

**BETWEEN IDEAL THEORY AND PRACTICE:**

**Justice as Fairness, Productive Ownership Rights  
and Wider Economic Liberties**

**By**

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## **Declaration**

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## Abstract

This thesis explores two main interconnected issues. First, it questions whether mainstream Rawlsian conception of justice and institutional regimes favored on such a conception are the most reasonable option, and would be selected as such, for actual societies characterized by ongoing disagreements on justice. It is explored how various idealizations underlying Rawls's account are used to make the proposed regimes appear more feasible and appropriate for actual societies than they would have been on a more “realistic” approach. Reasonable individuals have many reasons to be attracted to the broad ideal of justice as fairness. However, even if we assume there would be no radical disagreement over the broad ideal of justice as fairness, Rawls's own conception and his preferred regimes may not be selected as the most reasonable options. The problem is that the establishment, well-functioning and stability of the proposed regimes may be too dependent on the presumed existence of favorable socio-political conditions, appropriate individuals' attitudes and motivations. All things considered, less robust and more market-friendly regimes akin to Nordic regimes could better approximate justice as fairness than Rawls's own preferred regimes. The first issue reveals a deeper problem in mainstream liberal egalitarian conceptions of justice: Relative neglect of individuals' economic liberties, specifically neglect of productive ownership rights and entrepreneurial liberties. The objection is that many liberal egalitarians, Rawls included, have wrongly neglected the value individuals assign to their economic liberties as important for their autonomy and have failed to recognize the moral significance of various “capitalist” activities, i.e. business ownership. As a consequence, liberal egalitarian conceptions and institutional regimes allow only a modest scheme of economic liberties and therefore can be seen as inadequate for securing a sufficiently wide room for individuals' autonomy. The implication is that individuals, who aspire to be autonomous and who highly value their economic liberties, could reasonably reject such regimes. They would also seek principles which assign greater weight to their economic liberties. Therein, given individuals' enduring preference for productive ownership and entrepreneurial liberties, assigning more weight to these liberties in principle and institutional design is a reasonable accommodation under real-world constraints, even if such accommodation comes at some cost in terms of the distributive ideal of justice. Using Raz's notion of autonomy as self-authorship, three main arguments for productive ownership rights and entrepreneurial liberties are explored: the argument from economic independence, the argument from occupation choice (active independence) and the argument from self-authorship. The overall argument is that wider economic liberties fully enable (and meaningfully enhance) individuals' autonomy both directly and indirectly. The proposed Rawlsian-inspired approach aspires to assign more weight to individuals' productive ownership and entrepreneurial freedoms (and reasonably widen their scope), while retaining the core elements of justice as fairness. Finally, the last part of the argument elaborates how commitments to wider autonomy and economic liberties could be adequately balanced with the core requirements of justice as fairness and relational equality.

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## List of Abbreviations

DP – Difference principle

CDA - Child Development Accounts

CTF – Child Trust Fund

FEO – Fair equal opportunity

FRP – Fact of reasonable pluralism

CME – Coordinated market economy

JF - Rawls's *Justice as Fairness: A Restatement*

LME – Liberal market economy

LMS – Liberal market socialism

OP – The Original Position

PL - Rawls's *Political Liberalism*

POD – Property-owning democracy

SME – Social market economy

TJ - Rawls's *Theory of Justice*

WFE – Well-functioning economy

WSMC – Welfare state market capitalism

## I Introduction

John Rawls's *Theory of Justice* was published 50 years ago, becoming almost immediately the focal point in discussions about justice in contemporary societies. To this day it still remains a focal point of discussions and has influenced, in one way or another, all other mainstream theories of justice. Despite Rawls's everlasting impact, it is no secret that we are still far from reaching a substantive agreement (even an overlapping consensus) on what counts as a just society and how to establish such a society. Ongoing academic debates aside, poverty and social inequalities remain pervasive and a growing number of people perceive their societies as unjust, which threatens to undermine their legitimacy and stability. Habermas argued that societies are stable in the long-run only if their members perceive them as organized in accordance with that is true, right and good (Habermas, 1997). The main problem, of course, is that diverse people will inevitably disagree (to a varying degree) not merely about what constitutes a just society and how to establish it, but also on how to even reach an agreement on justice. Furthermore, disagreements about justice, as Schmitz noted, also arise due to the nature of theorizing itself which *per se* does not produce consensus, rather often quite the opposite. For any set of data, an infinite number of theories will fit the facts, thus, even if we agree on particular cases we will still disagree on how these judgments should be combined together to form a coherent theory (Schmitz, 2006: 5). The issue is that there are many competing distributive principles, ranging from need to equality (of something), each of which would lead to a different social distributions and could ground a reasonable conception of justice. Many people, Plant notes, would also want to be sensitive to several principles in distribution which requires that these are somehow ordered and properly weighted against each other (Plant, 2005). Even reasonable people, fully committed to some abstract conception of justice, will inevitably still significantly disagree about what should be done about concrete issues such as growing social inequalities. Another often underestimated

issue is the gap that exists between abstract conceptions of justice developed by academics and the kind of institutional reforms which could feasibly be implemented. The problem is not only the concern that actual evolution of societies and our intuitions about what justice requires might be on diverging paths, but also that much of mainstream theorizing about justice might be overly utopian and that even “realistic utopias” are not capable of generating sufficiently strong agreement among actual persons.

Distributive justice is the fulcrum around which most, if not all, debates revolve. The core of all debates about distributive justice is always, in one way or another, related to individuals’ property rights and economic liberties. Although in academia the focus is on the debate between egalitarians and libertarians, the main battle in Western democracies is fought between classical and egalitarian liberals about the legitimate scope of individuals’ property rights and economic liberties. Disagreement between classical and egalitarian liberals is often mistakenly reduced to the state vs. market debate although both sides are committed to a mixed market-based economy, combining in some manner competitive markets with state interventions and predominantly private ownership. The question, as Olsaretti noted, “should we have a market-based economy” is currently (and probably for an indefinite time) off the agenda (Olsaretti, 2004). Alternative economic systems have been either demonstrated as inferior in practice or are lingering in theoretical development limbo. Disagreement is not about the desirability of a market-based economy, rather about in what form the market system should be preserved, and on what criteria should we select between various forms. Market economies can come in various forms - socialist or capitalist, and ranging from liberal market economies (LME) and coordinated market economies (CME). All these forms can further be characterized into (more or less) egalitarian and inegalitarian forms. The choice between these systems ultimately depends on how much weight is placed on individuals’ economic liberties (and for what reasons). Where liberals predominantly disagree is about the

status and the legitimate scope of productive ownership rights and entrepreneurial liberties. For classical liberals personal, political and economic cannot be separated, which drives them towards liberalized economic systems as to preserve their commitment to robust personal and economic freedoms. Liberal markets are seen as an “engine” for long-term socio-economic development and as having an important role in protecting and promoting individual freedom. The problem with classical liberal accounts is that while emphasizing the value of wider economic liberties and liberalized markets, they have underemphasized the issue of growing social inequalities and individuals' perception of fairness of market societies. All classical liberals are concerned about the adequacy of distributive outcomes and have reserved an important role for the government in the economy (to maintain its well-functioning) and in social affairs (to improve individuals' welfare). Provision of a social minimum, various public goods and even some limited and indirect redistribution of income, was seen as justified on various grounds. The issue is whether such limited provisions are really adequate. If their purpose was only to guarantee a minimal safety net, then they may be adequate. However, if their intended purpose was to secure independence and personal autonomy for all persons, then they are inadequate. Limited provisions will do little to change the perception that on classical accounts there is insufficient sensitivity to the possibility that real freedoms and well-being of some may legitimately be sacrificed in the pursuit of aggregate social welfare and the aspiration to maximize people's opportunity to use freely whatever property they happen to own. Whatever else is true, it would be difficult to maintain that classical liberal regimes, with their foreseeable implications, would be acceptable and fair for everybody. Also, it would be somewhat implausible to maintain that those less advantaged would prefer a minimalist social security system over more robust systems, and especially over Nordic regimes which balance commitments to social equality and wider economic liberties. The dilemma facing classical liberals is to decide where their core commitments lie: On

maximizing formal opportunities for individuals to utilize whatever property they happen to own, or on securing the conditions of their independence. The former inevitably leads to libertarianism, while the latter requires moving closer to liberal egalitarianism. All things considered, in order to mount a defensible argument for a wider scheme of economic liberties, classical liberals are better-off moving closer to liberal egalitarian position at the level of basic principles, and proceed from there, than trying to win an apparently unwinnable battle for contemporary capitalist regimes and a minimalist welfare state.

Although liberal egalitarian theories dominate the academic discussions, such theories have failed to generate a broad agreement among the general public. One reason is that there might be a deep tension between what egalitarian justice demands and actual people's pluralist views about social justice and their attitudes towards their economic liberties. Economic liberties occupy a peculiar place in liberal egalitarian theories. Their importance for the well-functioning of the economy is acknowledged. However, with the exceptions of personal ownership and freedom of occupation, economic freedoms have been somewhat neglected in favor of political and civil liberties, which are given priority. Tomasi holds that Rawlsians are guilty of "a profound failure" to recognize the significance of economic activities for the "moral development of individuals" (Tomasi, 2012b: 60). Tomasi argued that the grounds on which personal ownership and occupation choice are justified as basic rights can be used to show that various other economic liberties, including productive ownership rights and entrepreneurial liberties are also basic (Tomasi, 2012b: 76). Tomasi's argument ultimately failed, the hype surrounding it quieted down during this research, life in academia continued more or less as before, but the issue of the relative neglect of economic liberties in liberal egalitarian conceptions of justice remained. As Scanlon argued, questions of economic liberty "must be considered along with political and civil liberty and fair distribution, as conditions for the legitimacy of social institutions" without prioritizing political and civil liberties

(Scanlon, 1976: 25). This is where my project comes in. It aims to provide a better understanding how economic liberties, specifically productive ownership rights, could be qualified and integrated in a reasonable liberal conception of justice, Rawlsian or otherwise.

### **Research Focus and Question**

The overarching question is how to arrive at a publicly justified social order among free and equal moral persons who reasonably disagree about justice. Although reaching an agreement, even if only hypothetical, on abstract principles of justice is an important step, such an agreement can only provide us with abstract guidelines and not with concrete rules for a well-ordered social cooperation. A more difficult problem is how do we move from abstract principles to a well-ordered society, and what rules and institutions are required? The main question of this project is, given ongoing disagreements about justice, whether Rawlsian principles of justice are suitable to bridge these disagreements. Can they bridge the tension between what egalitarian of justice demands and actual persons' pluralist views about justice and the value they attach to their economic freedoms? Despite various disagreements on justice, it would be plausible to assume that among citizens in Western democracies there is sufficient agreement on some core political values corresponding to justice as fairness, in particular on the ideal of a Society of Equals. This does not imply that all citizens would converge around a broader interpretation of Rawlsian principles, rather that they could accept the underlying spirit of these principles. The following discussion aims to show that even if we assume there would be no radical disagreement over the broad ideal of justice as fairness, this does not mean that the Rawls's own conception of justice and preferred regimes would, all things considered, be chosen as the most reasonable options for actual societies.

Although primarily focused on the Rawlsian conception, and the institutional scheme favored by such a conception, the following critique may apply to other liberal egalitarian theories.

Rawls is taken as paradigmatic example of (what I believe are) the core inadequacies of egalitarian theories (with exceptions): (1) insufficient fact-sensitivity and (2) insufficient normative weight assigned, in principle and institutional design, to individuals' economic liberties, specifically to productive ownership and entrepreneurial liberties. There are two interconnected lines of the argument against Rawls's preferred institutional regime, property-owning democracy (POD). The first focuses on issues of feasibility, specifically on whether POD would be well-functioning and capable of generating its own long-term support in actual societies. It will be shown that there are serious doubts it would. The second part of the overall argument is an autonomy-based argument which focuses on the requirement that liberal justice must secure a sufficiently wide room for individuals' autonomy. The common point is that insufficient weight was assigned to individuals' economic liberties.

The main objection is that many liberal egalitarians, Rawls included, have wrongly neglected the value individuals assign to their economic liberties as important for their autonomy and have failed to recognize the moral significance of various “capitalist” activities, i.e. business ownership. Consequently, institutional regimes favored on egalitarian conceptions allow only a modest scheme of economic liberties and can be seen as inadequate. This inadequacy in turn would generate problems for the well-functioning and long-term stability of POD. The implication is that individuals, who aspire to be autonomous and highly value their economic liberties, would reasonably reject such regimes. Specifically, there are two concerns with POD. First, economic liberties, specifically productive ownership and entrepreneurial liberties, are not just subjectively but objectively morally more significant than justice as fairness acknowledges. Second, POD is motivationally unstable because many people place high value on economic liberties that POD, due to its robust requirements and restrictions on these freedoms, cannot deliver. It will be argued that, given people's enduring preference for productive ownership and entrepreneurial liberties, assigning more weight to economic

liberties (and widening their scope) in principle and in the institutional design is a reasonable accommodation under real-world constraints, even if the accommodation comes at some costs in terms of the distributive ideal of justice as fairness. The proposed approach is located between Rawlsian liberal egalitarianism and Tomasi's "free market fairness" view. It aspires to assign more weight to individuals' economic freedoms, specifically to productive ownership and entrepreneurial freedoms, while retaining the core elements of justice as fairness. The crucial claim is that it is possible to assign more weight to wider, but qualified, productive ownership rights and entrepreneurial liberties while maintaining the core of justice as fairness more or less intact. Thus, such a move would not block redistribution of wealth required to establish a Society of Equals. In this regard, as much as this project is a critique of Rawlsian account of justice for neglecting economic liberties, it is also a critique of contemporary classical liberal accounts on which extensive economic liberties are celebrated without addressing the implications involved in an unreasonable expansion of these liberties.

This dissertation is structured as followed. Chapter 2 summarizes the core elements of Rawls's conception of justice and his preferred institutional regimes. Chapter 3 engages in the ideal vs. non-ideal theory debate and addresses the question which real-world considerations should be taken into account in order to develop a realistically utopian conception of justice and a well-functioning regime. Chapter 4 clarifies the underlying notion of the ideal of a Society of Equals and sets the stage for the assessment of the Rawlsian POD. Chapter 5 engages in the assessment of the appropriateness of POD for actual societies with the specific focus on questions of well-functioning and stability of POD. Chapter 6 presents the autonomy-based arguments for wider economic liberties. This chapter has two parts. The first part deals with the relationship between autonomy, self-development and economic freedoms in general, and examines whether considerations of autonomy would favor (as assumed here) a wider scope of economic freedoms and options. The second part presents more specific arguments for

productive ownership rights and entrepreneurial liberties. Chapter 7 elaborates on the institutional scheme that would substantiate the envisaged intermediate position between Rawlsian liberal egalitarianism and Tomasi's free market fairness. It also has two parts. The first part deals with qualifications of the right of productive ownership and the extent of permissible state intervention consistent with the proposed accounts of autonomy. The second part discusses the details of the underlying asset-based scheme and the regulatory framework. Finally, the conclusion ends this long discussion by highlighting the implications of presented arguments, addresses open issues and further required research.