A second worry is whether the fulfilment of the difference principle should be affirmed in a society's constitution. It seems that it should not, for this risks making it a constitutional essential which the courts are to interpret and enforce, and this task is not one they can perform well. Whether that principle is met requires a full understanding of how the economy works and is extremely difficult to settle with any exactness, although it may often be clear that it is not satisfied. Still, if there is sufficient agreement on the principle, it might be accepted as one of society's political aspirations in a preamble that lacks legal force (as with the U.S. Constitution)" (Rawls 2001, §49.5, 162).

indicator of what are the needs of free and equal citizens. However, the index of the primary goods in a specific formulation suitable for application in factual context would be determined only by the social contract at different stages, provided that instances of the previous stages (the first is the original position) are observed. Rawls does not say it clearly, but this process would also lead to the fact that the social contract, in each stage, would determine the way in which the fundamental liberties, and consequently a specific characterisation of them, shall be guaranteed. The index (and so even the fundamental liberties) does not correspond to a conception of good supported by Rawls, nor anyone, in the original position. Again, determining what are the liberties that “provide the political and social condition essential for the adequate development and full exercise of the two moral powers of free and equal persons” (Rawls 2001, §13.4, 45) is an issue that does not appear immediate nor thinkable without consulting the most important conceptions of good in the society. Even if to enunciate these liberties seems easy, the way in which they shall be regulated (under the constitutional, legislative and jurisprudential stages) has serious implications on the real notions underlying those enunciations.

## 7. THE RIGHT OF PROPERTY IN RAWLS’ THEORY

Let’s make an example regarding the right of property: it is a primary good since it is included among the social basis of self-respect (Rawls 2001, §32.6, 114) (see paragraph 4 of this essay). This right is historically highly discussed, from the libertarian theory of the “entitlement” of Nozick (1974)<sup>12</sup> to the Marxist or socialist theories.<sup>13</sup> The theory of justice as fairness promotes the property as the right “to hold and to have the exclusive use of personal property” (Rawls 2001, §32.6, 114). But how shall be determined this concept in light of the practical and normative regulation of the right within the society? Would it be closer to the libertarian or the socialist version, or again, entirely different from both? According to Rawls, this concept does not exclude nor support the wider conceptions of “private property” or “social property” of means of production and natural resources: “these wider conception of property are not used because they are not necessary for the adequate development and full exercise of moral powers, and so are not an essential social basis of self-respect. They may, however, still be justified. This depends on existing historical and social conditions” (Rawls 2001, §32.6, 114). This underlies the fact that conceptions of the good of the society, varying from one society to another, can lead to a very different choice of primary goods (including the right to property), depending on the outcome of the deliberations

<sup>12</sup> It is clear that if the State applies any redistribution (except the eventual legitimation given by the principle of rectification of injustice) is violating the principles of justice of the entitlement theory.

<sup>13</sup> Rawls speaks about “equal right to participate in the control of the means of production and of natural resources” (Rawls 2001, §32.6, 114).

at each stage: “further specification of the rights to property is to be made at the legislative stage, assuming the basic rights and liberties are maintained” (p. 114).

Probably if it happened to apply the theory of justice as fairness to a society where the right of private property completely misses on the moral and political conceptions of individuals (it doesn't matter if this type of society really exists or has ever existed: we can think of something like a particular primitive society in the Amazon), then among the primary goods there wouldn't be this right indeed. This conclusion could be reached just by virtue of pure procedural justice. On the other hand, applying the principles of justice as fairness to a society alike the American Far West (under the assumption that it corresponds to what some libertarian intellectuals have described<sup>14</sup>), among the primary goods would compare indeed some right similar to what Nozick's entitlement theory proposes. This happens only in case, perhaps unrealistic, that in the Far West there was total conformity between the current social condition and the conceptions of good belonging to those who lived there. For example, it could depend on the fact that, in those societies, there were mostly individuals characterised by a careerist or Darwinist spirit<sup>15</sup> or, easier, individuals who have already developed an attachment to the “basic structure” of the society (which in such case would have reached the stability<sup>16</sup>), which presents, among few but effective rules, a kind of right of private property comparable to the Nozick's entitlement theory (no matter how this right is born or developed). It may be that, in a libertarian society of this kind, the concept of liberty itself (determined by the conceptions of good of those who live there) implies, thanks to the priority of the first principle on the second, also immunity from any coercive redistribution of property by the State: liberty would be understood as liberty from aggression of the State, since regulation is seen as a threat and taxation as a real theft (see Rothbard 1973 or Lottieri 2001). In this type of hypothetical society the

<sup>14</sup> Lottieri refers to several authors: G. Piombini, “Far West: l'epoca libertaria della storia americana”, *Federalismo & Società*, IV, 1997, 3; T.L. Anderson and P.J. Hill, “An American Experiment in Anarcho-Capitalism: «The Not so Wild, Wild West»”, *The Journal of Libertarian Studies*, III, 1979, 1. “...a world essentially libertarian, for example, was the American Wild West, where the law enforcement and security were insured by private parties: and all this happened (in spite of what one believes and despite the filmography of Hollywood) in an effective, civil and inexpensive way, considering that—in relation to the resident population—the number of crimes committed in the territories not yet nationalized was much lower than the ones in the East Coast, placed under the control of Washington” (Lottieri 2001, 243, translation mine).

<sup>15</sup> This assumption is just an example. It's not relevant for the aim of this paper to verify if the fact is true or not. It is not certain at all that such people would adopt a “basic structure” of society of this kind. Anyway, for the notion of social Darwinism (or Spencerism), it refers to the sociological theory of Herbert Spencer.

<sup>16</sup> An aim of the theory of justice as fairness is to achieve public support and therefore the stability: “It is an important feature of a conception of justice that it should generate its own support. That is, its principles should be such that when they are embodied in the basic structure of society, men tend to acquire the corresponding sense of justice. Given the principles of moral learning, men develop a desire to act in accordance with its principles. In this case a conception of justice is stable” (Rawls 1971, §24, 138).

idea of neutrality towards different conceptions of good can lead to the decision to grant the right to property as described, since everyone agrees on it and there is no conflict among the various conceptions of good. These considerations means nothing by themselves (because it would never arise, for example, the opportunity to apply Rawls' theory to an Amazon primitive society, nor to a people composed of only libertarians), rather they are functional to understand that "the question of private property in the means of production or their social ownership and similar questions are not settled at the level of the first principles of justice, but depend upon the traditions and social institutions of a country and its particular problems and historical circumstances" (Rawls 1993, VIII §9, 338).

The conclusion achieved on the right of property can be easily extended, by analogy, to the other primary goods and to the index as a whole. The characteristic of indeterminacy of the index (and therefore of the application of the difference principle) is not only suitable for the theory of justice as fairness, but necessary. It's even essential to the conservation of neutrality towards different conceptions of good for the society. As Larmore says, "Rawls's original position is best understood as a position of neutrality, so one might think here of his argument for the difference principle" (Larmore 1987, 44). In light of the above, it's possible to understand why Buchanan and Lomasky think that starting from the principle of the greatest equal liberty proposed by Rawls we are forced to come to a quasi-libertarian solution.<sup>17</sup> The problem is that Buchanan and Lomasky claim that their own libertarian conception of the good is to determine the social choice of an index of primary goods, or the right scheme of cooperation. But libertarians do not take into account that in societies where there is not unanimous consent on such conception of good (such as those in which we live, for which is designed the Rawlsian theory) it is also necessary to justify the proposed principles to everyone. The jusnaturalism by which they support their ideals is not enough, since it may appear nothing more than a kind of new theology. Clearly the same thing also applies to the communitarian theories. They are all forms of political expressivism. On the contrary, according to political liberalism, the principles proposed by libertarians and communitarians may be applied only if supported from a neutral position: entailing rational dialogue and equal respect, and instituting "only the least abridgment of neutrality necessary for making decision possible". On the contrary, the only way to affirm these principles without presenting a neutral justification is imposing them by force (of any kind, such as the oppression by the State).

<sup>17</sup> Of course this is not the outcome Rawls expects for the present American society based on the theory of justice as fairness. It is clear that he admits redistribution (through coercion of the State). In fact, even if the difference principle should not appear in a constitution, there it would be at least a guaranteed social minimum, as Rawls writes in *Justice as Fairness*: "What should be a constitutional essential is an assurance of a social minimum covering at least the basic human needs, as specified in §38.3-4. For it is reasonably obvious that the difference principle is rather blatantly violated when that minimum is not guaranteed" (Rawls 2001, §49.5, 162).

## CONCLUSIONS

The one who does not get what deserves finds himself in a situation of injustice and therefore claims to be compensated. This would lead to a redistribution that deducts from those who have got more than deserved, in order to compensate who have received less. But even the one who received more than deserved in a legal way (for example by means of a voluntary grant from another individual, as heredity) considers as unfair the fact of being divested of his goods. The undeserved wealth is socially justifiable if its “redress” violates any right that the society shall preserve, because in the society it’s either considered of fundamental importance in itself (but the mere entitlement is unlikely to be a valid moral justification), or because in the long period those rights might ensure a better life for those who are worse off or who didn’t get what deserved. In some way, redistribution may lead to injustice, but lack of compensation may do the same. They both violate rights that society aims to preserve, at least, a society composed by culturally heterogeneous groups as the one in which we live. The difference principle involves the complicated effort of weighing all the rights, as a whole, of each representative individual, and redresses the largest violations, or major situations of injustice, in a long-term perspective. In a nutshell, its concern is to prevent or repair the greatest injustice, exactly because the “least-advantaged” are those who suffer the greatest injustice: according to the analysis presented in this essay, it is precisely in this way that we can understand the difference principle. But what the greatest injustice consists in inevitably depends on the current culture and beliefs of the society. For this reason, the difference principle, in the end, plays nothing but a role of guarantee for the rights (without explicit definition of what they are in practice) of each representative individual. In virtue of its function it represents, ultimately, a liberal warranty of the rights of citizens.

In light of the discussion above, why should we maintain the difference principle as a pillar of a liberal theory of justice? We have seen that it is rather undetermined, in the sense that it doesn’t seem to propose a particular comprehensive doctrine or conception of good. But is this characteristic of indeterminacy enough to consider the principle neutral? Indeterminacy softens the most pretentious demands of the principle and offers an interpretation in a procedural way, considering what is right or wrong on the basis of a particular “measure”, given by a procedure commonly considered valid, for instance the method of majority rule. Depending on that measure (that itself outlines a conception of justice) the difference principle could work redressing the greatest injustices, or just protecting people from the greatest injustices (without redressing anything) either. In the first case, it implies redistribution; in the second it guarantees only those rights connected to what Berlin (inspired by Benjamin Constant) defined “negative liberty” (Berlin 1958). This is an extreme case in which these kind of rights would be considered the only one entitled to be protected, for instance due to the very particular culture of a libertarian society. This means that the difference principle is such undetermined that we could even figure out exceptional contexts in which redistribution



isn't legitimate at all. Of course, in our present society the difference principle wouldn't deal with a conception of justice so similar to a libertarian one, but the principle cannot completely ignore it either, remaining neutral anyway, as long as possible, with regard to each conception of good life. In fact it ultimately represents a procedural norm stating: "We shall prevent the greatest injustice", which embodies different substantive meanings, from case to case, depending on what is the conception of justice of a particular society. In this context, Harsanyi's (1975) criticism falters. He complains, misrepresenting the Rawlsian principle, that Rawls assumes the parties in the original position would be maximally risk-averse: only thanks to this reason they would choose a principle that maximizes the condition of the poorest. But income distribution is a completely different issue with respect to the difference principle. If libertarians think that what's most unjust is losing liberties, in their perspective even a billionaire entrepreneur may be "the worse off" with respect to a destitute, if the State limits in some way his possibilities of investment. Then, in the ideal model of a "libertarian society" (assuming that it may exist a society in which libertarians only live in), the fact of maximizing condition of the weakest—when "weakest" refers to an extreme lack of liberties—consists in maximizing the liberties *de facto* for the entire society. It's not a really different issue from the fact of "weighing individual preferences" or defining legitimate or illegitimate interests, before including preferences in the "social calculation" (as all utilitarians, including Harsanyi (1976) but not Bentham, do in some way—according to Villani). We all believe in some principles that are considered, by ourselves, of utmost importance: with regard to these, no rational person is disposed to risk, no matter how strong our aversion for the risk is.

The principle, in its more abstract version (detached from empirical context) suits various ideals of good, but in the end, when applied in practice, it would necessarily express a substantive, and inevitably controversial, conception of good. The concept of democracy is cogent in the practical application of the principle, since it is supposed to be applied in our society, that is nothing but a democratic society. Considered the indeterminacy of the principle, it seems that the outcome of a democratic process would completely determine the concept of justice regulated by the difference principle. According to this, the principle would merely involve democracy as a substantive conception of good; but this conclusion has no moral implications. In fact democracy is Rawls' premise, taken as a matter of fact (he doesn't deal with the goodness of this ideal of political participation) while his argument about the principles of justice seems to claim something more. Indeed, indeterminacy of the principle cannot imply a purely procedural conception of justice, established on democratic premise and excluding other moral arguments. On the contrary, it embodies a specific conception of good, maybe conflicting with other ideals: it claims not only respect for others (equal respect is a common ideal of good, implying the neutral procedure of rational dialogue), but also an "interest in the weakest", though independent of how is defined "weakness". According to Larmore and Rawls, basic assumptions of the justification of political liberalism are rationality and reasonableness (the last well represented by the ideal

of equal respect): are these prerequisites sufficient in order to justify this kind of interest?

The difference principle establishes a reciprocity bond between—say—rich and poor (considering income dimension) or, at least, it “interprets” this connection, or interdependence (if it is supposed to exist) between rich and poor, as a solidarity bond. But the mere fact of interpretation can have significant influence if the principle is endorsed by institutions, for in a well-ordered society “social institutions generate an effective supporting sense of justice” (Rawls 1999, 234) and norms with institutional recognition are naturally strengthened in the “cultural background” of society. The difference principle can be precisely justified thanks to its function of “social glue”, binding one to another. This is the most characteristic (and innovative) element Rawls introduces within a liberal perspective, and it can be justified in terms of stability. As Larmore says, reasonableness (equal respect) is not sufficient in order to justify neutrality and political liberalism, but even an *original Compact*<sup>18</sup> is necessary, without which we cannot see the motivation to start a rational conversation. Difference in our society is seen as unfair unless it is justified: that’s a matter of fact in our society, since it holds for the many. If citizens wouldn’t feel morally committed in preventing or repairing the greatest injustices of the least-advantaged—explaining moral justifications to these differences, or moral reasons by which they have to be redressed—they probably wouldn’t even start a debate on these problems, and without a system justifying differences between worse off and better off, the system is likely to collide. It has nothing to do with ought-statements, since without such system, simply, a liberal society would always run into the threat of collapsing. Therefore the difference principle, as method to justify inequalities among various conditions of citizens, is crucial for the stability of society, and may represent a sort of *original Compact*. Where difference is unfair, the principle demands to be redressed, but before playing this function, it develops a prudential task, aimed to maintain the stability, just because it offers citizens the perception that difference has a reason to be. Even libertarians should recognize that this is a good expedient (maybe because of its psychological mechanism) to legitimate differences to the worse off. But what libertarians seem to ignore is that, without a justification of differences, their liberties would be always jeopardized. Merits might be a justification for differences, while a strict application of Nozick’s entitlement theory couldn’t be, since it would be too controversial. Society—especially a liberal society—cannot really stand if most of citizens do not perceive wide differences among their conditions as fair.

Each kind of political organizations, regimes or societies shall preserve itself and achieve stability in order to pursue, in practice, its ideals. This must be reckoned in order to approximate reality to our ideals, even if the reaching for stability sometimes forces to leave aside part of our wishes. A non-merely utopian model, but

<sup>18</sup> Without a binding relation among us, we cannot see a motivation to start a dialogue in a rational way. For the notion of *original Compact*, see Part I of this essay (De Luigi 2014, §5).

effectively feasible one, must take into account the fact of stability, related to empirical conditions. For this reason a practical and substantive interpretation of the difference principle cannot be detached from the outcome of a democratic process (not meant as a method of majority rule, but as the actual entire procedure of democracy, even constituted by checks and balances); otherwise it would lead to unstable outcomes. One of the goals of every model of political organization (included liberalism) is stability: we could hardly think of a regime, whether real or ideal, that wouldn't aim to the minimization of the number of opponents, adverse ideals, or any factors threatening its survival. These factors, in our society, may be inequality, lack of liberties, lack of security, economic inefficiencies, corruption, moral decay, and so on. Minimizing these conditions regimes are more stable and even fairer. Justice—or at least what is perceived just—and stability are strictly correlated: no social system can be just if unstable. Ideally, a libertarian system is considered “fair” by its supporters because it guarantees liberties; a socialist system because it grants survival to everybody under acceptable conditions; a communist system because it grants equality, and so on. All these ideals are highly contested and no one can easily overcome the respective alternatives. On the contrary, in our modern western countries almost all—with very few exceptions—think to democracy as the most “fair” political system. Democracy might be considered a “fair” method of decision process because it offers everybody the possibility to participate to political process of deliberation, public choice, government, etc. But the success of democracy doesn't depend on its moral qualities, rather it depends on its relative stability, and maybe this fact is ignored by the many. In fact, from an ideal point of view, it's difficult to demonstrate that democracy is fairer than aristocracy, for instance. It would be logic that administrators should be the ones who are better in administrating, and from a merely theoretical or ideal point of view, under aristocracy the government is in the hands of the *ἀριστοί* (*aristoi*), namely the most excellent, the best administrators: the ones who are able to better realize the principles of justice. We can object that these principles of justice are not given *ex ante*, therefore democracy represents a procedure to identify them. But once identified the principles, why should they be achieved by elected authorities? The “goodness” of the ideal of political participation is not so evident. The literature developed stemming from Arrow's theory<sup>19</sup> is exemplificative of these arguments. As Przeworski states, “democracy is not rational, in the eighteenth-century sense of the term” (Przeworski 1999, 25), “it thus seems that choosing rulers by elections does not assure either rationality, or representation, or equality” (p. 43). In other words, as summarized by Tsebelis:

<sup>19</sup> According to Arrow (1951) there is, in social life, a trade-off between social rationality and the concentration of power. Any mechanism which translates the preferences of *rational* individuals into a *coherent* group preference (namely, respecting some minimal conditions—no further analysed here) is either dictatorial (independent of distinguished individual) or incoherent. But the method of “majority rule” holds precisely on the minimal conditions mentioned by Arrow (see May 1952), so it is incoherent: it violates rationality assumption, at least on some occasions.

there is nothing that can be defined as the common good to be maximized (existence). If there were, the democratic process does not necessarily identify it (convergence), and if it did, democracy is not the only system that does (uniqueness) [...] Przeworski goes on to demonstrate that even this substandard system [a minimal conception of democracy] under certain conditions presents one significant advantage: that the losers in an election may prefer to wait until the next round rather than to revolt against the system. This peaceful preservation property a fortiori holds for Schumpeterian democracy<sup>[20]</sup>, where citizens control electoral sanctions and representatives know that reelection depend on responsiveness. (Tsebelis 2002, 67)

Democracy seems stable, at least in western countries after the Second World War, and it is probably due to the fact that it has already generated an effective supporting sense of justice in citizens' cultural background. This also implies a good reason for which political liberalism shall support democracy: without stability, neutrality couldn't be, because the rules and the government conduct couldn't be predictable, and predictability itself confers a certain grade of neutrality.<sup>21</sup> There are cases in which liberalism and democracy present conflicting ideals, for instance the tyranny of the majority, but given some defined limits of the State they can freely go hand in hand. Furthermore, the ideal of participation could be neutrally justified under a liberal perspective, and it's probably the best way to justify democracy: it's the best means to ensure the State remains neutral toward the intrinsic worth of all ideals of good life (Larmore 1987, 130; Schumpeter 1950, 232-302). By historical and analytical examinations, it seems that does not exist other regime achieving liberal goals better than democracy. Finally, democracy itself represents an *original Compact*, since it leads citizen to dialogue (competing for votes means convincing the electors), while equal respect explains why to undertake it in a rational way. The role of the difference principle within political liberalism is comparable to the role of democracy; they are even tied together, since democratic procedures affect the substantive meaning of the principle. They both represent an *original Compact* which doesn't rest on the same basis of neutrality, that are rationality and reasonableness. Instead they are instruments to achieve stability: since it's not possible to actually grant neutrality without stability, they represent, in a way, a very important element of neutrality, that is what allows its existence in an empirical context.

Finally, although the ideal of political participation and interest for the weakest are not as much neutral as the equal respect, they present an high level of neutrality (Larmore himself speaks about the principle of "higher neutrality" when explaining its empirical neutrality<sup>22</sup>). For instance, the difference principle might be neutrally defended even from probable criticisms by social Darwinism or Spencerism. Those theories are supposed to endorse the law of the strongest against a moral

<sup>20</sup> According to Schumpeter's "economical model of democracy", democracy is simply a matter of leaders competing for votes (Schumpeter 1950).

<sup>21</sup> See Larmore (1987, 40) or note 8 of Part I of this essay (De Luigi 2014, 14).

<sup>22</sup> See Larmore (1987, 68).

interest for the weakest, who are left to succumb. But the mere law of the strongest—without any limit (into anarchic framework)—cannot fit for equal respect. Then a Darwinist perspective opens two possible scenarios: (1) it doesn't comply with equal respect, and in this case it's not reasonable; (2) or it simply expresses a concern (which prevails on other kind of interests but doesn't exceed the equal respect) for merits and opportunity to implement talents<sup>23</sup> either. The last category is the only one we need to discuss, and necessarily presumes a framework of rules with the aim of ensuring a fair, or legitimate, competition. Even Nozick's entitlement theory cannot be implemented without rules and monitors. But a framework of rules ultimately defines a conception of justice, and the one who suffers the greatest injustice (it occurs when the most important rules are broken) can be considered "the weakest". Therefore, the difference principle, in its most abstract intension, can be neutrally justified even from the perspective of a Darwinist conception of good life, provided that a Darwinist conception doesn't reject equal respect (and this is not a trivial matter). After all, even Howard Roark, in the famous speech in his own defense (from the novel *Fountainhead* by Ayn Rand, 1943) says: "Those who were concerned with the poor had to come to me, who have never been concerned, in order to help the poor".

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<sup>23</sup> The assumption behind (not necessarily true) is that a social theory can coherently be called Darwinist and at the same time complies with the principle of equal respect.

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