

# **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.



## II Justice as Fairness

### 2.1. Rawls's Conception

Justice as fairness is a conception of justice for liberal democratic societies developed in contrast to utilitarianism, which Rawls saw as inadequate for resolving the tension between the core moral values of freedom and equality. Justice as fairness aims to guarantee equal respect for each person, as free and equal citizens, and preserve the “separateness of persons”. According to Rawls, any conception of justice that would allow the society to unreasonably sacrifice some individuals for the benefits of others (as he argues utilitarianism does) could not be agreed upon. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override (TJ: 3). Justice as fairness is essentially tied to Rawls's understanding of “society as a cooperative venture for mutual advantage”. Issues of justice arise only in conditions of moderate scarcity in which there are enough resources to satisfy everyone's basic needs, but not enough to satisfy all of their demands (TJ: 110). Rawls argues that persons “*have contrary conceptions of the good as well as of how to realize them, and these differences set them at odds, and lead them to make conflicting claims on their institutions*” (Rawls, 1980: 536). Issues of justice arise because individuals are not indifferent about how benefits and burdens of social cooperation are distributed. The primary subject of justice is the basic structure of society which includes major political and socio-economic institutions (TJ: 6). The primacy of the basic structure, according to Scheffler, is justified because: (1) it has a pervasive and profound impact on people's lives from the start; (2) it shapes citizens' overall “wants and aspirations” throughout their lives; and (3) individual transactions could not be evaluated as just or unjust without certain background conditions of justice already in place. Since it would be impossible to develop feasible rules for individuals that could secure the background conditions of justice, this task can only be performed by the

institutions of the basic structure (Scheffler, 2006: 4-7). Principles of justice apply only to the basic structure of the society and not directly to individuals who have a duty to uphold justice.

Sen argues that for Rawls the notion of fairness is foundational and understood as “prior” to the development of principles of justice. Therein, fairness can be seen as a requirement of impartiality which includes: (1) a demand to avoid biases in our evaluations; (2) taking into account interests and concerns of others; and (3) the need to avoid being influenced by our vested interests, personal priorities and prejudices (Sen, 2009: 54). Rawls's core idea is that people will accept certain principles of justice, which will regulate their societies, if they would have been chosen under fair conditions in which nobody would be able to “skew” the choice in her favor. The original position (henceforth, OP) is designed to ensure fairness and impartiality in the choice of principles of justice. Scanlon summarizes its core features. First, the OP includes all members of a society since it would be unfair to exclude anyone from consideration. Second, it recognizes that individuals may have conflicting interests. This is acknowledged in the assumptions that the parties in the OP are rational (they want to secure the best possible deal for themselves) and mutually disinterested. Third, the veil of ignorance excludes knowledge of contingent facts irrelevant for justice, i.e. knowledge of individuals' personal characteristics (race, gender, talents and biases), their conceptions of the good, social circumstances, etc. The veil of ignorance prevents unfairness by disabling the parties' ability to identify principles that would favor their own social position, conception of the good, etc. (Scanlon, 2003: 154-5). The parties, being mutually disinterested and neither risk averse nor risk seeking, will reason as if they might be the least advantaged members of society and aim to secure the best possible deal in that case (the maximin rule) (Hampton, 1998: 139).

The famous two principles of justice as fairness chosen in the OP under these conditions are:

- 1) Each person has an equal right (indefeasible claim) to a fully adequate scheme of equal basic liberties, which scheme is compatible with a similar scheme of liberties for all;
- 2) Social and economic inequalities must satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society (the difference principle) (JF: 42; PL: 291; Sen, 2009: 60).

The first principle has lexical priority over the second principle. Within the second principle fair equality of opportunity (henceforth, FEO) has priority over the difference principle (henceforth, DP) (TJ: 53). On Rawls's account only a limited set of rights and liberties is considered basic and given priority over the second principle. These include freedom of thought and liberty of conscience, political liberties (freedom of speech, the right to vote, participate in politics and hold office) and freedom of association, the rights and liberties specified by the liberty and integrity (physical and psychological) of the person (including personal ownership and freedom of occupation choice), and the rights and liberties covered by the rule of law (JF: 44, 169). Basic liberties are assigned special protection since they are essential for the development and exercise of citizens' moral powers: the capacity for a sense of justice (the capacity to “understand, to apply, and to act from” the principles of justice) and the capacity for a conception of the good (the capacity to “have, to revise and rationally to pursue a conception of the good”) (JF: 18-19). These rights are not subject to political bargaining or to the calculus of social interest and must not be traded-off against other social goods (TJ: 3). Although basic liberties cannot be restricted for non-liberty reasons, each basic liberty has to be limited for the sake of other basic liberties (JF: 47). The first principle also requires ensuring the fair value of political liberties. The worth of political liberties for all citizens must be sufficiency equal and independent of their socio-economic position. Citizens

should have a fair opportunity to hold public office, exercise political influence and affect the outcome of elections (JF: 149; PL: 327-29). Rawls argues that without such guarantee the wealthy would be able to dominate political life and corrupt the political process (JF: 150). Only political liberties are guaranteed their fair value. Once the first principle is satisfied, the second principle imposes a robust egalitarian requirement on major political and socio-economic institutions. Social and economic inequalities should be arranged as to work “to everyone’s advantage” and meet two conditions: FEO and DP (PL: 291). FEO regulates competition for employments, social positions and public offices. It requires that social positions and public offices are formally open, but also that all citizens have a fair chance to attain them. According to Rawls, “those who have the same level of talent and ability and the same willingness” should have roughly the same chance for success irrespective of their social background (JF: 44; TJ: 63). FEO ranges over lifetime educational, medical and economic opportunities enjoyed by citizens, required for them to attain all occupational positions that exist in societies (O’Neill, 2012: 85). FEO requires minimizing the extent to which individuals are unfairly disadvantaged due to their social background. DP regulates the distribution of primary goods, socio-economic advantages, wealth and income. Its application is constrained by prior principles, including duties of assistance to burdened peoples, and the duty to future generations (Freeman, 2007b: 88). Rawls argues that we should start from an assumption that all primary goods, including wealth and income, should be equal. Everyone should have an equal share (PL: 281). Rawls then insists that economic efficiency is taken into account (PL: 282). Certain inequalities of wealth and income can “act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on” (TJ: 68). It would be unreasonable to remain at the egalitarian starting point if certain unequal distributions of wealth and income would be to everyone’s advantage. Justice as fairness allows economic inequalities insofar they are consistent with equal basic liberties and FEO,

will improve everyone's advantage and are to the greatest benefit of the least advantaged members in a society (PL: 282). Economic inequalities are only permitted if an unequal distribution of social goods would “improve the expectations” and will result in more of primary goods for the least advantaged compared to perfect equality or other feasible unequal schemes (TJ: 157). Primary goods are general-purpose means required for all persons in the pursuit of their conceptions of the good and to be fully cooperating members of society (TJ: xiii). Primary goods include basic rights, liberties and opportunities, income and wealth, and the social bases of self-respect. These are compounded into an index of primary goods (TJ: 54, 80; PL: 324–331). Rawls holds that self-respect is the most important primary good since, as he notes, few things seem worth doing if persons have little sense of their own worth or confidence in their abilities to pursue their life plans (TJ: 386). Being regarded and treated by others as a free and independent person of equal status with others is crucial for one's self-respect. FEO and DP ensure that all citizens are socially and economically independent, and that no one is subjected to the will of another. Citizens can then respect each other as equals (Freeman, 2019). Van Parijs notes that the DP is understood in terms of “social and economic advantages” of individuals and their lifetime expectations. What matters is not that the least advantaged should occupy the social position in which their lifetime prospects are “as good as they can sustainably be”, but that they should all have access to it (Van Parijs, 2003: 215-6).

### **Ideal of Democratic Equality**

Rawls discussed three interpretations of the second principle: natural liberty, liberal equality and democratic equality (TJ: 57). System of natural liberty is grounded in a background of equal liberty and a roughly free market economy (regulated as to maintain efficiency). It requires only formal equality of opportunity, namely that “careers are open to talent” for those “able and willing to strive for them”. Rawls holds that formal equality is insufficient to eliminate unfairness since it does not regulate the effects of “accidents and good fortune” and

unjustifiably permits that distributive shares are improperly influenced by morally arbitrary factors (TJ: 62-63). Liberal equality aims to correct for this issue by combining the requirement of “careers open to talents” with the condition that citizens should have a fair chance to attain positions of advantage. Those with the same level of talent, ability and willingness to use them should have roughly the same prospects for achievement regardless of their social background. Liberal egalitarian regimes aim to mitigate the influence of social contingencies on distributive shares by preventing excessive accumulation of wealth, redistribution, and through various public provisions and services. Rawls argues that liberal equality is also insufficient to eliminate unfairness because it still allows that distributive shares are improperly influenced by the outcome of “natural lottery” and distribution of abilities and talents (TJ: 63). According to Rawls, if we are concerned about the influence of social contingencies on distributive shares, then we should also be concerned about the influence of natural chance (TJ: 64). Thus, liberal equality should be supplemented by further principles which mitigate arbitrary effects of natural lottery. For Rawls natural distribution is neither just nor unjust. What is just and unjust is how institutions deal with these facts (TJ: 87). Rawls does not believe that we should “try to even out handicaps” (by some principle of redress) in order to eliminate natural inequalities in talents (TJ: 86-7). Natural inequalities are dealt by arranging the basic structure so that these contingencies are to the greatest benefit of the least advantaged. Democratic equality is achieved through FEO and DP. (TJ: 65).

## **2.2. The Stability Requirement**

Rawls's theory develops in four stages. The choice of principles of justice is the first stage. The second stage is the “constitutional stage” in which institutions are selected in accordance with chosen principles while taking into account actual conditions and historical legacies of societies. The working of the selected institutions leads to further social decisions and legislation in the “legislative stage”. Before proceeding to the constitutional stage, the issue of stability of the chosen principles must be addressed (TJ: 124, 465). Rawls holds that an important feature of a conception of justice is that it should generate its own support and promote the development of the corresponding sense of justice (TJ: 119). The parties in the OP must take into account “relative stability” of a conception of justice. They should consider the degree to which a conception describes an achievable and sustainable system of social cooperation, and if the institutions of such a society will generate citizens' willing compliance and engage their sense of justice (Freeman, 2019) It should be considered whether a society regulated by justice as fairness will be more stable compared to societies based on alternative conceptions. Rawls argues that, other things equal, the parties will adopt the most stable scheme of principles (TJ: 436). Although the “criterion of stability is not decisive”, if the parties find that a conception is unworkable given the limits of the human condition, this would force a reconsideration of their initial choice (TJ: 399, 472; Gaus, 2014: 236).

### **2.2.1. Rawls's Congruence Argument**

Analysis of stability in *Theory* has two parts. The first part addresses whether citizens living under justice as fairness would develop an effective sense of justice. Rawls sketched an account of moral psychology and moral development to show how they would (TJ: §§71-75). Even so, Rawls realized that a well-ordered society could be confronted with “hazards of the generalized prisoner’s dilemma” in which each person, although acknowledging the collective

rationality of acting on the principles, may be tempted to defect in her own case (TJ: 296, 435). That is, if individuals reason from “the self-interested view” and their own good narrowly defined (leaving out the good of acting justly), and if their rational good regularly “runs counter” to the demands of justice, they may find that acting on their sense of justice is very costly for them. Thus, they may start resenting their sense of justice and may be tempted to turn their backs on their sense of justice or become alienated from it (TJ: 295). The second part of Rawls's argument was to show that conceptions of the rational good in a society would be such that people would typically not be alienated from their sense of justice. What Rawls wants to argue is that stability would be achieved for the right reasons and not merely established through coercion or indoctrination. The aim was not only to show that people would develop an effective sense of justice (which could be achieved through indoctrination) but also that they would have good reasons to affirm this sense of justice (Scanlon, 2003: 158; Gaus, 2014: 239). Namely, that acting justly is consistent with individuals' rational good. Rawls's congruence argument, based on his “thin theory of the good”, involves four main arguments: (1) the argument from the good of community, (2) the argument from justice and friendship, (3) the Kantian congruence argument, and (4) the argument from the unity of self (Gaus, 2014: 241). The crucial part is the Kantian congruence argument, which appeals to a “special feature of our desire to express ourselves as moral persons” (TJ: 503). Rawls argues that the desire to express our nature as free and equal moral persons is simply the desire to act justly (TJ: 501). Acting justly expresses our nature as a free and equal rational being, which is an important element of our good (TJ: 417). The good of expressing our nature is equivalent to a desire to treat our sense of justice as supremely regulative in our life. Rawls maintains that only a life plan consistent with our sense of justice can provide the basis of a unified self. The self is not unified through the pursuit of happiness or any other end, but through a rational plan which each person develops through her deliberations in accordance with the



principles of right (TJ, §85; Gaus, 2014: 242). Rawls also argues that, once principles of justice are identified, the knowledge of what is right then constrains our understanding of what is good (TJ: 382; 494). A life of injustice then could not possibly be good whatever other advantages it may possess and thus maintaining a sense of justice is good for a person (TJ: 498). The best life for members of a well-ordered society would include a devotion to act upon the principles of justice (TJ: 382-3). In general, stability test in *Theory* is understood as population stability. As Gaus notes, the parties do not consider whether citizens will develop the appropriate dispositions, but whether a well-ordered society would. Therefore, they are making a population-level judgment (Gaus, 2014: 237). Rawls's aim, according to Weithman, was not to show that every person will have a stable disposition to act on justice, but that a well-ordered society has such a general disposition (Weithman, 2010: 58, 66; TJ: 504).

### **2.2.2. Political Liberalism**

Rawls later acknowledged that there are serious problems for the stability argument as presented in *Theory*. The problem was the claim that a well-ordered society would come to embrace justice as fairness as a “comprehensive philosophical doctrine” which is unrealistic once “the fact of reasonable pluralism” (henceforth, FRP) is taken into account. Pluralist societies are characterized by deep disagreements on fundamental moral, philosophical and religious issues and people hold many different comprehensive views. Disagreements arise because people, when deliberating about moral and political issues, emphasize different aspects of questions and employ different methods of investigation and thus come to different and irreconcilable answers (PL: 54-8). As Gaus notes, disagreements continue because the evidence is often conflicting and difficult to evaluate, and even when we agree on relevant considerations we often weigh them differently (Gaus, 2014: 242). Rawls calls this fact of human reason “burdens of judgment” and maintains that FRP is “a permanent feature” of democratic societies (PL: 216-7). FRP generates problems for Rawls's congruence argument

because it is based on the thin theory of the good, which as Gaus notes is “not really all that thin”. For Rawls's congruence argument to hold a well-ordered society would have to maintain an overwhelming consensus on the full theory of the good, including justice as fairness and the Kantian comprehensive view (Gaus, 2014: 242). Rawls realized this was unrealistic, so his aim was to accommodate FRP into the argument. The focus is on the question how people could cooperate despite subscribing to “deeply opposed” although reasonable comprehensive doctrines (PL: xviii). The answer is, cooperation becomes possible “when citizens share a reasonable political conception of justice”, which gives them a basis for public discussion on fundamental political issues (PL: xx–xxi). Rawls holds that people, despite differences in their comprehensive views and many disagreements, would still be able to agree on a range of issues and principles required for the well-functioning of society's basic structure. Rawls still maintains that fundamental disagreements in pluralist societies are unbridgeable and we are faced with “*intractable struggles*” and “*irreconcilable conflict*” of “*absolute depth*” (PL, xxviii, 36-7). Rawls's strategy in *Political Liberalism* was to show that people would have reason to affirm a sense of justice based on justice as fairness no matter what reasonable comprehensive view they come to hold (Scanlon, 2003: 159-160).

Rawls holds that justice as fairness is suited to bridge the pluralism of liberal societies and would ground an overlapping consensus (henceforth, OVC). Stability can be achieved since the principles of justice are developed from public and shared ideas of a society as a fair system of cooperation and of citizens as free and equal (PL: 90). Stability is possible when reasonable doctrines in an OVC are affirmed by active citizens and the requirements of justice are not too much in conflict with citizens' essential interests (PL: 134). OVC is contrasted with a *modus vivendi*, which is understood as a consensus based on convergence of interests, an outcome of political bargaining. Rawls's concern was that if principles of justice are chosen through negotiations between existing comprehensive views, or were derived from

agreements based on existing balance of power, their content would be affected by the existing balance of power between comprehensive views (PL: 142). The issue with *modus vivendi* is that people adhere to it for self-interested reasons, which means that its terms of social cooperation reflect the balance of power between factions making them subject to renegotiation as the balance shifts. Since the balance of power on which a *modus vivendi* rests can be uncertain, long-term stability would always be in question. In contrast, an OVC is a moral conception to which people subscribe for moral reasons, hence its adherents will not withdraw their support if the relative strength of their views becomes dominant (PL: 147-8).

Rawls notes that *Political Liberalism* has the same structure as *Theory*, only the last step is different since it has to be shown that justice as fairness can ground an OVC (PL: 78, 140-41). Since justice as fairness cannot be derived from any controversial comprehensive conception or the thin theory of the good (PL: 40, 140), it must be constructed from fundamental ideas that “are present in the public culture” (PL: 78, 7-8). Starting from “a widely shared public and political culture”, Rawls assembles certain fundamental ideas that would serve as the basis in constructing the set of political values which is independent of any comprehensive doctrine (PL: 98). Re-interpreted values and ideas from *Theory* are then moved from the “comprehensive good” set into the “political set” of values (PL: 178-90). Assessment of stability now proceeds through the comparison of the political and comprehensive set of values (PL: 38, xxiii; JF: 187). Rawls’s revised stability argument is that values of these two sets, taken together, endorse conformity to political conception of justice as fairness. Therefore, a well-ordered society regulated by justice as fairness can be stable. According to Gaus, the parties are still making a population-level judgment, which means that it is not required that every reasonable comprehensive doctrine participates in an OVC. Rather, population stability only requires “sufficiently wide” support or the support of large majority of reasonable comprehensive doctrines. Since Rawls placed many weighty values into the

political set, it can carry most of the weight of demonstrating stability insofar there is no radical conflict with reasonable comprehensive conceptions (Gaus, 2014: 244-6; PL: 39). Rawls does not aim to demonstrate that justice as fairness will be stable, or that an OVC will occur, rather only argues that the freestanding argument allows for it (PL: xlvii-viii).

### **2.2.3. Public Justification**

Rawls argues that the aim of justice as fairness is not metaphysical or epistemological, but practical. Therein, “it presents itself not as a conception of justice that is true”, but as one that “may be shared by citizens” as “a basis of a reasoned, informed, and willing political agreement” (Rawls, 1985: 229). The unity of social cooperation depends on citizens agreeing to its notion of fair terms of cooperation, which are grounded in the ideal of mutual respect and reciprocity among free and equal citizens. The alternative to willing political agreement is unwilling and resentful compliance or resistance and civil war (PL: 301). Only a political conception of justice that all citizens may reasonably be expected to endorse can serve as a basis of public reason and justification (PL: 137). If citizens cannot sufficiently agree on a political conception of justice, at least in matters of basic justice and constitutional essentials, to regulate their societies and serve as a basis for public justification, then coercion will have to be applied for reasons citizens cannot reasonably accept. This would in important ways constitute a denial of their status as free and equal citizens (PL: 68, 90; TJ: 236). Conception of justice grounded in some comprehensive view cannot serve as a public standard of justification since citizens who do not share this view will have no reason to accept it. Public justification must be grounded in shared political values that all citizens publicly recognize as true. Rawls emphasizes that public justification is not simply a valid argument. It must be acceptable “not only to our own considered convictions, but also to those of other” (JF: 27).

In *Reply to Habermas* (1995), Rawls further elaborates on public justification. Justification occurs in three stages. The first stage is the freestanding argument from the OP, which is only a *pro tanto* justification since it is based on the freestanding political set. The next stage is “full justification” which is carried out by individual citizens on the basis of their non-political set of values (PL: 386). The final stage is public justification which occurs when all reasonable members of a political society “carry out the justification” of the shared political conception by embedding it in their comprehensive views (PL: 387). Rawls argues that from public justification arises “stability for the rights reasons” since, if achieved, there would be public knowledge that each citizen endorses a political conception of justice. Thus, this conception would be seen by all citizens as fully justified on both sets of values (PL: 388-9). Gaus notes that this elaboration introduces the idea of an individualized OVC instead of the population-focused OVC which was present in Rawls's previous arguments. Each reasonable citizen now must affirm principles of justice on the basis of both political and non-political set of values. If some reasonable citizens cannot affirm them on the basis of both, then these principles would not be justified to them. This is a more demanding account of stability since it requires an individualized OVC of all reasonable citizens; something not previously required. The shared political set still does most of the work since it contains many weighty values (Gaus, 2014: 246). However, according to Gaus, in the paperback edition of *Political Liberalism*, Rawls acknowledged that FRP and burdens of judgment apply to the political conception as well (and not only on diversity of comprehensive conceptions) (PL: xlvi-xlvii, li-lviii). Since FRP and burdens of judgment also “infect” the political set, appeals to justice as fairness cannot be required to justify political actions in matters of basic justice and constitutional essentials (Gaus, 2014: 247-8). Therein, the principle of liberal legitimacy and public reason become prominent since we have to justify our actions to others and this justification must take into account FRP as applied to the political set as well (PL: 392-3).

#### **2.2.4. Liberal Legitimacy**

Rawls defines legitimacy in terms of reciprocity and argues that the exercise of political power is fully justified only when it is exercised in accordance with a constitution which all citizens may reasonably be expected to endorse in light of principles and ideals acceptable to “their common human reason” (PL: 137). Exercise of political power is justified “only when we sincerely believe that the reason we offer for our political action may reasonably be accepted by other citizens” as justified (PL: xlv, 393-4). We need to explain to each other how the proposed principles and policies can be supported by political values of public reason (PL: 217). Public reason provides guidelines for an appropriate justification (PL: 225-6, 243). The idea of public reason holds that matters of basic justice and constitutional essentials (and only these matters) are to be settled by appeal to shared political values which everyone in the society can reasonably affirm (PL: 214-5). The parameters of public reason are defined by reasonable pluralism, meaning that public reason does not aim to address or accommodate unreasonable persons and doctrines as to justify laws and public policies. Unreasonable doctrines, as Freeman notes, could not be affirmed by reasonable citizens who aim to justify their actions through reasons that other citizens can accept (Freeman, 2003: 40). Rawls explicitly states that the content of public reason cannot be restricted to justice as fairness (or any conception). Its content is determined by a family of reasonable political conceptions of justice (PL: li). Freeman agrees with Rawls that no list of necessary and sufficient conditions can exhaust the meaning of the concept of “reasonable”. Its meaning “can be revealed only by its uses” clarified by other concepts and principles. These insights can then be used for other clarifications and to develop a political conception of justice (Freeman, 2003: 32). Such an approach, according to Rawls, is necessary since “the content of the reasonable” can only be specified by the content of a reasonable political conception of justice (PL: 94). Rawls characterizes reasonable political conceptions by three

main features: (1) they must include a list of basic rights, liberties, and opportunities; (2) prioritize these rights, liberties and opportunities over concerns for the general good, economic efficiency and perfectionist values; and (3) provide measures that ensure for all citizens adequate general-purpose means required for them to effectively use their freedoms (Rawls, 1999c: 581–3). Assigning priority to basic rights is necessary to protect the status and moral powers of all citizens. Without it, basic rights or opportunities of some citizens could be sacrificed for the sake of general good, economic efficiency, etc. (PL: 310-323). The same would be true if opportunities were only formal. Hence the need to ensure the social conditions of freedom through some general-purpose means required for the effective use of freedom (PL: 324-331). Regardless of the actual content of public reason, when some fundamental question is resolved by public reason, “the answer must be at least reasonable, if not the most reasonable, as judged by public reason alone” (PL: 246).

On the Rawlsian understanding, according to Estlund, political legitimacy does not require conformity to single complete conception of justice. This is because it does not specify the terms of equality beyond what is required for a political constitution. Exercise of political power is justified insofar the constitution guarantees equal civil and political liberties to each citizen which can be specified with relatively small variations. The principle which regulates socio-economic inequalities can vary to some extent without violating the principle of legitimacy (Estlund, 1996: 72). Different conceptions of justice can satisfy these core requirements, and Rawls argues that there are various reasonable conceptions that could provide the content of public reason. Seeking a fair distribution of benefits and burdens and treating others as free and equal are crucial elements in establishing a conception’s reasonableness (JF: 191; Rawls, 1999c: 578-9). The criterion of reciprocity is used as the “limiting feature” of different reasonable conceptions (Rawls, 1999c: 581). Even so, we still have to determine how to interpret, organize and weigh various rights, liberties and

opportunities which can be done in different ways while remaining committed to the criterion of reciprocity. In this regard, Rawls notes that the balance of political values and reasons must not only be reasonable, it must also be “one that can be seen to be reasonable by other citizens” (PL: 243). According to Boettcher, arguments made in public will often, in addition to appeals to basic values of a political conception, involve references to other ideals, social goals and to empirical and common-sense judgments. For example, debates on the scope of redistribution may involve questions of feasibility, efficiency and other considerations which have to be weighted alongside the values of a political conception. The determination of which political conceptions are reasonable, and which is the most reasonable, depends in part on the judgments of actual citizens (Boettcher, 2004: 611). In conclusion, according to Freeman, Rawls's stability requirement states that the principles of justice and the corresponding regime should generate stability for the right reasons. Stability should be achieved by gaining the willing support of citizens and a just society should endure not simply as a *modus vivendi* or through coercion. Stability for the right reasons requires that people support a just society for moral reasons (Freeman, 2019).



### **2.3. Institutional Framework**

The main problem of justice is the choice of an appropriate institutional regime since the principles of justice apply to the basic structure of society (TJ: 242). Rawls lists five broad institutional regimes: (1) laissez-faire capitalism; (2) state socialism with a command economy; (3) welfare-state market capitalism (henceforth, WSMC); (4) liberal market socialism (henceforth, LMS); and (5) property-owning democracy (henceforth, POD). The first three regimes violate principles of justice as fairness, leaving LMS and POD as the only eligible regimes (JF: 136-7). Rejection of laissez-faire capitalism and state socialism is fairly uncontroversial among liberals, so I will not dwell on it. Laissez-faire capitalism allows extreme inequalities and cannot ensure FEO and DP (or the fair value of political liberties) (JF: 137; TJ, §17). State socialism is rejected since it violates citizens' basic rights and liberties and due to its economic inferiority to market-based alternatives (JF: 138). All real-socialist regimes systematically violated individuals' basic rights. History also demonstrated that no centrally planned economy managed to maintain a well-functioning economy. Thus, due to inherent problems with centrally planned economies, FEO and DP would not be satisfied either. Social benefits of market-based economy and concern for economic efficiency, although not always fully appreciated, are among the crucial reasons why state socialism is rejected. Rawls argues that while "the market is not indeed an ideal arrangement" its worst aspects can be removed given appropriate background conditions of justice. If so, market economy is consistent with justice (TJ: 239). Compared to non-market alternatives, market economy enables us to secure greater benefits to the least advantaged. The market establishes a structure of incentives that encourages entrepreneurs for additional investments, which significantly increases the prospects and expectations of the worst-off (TJ: 68). System of competitive markets also contributes to effective decentralization of economic power (TJ: 241). The market system has an important, if not essential, role in Rawls's conception,

although not for maximizing economic efficiency or growth (and not in absence of appropriate background conditions of justice). Rawls has little sympathy, however, for existing capitalist regimes, even when combined with a reasonably robust welfare state.

Rawls explicit rejected WSMC as being inconsistent with justice as fairness. Such “explicit” may seem strange since, as O'Neill notes, institutions and policies which have done most to advance social justice, i.e. progressive taxation and income redistribution, are all associated with welfare states (O'Neill, 2012: 77). Notwithstanding their relative success, Rawls held there are significant structural limitations which prevent WSMC from adequately realizing justice. The issue is that WSMC may allow larger inequalities in capital ownership and wealth, which would enable the wealthy to control the economy and indirectly political life (JF: 137). Therein, according to O'Neill, even if WSMC secures equal opportunity and compensates the less advantaged in terms of income, it would still have difficulties in guaranteeing the fair value of political liberties in conditions of greater wealth inequalities (O'Neill, 2012: 77-78). As noted by Little, Rawls also expressed significant mistrust of the value system created by capitalism. He refers to the world “bankers and capitalists” want to create, one based on acquisitiveness and pursuit of profit, as being incompatible with a truly human life. This “capitalist worldview” incentivizes accumulation of wealth and meaningless consumerism which override individuals’ ability to construct a meaningful life plan (Little, 2014: 520). A just Rawlsian society, as O'Neill notes, cannot be one in which the political agenda and economic life were determined by capitalist interest (O'Neill, 2012: 76). Realization of justice as fairness requires a more systematic transformation of the basic structure and modern economies (Williamson, 2012: 6).

### ***2.3.1. Property-owning Democracy***

LMS and POD share many core features. Both aim to comprehensively restructure patterns of ownership existing within modern societies through systematic redistribution of capital ownership, considerable economic regulation and limits on private property rights. Although both regimes are market-based systems, greater emphasis would be placed on democratic decision-making and political coordination. In contrast to liberal regimes, the market is restrained to its allocative role, while its distributive function would be significantly restricted (TJ: 242). The main difference relates to formal ownership structure over productive property. LMS recognizes only different forms of collective ownership (with possibly allowing some private ownership); while in POD productive means remain largely privately owned (with expanded public ownership in certain areas) (Queralt, 2013: 122) Rawls envisions LMS as involving publicly-owned and democratically controlled companies operating within a system of competitive markets (JF: 138). Productive means would be predominantly in public ownership and economic power dispersed among firms similar how political power is shared among democratic parties. Direction and management of companies would be elected by, if not directly in the hands of, its own workforce (JF: 138). As Fisk noted, Rawls's LMS resembles Lange's model (1938). Companies are publicly owned, managers set prices to maximize profits, most of which goes to the public. Allocation of profits between public goods and reinvestment in enterprises are decided democratically, while internal decisions within enterprises are made by workers' councils. Important restriction on democratic decisions is that they must promote economic efficiency (Fisk, 1985: 357). Although several authors advocated for some version of LMS<sup>1</sup>, discussion remains focused on POD. Rawls himself spent significantly less time on discussing the details of LMS than on POD.

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<sup>1</sup> Most notable proposal is John Roemer's Coupon Market Socialism (1994, 1995)

Despite Rawls's explicit rejection of WSMC regimes, POD and WSMC share many common features. The basic institutional structure of POD involves a constitution protecting basic rights, a large public sector providing a suitable social minimum and public goods, and a market-based economy (adequately regulated and used primarily for purposes of allocation of resources, not distribution) (JF: 145). Regarding productive ownership, POD is envisioned as consisting of (expanded) public and (predominantly) private ownership, with capital ownership being widely dispersed. The government is assigned an enhanced regulatory, corrective and investment role, including an active role in dispersing ownership and wealth. Compared to WSMC, greater emphasis is placed on treating deeper structural inequalities, especially with regards to dispersing ownership and limiting intergenerational transfer of advantage. Another distinction is in the general aim of public provisions and redistribution. According to Rawls, the main aim of WSMC is to ensure a decent standard of life (meeting everyone's basic needs) and that citizens are protected against "accident and misfortune", i.e. through universal healthcare and unemployment benefits. Rawls holds that such strategy does not tackle deeper structural inequalities. In absence of background justice, WSMC may sustain a "discouraged and depressed underclass many of whose members are chronically dependent on welfare"; an underclass of people which "feels left out and does not participate in the public political culture" (JF: 140). O'Neill argues that, due to deeper structural inequalities, recipients of ex-post transfers may see themselves as passive beneficiaries, not as free and equal citizens with their own valuable life plans and of equal standing with fellow citizens. They may see these transfers as the source of their diminished status and as the mechanism which undermines their self-respect (O'Neill, 2012: 89). POD would still provide (through income supplements) for people's basic needs when necessary. The primary aim, however, is not simply to assist those who lose out through accident or misfortune, rather to place all citizens in a position to manage their own affairs on a footing of a suitable degree of

socio-economic equality and benefit fairly from social cooperation (JF: 138). Redistribution of wealth, according to Freeman, is not designed to promote individuals' welfare, rather to promote their independence and establish an environment in which citizens cooperate as equals (Freeman, 2007: 104). Its purpose is to provide a degree of equality required to prevent concentration of power which would undermine the fair value of political liberties and FEO (TJ: 277) and “to secure the institutions of equal liberty” and “the fair value of the rights they establish” (TJ: 279). The aim is to restructure existing patterns of ownership and control as to reduce the likelihood of social domination and loss of equal status. The main distinctive feature of POD is the goal of dispersing capital ownership and wealth as widely as realistically possible, with citizens controlling substantive and broadly equal amounts of productive capital, both human and non-human capital (O'Neill, 2012: 80). The focus is not on ex-post redistribution of income to the less advantaged, but on ex-ante redistribution and ensuring widespread ownership of capital (productive means) and human capital (education and trained skills) which individuals “bring to the market” at the beginning of each period, all this against a background of FEO (JF: 139-140). It is envisioned that workers would derive part of their income from capital ownership, i.e. through worker-owned companies (Freeman, 2007: 106) and/or mutual-investment funds (Williamson, 2012: 237). The overarching aim is not merely to prevent people from having too much wealth and economic power via ex-post redistribution. Rather, to ensure “a more equitable pre-tax distribution” by placing restraints on accumulation and significantly limiting intergenerational transmission of advantage, thus narrowing inequalities from both sides and maintaining residual inequalities within narrow limits. Although allowing private productive ownership and some inequalities in wealth, POD is envisioned as fundamentally different from WSMC since there would be no sharp division of society into owners (wealth-holders) and non-owners (non-wealth-holders). All citizens would have effective access to productive wealth and its benefits (Williamson, 2012: 226).

### Core Institutional Features

Institutional Feature	Aim	Method
<b>Wide dispersal of capital ownership</b>	Ensuring that individual citizens control productive capital (and possibly to have the opportunity to control their own working conditions)	(1) Alterations in distribution and effective control of <i>existing</i> forms of capital;  (2) Using public funds to provide capital assets to individuals and to encourage creation of new forms of productive capital (widely distributed from the start)
<b>Blocking the intergenerational transmission of advantage</b>	Limiting transfer of largest inequalities of wealth from one generation to the next	Significant estate, inheritance and gift taxes
<b>Safeguards against corruption of politics</b>	Guaranteeing fair value of political liberties by limiting the effects of private and corporate wealth on politics	Campaign finance reform, public funding of political parties, public provision of forums for political debate, publicly funded elections

(O'Neill, 2012: 81; JF: 149-150)

According to Williamson, POD consists of two distinctive core pillars: (1) systematically redistributing wealth away from the top 1% (or top 0.1%) of households and (2) establishing mechanisms by which households could come to control meaningful assets (Williamson, 2012: 296). Williamson notes three general strategies how wide dispersal of wealth could be achieved. One strategy is to engage in one-time, large-scale redistribution and alter the distribution of assets as quickly as possible. The second strategy, favored by Rawls, is to implement a robust scheme of taxes, especially on wealth, estates and inheritance, which

would level out inequalities over time. The third approach would focus less on redistributing existing wealth and more on ensuring that new wealth is produced and distributed in a more equitable manner from the start. In practice, all three strategies may be required if POD would be established within reasonable time frame (next 25 years) (Williamson, 2012: 227).

### **2.3.2. *Williamson's Asset Scheme***

Williamson proposes that each household should have access to roughly \$100,000 (in current dollars) in net assets. The \$100,000 target applies to households with two adults. Thus, each adult would have access to \$50,000 in publicly provided assets. The intention is to make these assets available to all adults (not just those under age 18) and to adjust upwards the amount over time. The scheme is envisioned as a complement to universal social insurance and generous public provisions. Its aim is to provide citizens access to a substantial bundle of assets as to provide long-term security, equalize their life chances, foster their independence and capacity to pursue their life plans. Assets should be diversified both as an assurance against “losing all” and to promote the full range of independence and freestanding associated with ownership of property. Williamson proposes that these assets should be diversified over five principal platforms: \$20,000 in cash assets (\$15,000 in an unrestricted fund, \$5000 in a restricted emergency fund); \$10,000 for housing acquisition; and \$20,000 in ownership of productive capital (\$10,000 in unrestricted investment capital, and \$10,000 consisting of non-tradable stock coupons. The purpose of universal cash assets is twofold: (1) to enable citizens to undertake investments and risk they otherwise might not be able (i.e. investments property acquisition, specialized education, etc.); and (2) provide an additional security cushion in cases of prolonged economic distress or incursion of unexpected expenses not covered by other forms of social insurance. Since cash assets are not intended as a substitute for other social provisions, most of cash assets (\$15,000) should be unrestricted, beginning in stages at age 18. Access to the emergency fund might require filing of a

statement of need, meeting with a publicly provided financial adviser, and signing a statement indicating understanding that these funds cannot be replenished if used (except through gradual depositions into all accounts). Access to accumulated interest on the amount in this fund can remain unrestricted. At suitable age (age 35), citizens would acquire the right to deplete the emergency fund unconditionally. The aim of providing housing assets is to make home ownership accessible to all, ending non-voluntary renting. Williamson's proposal is that the state makes available to each adult a one-time grant of \$10,000 for making a down payment and access to matching funds (1:1 basis) up to \$5000 (Williamson, 2012a: 230-234).

All citizens at age 18 would acquire access to a universal capital fund, consisting of two components each initially capitalized at \$10,000 per person. The first fund involves an unrestricted investment capital which would be usable for traditional high-risk investing. The only requirement is that the funds are invested in productive enterprises (and not used for speculation). The idea is to give individuals a real chance to become entrepreneurs, business owners or investors in enterprises directly or preferably through mutual funds (as to protect citizens from poor investments). Individuals can also choose to save the initial funds and accumulate interest as to make larger investments later on, or join with their co-workers to acquire ownership and become worker-owners (something the state should encourage). Even though many may lose their initial investments, the idea is that, given progressive recapitalization of all funds, they would be able to accumulate sufficient savings for another attempt (Williamson, 2012: 237). The second fund resembles Roemer's coupon market socialism: Citizens would be issued non-tradable coupons valid for buying shares in a series of publicly owned mutual funds. These mutual funds in turn would buy shares of publicly traded corporations, and return annual dividends to coupon holders. Citizens would be able to shift their coupons from one public trust fund to another, but would not be able to redeem the coupons for cash. Citizens would also be allowed to transfer funds from the entrepreneurial



fund (but not private assets) to the coupon fund. The purpose of this fund is: (1) to guarantee each citizen a non-losable stake in productive capital (preferably through mutual funds) and, at least, a modest income stream from corporate dividends; and (2) to disperse ownership and enable that everyone can acquire a meaningful share of the society's productive capital (ibid.). Williamson envisions these assets should be semi-universal in nature. They should be provided to all citizens irrespective of their income. Beginning at age 45 citizens should be taxable on a steeply progressive scale according to their net accumulated assets, i.e. above the threshold of \$1 million net assets. Citizens would receive new deposits at a lower rate after age 45. The idea is to prioritize funneling assets to younger people since then assets might have a larger impact on their life choices. After age 65, citizens would not receive new deposits. The public should continue capitalizing each account at the annual rate of (at least) \$2000 for those aged 44 and below, and at the rate of \$1000 for those aged between 45 and 64. If the system works as intended, people would accumulate more than the starting target of \$50,000 in assets (Williamson, 2012a: 231-4).

### ***2.3.3. Ownership Rights and Economic Liberties***

On the Rawlsian account only two economic freedoms are protected as basic rights, personal ownership and freedom of occupation choice (against a background of diverse opportunities) (PL: 308). Personal ownership is justified on the grounds that such a right allows “a sufficient material basis for personal independence and a sense of self-respect”, which is essential for the adequate development and exercise of moral powers. Having this right and being able to effectively to exercise it is one of the social bases of self-respect (JF: 114). Rawls emphasized that citizens have no basic right to productive ownership (either individually or collectively). Other economic freedoms, prevalent in classical liberalism, such as freedom of trade and contract are not assigned any special protection since they are not seen as necessary for citizens' moral power (JF: 114). This does not mean that private productive ownership rights

cannot be justified. Both LMS and POD would accommodate some modest productive ownership rights, regulated by the second principle. The basic right of personal ownership, according to Wells, is only a right to exercise limited property rights over housing and personal possessions. It is only a modest right which constitutes a weak constraint on the rules governing ownership, production and transfer of material goods (Wells, 2019: 681). As van Parijs notes, this right is fully consistent with tax institutions that would widely disperse wealth and even with liberal regimes in which all means of production are publicly owned. Such a right excludes only radical forms of communism in which all consumption goods would be held in common as well (Van Parijs, 2003: 224; TJ: 248). Rawls holds that individuals have no strong claim of justice to distributive shares earned on the market through their efforts (TJ: 61-65.) and rejects the idea that economic rewards should be proportional to moral desert (TJ: 88-9; 273-277) or to individuals' marginal contributions to society (TJ: 270-271). Rawls argues that "there is a natural inclination to object" that the more fortunate deserve their greater advantages irrespective of whether they benefit others (TJ: 103). This conception of individual desert is mistaken since individuals do not "deserve" their place in the distribution of native talents or their starting social position (TJ: 104). The claim that people deserve what they achieve through their own efforts is also problematic since even the willingness to exert effort may largely be determined by social and natural contingencies (Sandel, 1998: 71). Rawls holds that we should regard the distribution of natural talents and greater abilities as a common asset (TJ: 87) to be used for common advantage (TJ: 92). According to Sandel, persons are not seen as owners (in the strong sense) but merely as the repository of talents and abilities that happen to reside in them. This enables Rawls to maintain that persons have no strong moral claim on advantages derived from their utilization and cannot even be seen as privileged recipients (Sandel, 1998: 70-71, TJ: 101-2). This is not to deny individual entitlements altogether. Emphasis is on the distinction between desert and

legitimate expectations. Desert is a moral concept logically prior and independent of public institutions and their rules. Entitlements are claims that only arise under the rules and qualifying conditions of already established institutions specifying legitimate expectations (TJ: 84). Legitimate expectations, and corresponding unequal economic rewards, are justified on incentive-based grounds. Since it is in the general interest that people cultivate and exercise their talents (rather than not), social institutions should be arranged to provide resources for their cultivation and incentive for exercise (JF: 158). Income and wealth inequalities are permitted provided they are not too large and are consistent with FEO and DP. Individuals' claim to their better position and advantage is grounded in the legitimate expectations established by public institutions, not in desert (TJ: 103). While individuals are entitled to their fair share in benefits corresponding to legitimate expectations under certain institutions and rules, they are not entitled that these rules, rewarding these particular attributes, are enforced rather than some other. Rawls stresses that there is no basis for such an entitlement (TJ: 104). Whatever entitlements individuals might have are justified only if the appropriate background conditions of fairness are secured (TJ: 61-65). Rawls argues that the concept of entitlement, being derivative from institutions, cannot provide a first principle of justice since it presupposes the existence of already established and qualifying institutions. Thus, it "is irrelevant to the question" how the cooperative scheme is to be designed in the first place (TJ: 103). What individuals are entitled to, according to Nagel, is determined by the rules of the basic social structure, and what the rules should be (including rules of taxation and redistribution) is determined by which system would be most just overall. Only justification of the system as a whole provides moral support for individuals' entitlements. These entitlements have a completely different status from other basic rights, even from the right of personal ownership and freedom of occupation. They are valid only if appropriate background conditions of fairness are secured (Nagel, 2003: 68). On the Rawlsian account,

rights of holding, accumulation and disposition of private property or productive ownership rights are not given any special protection. Private property rights are not valued as an essential part of individual freedom, or as necessary for the development and exercise of citizens' moral powers, rather only as important features of economic systems without which their well-functioning and long-term planning would be impossible (Nagel, 2003: 68-69). Rawls notes that productive ownership rights, including rights of acquisition and bequest, may be justified (depending on existing historical and social conditions). Relative merits of various economic rights are assessed at latter stages when more information about a society's circumstances becomes available. Further specification of these rights is to be made at the legislative stage, assuming that basic rights and liberties are maintained (JF: 114, TJ: 239-242). That said, whatever additional economic rights are granted to citizens, they are not assigned any degree of special protection. Rawls's argument for POD also suggests that the scope of productive ownership rights and entrepreneurial liberties would be modest.

#### ***2.3.4. Institutional Choice***

The choice between eligible regimes is not determined in abstract. Rather, the choice is made by considering which regime best ensures the satisfaction of the DP [and the fair value of political liberties] and can be expected will be to the greatest benefit of the least advantaged (Freeman, 2007a: 49). Rawls's holds that justice could be realized by both liberal socialist and capitalist regimes, depending on prevailing conditions (JF: 138; TJ: 248). The choice between eligible regimes depends on the assessment which regime is most likely to work out best in practice. Considerations of justice are a necessary part of assessment, but not sufficient (TJ: 242). According to Rawls, the choice should be made on the basis of existing historical and social conditions, cultural factors, society's traditions of political thought, and political feasibility (TJ: 242; JF: 114, 139). That is, the choice between eligible regimes is determined by pragmatic considerations rather than considerations of basic justice. Justice only sets

guidelines for a reasonable decision (JF: 139). Although the choice between LMS and POD was left open in theory, according to O'Neill, Rawls's remark that the choice should be made on the basis of society's historical circumstances, cultural factors and political traditions suggests that for Rawls POD would be a more plausible choice, for Western societies at least (O'Neill, 2012: 76). O'Neill also notes that Rawls's version of WSMC, which is contrasted with his preferred ideal regimes, is presented somewhat as a straw-man position. WSMC regimes are described as "rather minimalist, intrepid, and toothless version of a welfare state". Such characterization neglects that significant advancements in social justice in some WSMC regimes, i.e. post-war Swedish Social Democrat governments or British Labour governments, were not achieved only through policies Rawls associates with WSMC, but also through policies associated with POD. Even if existing WSMC regimes have not done enough to disperse capital ownership and wealth, it would be unfair to conclude that WSMC regimes have no interest in ex-ante redistribution of productive assets or wealth (O'Neill, 2012: 89-90). Two points follow from this insight. First, it appears that Rawls's critique of WSMC largely relates to "liberal" welfare states and not to "social democratic" or "corporatist" welfare states. Second, even if POD is superior to liberal WSMC regimes that does not imply that it is superior to all WSMC regimes. All things considered, POD may not be superior (or more stable) compared to well-functioning Nordic-style regimes, which are significantly more market-friendly and allow more room for economic liberties (and somewhat larger inequalities) than it would be allowed in POD. In contrast to Rawls and Freeman, O'Neill acknowledges that many POD-specific aims, including dispersal of capital ownership, can be achieved under certain WSMC regimes even with a relatively inegalitarian distribution of productive assets and wealth. Systematic structural changes and increased dispersal of capital ownership are still necessary if Rawls's principles are to be fully realized (O'Neill, 2012: 93).

### **III Fact-sensitivity and Practical Possibility**

This chapter presents an overview of the ideal vs. non-ideal 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 institutional regime.

#### **3.1. Realistic Utopia**

Rawls developed justice as fairness as a work of ideal theory. Ideal theory involves determining principles that would characterize a well-ordered society in which “everyone is presumed to act justly and to do his part in upholding just institutions” (TJ: 8). Ideal theory assumes full compliance and favorable socio-political circumstances. Non-ideal theory addresses how to proceed in conditions which are less favorable than assumed in ideal theory (“the parties ask which principles to adopt under less happy conditions”) (TJ: 216). Rawls holds that non-ideal theory can only be pursued after ideal theory has been established. Ideal theory provides “the only basis for the systematic grasp” of the problems of non-ideal theory and how to respond to injustice (TJ: 8). Rawls maintained that political philosophy should be realistically utopian and conducted within the limits of practical possibility. Principles of justice are developed under the assumption of favorable but still realistically possible conditions that are “allowed by the laws and tendencies of the social world” (JF: 4). Adequate institutions should be just and effective and should “encourage aims and interests necessary to sustain them” (JF: 136). Given the many difficulties involved in designing, implementing and maintaining effective institutions, we should describe fully workable arrangements capable of gaining support from actual citizens (JF: 136). Within the limits of practical possibility, philosophy can be utopian and describe the best social order that we can hope for (Wenar, 2021). Realistically utopian ideals, as Jensen notes, are those in which our highest aspirations

for a society are balanced by our understanding of what individuals can actually achieve (Jensen, 2009: 168).

Limits of practical possibility under modern democratic institutions, for Rawls, are broadly determined by circumstances of justice (including the FRP) and the requirements of publicity and stability. For example, an ideal that would require consensus on some comprehensive doctrine is seen as practically impossible in pluralist societies (and cannot be publicly justified or pass the stability test). Rawls never fully elaborated on what would be the limits of practical possibility (JF: 5). Still, in order to develop a realistically utopian ideal, we need to know, at least roughly, what would be the limits of practical possibility and what real-world constraints should be taken into account. The notion of a realistic utopia is about sufficient fact-sensitivity, namely, about staying within the limits of practical possibility which is determined by the appropriate balance between idealizations, simplifications, abstractions and relevant real-world constraints. Ideal and non-ideal theory offer different moral guidance and proposals. “Designing justice” for well-ordered societies and maintaining justice in ideal conditions (or favorable conditions) and doing the same for non-ideal societies (and less than favorable conditions) are two different tasks, the latter being significantly more complex. Conclusions on what justice demands may also vary depending on what kinds of idealizations are used. For example, if full compliance and favorable conditions are assumed, then justice would be significantly more demanding compared to theories developed under the assumption of partial compliance. Idealizations can distort normative reasoning and lead into proposals which may be too unrealistic and too demanding for their own good. Estlund argues that unless we are clear on what kind of theorizing is appropriate, we risk that a broader set of possible projects will go unpursued for no good reason (Estlund, 2014: 113). The main question of the ideal/non-ideal debate is how fact-sensitive a theory of justice ought to be,

namely what real-world constraints should be taken into account, at what points of discussion, and to what degree in order for a theory of justice to be considered realistically utopian.

### ***3.1.1. Ideal and Non-ideal Theory***

Valentini (2012) offers a helpful “conceptual map” of the ideal vs. non-ideal debate and distinguishes between three main dimensions on which ideal and non-ideal theories are contrasted. Each dimension involves different questions which are (more or less) in dispute. On the first dimension, ideal theory corresponds to “full compliance theory” and non-ideal theory to “partial compliance theory”. The dispute is whether duties appropriate for situations of full compliance should apply in situations of partial compliance (Estlund, 2014: 127). Valentini notes that some authors questioned whether full compliance theories are appropriate for adequately understanding what is required of citizens in conditions of partial compliance. The issue is, while ideal theory identifies instances of partial compliance, it does not say how to effectively respond to them (Valentini, 2012: 656). For example, persistence of poverty and large social inequalities is less about people not seeing these issues as morally problematic and more about their unwillingness to act on their duties. Under the assumption of full compliance, the solution for these issues is relatively straightforward. The state should implement a robust tax scheme and redistribute wealth more equally. The solution becomes significantly more complex and uncertain if people cannot be expected to endure the burdens of such schemes. While most people will not radically oppose the idea of redistributive taxation or promoting social equality, they are likely to resist significantly higher rates even if that is what ideal justice demands. Growing tax-payer resistance (not to mention tax evasion and avoidance) in all societies clearly demonstrates this issue. Ideal theory condemns unwillingness to comply with the demands of justice, but remains silent on how to effectively deal with it. Non-ideal theorists, as Valentini notes, hold that the relevant question for theories



aiming to effectively guide collective action in actual societies should be how to proceed in conditions of partial compliance in which some are unwilling to do their part (ibid.).

On the second dimension, ideal theory corresponds to end-state theory and non-ideal theory to transitional theory. Ideal theory focuses on determining what would a perfectly just society, while non-ideal theory deals with how this ultimate goal of justice might be achieved. Rawls holds that transitional theory presupposes ideal theory since “until the ideal is identified” transitional theory “lacks an objective” and a referential point for its questions (Rawls, 1999b: 90). In contrast, Sen argues that if the aim is to advance justice in actual societies, then the focus should not be on determining what would make a society perfectly just. According to Sen, end-state theory (“transcendental theory”) is neither necessary, nor sufficient for transitional theory. It is not necessary since what counts as justice-improvements can be determined without identifying an ideal of a perfectly just society. As he says, we do not need to know that Mt. Everest is the tallest mountain to compare the heights of Mt. Kilimanjaro and Mt. McKinley. It is not sufficient since we still need a metric which would enable us to determine how much some states of affairs depart from the ideal (Sen 2009: 98–101). Valentini notes that some authors insisted on the importance of ideal theory in normative theorizing, although not as logically prior to transitional theory. The argument is that we do not want to know only what would make our societies more just, but also what would be a fully just society and what such an ideal demands of individuals. Others insisted on the priority of end-state theory (Valentini, 2012: 661). Simmons (2010) holds that prescribed actions in transitions have to be both morally permissible and likely to be successful. Without ideal theory identifying what counts as permissible and as success, it cannot be determined if transitional proposals satisfy these requirements. Therein, Valentini argues that in addition to feasibility constraints there are also transitional constraints related to “moral costs” of transition from the *status quo* to the desired state of affairs which should be taken into

account. For example, if a just society could be achieved faster through civil war and much suffering, this “faster path” would not be morally permissible. Also, if achievement of some short-term justice-improvements would prevent the achievement of greater justice in the long-run, the moral opportunity costs of lesser short-term improvements would likely be too high. While ideal theory is not strictly necessary to advance justice, it should still influence transitional proposals of how to advance justice (Valentini, 2012: 662).

On the most common distinction, ideal theories are seen as utopian and non-ideal theories as realistic. This dichotomy revolves around the issue of whether factual considerations should constrain normative theorizing and, if so, what real-world facts should be taken into account and to what degree. Valentini notes that we can distinguish “fully utopian” theories, which altogether reject the necessity to place feasibility constraints on normative theorizing, and “realistic” theories, which accept some feasibility constraints. We can also distinguish between more and less realistic theories, depending on how many real-world constraints are taken into account (Valentini, 2012: 654). On a fully utopian account, the core question of justice is predominantly evaluative, not normative. The aim is to develop an ideal of a perfectly just society and evaluate how much existing societies depart from it. No modern theory of justice is fully utopian or extremely fact-sensitive since such a theory would be entirely unworkable in actual societies. G.A. Cohen (2003, 2008) is the most prominent contemporary advocate of the view that principles of justice are independent of factual constraints. However, in Cohen’s view, according to Valentini, justice is only one value among many and, by itself, does not tell us what we should do. In order to develop appropriate “rules of social regulation”, the value of justice must be combined with other values, certain facts and feasibility constraints (Valentini, 2012: 657). No theory is fully realistic or extremely fact-sensitive either. The most realistic normative theory, as Estlund notes, would recommend that people and institutions remain exactly as they are. Since no

author believes that existing societies are already exactly as they should be, all normative theories depart from strict realism and no theory is maximally realistic. Taking all the facts into account would not leave any room for normative reasoning and critique (Estlund, 2014: 132). In short, all theories somehow balance idealizations with certain factual considerations.

### ***3.1.2. Appropriate Degree of Idealization?***

Valentini, following Carrens (1996), suggested that the correct level of idealization (fact-sensitivity) should depend on the specific aims of theorizing. If the aim is to determine how much existing societies depart from some ideal of a perfectly just society, then only minimal factual assumptions have to be made, i.e. moderate scarcity or limited altruism. If the aim is to develop normative principles and proposals which are more likely to be effective given common human flaws, then more real-world constraints should be included. More idealized theories aim to identify the full extent to which existing societies depart from some ideal of a perfectly just society, while more realistic theories aim to develop principles and regimes which are likely to be effective “here and now”. The objection from the “more realistic” perspective is that achievement of perfect justice may be imaginable, but not sufficiently feasible. Specifically, the objection is that the fewer real-world factual constraints are taken into account during the development of principles the more practically ineffective these principles are likely to be. This is because the principles may be designed to respond to situations significantly different from the situation in actual societies (Valentini, 2012: 660). For example, as Valentini notes, from the motivational perspective, relatively fact-insensitive principles may not be very effective, especially if they significantly clash with attitudes predominant in a society. If so, this would raise concerns whether insufficiently fact-sensitive conception of justice could be effectively implemented or would be able to generate its own long-term support. If the aim is to develop principles and regimes, which are more likely to be effective “here and now”, then more real-world constraints should be taken into account

(Valentini, 2012: 659). Placing too much weight on fact-sensitivity involves the risk of taking too many existing real-world constraints, even those imposed by an unjust social structure, as legitimate constraints. Justice may then (more or less) reaffirm the *status quo* since the present situation would be seen as one that can only be marginally improved given real-world constraints. According to Valentini, since relevant facts will vary on a case-by-case basis, it may be impossible to develop a general rule of what should be the correct level of idealization in normative theorizing. What idealizations and facts should be taken into account depends on the aims of the theory in question (Valentini, 2012: 660-662).

Rawls aimed to occupy a middle ground between ideal and non-ideal theory by acknowledging some moderate feasibility constraints. On one hand, Rawls aims to take seriously Humean circumstances of justice, including facts of moderate scarcity and limited altruism, while developing principles of justice. With the evolution of his argument, greater emphasis was also placed on the FRP and burdens of judgments. The choice between eligible regimes is also made on the basis of contingent historical, social and cultural factors and considerations of political plausibility. Appropriate regimes must be fully workable and capable of generating their own long-term support (TJ: 119, 242; JF: 114). Rawls also uses various idealized assumptions and simplifications, in particular the assumptions of full compliance, closed societies and favorable socio-political conditions. While emphasizing the importance of non-ideal theory, Rawls remained focused on ideal theory and discussion about principles of justice in abstraction and devoted less time discussing their application in actual societies. Rawls noted that some authors (“much of conservative thought”) have focused too much on practical and feasibility concerns, criticizing the ineffectiveness of welfare states and their tendency towards waste and corruption. Rawls stresses that his focus is on questions of rights and justice (“leaving others aside”), but acknowledges that practical questions still have to be faced (JF: 136-7). Problems arising in conditions of partial compliance were only briefly

addressed (TJ: 8, 212–213: 215–218, 267, 308–309, 343). Maloberti notes that Rawls selects institutional regimes only by considering their aims and intentions and whether their well-functioning is “sociologically possible” (under favorable conditions). The focus is not on how likely such well-functioning would be in actual conditions, rather on how appealing the ideal itself is. Questions of feasibility are asked only at the basic level. If the demands of justice are not impossible for people and institutions to satisfy, practical concerns about how people and institutions are likely to behave are not sufficient to discredit the ideal of how they should behave. Therefore, insofar justice does not demand the impossible; feasibility considerations should not lower our aspirations (Maloberti, 2015: 575). The issue is Rawls's ideal regimes abstract from various political, economic and social factors that determine their effectiveness, but which must be considered when assessing their appropriateness for actual societies. Rawls's idealizations make the effectiveness of POD highly dependent on these idealizations and favorable conditions, which raises concerns about their well-functioning and stability in non-ideal conditions. The issue is not whether we should have a reasonably fact-sensitive theory, rather what real-world considerations must be taken into account (and to what degree).

### **3.2. Ability and Probability**

Jensen argues that a socio-political ideal should be seen as practically possible if: (1) it is logically consistent; (2) it conforms to physical laws; (3) it presumes world history; (4) it reflects natural human abilities. These conditions are necessary and jointly sufficient for practical possibility, so feasibility assessments of ideals should be based on these criteria. The first three criteria are straightforwardly bivalent (and rarely in focus). History is immutable, while achievable goals must be logically possible and consistent with physical laws. Some features of the physical environment, i.e. location of the continents, are relatively permanent and impose practical limits on ideals (Jensen, 2009: 172). Jensen argues that human ability is

the key factor when it comes to practical possibility. For example, ability explains why the FRP is a relevant constraint since a political order grounded in consensus on a comprehensive doctrine is seen as something beyond human ability to maintain in pluralist societies. At paradigmatic extremes we can be relatively confident about what people can and cannot achieve, but there is a lot of ambiguity in-between. History is filled with both “unthinkable” achievements and spectacular disasters of “realistic” proposals. To clarify the issue, Jensen distinguishes between synchronic and diachronic ability (Jensen, 2009: 171-3).

<b>Synchronic ability</b>	<b>Immediate ability</b>	I can, or I am able to perform X now
<b>Diachronic ability</b>	<b>Direct Ability</b> (first-order ability)	I can perform X later, if not now
	<b>Indirect Ability</b> (second-order ability)	I can perform X later provided that I perform Y first and have the ability to perform Y in one of these three senses

Ideals relying on the exercise of immediate abilities and first-order abilities, according to Jensen, are clearly within the limits of practical possibility, while ideals depending on second-order abilities (especially if complex) are closer to, or beyond, the edge of practical possibility (Jensen, 2009: 175-6). Being either too pessimistic or too optimistic about practical possibility is problematic. Being too pessimistic risks falling into the trap of being too acceptable of the current *status quo* and too willing to settle for less than humans can achieve. Consider, for example, that we want to implement egalitarian justice in societies characterized by significant opposition towards robust distributive egalitarianism. Hard realistic may argue that

it would be practically impossible to effectively implement egalitarian justice in such societies. However, as Jensen notes, consider that a society is able (first-order sense) to implement long-term economic and educational reforms which would make people more open to egalitarian ideas. Society would then be able (second-order sense) to create effective institutions required to implement egalitarian justice. This does not mean that such a complex task is actually possible, but it is not practically impossible (ibid.). However, being too optimistic about practical possibility (as idealists tend to be) risks developing normative proposals that may not be sufficiently effective and well-functioning in actual societies.

### ***3.2.1. Probability of Success***

According to Estlund, opposition towards ideal theories arises from the belief that sound standards of justice must be appropriate to set as practical goals. Since the probability of success is a criterion of appropriate practical goals, it follows that probability of achieving justice should be seen as a constraint on its content. In keeping with the “ought implies can” requirement, if something is beyond one’s ability, then it would not be required. A theory prescribing standards for people that are beyond their abilities would be inappropriate since it imposes impossible standards (Estlund, 2014: 114-6). Estlund distinguishes standards that are impossible to meet and standards that will certainly not be met. The claim that some action (or standard) is impossible can mean two different things: (1) that agents cannot perform it because they are unable to perform it (claim about ability) or (2) that there is no chance agents will perform it (claim about probability). If something will not happen (objective probability is zero), then standards in question would be impossible. However, claims that something is “nearly impossible to do” only mean that it may be extremely difficult, but not actually impossible. Sometimes the low probability of success is indeed due to inability, and other times it only reflects agents’ motives and choices, not actual objective obstacles. Therefore, if something is unlikely, even extremely unlikely, to be achieved does not imply that it is

beyond human ability or would not be required. According to Estlund (and apparently Rawls as well), if moral standards are “sound and true”, and they do not demand the impossible, the fact that people will not live up to them, although they could, can be seen as a defect of the people and not the defect of a theory (Estlund, 2014: 117-9).

Does this mean that feasibility considerations and probability of success are less important for the assessment of ideals and proposals? Not quite. If the aim is only to determine how much existing societies depart from some ideal of a perfectly just society, then actual probability of success is less important. Rawls's aim, however, was not to develop a hopeless aspirational theory (to borrow Estlund's term), rather a realistically utopian regime which could be fully workable in actual societies. While lower probability of success may not discredit the abstract ideal, if the aim is to advance justice in actual societies and develop proposals which are more likely to be effective “here and now”, then probability of their success becomes especially important, if not essential. When confronted with failures of their preferred regime, it's common for its supporters to resort to what Scheffler called the generic defensive strategy. Whenever a regime associated with some ideology runs into serious problems, advocates tend to claim that a society did not subscribe to the correct version of that ideology, or that failures were not caused by deficiencies of the theory, rather inappropriate implementation and/or people's defects. As Scheffler notes, such claims are easy to make and difficult to falsify since it is almost always true that there are different versions of any theory and that societies failed (for whatever reason) to properly implement the preferred version (Scheffler, 2019). We can easily shift the blame for potential failures from theory to people, and failures may indeed be caused by people's defects. Even if lower probability of success is due to people's defects and unfavorable conditions, that is not a valid excuse. On more realistic accounts such defects would have been foreseen and would force reasonable adjustments. Estlund acknowledges that even sound ideal theories can be too idealized. The soundness of



arguments underlying such theories might lead some to pursue demanding standards that will never be achieved, which can be wasteful and even disastrous. Certain institutions which would work as intended if people “lived up to their duties” could make things worse if people are not sufficiently compliant. Theories that would require the pursuit of highly demanding standards which “are not sufficiently likely to be achieved, where the costs of failing are very high” should be seen as too unrealistic (Estlund, 2014: 120).

Ambitious projects might be achieved through complex intermediate steps and changes in existing socio-political conditions (as to make them “more favorable”). Development of such future possibilities requires significant investments, while success is uncertain. Thus, we need to carefully weigh whether large investments into an uncertain future are “worth sacrificing” scarce resources that could be invested into proposals which can be realized with greater probability of success “here and now”. Such cost-benefit assessments, given moderate scarcity, less than ideal conditions and various political disagreements, require that we are not too optimistic about human ability and demands that we make sure our proposals are indeed realistically utopian. Although lower probability may not discredit the ideal itself, probability of regime actually well-functioning is clearly important, if not crucial, when selecting between eligible alternatives. Consider the choice between LMS and robust WSMC regimes. Maloberti argues that choosing LMS over WSMC, even if LMS is practically possible, would be unreasonable if there are valid concerns that LMS has a significantly lower probability of success in realizing justice than WSMC and significantly greater probability of generating undesirable outcomes (Maloberti, 2015: 576-8). The choice between regimes, for Rawls, depends on which regime is “most likely to work out best in practice” (TJ: 242). As noted, Rawls appears to hold that POD is a more appropriate option for Western societies than LMS. That implicit belief can be reduced to perception that, other things equal, POD would have a higher probability of well-functioning in actual societies.

Assessment of theory and proposed regimes also cannot remain unaffected by the fate of previous relevant attempts of their implementation and realization (Scheffler, 2019). Many authors would prefer to start from a clean slate, and distance themselves from historical failures by arguing that ideal regimes should not be compared to historical regimes even if there are relevant similarities. While it is true that we should not confuse ideal-type regimes with real-world regimes (more or less) approximating these ideals, this cannot mean that we should assume away available evidence and past experiences. Most ideal proposals have their “real-world counterparts” and contain strategies which have been attempted before. Thus, it is important to take into account what previous attempts got right and wrong. For example, if we are to re-recommend controversial proposals, i.e. some version of socialism (democratic or otherwise) or laissez-faire capitalism, then we must also offer strong(er) evidence that past problems could now adequately be resolved. Political philosophers should, as Geuss noted, develop a “historical consciousness” that would act as an in-built constraint against abstract, unrealizable utopian projects that are found throughout the field today (Geuss, 2005:179).

### ***3.2.2. Strains of Commitment***

Probability of well-functioning of any regime depends on various factors, including socio-political circumstances, availability of resources and individuals' ongoing willingness to endure the burdens of the implemented regime. Individuals' motivations are a crucial element, with their willingness to endure the burdens of justice depending on their demandingness. All normative theories, as Hooker notes, are demanding to some extent since they require certain sacrifice from individuals (and often conflict with their interests). The demandingness objection is not that normative theories are demanding, rather that some theories demand too much from individuals, i.e. to sacrifice too much of their personal good and welfare or accept too many restrictions on their liberties for the sake of justice. Although unwillingness of individuals to comply with moral duties cannot (as commonly thought) serve as a justifiable

excuse for non-compliance, or prevent assigning these duties, some moral demands can be excessive even if justified and individuals are able to comply (Hooker, 2009: 150-2). Estlund holds that ideal theories which unreasonably demand more sacrifice from individuals (even if not beyond their abilities) than genuinely required are invalid (Estlund, 2014: 120-1). Different principles of justice and regimes will generate different degrees of support and compliance and, as Rawls argued, some principles and regimes can violate the “strains of commitment” by exceeding “the capacity of human nature” (TJ: 153). Considerations of demandingness are crucial for Rawls's stability requirement since the implemented regime should be able to generate its own long-term support, with its stability dependent on whether citizens can be relied upon to uphold just institutions. Neither effectiveness and well-functioning of regimes, nor sufficient compliance (and appropriate motivations) would realistically be possible if requirements of justice are too demanding or excessive. Schmidtz notes that Rawls never intended to demand too much from individuals, either from the least advantaged or from those whose contributions are crucial, so that their compliance becomes unlikely (Schmidtz, 2006: 189). The demandingness objections are often vaguely construed so it is not clear above what threshold theories become too demanding (Hooker, 2009: 158). Regardless of some inevitable vagueness, if we aim to develop a regime that would be capable of generating its own long-term support, we should seriously consider whether demands made on people are indeed reasonable and we can realistically expect their cooperation in upholding just institutions. The more demanding some conception of justice is, the less likely it becomes that people will comply with it, especially if they do not sufficiently agree with its core requirements and aims. While highly demanding conceptions may be fully justified in abstract, what matters are not moral intentions, rather whether the implemented regime would be well-functioning and capable of generating its own long-term support.

### 3.3. Disagreements on Justice

Rawls's later preoccupation was to provide a solution to the problem of stability while taking FRP into account. Namely, that it is possible for citizens with conflicting comprehensive views to be "wholeheartedly devoted" to a political order regulated by justice as fairness (PL: xl). Believing this to be possible among idealized citizens is one thing; showing that it is realistically possible in actual societies, given various disagreements, something quite different. Individualized public justification, if taken seriously, makes this task even more challenging given Rawls's acknowledgment that FRP "infects" the political set of values. Despite the emphasis on FRP, Rawls largely assumes away disagreements on justice and never considers how they may impact the appropriateness of POD for actual societies. However, if the FRP places limits on what is practically possible in modern societies, then disagreements on justice, an aspect of FRP, must also place some restraints on what institutions can be realistically implemented. Ability to uphold justice (without relying on coercion) depends on actual agreements on justice and the corresponding regime. The issue is not the mere fact that various disagreements exist, but what disagreements are relevant for the discussion about justice. Valentini distinguishes four types of disagreements:

<b>Types</b>	<b>Thin</b>	<b>Thick</b>
<b>Reasonable</b>	Persons reasonably disagree about substance, but agree on truth conditions of their claims	Persons reasonably disagree about truth conditions and substance
<b>Unreasonable</b>	Persons unreasonably disagree about substance	Persons unreasonably disagree about truth conditions and substance

(Valentini, 2013: 186)

Under thin disagreement, disagreements are about substance not about the underlying truth conditions. Despite disagreements about substance, there is a broad consensus on what conditions have to be satisfied for claims about justice to be true or false. Thus, while people disagree over policies required by justice in particular circumstances, they agree on conditions that must be satisfied for those policies to count as just. For example, disagreements over redistributive taxation may be about empirical issues regarding its impact on efficiency, not over the notion of redistributive taxation itself. Thin disagreements arise due to burdens of judgment and are on par with most disagreements in natural and social sciences. Under thick disagreement individuals disagree both on substance and the truth conditions. These cannot simply be traced to burdens of judgment since they arise due to absence of consensus on what would make some views true or false. When disagreements are thin, it is possible to identify experts with greater knowledge of relevant facts. This is impossible when disagreements are thick since people disagree on what the relevant expertise is. While there are various thin and thick disagreements about justice, following Rawls's notion of reasonableness, some positions are obviously wrong and unreasonable. When citizens reasonably disagree about justice neither party in the dispute is obviously right or wrong. For example, some favor proportional taxation on grounds of liberty, while others argue for progressive taxation on grounds of equality. Since neither view is clearly wrong or unreasonable, both merit to be taken into consideration. Judgments about reasonableness, being normative in kind, are also subject to some controversy themselves (Valentini, 2013: 182-5).

### ***3.3.1. Rawls's Presumed Deep Agreement***

Rawls's ideal of a well-ordered society is characterized by substantive agreement on justice since "everyone accepts and knows that the others accept" the same principles of justice (TJ: 4-5). Citizens accept public rules as "properly regulative of their conduct" instead of merely coordinate their behavior according to certain rules (PL: 16). "Some measure of

agreement” on justice, according to Rawls, is a “prerequisite for a viable human community” and has “wider connections” with coordination, efficiency, and stability (TJ: 5-6). James noted that, while acknowledging that well-ordered societies rarely exist, Rawls holds that the proper role of principles justice in actual societies is nevertheless founded upon a good measure of actual presumed agreement about justice itself as part of the publically assumed “backdrop”. Principles of justice function within and against this thick social background of agreement, and “exert their force where the extent of actual agreement runs thin” (James, 2014: 254). Despite holding that justice as fairness is suited to bridge the pluralism of modern societies, Rawls recognized the likelihood of disagreements about justice. The possibility that the principles chosen the OP would not be accepted in the constitutional stage was addressed. If so, “acceptable changes” would be required to bring them into accord with society's comprehensive views (as to achieve long-term stability) (PL: 65-66). Rawls resorts to the intuitive (“public and shared”) ideas from which the principles were constructed to find around this problem (PL: 90) and sets the issue of disagreement on justice aside by assuming (“on the basis of a number of plausible considerations”) that it will not arise, or at least that it will not have a significant impact on stability of justice (PL: 66; Klosko, 1997: 638). Waldron noted that, compared to discussion on moral and religious disagreements, Rawls’s discussion of reasonable disagreements on justice is “quite insignificant” (Waldron, 2004: 151). Rawls does not deny that people disagree over what justice requires in specific cases and whether some legislation is just. He argues that accepting the idea of public reason and its principle of legitimacy does not imply accepting some conception of justice “down to the last details of principles defining its content”. People may disagree about principles and still “agree in accepting a conception's more general features” (PL: 226). In short, Rawls reduces disagreements on justice to disagreements over details of the selected conception of justice. Disagreements are about how to apply certain principles, not about what principles to apply.

Actual societies are, of course, significantly different from Rawls's idealized societies. Reasonable people do not only disagree on moral, philosophical and religious issues, or only about the details of justice (how to implement some principles), but also on matters of basic justice (what principles to implement) and constitutional essentials (what rights people have) (Waldron, 2004: 153-8.). In particular, there are wider disagreements on what rights people have, on the normative grounds for these rights, and on what rights should be given special protection. Waldron argues that even if there is a broad consensus on a set of basic rights (as found across different constitutions), there are deep disagreements on what this consensus (and commitment to particular rights) entails "so far as detailed applications are concerned" (Waldron, 2004: 12). Indeed, the core disputes over distributive justice are always related to the legitimate scope of individuals' property rights and economic liberties. The issue, as Waldron notes, is how can citizens agree on the relevant matters of institutional design and support the implemented regime [as Rawls presumed] if they disagree over principles (and normative grounds) of institutional design. Citizens who disagree in principle will aim to design the constitution on different grounds that are just on their own standards (Waldron, 2004: 294). Rawls was aware that disagreements on justice must be resolved (or adequately bridged) before proceeding to the constitutional stage. Constitutional choice presupposes that appropriate principles of justice have been selected and that there is sufficient agreement (even if only presumed) on these principles among people who reasonably disagree on justice. There are different methods how principles of justice, and agreement on them, can be developed, each subject to some controversies. Rawls aimed to identify principles capable of generating unanimous agreement in the OP. The idea was that principles derived from a fair method would be accepted as fair and could be stable despite residual disagreements. Sen expressed doubt about Rawls's claim that the OP would generate a unanimous agreement on a specific set of principles (Sen, 2009: 56). Rawls himself later acknowledged that the OP,

depending on how it is constructed and what considerations are taken into account, can generate alternative reasonable conceptions of justice and principles each “favored by some consideration and disfavored by others” (JF: 133-4). Sen argues that even if Rawls’s conception is accepted as the most reasonable, there remains a possibility that reasonable persons could, even after much public discussion, take very different principles as appropriate because of the plurality of their “reasoned values and political norms”, rather than their differences in particular interests. However, if institutions have to be set up on the basis of a unique set of principles of justice, then absence of such a “unique emergence” and unanimous agreement contaminates the core of Rawls’s theory (Sen, 2009: 58; 66-68). Regardless, even if reached, hypothetical or actual agreement on abstract principles can only provide us with abstract moral guidelines, not with concrete rules for a “well-ordered society”. Even reasonable persons, fully committed to some abstract principles of justice, may still significantly disagree (and a lot more than Rawls acknowledged) on how to interpret and implement them. Different reasonable conceptions, and different versions of justice as fairness, can support significantly different regimes both more and less robust than POD, depending on what real-world considerations are taken into account. Even if strong agreement on general features of justice as fairness is assumed, there are significant differences between LMS, POD and robust WSMC regimes, both in terms of probability of their well-functioning and potential to generate the required political support for implementation. The point is, individuals can be fully committed to the broad ideal of justice as fairness and still significantly disagree over what regime would best approximate that ideal. Presumed or actual agreement on abstract principles only limits the range of eligible regimes, but it does not dissolve disagreements on what is the most reasonable option. Additional considerations, in particular assessment of probability of well-functioning of different regimes, are required to further narrow the choice. Any conception of justice to be capable of generating sufficient



support from citizens and for the implemented regime to be well-functioning presupposes “some measure” of convergence on the content of justice and the corresponding regime. Therein, if disagreements in practice among reasonable persons are too wide, then we should be concerned about the stability of the agreement in principle and question whether such an agreement can be presumed. If not, “acceptable changes” either in the proposed regime or the underlying principles would be required as to secure a stable agreement on justice. Without sufficient and stable agreement on justice, both in principle and practice, we are likely to be stuck in an endless *modus vivendi* (with all of the problems Rawls ascribed to it) and the implemented regime would not be well-functioning and stable over time.

### **3.3.2. Legitimacy and Well-functioning**

Not everyone holds that substantive agreement on a conception of justice is a necessary condition of legitimately implementing it, or whether it's possible to achieve such agreement on justice. The first issue is whether substantive agreement is necessary to legitimately implement some conception of justice, that is, to attempt to change the *status quo* despite existing disagreements and foreseeable opposition. The second issue is that of well-functioning of the implemented regime given absence of the corresponding substantive agreement on relevant questions of justice and foreseeable opposition. One consequence of the FRP is the absence of consensus on justice in pluralist societies (and maybe impossibility of ever reaching consensus). This implies that both coercive implementation of reforms and significant opposition to substantive changes in the *status quo* are inevitable during transition regardless what conception of justice and regime are chosen. If various disagreements and opposition are inevitable both during and after transition regardless what regime is implemented, then substantive agreement on some conception of justice cannot be, strictly speaking, a necessary condition of legitimately implementing it. Despite concerns that disagreements on justice were not taken seriously, it has been argued that justice as fairness

should be pursued despite foreseeable opposition, even if that would require a substantial degree of coercion during transition (Williamson 2009: 449). The assumption is that, once implemented, POD would generate the corresponding sense of justice over time and its long-term support, which would stabilize the regime despite residual disagreements. Legitimately implementing some regime despite foreseeable opposition is one thing, the well-functioning and stability of that regime in light of insufficient agreement on its core features and (wider) political support a different matter altogether. While it can be argued that even highly controversial regimes could be stable after a successful transition (through the promotion of the corresponding sense of justice), the problem is actually achieving successful transition in non-ideal conditions and absence of sufficient agreement and support during transition. The implemented regime will be more effective, well-functioning and stable if there is sufficient agreement on its appropriateness and on the conception of justice underlying it. No conception of justice and regime, regardless of their moral attractiveness in abstract, could be effectively implemented and maintained in conditions of wider disagreement on their core features and maintenance costs. Higher degrees of actual agreement increase the probability of the implemented regime to be well-functioning and stable over time (and *vice versa*).

Any regime can be stabilized through sufficient coercion, although not indefinitely. Unless we are willing to restrict citizens' right to democratically replace it maybe not even for long if the regime runs into significant problems during transition, which is foreseeable due individuals' attitudes and motivations not yet being in line with the demands of the regime. Rawls was not interested in maintaining justice through coercion or indoctrination, rather aimed to show that his principles would ground "a willing political agreement" among citizens and that stability can be achieved for the right reasons (as opposed to "resentful compliance"). As noted, Rawls presumes a "good measure" of actual agreement about justice itself and saw it as required for the smooth functioning of the implemented regime. The importance of this presumed deep

agreement for Rawls's theory cannot be overstated. Based on it, Rawls developed justice as fairness, advocated for his preferred regimes and argued that both can realistically be implemented, be well-functioning and achieve stability despite residual disagreements about justice. Indeed, it is precisely because Rawls presumes such a deep agreement, that he can reduce disagreements about justice to disagreements about details of the selected conception of justice and maintain that the residual disagreements would not have a significant impact on the well-functioning and stability once justice as fairness is implemented. Since Rawls presumes that the residual disagreements would not have a significant impact on the well-functioning and stability of the implemented regime, he can also argue that his principles are suitable to bridge the FRP in actual societies. Additional assumptions of full compliance and that the corresponding sense of justice would develop in due time further "diminish" the significance of ongoing disagreements about justice. Thus, for Rawls, "some measure" of substantive agreement on justice is not just desirable, but necessary for the well-functioning and stability of the implemented regime. Absence of such agreement places restraints on what can actually be achieved in societies characterized by wider disagreements on justice.

### ***3.3.3. Broader Public Support***

Since Rawls suggested that the content of justice is determined relative to society's political culture, Cohen argues that we cannot simply ask what justice requires. Rather, we have to ask what the most reasonable conception of justice for a democratic society is. As such, we address the issue of disagreement among citizens who accept an understanding of persons as equals, but disagree about the implications of that understanding (Cohen, 2003: 88). Williamson notes that even among relatively egalitarian authors there is no consensus on justice as fairness, while the general public opinion opposes some of the core features of Rawls's conception, i.e. the rejection of pre-institutional moral desert and the DP. Therein, if Rawls's aim was to develop principles of justice capable of becoming the consensus view

underlying political debate in pluralist societies (especially in the USA), his project has failed (Williamson, 2012b: 290). Klosko argues that, due to his emphasis on pluralism of modern societies and burdens of judgment, the burden of proof is on Rawls to show that justice as fairness would indeed fit with society's comprehensive views. This is required since Rawls's method of political constructivism, according to which principles of justice are derived from selected intuitive ("public and shared") ideas, will succeed only if there is a fit between the chosen principles and pluralism of liberal societies. Given the possibility that there would be no such fit, a more advisable procedure should be to focus on the need to generate ("serviceable" and "as uncontroversial as possible") principles that would fit, and then select those that are normatively preferable (or the most reasonable principles, all things considered) (Klosko, 1997: 638). Establishing complete society-wide consensus, both in principle and detail, on any conception of justice and institutional regime is unrealistic. Regardless what conception and regime are chosen as "the most reasonable", there will be residual disagreements and some opposition. Due to the FRP and burdens of judgment, there is little reason to believe that citizens will agree more readily about justice than on other aspects of their comprehensive and moral views (Klosko, 1997: 638). This does not imply that some degree of substantive agreement on justice is impossible. Not all disagreements are inherently unresolvable, and some need not ever be resolved. It may even be realistically possible to establish a society-wide agreement on the broad ideal of justice as fairness.

The relevant question, according to Williamson, is whether it's possible to establish a conception of broad principles of justice and institutional measures capable of "winning and maintaining" a stable majoritarian support in actual societies. Framing the question as such acknowledges that some people will oppose both the institutional proposals and the normative grounds on which they are justified. An implication is that normative proposals should take (more seriously) into consideration actual public opinion (Williamson, 2012b: 290-1). Rawls

argued that justice as fairness is “not at the mercy” of existing wants and interests, rather it sets up an “Archimedean point” for assessing the social system without invoking *a priori* considerations (TJ: 231). While some attitudes and opinions are unreasonable, there are many real-world attitudes grounded in reasonable disagreements about justice which warrant being taken seriously into consideration even when they clash with the proposed conception of justice and regime. After all, we should be (reasonably) confident that actual citizens can be relied upon to uphold just institutions. Abstracting too much from actual persons, their attitudes, i.e. towards their economic liberties, and interests entails the risk of developing proposals which would not “fit” with pluralism of societies and, consequently, motivational instability of the regime. Taking actual public opinion into account, according to Williamson, does not mean that normative proposals should be refined as to correspond to current views on justice of the “median voter”. It means that far-reaching institutional proposals should be built on principles that could plausibly be embraced by a stable political majority (Williamson, 2012b: 291). Not all attitudes should be taken as fixed. Nevertheless, even if many individuals' attitudes can be changed, the costs and the likelihood of success of changing “insufficiently reasonable” attitudes cannot be assumed away.

### 3.4. Conclusion

An appropriate conception of justice must be realistically utopian. It must be capable of offering adequate moral guidance and propose institutional regimes that can be sufficiently realized and would be able to generate their own long-term support in actual societies. To be realistically utopian, it must be sufficiently fact-sensitive and give due consideration to the relevant real-world complexities, including to reasonable disagreements on justice. Otherwise, the corresponding regime would not be adequate for existing social-political circumstances and, consequently, would not be effective, well-functioning or stable in the long-run. Three main points about the constraints of a realistic utopia follow from the preceding discussion.

First, normative theories which generate insufficiently feasible practical proposals, i.e. recommend an institutional regime for which we have valid reasons to hold would not be well-functioning in non-ideal conditions, are either incomplete or defective. We can idealize the existing conditions and persons, and to some degree we must in order to avoid the *status quo* bias. Highly idealized visions of social conditions and persons, however, will not get us far when it comes to actual implementation and transition. Any theory aspiring to be realistically utopian cannot remain at a high level of abstraction. Estlund argues that we need to know “what we should do” in practice given what people and institutions are actually likely to act, and taking these facts as fixed. Proposals grounded in false premises about how people or institutions are likely to act are unsound (Estlund, 2014: 123). Ideal theory, according to Williamson, has a vital role in determining the broad direction in which societies should move. It has a significant less important role in institutional design (Williamson, 2012b: 291). Assessment of probability of well-functioning is crucial in evaluating the appropriateness of the proposed conception of justice and the corresponding regime. Their appropriateness does not depend on the attractiveness of the underlying normative ideal in abstract or moral intentions (intended outcomes), rather on the adequacy of the proposed institutions:

- (1) Their effectiveness and well-functioning in non-ideal and less than favorable conditions, namely, on the capacity of a regime to generate the intended state of affairs given moderate scarcity, political disagreements, motivational defects of persons and partial compliance;
- (2) The ongoing willingness of individuals to endure the burdens of upholding implemented institutions over time, namely, on the capacity of a regime to generate its own long-term support and promote the development of the corresponding sense of justice.

The preceding discussion suggests that conceiving of practical possibility without sufficient attentiveness to actual socio-economic and political conditions, reasonable disagreements

about justice and actual person's attitudes and motivations is misguided. Again, if the aim is to develop a fully workable regime, which is more likely to be effective “here and now” given some common flaws in human behavior and institutional defects, then it would be prudent (even necessary) to be “more realistic” and include more real-world constraints. In particular, as Scheffler noted, it should be taken into account that justice has to be implemented by flawed human beings who will inevitably be subject to social pressures from different groups, whose interests are likely to coincide only up to a point, and who disagree about many things, including the very theory they are implementing (Scheffler, 2019). The motivation problem is probably the most important restraint since the well-functioning and stability of the implemented regime essentially depends on people’s motivations, compliance and their ongoing willingness to endure the burdens and costs of maintaining the regime. Being over-optimistic about human abilities, or about what diverse individuals can achieve or what they are willing to achieve together in the first place, inevitably leads to inconstancies and to “hidden obstacles” which could have been foreseen on a more realistic account. Actual experiences with relevant real-world counterparts should also be taken into account during institutional design, especially since they give us foresight into challenges which are likely to arise during implementation. Even if normative theories can be (highly) idealized as to explore what justice would require in ideal conditions, well-functioning of the proposed regime must not depend on idealizations. If it does, such a regime could reasonably be rejected as inadequate and the underlying theory seen as either incomplete or defective.

Second, requirement of sufficient fact-sensitivity is not only about *what* real-world constraints should be taken into account, but also *when* they should be taken into account. If certain real-world considerations, i.e. probability of success or individuals' motivations, are crucial in developing a realistically utopian proposal, then they should be taken into account from the start and not merely considered as an aftermath once ideal theory is already developed and

when the requirement of internal consistency allows only minor modifications. Rawls holds that we should first develop ideal theory and then proceed to non-ideal theory. However, these are two different issues and not examining them parallelly can lead to inconsistencies. The issue is not only that ideal and non-ideal theory give us different guidance, but also that starting assumptions lock us into a certain path from which there may not be an easy way out later on. Idealizations can distort normative judgment and lead towards unworkable (or only partially workable) proposals. Consider, for example, that we assume that people are fully committed to certain principles of justice (substantive agreement), that citizens will act justly and do their part in maintaining just institutions (full-compliance) and that the government always works as intended under favorable conditions. Under such assumptions, the conclusion that we should endow the government with extensive powers, to do whatever we hold it should be done in accordance with the selected conception of justice, seems almost unavoidable. In contrast, if we allow that people will sometimes (even often) fall short of justice and that sometimes (even often) governments fail in their intentions (even in disastrous ways), then we are likely to be more skeptical towards ambitious macro-structural social reforms and governments with extensive powers. Also, at the level of ideal theory, a fairly liberalized economic system combined with reasonably robust egalitarian policies, may be *a priori* rejected in favor of highly collectivists systems, although the latter have generated even more undesirable state of affairs than liberal regimes. Commitment to realistic utopianism necessitates that we start from sufficiently realistic assumptions. Taking seriously reasonable disagreements about justice from start, in combination with assessments of probability of success and being more realistic about people's willingness to cooperate, will place certain limits on the choice of institutions and their justification. Concerning public justification, which should be offered to those who reasonably disagree on justice, starting from more realistic assumptions will make certain regimes non-starters (even those morally attractive in



abstract) and it may make certain WSMC regimes morally more attractive than Rawls thought. This is because it would be much harder to offer appropriate justification for ambitious projects with significantly lower probability of success.

Third, aspiring to be realistically utopian, and sufficiently attentive to actual public opinion, requires that the discussion is broadened. Such a requirement is grounded in both moral reasons (equal respect for citizens) and prudential reasons (Hayekian knowledge problem). Sen argues that in seeking resolution of reasonable disagreements through public reasoning, there is a strong case for not leaving out perspectives presented by anyone whose assessments are relevant, either because their interests are involved or because their perspective throws a light on some important issue which otherwise might be missed. An essential part of the demand for impartiality is that moral and political convictions [and institutional proposals] must be able to “survive” challenges from informed scrutiny coming from different perspectives based on diverse experiences (Sen, 2009: 44-45). One issue may arise from a highly moralized notion of reasonableness according to which various relevant perspectives, interests and objections may be inappropriately categorized as unreasonable and either not taken seriously enough into account or excluded from discussion altogether. For example, individuals' enduring interest in economic liberties and demands for wider liberties are often rejected as being merely self-interested even though they need not be, and even though there may be valid reasons (as it will be argued) why these interest should be taken into account.

## **IV Theoretical Framework and Critique**

Despite ongoing disagreements on fundamental moral issues and justice, we have to start somewhere, from some least controversial common ground. The following approach is grounded in the ideal of a Society of Equals and the presumed deep agreement among liberals characterized by a shared commitment to three core values: (1) to a principle of equal respect for persons and their autonomy, and by association commitments to (1a) ideals of reciprocity and mutual justifiability and (1b) to a notion of a reasonable conception of justice, which includes securing substantive opportunity and real freedoms for all; (2) to the principle of presumption of liberty in the sense that some degree of priority should be assigned to freedoms which are essential for individual autonomy over other moral concerns and social objectives; and (3) to constraints of a realistic utopia. Short elaboration is in order.

### **4.1. Society of Equals**

Commitment to moral and political equality is deeply embedded in political traditions of all modern democracies. Sen argues that, despite differences in understanding on what dimension equality is important, all normative theories demand equality of something (Sen, 2009: 291). Valentini notes that the principle of equal respect for persons is the greatest common denominator of modern liberal theories of justice (Valentini, 2013: 177). Disagreements are over the interpretation of equal respect and especially over the implications for distributive equality. On the proposed approach, the principle of equal respect is understood in terms of relational equality, reciprocity and mutual justifiability. In general, the ideal of relational equality is that people, as free and equal persons, should enjoy the same fundamental status: All permanent adult members of a political community are equal citizens: equal in their personal, social and political rights and duties. Equals are free to participate in the political, social and economic sphere, they are not subjected to physical violence, coercion

or manipulation (or subjected to unjustifiable political coercion), they are not wrongly discriminated, marginalized or exploited by others, or treated as inferiors (or subjected to state paternalism), and they are given a sufficiently wide opportunity for autonomy, and real freedom to pursue their legitimate goals without arbitrary or excessive interference. People in a society relate as equals when all members are enabled to be fully functioning members of a democratic society, and when it is recognized that: (1) the perspective of all citizens should be addressed in examining whether coercion respects their status as free and equal persons, and (2) that each of them has equally valid interests to be considered in the process of public justification (Walzer, 1983; Anderson, 1999). According to Valentini, if the principle of equal respect is understood in terms of mutual justifiability, then a society expresses equal respect for persons if the rules governing it are acceptable, in principle, to all citizens as rational and autonomous persons (Valentini, 2013: 177-8).

Coercive nature of political institutions, for Rawls, is a basic fact needing special justification (at least in matters of basic justice and constitutional essentials) (§2.2.4). Since political power cannot be eliminated due to its importance for protection of freedom and autonomy, it must be determined which forms of coercion are morally acceptable invasions of individuals' autonomy (Blake, 2001: 272). Rawls holds that respect for persons is shown by treating them in ways that they can see as justified (TJ: 513) and that political power should not be used in ways that citizens cannot affirm (PL: 68, 90; TJ: 236). Freeman argues that respecting persons requires that we justify our claims and institutions on terms they can reasonably accept and endorse in their capacity as free and equal persons. This does not mean that we "literally" justify ourselves to others. Rather, we justify ourselves to others in their capacity as free and equal persons by appealing to "principles we would both acknowledge" (Freeman, 2007b: 93; TJ: 455). Also, as Waldron notes, modern political philosophy involves a commitment to the idea that laws and political proposals should be justified to "ordinary men and women" who

will be affected (Waldron, 2004: 229). It would be practically impossible for all citizens to consent to every rule and institution. Therein, the emphasis is placed on the requirement that political coercion must be justifiable to all citizens, as free and equal persons, on the grounds they cannot reasonably reject (Scanlon, 1988: 184). This method of justification embodies Rawls's criterion of reciprocity by stressing that the perspective of each person should be addressed in examining whether coercion respects their status as democratic citizens. Citizens treat each other reciprocally insofar as they recognize that each of them has equally valid interests to consider in the process of public justification (Brettschneider, 2012: 56).

Any plausible conception of justice must reconcile individual freedom and equality, two fundamental moral ideals, in a fair manner consistent with equal respect of all citizens. The tension arises because ensuring equal shares of anything, even the right to formal negative liberty, requires certain interferences with individuals' freedoms. The more robust the egalitarian requirement is, the more restrictions on individuals' freedoms will be required. Although there are no plausible grounds on which a general rule for freedom as non-interference could be established, there are valid reasons why there should be a presumption in favor of liberty (Buchanan, 1984: 70). Such a presumption, according to Feinberg, means that "liberty should be the norm, coercion always needs some special justification" (Feinberg, 1984: 9). Why should freedom be the norm while interference, even when desirable, requires special justification? The answer is fundamentally tied to individuals as agents of their lives with their own purposes and personal goals which they aspire to accomplish. Stanley Benn gives asks us to imagine a person named Alan splitting pebbles on a public beach. Another person Betty wants to prevent Alan from continuing his activity by removing all pebbles out of his reach. Benn argues that in this situation, Alan has a right to demand justification from Betty, while Betty does not have a right to demand an explanation for Alan's activity, which does not interfere with her actions. If a third person observed this situation, she would not ask

why Alan was splitting pebbles rather than why Betty wanted to prevent Alan from continuing his activity. Since the burden of justification falls on the interferer, not the person interfered with, Alan might justifiably resent Betty's interference, but Betty has no grounds for complaint against Alan (Benn, 1988: 87; Gaus, 2005: 274). As Gaus notes, persons are not like pebbles in Benn's example, lying somewhere until they are displaced by nature or used by others, they are in Kantian terms "ends in themselves". The reason why the burden of justification falls on the interferer, and not the person being interfered with, arises from the acknowledgment that each person has legitimate ends of her own. These principles ground individuals' right to act freely as long as there are no compelling reasons [which could not be reasonably rejected] to limit their freedom (Gaus, 2005: 274). Presumption of liberty and reciprocity are closely interconnected, and without the former the value of the latter would be diminished since some people may perceive that their interests and freedoms have not been taken seriously or are vulnerable to be overwritten without proper justification and, ultimately, that they were subjected to unwarranted and non-reciprocal restrictions. Stability of agreement on justice is highly dependent on the principle of presumption of liberty, which offers an assurance to individuals that all of their freedoms, not just basic liberties, will not be taken lightly.

#### **4.2. Autonomy as Self-Authorship**

Another common denominator in liberal theories, going back to Kant, is a commitment to personal autonomy. While the idea of autonomy originated with Kant, Kantian concept of moral autonomy is a very specific form of autonomy which significantly differs from the notion of personal autonomy. Raz notes that on the Kantian conception, personal autonomy is reduced to a "vanishing point" since there is only one set of principles, which individuals can rationally choose. They are the same for all rational persons and would be universally accepted. Personal autonomy, by contrast, is essentially about the freedom of persons to choose their own lives (Raz, 1986: 370). All liberals would agree that the capacity

of individuals to determine the course of their own lives is what makes a person free and autonomous. Therein, according to Blake, what matters is not only that individuals choose what actions to undertake, but also what values and goals to adopt for themselves and pursue a life that can be perceived as chosen, rather than forced upon them (Blake, 2001: 269). Different authors have emphasized different constitutive elements of autonomy. The focus of the following discussion is predominantly on the Rawlsian and Razian conceptions.

On Rawls's account individuals are considered to be free in three respects: (1) as having the capacity for a conception of the good; (2) as being self-authenticating sources of valid claims, and (3) as capable of taking responsibility for their ends (PL: 72). Rawls distinguishes between personal and moral autonomy, each associated with one of citizens' moral powers. Personal autonomy represents a person's moral power for a conception of the good. Moral autonomy corresponds to individuals' capacity for a sense of justice. Full autonomy involves the combination of personal and moral autonomy, in which justice is given the highest-order priority in regulating one's rational plan of life (PL: 72-81; PL: 305-6). Rawls's conception emphasizes deliberative rationality with autonomy having an essential role in construction of one's life plan (TJ: 360). Freeman argues that the point of Rawls's congruence argument was to show that acting from their sense of justice is an intrinsic good for all persons. Later in KC, Rawls argued that the capacity to form, revise and pursue a life plan is also a good for persons. This suggests that, in addition to taking responsibility for the principles of justice, it is also intrinsically good for person that they take responsibility for their own good by constructing and pursuing a life plan of their own choosing (Freeman, 2007b: 95).

Raz argues that the core idea behind the ideal of autonomy is that "people should make their own lives", which is understood as the vision of people controlling, to some extent, their own destiny and fashion it through successive decisions throughout their lives. An autonomous life

is contrasted to a “life of coerced choices”, a “life of no choices” and a “life of drifting through life without ever exercising one’s capacity to choose” (Raz, 1986: 204). Raz emphasizes that an autonomous life requires a degree of self-awareness since, in order to choose, a person must be aware of her options and capable of understanding how various choices will have a lasting impact on her life. Therein, the notion of autonomy corresponds to the ideal of normative self-creation, according to which an autonomous person is someone who is (part) author of her own life (ibid.). The ideal of autonomy is meant to be compatible with value pluralism and may consist of very diverse pursuits, including those which may be seen as “unintellectual” and “not autonomous” (Raz, 1986: 371). Wall describes the ideal of autonomy as a character ideal, which relates to the ideal of individuals “charting their own course through life”, fashioning their character by self-consciously choosing projects and making something out of their lives according to their understanding of what is valuable and worth doing (Wall, 1998: 128-130). Waldron argues that autonomy is a matter of self-determination in the pursuit of value in one’s life, an ideal of a person in charge of her life not only by following her desires but also choosing which desires to follow (Waldron, 2005: 307). Wall argues that autonomy can be seen as both intrinsically and instrumentally valuable. It is intrinsically good for people to make their own choices about how to live their lives, to adopt and pursue their own projects and pursuits because on their own reasoning these pursuits are worth adopting and pursuing and not because others have coerced or manipulated them into adopting or pursuing these goals, or because they have no other meaningful options to choose from. Autonomy is instrumentally valuable since it contributes to the achievement of a further ideal of self-development, which refers to the development or realization to the full extent of all, or all the valuable talents, capacities and potentials a person possesses (Wall, 1998: 128-130). Both Raz and Wall emphasize that autonomy and self-development are not conceptually linked making it possible to realize one without the other. Although it is possible to be

autonomous without achieving self-development, Wall argues that, everything else equal, autonomous persons are more likely to achieve self-development than non-autonomous persons (Raz, 1986: 375; Wall, 1998: 130). Constraints on autonomy, according to Feinberg, may be both internal (i.e. lack of skill, neuroses) and external (physical obstacles, coercion, inadequate material resources) (Feinberg, 1973). Since the relevant constraints can be both internal and external, autonomy requires both negative freedom (as to guarantee the necessary degree of independence) and positive freedom (as to guarantee adequacy of options and resources). Oshana argues that negative and positive freedoms are not sufficient; presence of certain socio-political arrangements is also necessary. An autonomous person's choices must not merely be unobstructed (internally or externally), but also (where realistic) socially, politically, and economically within her reach (Oshana, 2003: 104).

Raz argues that valuable ideals are not independent of the social forms or patterns of behavior, ranging from economic conditions to shared cultural practices that are widely practiced in particular societies. Rather, ideals and social forms are strongly interconnected (Raz, 1986: 164). Therein, the ideal of autonomy is connected to certain social forms which not only enable autonomy, but also promote it. Western societies are dynamic and pluralistic, characterized by a high degree of technological and economic innovation, social mobility and a strong commitment to individual rights which protects personal choice in various areas. Such social forms, according to Wall, imply that for people living in these societies autonomy is not just one ideal among many, but one that is intimately bound up with a fully good life. This does not mean that autonomy is the only component of a fully good life; however, it is a central component of a fully good life. Thus, for most people, regardless how well their lives may go, if they fail to realize autonomy to some substantial degree, they will fail to live a fully good life (Wall, 1998: 167). One important implication is that persons, for whom autonomy is not just one value among many, will reasonably reject social regimes which do



not secure a sufficiently wide scope (and adequate social conditions) for their autonomy, regardless of other valuable benefits that might be received in trade-off.

#### **4.3. Two-level Critique**

Despite various reasonable disagreements on justice, it would not be implausible to assume that there exists an overlapping agreement among citizens in Western democracies on some core political values corresponding to justice as fairness, in particular on the ideal of a Society of Equals. Reasonable persons have reasons to be attracted to the broad ideal of justice as fairness since it involves meaningful priority assigned to especially valuable freedoms over other moral concerns and social objectives, strong respect for autonomy and relational equality, aim to guarantee substantive opportunities and real freedoms for all, special concern for the least advantaged members of society, and concern for economic efficiency. The following discussion proceeds on the assumption that a liberal conception of justice appropriate for actual societies would be Rawlsian-inspired. That is, it would have the general structure of Rawls's justice as fairness in the sense that it would be grounded in two principles in which the principle of equal freedom has priority over the second principle of distributive equality. This does not imply that all individuals would actually converge around a broader interpretation of Rawlsian principles, rather that they could accept the underlying spirit of these principles. Actual content of the most reasonable Rawlsian-inspired conception of justice may be significantly different from Rawls's own conception.

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 Rawlsian POD would, all things considered, be selected as the most reasonable option for actual societies. The choice of POD over eligible alternatives, i.e. the Nordic-style regimes, depends on the assessment of POD in terms of its probability of well-functioning in actual societies

and its capacity to generate its own long-term support. The issue is that Rawls remained focused on ideal theory and discussion about principles of justice in abstraction of regimes. Significantly less time was devoted to the discussion about their application and feasibility issues involved in implementing POD. Rawls assumes that POD can be effectively implemented and maintained, given favorable conditions. Whether the same is true in less than favorable conditions in actual societies is never seriously considered. There are some crucial issues regarding how POD would function in practice (and whether it would indeed be well-functioning) which remain open. For example, Rawls never addressed the issue of costs and trade-offs involved in establishing POD and whether POD can actually deliver on its promises given limited public budgets and various political disagreements. It was also never considered whether in POD, given its robust aspirations, the well-functioning of the economy would be maintained. The relevant question is not whether ideal POD would be well-functioning (and deliver on its promises) in favorable conditions, characterized by relative abundance of resources and absence of wider disagreements (since the answer is trivially – yes, it would work as intended). Any conception of justice and regime can be fully realized (and seen as appropriate for actual societies) if we assume, for example, sufficient agreement on justice, favorable conditions, adequate resources to satisfy all requirements of justice and, crucially, appropriate attitudes and motivations of citizens to uphold just institutions (regardless how demanding). The relevant question is how a non-ideal version of POD would function in actual societies, especially given the tension between what robust egalitarian justice requires and people's pluralist attitudes about justice and the value they place on their economic liberties. Even if POD is superior to liberal WSMC regimes, it does not follow that, all things considered, POD is also superior to Nordic regimes, which have arguably best approximated justice as fairness in the real world, but are more market-friendly and allow more room for individuals' economic liberties than POD would. If the choice between POD

and LMS would come down to assessments of probability of success, then the same principle should apply when selecting between POD and Nordic-style regimes.

As noted in introduction, the following critique is focused on the institutional scheme favored by the Rawlsian conception of justice. I believe there are two core inadequacies of such a conception: (1) insufficient fact-sensitivity (not being realistically utopian enough) 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 lines of the following argument against the Rawlsian POD. The first focuses on issues of feasibility, specifically on the issue whether POD would be well-functioning in actual societies. The second argument is autonomy-based and focuses on the requirement that justice must secure a sufficiently wide room for individuals' autonomy. The objection is that many liberal egalitarian theories, Rawls included, have wrongly neglected the value people assign to their economic freedoms for their autonomy. This inadequacy in turn would generate problems for the well-functioning and stability of POD. While the focus is on the institutional scheme favored by Rawls, concerns about the appropriateness of such a scheme for actual societies may transfer onto the underlying principles. As Rawls argued:

“It is also important to trace out, if only in a rough and ready way, the institutional content of the two principles of justice. We need to do this before we can endorse these principles, even provisionally. This is because the idea of reflective equilibrium involves our accepting the implications of ideals and first principles in particular cases as they arise. We cannot tell solely from the content of a political conception - from its principles and ideals - whether it is reasonable for us. Not only may our feelings and attitudes as we work through its implications in practice disclose considerations that its ideals and principles must be revised to accommodate, but we may find that our sentiments prevent us from carrying it out.” (JF: 136).

The general point is, principles and associated regimes are closely interconnected. In a reflective equilibrium, there is a two-way interplay between principles and institutional design: Shortcomings in the design may force us to reconsider the principles themselves. Rawls's conception of justice may change significantly once his crucial idealized assumptions

are somewhat relaxed, in particular once the value individuals place on their economic liberties in terms of their autonomy is taken into consideration. The following chapter first explores how deep is the rabbit hole, namely how many crucial idealizations and simplifications are used to make POD appear significantly more attractive and appropriate for actual societies than it would have been on a more “realistic” Rawlsian account.

## **V Assessment of Property-owning Democracy**

Rawls argues that, regarding any regime, four main questions arise. The first question is whether its institutions are right and just. The second question is whether its institutions can be effectively designed to realize its declared aims and objectives. The third question is whether citizens, considering their diverse values and ends, can be relied on to comply with just institutions. The final question is that of competence, that is, whether the tasks assigned to offices and positions (especially to the government) would prove simply too difficult for those likely to hold them (JF: 136). The following analysis is framed around these four questions. Three overlapping issues will be explored: (1) can POD deliver on its promises given limited public budgets and political disagreements; (2) would the well-functioning of the economy (henceforth, WFE) be maintained in POD; and (3) would POD be capable of generating its own long-term support. The question is whether POD would be, all things considered, selected over eligible alternatives. The emphasis is on the WFE since whether justice would be established and maintained largely depends on whether the WFE would be maintained over time. Emphasis on the WFE also reveals how absence of appropriate individual motivations (presumed by Rawls) would impact the well-functioning and stability of POD.

### **5.1. The Well-Functioning of the Economy**

Well-functioning economic system is, doubtlessly, one of the core preconditions of a stable and prosperous society. Without WFE there can be no socio-economic development, large-scale investments, increases in citizens' wealth and opportunities, and not enough cooperative surpluses to fund public services on which modern societies are dependent upon. It is difficult to imagine that any conception of justice could be effectively implemented and maintained in societies with weak and inefficient economies. Even relatively small malfunctions in the workings of the economic system, unless adequately resolved, tend to

accumulate and generate serious adverse effects on social prosperity and individuals' well-being. This fuels social discontent and generates additional pressures for state interventions. The issue with interventions is that sometimes they may resolve the issues at hand, and sometimes make them even worse. Even casual observation of modern history reveals numerous failed large-scale economic reforms, misguided macroeconomic policies, strategies of development with disastrous consequences, etc. The problem of maintaining the WFE, which all societies must resolve, tends to be the cliff on which many ideal theories have crashed and broke apart due to their unrealistic assumptions. Waves slowly erode any rock and with enough time obstacles are removed. The same might be said about societies since – if we are willing to wait long enough – most of the pressing social and economic issues are likely to either spontaneously resolve themselves or stop being a problem. While nature can wait, even millions of years, until its obstacles are removed, people do not have the luxury of time. Either the WFE will be established, or their societies will perish. Although nobody denies the importance of the WFE, different authors assign different degrees of importance and priority to maintaining the WFE. Some authors (especially neoclassical economists) see it as the core social problem taking precedence over distributive justice, while others (especially egalitarian philosophers) assign less importance to economic efficiency subordinating it to other social goals and distributive justice. Obviously, demands of justice should have priority over economic efficiency since there are no plausible grounds on which an efficient regime which contains grave injustices could be publicly justified. The paradigmatic example is a society in which efficiency is maintained through forced labor. It also appears obvious that we should avoid maintaining a regime in which the demands of distributive justice are formally satisfied, but one that is highly inefficient and economically unsustainable.

In general, if we are not willing to place our faith in the spontaneous resolution of various economic challenges facing all societies, then special attention must be given to these issues

from the start and not just addressed as an afterthought in theorizing about justice. We simply do not have the luxury to underestimate, for the sake of developing an elegant conception of justice, the sheer amount of economic challenges which must be resolved in any society at any given time. It cannot be taken for granted that the WFE would inevitably be achieved in a well-ordered society and/or without certain trade-offs between various social objectives, including the pursuit of distributive equality. The complex, and often contradictory, relationship between economic efficiency and equality necessitates they are considered simultaneously. Otherwise, we may end up with an inefficient and unjust society, even if greater distributive equality was formally achieved. Therefore, if justice is the highest-order interest, maintaining the WFE is surely not far behind in order of importance for the well-functioning of societies. Due to its essential importance for societies, the requirement of maintaining the WFE should be understood as a higher-order requirement, which must be taken into account from the start as to ensure our theorizing about justice is sufficiently fact-sensitive and realistically utopian. A theory of justice unable to provide sufficient evidence that the WFE would be maintained given its distributive requirements is either incomplete or self-defeating. Regardless of its moral attractiveness, such a theory would be unable to offer adequate moral guidance in actual societies and can reasonably be rejected on these grounds.

### ***5.1.1. Market Efficiency***

An economy with a fairly constant economic growth, low and stable inflation, and lower degrees of unemployment, financial instabilities, poverty and social inequalities would be considered as well-functioning. Despite various disputes, there is a consensus that a WFE should be capable to: (1) maintain efficient allocation of resources; (2) generate a satisfactory rate of innovation; (3) adapt quickly to external and internal shocks; (4) maintain macroeconomic stability at higher levels of employment; and (5) satisfy some requirement of distributive adequacy (Haddad, 1996: 208). Critics of often claim that the pursuit of

distributive equality must be restrained due to its adverse effect on incentives diminishes economic efficiency and, consequently, makes everyone worse-off. Okun refers to the equality-efficiency trade-off as the “big trade-off” and argues that “the market creates inequality and efficiency jointly” meaning that “we cannot have our cake of market efficiency and share it equally” (Okun, 1975: 48). Dietsch notes that, despite disagreements over details, the idea that there is a significant equality-efficiency trade-off is widely accepted but points out that there is a lot of ambiguity in how the terms “efficiency” and “equality” are used, which makes the resulting critiques inconclusive (Dietsch, 2015: 128, 134).

Dietsch argues that the notion of efficiency can be understood in two ways. First, efficiency concerns the manner in which two or more social objectives are simultaneously pursued. Allocation of resources is efficient if it is impossible (due to scarcity) to move towards achieving one objective without moving away from achieving another. Efficiency is a secondary objective which can be defined only with reference to some primary objective. Second, the notion of efficiency is often used a placeholder for a different value, which serves as the criterion of evaluation of social institutions. Two common objectives therein are Pareto optimality and economic growth (Dietsch, 2015: 135-6). Appeals to Pareto optimality dominate academic discussions, while concerns for economic growth dominate political discourse. Concerning the latter, appeals to efficiency are grounded in the goal to create favorable economic and investment conditions as to maintain the WFE (Dietsch, 2015: 151-152). There are many open theoretical and empirical issues regarding Pareto optimality which are beyond the scope of this research. The focus instead is on allocative efficiency and its relation to the WFE and cost-related trade-offs between different social objectives.

Lindblom argues that the relevant concept of efficiency is defined as the ratio of valued outputs to valued inputs. Choices can be described as efficient only with reference to how



different inputs and outputs are valued. This broad notion can further be distinguished into technological and allocative efficiency. Technological efficiency describes increases in output generated by changes in technological aspects of production. Production will be inefficient if, for example, workers are inadequately organized or lacking motivation. Allocative efficiency is the more pressing issue. Allocative efficiency matters since resources are scarce and there is an imperative not to waste them (Lindblom, 2001: 124-5). Even if scarcity is only moderate, there are never enough resources to simultaneously achieve all valuable social objectives since the costs of pursuing some goals prevent the pursuit of other. Therein, every individual and collective choice is burdened by opportunity costs. While it is uncontroversial to say that allocations are efficient if the value received is worth the value given up, determining when some allocation is efficient is not straightforward. As Lindblom notes, what is seen as efficient for some may be highly inefficient for others. Whether some allocation is evaluated as efficient depends on whose evaluations count and what criteria are used. Disagreements on what counts as an efficient allocation are inevitable due to burdens of judgment. Actual costs depend, for example, on whether preferences and burdens of some people are disregarded as irrelevant for assessment. Still, if allocations are to be efficient for the whole society, then everyone's benefits and burdens have to be somehow balanced (Lindblom, 2001: 128-9).

The allocative process is essential for the WFE and it can easily malfunction. When systematic, inadequate allocative choices can lead to economic collapse as evident from the failures of real-socialist systems or the Great Depression. Although some still believe in economic planning (democratic or otherwise), the consensus is that an efficient allocation of resources, and ultimately the WFE, cannot be achieved without a market-based system. The core claim for market efficiency, as Lindblom notes, is that allocative efficiency requires efficiency prices that measure monetary costs (and imperfectly value) which the market establishes. Efficiency prices represent the ideal terms on which mutually beneficial and

efficient exchange occurs. In contrast, arbitrary prices represent terms which depart from ideal terms of trade making it undesirable and inefficient. Arbitrary prices are always found in the background of deep economic crises and shortages (Lindblom, 136-140). While market prices may often appear as arbitrary and unfair, especially if one believes that more “desirable or just” prices can be rationally constructed, it remains unclear how efficient prices and large-scale coordination could be established politically. Efficiency prices constantly change with changes in people's preferences, technological changes, socio-economic development, etc. The speed and unpredictability of such changes generates serious problems for any state interventionism even under favorable conditions, let alone for extensive political coordination and allocation. Politically establishing efficient prices on a larger-scale is ultimately prevented by the lack of required knowledge for such a complex task. Even absent knowledge problems, there is no guarantee that politically established prices would not be perceived any less unfair. For all the promises of democratic decision-making there is no assurance that all relevant values and interests would be represented in politically established prices (without arbitrarily disregarding some as irrelevant), or that such prices would indeed support the WFE.

### ***5.1.2. The Real World***

The market system based on private ownership works well-enough to encourage societies to make increasing use of it. Even granting its many failures, the system can be credited with generating conditions which enable efficient allocation and coordination at the highest levels of complexity. Many relevant questions about market efficiency remain open. Considering real-world social distributions, can we say that market allocations are efficient for the whole society in the sense that everyone's benefits and burdens have been balanced? Can economic systems be called well-functioning if efficiency and growth are bought at the high cost of environmental degradation? Are economic systems efficient if they generate large inequalities in wealth which can easily translate into exploitation of the economically

vulnerable? The issue is that most efficiency-based arguments are grounded in the highly idealized model of perfect market competition, which makes the derived conclusions either irrelevant or incomplete in an imperfect world (Dietsch, 2010). Crucial assumption is that market prices are determined by supply and demand and accepted as given. Additional assumptions include perfect information, low market-entry costs, negligible transaction costs, and dispersed markets. Technical details aside, under these assumptions the most efficient allocation of resources is established as Pareto efficiency and maintained through competition which prevents abuses of dominant market position and concentration of markets. In contrast, all real-world economies are characterized by significant degrees of concentration of markets, higher market-entry costs, asymmetries of information and bargaining power, and more or less interventionist states. Whenever larger asymmetries of power or information are present, the impartiality of the market process is diminished. Instead of market prices being accepted as given, dominant actors can influence prices or unilaterally set the terms of trade for others, which leads to allocative inefficiencies. Asymmetries of information and power generally tend to reflect and deepen inequalities of wealth and opportunity. All classical liberals are aware of these problems, however the expectation was that by focusing on promoting economic growth and maximizing aggregate welfare, relative inequalities of wealth would gradually decrease due to the positive spill-over. Not quite. Recent studies have unraveled a tendency even in developed countries towards greater inequality of wealth, capital ownership and opportunity (Bonesmo-Fredriksen, 2012). While people are willing to tolerate larger inequalities, especially if adequate social minimum is guaranteed, highly concentrated economic systems can undermine the social conditions of freedom and impede the WFE. Even in developed countries numerous individuals lack adequate resources and opportunities required to meaningfully utilize their freedoms and benefit fairly from social cooperation. Not all inequalities are, in themselves, problematic. However, larger inequalities of starting

positions, wealth and opportunity mean that some people are better placed to enjoy real freedom to engage in economic activities in greater capacity and derive significantly larger benefits therein. Why larger inequalities of wealth and opportunity are morally problematic is obvious (to most people), but why are they relevant for the WFE?

### **Inefficiency of Large Inequalities**

Maintaining the WFE requires both adequate legal and social conditions. If the state lacks the capacity to establish these conditions, economies remain weak and may systematically malfunction. This is not in dispute. Disagreements revolve around the issue what social conditions are required and whether the notion of the WFE itself should include some normative requirements. The question is whether relevant inequalities should be seen only as unfair or as also inefficient. At least some minimal requirement of distributive adequacy should be seen as one of the conditions for WFE since it's difficult to deny that extreme inequalities in wealth and opportunity will undermine the WFE and social stability. Theorized conditions in which markets achieve efficiency favor, and even require, sufficiently dispersed capital ownership and market power and, thus, also favor flatter social distribution of wealth as a precondition. This is implicit in the model of perfect competition itself. Neoclassical economists, despite acknowledging the economic benefits of greater social equality, tend to keep issues of efficiency and equity analytically separated. The focus is on a narrow understanding of efficiency which is predominantly concerned with aggregate welfare and economic growth. Inequalities are seen as a problem of justice, not of efficiency. The problem with aggregate measures is that they do not say anything about distributions of opportunity, income and wealth. High GDP *per capita* can hide the fact that many people live in absolute or relative poverty. Also, as Sunstein notes, correlations between GDP and other relevant socio-economic indicators, i.e. unemployment and poverty, remain unclear. For

example, since economic growth is a function of employment and productivity growth (measured as GDP over total employment), increases in productivity (without employment growth) can increase GDP. Thus, automation of production can increase productivity while simultaneously increasing unemployment and poverty (Sunstein, 1997: 123). In general, the larger the number of people lacking adequate resources and opportunities to engage in meaningful economic activities, the more resources and talents will be misallocated. Consequently, the less diverse and more inefficient the economy would be. Greater economic inclusion, by definition, contributes to the WFE. On neoclassical accounts, poverty is seen as problematic for efficiency, but inequality short of poverty is not. Still, acknowledging poverty as WFE-disabling begs the question why poverty, an extreme form of inequality, is an efficiency problem, but larger inequalities in wealth and opportunity are not. They are.

Larger asymmetries of power and concentration of markets can impede the formation of efficiency prices. Concentration of markets and capital ownership mean that smaller actors and newcomers will face significantly higher costs of market entry than they would in conditions of widely dispersed ownership. This may prevent them to effectively engage in economic activities in greater capacity since market entry costs are high, the probability of success in concentrated markets relatively small and the risk of losing available assets or becoming indebted may simply be too high. If so, many people will either be unable or unwilling to engage in entrepreneurial activities and take greater risks. The long-term implication of concentrated markets is that the allocation of resources may be skewed from an efficient allocation towards those with greater market shares. Larger asymmetries of capital ownership and market power disrupt the well-functioning of the price system since those with greater market shares can send “stronger signals” through the network and skew the allocation of resources in their favor, thus further concentrating the economy<sup>2</sup>. Haddad argues that if

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<sup>2</sup> Andersson (2008) wrote an excellent article on this issue from the Hayekian perspective

distributions of wealth and income are “too egalitarian” economic incentives may be diminished. However, if the distributions are “too inegalitarian”, then lower-income earners will be demoralized (Haddad, 1996: 218). Winner-takes-all economy acts as a disincentive for the less advantaged, which impacts their motivation. That is, if people perceive they are not receiving fair compensation for their efforts while only large capital owners are getting richer, their motivation to seek employment, increase their efforts when employed, engage in various economic activities, or invest in themselves will all be significantly diminished. Larger wealth and opportunity inequalities also generate resentment among the less advantaged, especially if greater wealth of those better-off is perceived as unfair. Some maintain that what actually breeds resentment is lack of adequate opportunities, and not inequalities of wealth. Regardless, the issue is perception of unfairness due to highly skewed distribution of wealth and opportunity, which fuels social discontent. Since the problem cannot be resolved overnight, governments tend to engage in short-term interventions aimed at “buying social peace”, which are more likely to result in additional problems than in social peace. The WFE will be negatively affected either by growing discontent fueled by the perception of unfairness or through imprudent state interventions. While larger inequalities on their own need not necessarily be a problem of efficiency, their impact on overall socio-political stability and people’s willingness to endure unequal distribution of income and wealth necessary for the WFE make it an efficiency problem. Stable social conditions are essential for the WFE.

Conditions in which many people lack adequate resources and opportunities required to engage in economic activities in greater capacity, in which the costs of market entry are high (due to concentrated markets and other obstacles); in which lower-income workers are demoralized and disincentivized to seek employment or increase their efforts, and in which there is a constant pressure for government interventions, taken together, will have significant adverse effects (directly or indirectly) on maintaining the WFE. Such economies are likely to

be characterized by losses in productivity, misallocation of resources and talents, lower rates of innovation and diversification, and further economic concentration. Increases in GDP may still occur, but other conditions may not be satisfied. The WFE can be diminished by internal and external causes. The above-mentioned three problems fall under the category of internal and structural causes. Considering this, if larger inequalities of wealth and opportunity can significantly diminish the WFE, then it follows that some fairness-based requirement of distributive adequacy should be seen as one of the core conditions for the WFE. Thus, if the demands of fairness and dispersed capital ownership are interpreted as structural conditions for the well-functioning of the market system and overall social stability, then even strict neoclassical economists would have difficulties to reject it as a necessary condition for the WFE, even if that implies certain trade-offs with efficiency (understood in narrow terms).

### ***5.1.3. Equality and Efficiency***

There are limits to market efficiency because the market system operates within a limited domain and can coordinate only voluntary allocations. It cannot efficiently coordinate allocation of public funds as to accomplish various goals outside its domain, including the establishment of appropriate legal and social conditions for the WFE (Lindblom, 2001: 168-174). In order to achieve an acceptable degree of efficiency and to accomplish goals outside its domain, the market requires an active role of the state, including some redistribution of wealth and ownership. While almost no one denies that the state should be involved in resolving market failures, provision of public goods, infrastructure and promoting long-term development, the idea that it should also have an active role in dispersing capital ownership continues to generate controversy. The disagreement between classical and egalitarian liberals is not about the ideal of widely dispersed ownership or the value of social equality (since there is a shared commitment to an economic and political system not dominated by elites), rather about how such ideals are to be achieved, namely, at what costs and trade-offs. Some

trade-off between equality and efficiency are necessary for the WFE. However, there is a threshold (however vaguely defined) above which the pursuit of distributive equality through political redistribution and economic regulation will impede the long-term WFE.

The general objection to distributive egalitarianism is framed around the claim that while the state may impose an equitable distribution of wealth through taxation and redistribution, this would counteract market dynamism and negatively impact long-term growth rates. This leads to less employment and investment and, due to decreased public revenues, makes generous public provisions unsustainable. Robust redistributive policies then may be self-defeating and harm those they are supposed to benefit. If these objections are correct, then countries with robust welfare states should be associated with worse economic performance. Available evidence is inconclusive. As Brighthouse notes, there is little evidence that economies with relatively egalitarian net incomes (Sweden) perform much worse in the long-run than economies with relatively inegalitarian net incomes (USA) (Brighthouse, 2004: 4). Studies of the relationship between the size of public spending and economic growth, according to Pontusson, have presented different conclusions. Countries with larger welfare states (compared to pre-war era) performed comparatively well on a range of socio-economic indicators prior to mid-1970s, and public spending appears to have promoted growth over 1960s and 1970s. European CME/SME countries, despite higher taxes and more equitable income distribution, generally achieved higher growth rates than LMEs. Since 1980s there is no clear association between the size of the welfare states and economic growth. On average LMEs performed better, however excluding the fastest growing country in each group (Norway and Ireland) the average growth rates have been the same in SMEs and LMEs (1.8% per year) (Pontusson, 2005: 71-77; 174-80). Evidence on the average annual growth of civilian employment (1990-2002) supports the claim that there is a trade-off between equality and employment growth. Only SMEs that managed to achieve annual employment growth



rates above 1% over this period were the Netherlands and Norway. Employment growth in all LMEs except the UK exceeded 1% per year. Long-term unemployment continues to be more problematic in continental CMEs than in LMEs and Nordic countries. However, in LMEs greater employment growth has not translated into lower rates of unemployment or into faster growth of average living standards (Pontusson, 2005: 10-11). Lower rates of employment growth in CMEs are significant since higher levels of long-term unemployment and sluggish growth rates (over the last 25-30 years) have generated problems for maintaining the levels of public spending on services to which citizens have become accustomed (Pontusson, 2005:164). Evidence also shows that public spending can also enhance efficiency and growth, rather than diminish it. For example, public education and income supplements can be seen as investments in human capital. Even so, the objection that there is a relevant trade-off between certain economic policies and economic growth which may make such policies unsustainable is plausible. Nevertheless, Pontusson argues that the relationship between public spending and growth are more complex than often suggested. Welfare states may have contradictory effects on the WFE. For example, generous income supplements and investments in human capital can promote social inclusion and economic participation, while simultaneously also generating significant economic disincentives. The issue is whether positive or negative effects prevail on balance (and to what degree) (Pontusson, 2005: 162-180). Certain trade-offs between efficiency and other social values, unless too costly, economically unsustainable or too demanding on citizens, can be justified and are required for the WFE. The crucial question is how much efficiency must be “sacrificed” to achieve a certain level of equality. This question cannot be answered in abstract, and answers will vary across countries due to their differences. Evidence shows that certain institutional regimes more successfully mitigate the equality-efficiency trade-off. Nordic regimes have managed to balance commitments to social equality, fairly liberalized markets and growth somewhat more successfully than other

countries. This was achieved despite, for example, generous social transfers and collective wage-bargaining, which some authors would judge as imprudent. Combination of liberalized markets and sophisticated welfare states is surely one of the reasons why Nordic countries continue to well-perform in economic terms and in some aspects are superior to LMEs. The issue is whether the Rawlsian POD would be capable of doing the same.

## **5.2. Idealizations and Real-world Challenges**

Effective implementation and maintenance of any regime is essentially a problem of allocative efficiency and socio-economic sustainability. The problem is how to get more of the valued output (justice, freedom, equality, WFE) given scarcity of resources, limited public budgets and various political disagreements while maintaining the WFE. Even if scarcity is only moderate, there are never enough resources to achieve all social objectives without some trade-offs. Assessment of cost is of crucial importance since we have to compare what is received by pursuing certain goals (while not pursuing other) and whether the benefits justify the costs and trade-offs between different objectives. Following Lindblom, if allocations are to be efficient for the whole society, then everyone's benefits and burdens have to be somehow weighed and balanced, without excluding or discounting for some people's costs and burdens. Public justification demands that choices in matters of constitutional essentials (choice of POD over alternative regimes) and in matters of basic justice (trade-off between freedom and equality) are acceptable, in terms of relevant costs and burdens, to all citizens. That moral choice is also troubled by economic considerations and opportunity costs, or that all morally desirable social goals cannot simultaneously be pursued, still surprises some people. If people need education, healthcare and various other goods to lead meaningful lives, then societies should simply tax its citizens as to produce the required goods and distribute them accordingly. The issue is not whether societies should produce these goods. Rather, the important questions are how limited public resources are, how much of each good to produce,

and at what costs and trade-offs. Since Rawls never addressed the issue of foreseeable costs and trade-offs involved in establishing POD, it is unclear whether justice as fairness can be adequately realized (while maintaining the WFE) in actual societies given limited budgets and political disagreements, or even if the costs are acceptable to all citizens. Rawls's argument presumes favorable conditions, which means that the relevant costs would be manageable. However, that assumption tends to be used as a "get out of jail free card" whenever ideal theory runs into problems and feasibility concerns are raised. Even in the most favorable conditions, public budgets will be limited which means that trade-offs are inevitable. Assessment of the probability of a regime well-functioning inevitably involves comparing the (actual and potential) benefits of the regime with (foreseeable) long-term costs of its implementation and maintenance. Such cost-benefit considerations may appear too "economic" and too "materialistic" for idealists, however that is one of the burdens of aspiring to be realistically utopian and developing a well-functioning regime.

### ***5.2.1. The Budgeting Problem***

The robustness of institutional regimes and their overall cost can be measured in terms of moral demandingness (demands made on citizens) and in terms of their ambitiousness (required resources and maintenance costs). POD scores high on both dimensions. To put things into perspective: Compared to the Nordic regimes, which are among the most egalitarian regimes, POD aspires to be significantly more egalitarian. It follows that, in order to achieve its robust aspirations, POD would require a larger public sector and significantly more resources as to maintain generous social transfers and redistribute more wealth. It would also require a considerable degree of economic regulation and greater emphasis on political coordination as to maintain capital ownership and wealth widely dispersed. Therein, it can hardly be denied that POD is an "expensive" regime, which will be costly to establish and maintain both in terms of required resources and compliance costs. This does not mean that its

costs cannot be justified, rather only that its maintenance requires considerable amounts of resources, regulation and even restrictions on individuals' economic liberties. Williamson acknowledges that the transition to POD “would require, probably in a quite substantial degree” of redistribution of accumulated assets and taxation (Williamson, 2009: 449). The speculation is that, once established, POD would work of its own accord and the corresponding social and moral equilibrium would develop. This should then decrease its maintenance costs. Even so, this only means that more people would come to accept the required higher degrees of taxation, public spending, regulation and redistribution, and not that these policies would become unnecessary once POD is established. Thus, compliance costs of maintaining POD might be reduced, but the overall costs of POD, and the amount of resources required, would not. Rawls never seems to worry about the availability of resources, nor considers how the costs of maintaining justice in ideal and non-ideal conditions are significantly different and how this would impact the degree to which POD could be realized in actual societies. Rawls's idealizations can be seen as a way of “discounting” for the actual cost of POD and thus making it appear more attractive and feasible than it would have been if all the relevant costs, dynamic adverse effects and trade-offs had been taken into account.

The first discount of costs arises from Rawls's assumption of full compliance, specifically from what Farrelly called a cost-blind approach to rights and regulation (somewhat common in ideal theories). Rights have costs and large amounts of resources are needed to effectively enforce individuals' rights (Farrelly, 2007: 851; Sunstein, 1997: 130). Assumption that the protection of rights would have no significant costs may be true in societies characterized by full compliance and abundance of resources. Farrelly notes that such conditions would violate Humean circumstances of justice and we would not need justice if such utopian societies were possible (Farrelly, 2007: 853). Taking into account costs of rights and limited budgets means that the state may not be able to protect individuals' basic (and other) rights in the way

Rawls's principles presuppose (Farely, 2007: 851; Nickel, 1994: 778). Then, there are the costs of satisfying the second principle which, considering how robust FEO and DP are usually understood, will require considerable resources for adequate satisfaction. The more resources are required to satisfy the first principle (including the guarantee of the fair value of political liberties), the fewer resources there are for robust FEO and DP. Consider, for example, the costs of implementing Williamson's asset scheme (§2.3), which is envisioned as a complement to generous public provisions of various higher-order goods, i.e. education, healthcare and unemployment benefits. Bergmann notes that if some good is determined as a higher-order good, then its provision has a higher priority for limited resources than cash grants (assets) costing the same amount. Another issue is the quality of provided goods. Low-quality and high-quality healthcare and education are different goods, and securing high-quality public goods requires constant and substantive investments (and there are many essential higher-order goods). Ideally, we may want to have both expanded public provisions and a generous asset scheme. Bergmann argues that the analysis of the Swedish budget shows that we cannot have both at current levels of GDP per capita because of the problems that accumulate as the rate of taxation is pushed to very high levels (Bergmann, 2006: 111-112). Williamson acknowledges in passing that his scheme is currently unfeasible in terms of costs but proceeds on the assumption that this may not always be the case (Williamson, 2012a: 239). In addition to the costs of satisfying the core requirements of justice, there are also costs of the administrative apparatus of POD (and administrative costs are very rarely negligible). The greater amount of resources allocated into maintaining the larger public sector and regulation means that there are even fewer resources left for investments into public services and transfers required to adequately satisfy FEO and the DP.

It is often underemphasized how much the assumption of full compliance (and citizens having the corresponding sense of justice) discounts the foreseeable costs of maintaining POD. The

issue arises from a tension between egalitarian justice and individuals' attitudes shaped by long-standing capitalist norms. Considering Rawls's concerns about "hazards of the generalized prisoner's dilemma" and that POD aims to be significantly more egalitarian than any WSMC regime, the state would have to considerably regulate and monitor more closely ongoing economic activities as to ensure that individuals are not avoiding their duties or regulation. The actual costs of regulation, which will be high in POD to begin with, would be even higher in conditions of partial compliance. It seems clear that the more people disagree (especially if they "reason from the self-interested view") with the goal of maintaining narrow distributive equality (and significant opposition can be foreseen during transition), the more likely they are to avoid their duties. Depending on the scope of non-compliance, additional funds would have to be allocated into regulation and monitoring. This will leave even fewer resources for the required public services and transfers. Any additional limitations on already limited public budgets only augment inevitable trade-offs between requirements of justice and various social objectives. Avoiding the budgeting problem can be done either by collecting more revenue through increased taxation or taking on substantive national debt. The latter can be a seriously misguided policy often resulting in long-term debt crises and followed by austerity policies. Increased taxation also has its costs and adverse effects. The more immediate effect is that less post-tax income is left for other purposes, including savings, investments, accumulation of wealth and consumption (all important for the WFE). This is especially true for the less advantageous. The assumption is that higher costs of POD would be covered largely through higher taxes on the wealthiest. Such taxes can easily be justified on any egalitarian account, whether they can also be effectively implemented and sustained is a different matter altogether. Rawls emphasized that the wealthy would block such taxation in WSMC, but that issue is never raised in relation to POD. Ideal theory also assumes away that robust taxation incentivizes tax evasion and avoidance. Not everybody is

tempted to injustice and most people, even if they complain, generally do not avoid paying tax. People who are not “wholeheartedly” committed to the implemented conception of justice will be more inclined to tax evasion and avoidance. However, if such persons “get away with it” on a regular basis (and tax avoidance and evasion are common nowadays), then others will feel cheated and be tempted to injustice. The long-run effect is diminishment of respect for just institutions. The more immediate effect is that tax avoidance takes up significant amounts of resources, which could have been used productively. It also generates additional costs since more funds have to be allocated into catching up with legal and illegal machinations of people avoiding taxation. This begs the question how much revenue is lost in games between tax avoiders and governments spending an increasing amount of resources trying to catch them and whether higher tax rates are really cost beneficial.

Increasing public revenues also does not imply that additional funds would be used only for public purposes, rather than wasted or misallocated. History is full of examples of expensive government failures, misguided policies and public funds being used for self-interested purposes. Practices of public officials maximizing their benefits, business political cycle and distribution of economic rents to maintain political support are common in all societies. Although sometimes exaggerated, objections coming from the public choice theory are well-supported by evidence. Wasteful management of public resources has been present from the very beginning of the practice of pooling resources for common purposes and will not “disappear” any time soon regardless of various (also costly) controls designed to prevent such practices. Therefore, given how real-world governments operate, can we really claim that once POD is implemented a “new breed of politicians”, who would be more socially conscious about not wasting or misallocating public funds, will be regularly elected into office? It is not impossible, but it is a rather strong assumption, underlined by a further assumption that a new moral equilibrium would develop in due time. Even assuming there

would be sufficient political support for significant increases in taxation and that the wealthy would not block such policies (although on Rawls's own account they would), that does not mean that increased taxation would be sustained over time. This is especially true if foreseeable adverse effects on the WFE are generated. If so, then insufficient cooperative surplus would be generated in the first place and the strategy of increased taxation aimed at expanding public revenues for egalitarian purposes would be self-defeating in practice.

### **5.2.2. *Economic Challenges***

Whatever else may be true, robust taxation and economic regulations do not mix particularly well with economic incentives and efficiency. The claim that robust egalitarian finance and regulation will have a significant adverse impact on the overall level of economic activity, large-scale investments and growth is plausible and supported by evidence. Since these findings are from regimes less robust than POD, the observed problems, i.e. sluggish economic performance, may be further augmented in POD. The main question is whether enough individuals in POD would be sufficiently incentivized to engage in WFE enabling activities at the required degree. Rawls acknowledges that economic incentives are necessary to motivate individuals to increase their productivity and encourage additional investments, which in turn significantly increases the prospects of the least advantaged (TJ: 68). Economic incentives are justified if, and only, if the resulting inequalities are not too great and are consistent with the DP. Economic incentives are necessary since it would be unrealistic to expect that all people, or even most of them, would be motivated solely by their social duties and that efficient coordination could be achieved predominantly through moral incentives or without restricting freedom of occupation choice. G.A. Cohen noted that Rawls wasn't clear on how much economic incentive would be required and justified. Cohen argues that the DP can be understood in strict and lax manner. On the strict version, incentives are objectively necessary for individuals to increase their productivity and are justified because the need for



them arises independently from their unwillingness to “work harder” without special rewards. On the lax version, incentives are only necessary because individuals are unwilling to increase their productivity without special rewards. Strict version allows only a very limited amount of economic incentives, while the lax version [which Cohen unfairly ascribes to Rawls] may allow even large inequalities for efficiency reasons. According to Cohen, justice as fairness is only compatible with the strict version of the DP (Cohen, 2008: 68-79; 82-85). Cohen may be right in arguing that in an ideal society, in which individuals fully embraced the ideal of egalitarian justice (and acquired an egalitarian ethos), there would be no need for significant economic incentives. The issue remains that, even under favorable conditions, we cannot expect that sense of justice or social duty would motivate enough individuals to engage in WFE-enabling activities. Lindblom argues that to achieve efficiency it is not enough to motivate people “to love their neighbors, do good, or work hard”. What is required that people are drawn into specific assignments, ranging from undesirable employments to large-scale investments, into which they otherwise might not be drawn. Economic incentives regularly draw people into required assignments without resorting to coercion (Lindblom, 2001: 144). Therein, especially important is that the market system establishes incentives that encourage entrepreneurs to undertake large-scale projects even at highest levels of risk. Although on the Rawlsian account various inequalities may be justified, this certainly does not mean that larger inequalities can be justified on efficiency grounds. Rawls’s own view on the legitimate scope of incentives, although ambiguous, is closer to stricter interpretations of the DP than to the more lax versions. Van Parijs notes that while Rawls’s earlier formulations might suggest that any inequality (regardless how large) could be justified if it generates some improvements (regardless how small) for the least advantaged, Rawls’s final formulation involves a shift from the requirement of “some improvement” to “maximal improvement”. Thus, allowed inequalities must make the least advantaged as well-off as

realistically possible (Van Parijs, 2003: 205). Guaranteeing the fair value of political liberties requires that inequalities remain within narrow limits. Furthermore, given that POD aims to be significantly more egalitarian than any WSMC regime, the goal of maintaining narrow inequality of wealth can allow only a limited scope of economic incentives in practice.

While Rawls acknowledges the need for incentives, the argument for POD proceeds as if incentives are of minor importance (and can be significantly restricted), and as if egalitarian public finance would not diminish them (although evidence suggests otherwise). It seems somewhat contradictory to emphasize the necessity of incentives and then proceed to design a robust corrective mechanism aimed to redistribute wealth and maintain narrow distributive inequalities under the assumption that people, who previously had to be motivated by greater economic rewards, would not object to higher levels of taxation and redistribution since it is also assumed they would be committed to democratic equality. Thus, individuals who are not motivated by moral reasons but by expected benefits should engage in specific activities required by the WFE while being aware that larger parts of generated benefits will be taxed away and redistributed. The issue is that individuals as economic actors and individuals as democratic citizens are treated as two different groups motivated by different reasons, and then the argument for an egalitarian POD proceeds as if there would be no significant “conflict of interests” between the “two groups”. The public perspective would prevail as to maintain POD without diminishing the WFE. The assumption is that engagement in public deliberation would make people reconsider their values and subordinate their self-interest to the common good while also maintaining roughly the same level of economic engagement and risk-taking. However, if most people would not object to robust egalitarian policies and would remain sufficiently motivated, then why would economic incentives be necessary in the first place? A more likely scenario is that robust POD would become unsustainable either because high taxation and redistribution would undermine the necessary economic incentives

(leading to reductions as to maintain the WFE) or because people's self-interested reasoning would transfer into the public sphere (with the same outcome). It is trivially true that the need for incentives is underlined by individuals' self-interested concerns. Given growing social inequalities, any attempt of defending greater tax cuts for the wealthiest on efficiency grounds would be a rather cynical apology for the *status quo*. Cohen's argument certainly succeeds in showing that economic incentives should not be taken at face value, but it does not resolve the motivation problem. It sets the problem aside by assuming that people will somehow acquire an egalitarian ethos (which would serve as the prime motivational force) and that the WFE would be maintained through (presumably) greater political coordination. What many authors fail to realize is that the main problem is not to develop a justification for robust egalitarian policies and regulation (that can be done on various grounds). Rather, the problem is to show (without depending on idealizations) that, once such policies are implemented, enough people will remain sufficiently motivated to engage in productive and entrepreneurial activities required by the WFE. Claiming that after successful transition level of motivation in POD would be comparable to less egalitarian WSMC regimes might be true, but it cannot be assumed. Also, successful transition depends on whether WFE would be maintained during transition given diminishments in economic incentives. Maintaining justice requires that people engage in WFE enabling activities and contribute their fair share in taxation. However, while you can tax people, you cannot coerce them into engaging in taxable activities, nor command them to increase their efforts. Liberal justice cannot demand that people increase their engagement in economic activities for the sake of maintaining justice (WFE). The problem is not that the necessity for incentives is not recognized on the Rawlsian account. Rather, the issue is that in practice there might not be left enough room for the required incentives since POD is specifically designed to nullify the impact of allowed incentives on consequent inequalities. The implication is not that any degree of inequalities can be justified

on efficiency grounds, rather that the necessity for economic incentives cannot be taken lightly during institutional design. Otherwise, the regime would not well-function.

Another issue is the foreseeable impact of robust regulation on the WFE. The WFE requires adequate legal conditions (sophisticated property rights and entrepreneurial liberties), social conditions (including a well-developed education and social security system) and adequate regulation. Without appropriate legal and social conditions, the WFE would not be possible. Robust regulation can often, instead of supporting the WFE, be very costly and generate various unintended adverse consequences. Costs of considerable regulation required in POD are twofold. It is costly in terms of resources required for effective enforcement and in terms of foreseeable effects on the decreased level of economic performance (due to increased business costs) and lower rate of innovation and diversification (due to restrictions on entrepreneurial liberties). In general, economic innovation is enabled and facilitated through property rights and the freedom to experiment with available resources and opportunities. Economic systems underlined by flexible regulations, which allow wider freedom for experimentation tend to be more diversified with a faster rate of creation of new employments. In contrast, higher regulatory costs and “business unfriendly” environment makes smaller businesses less likely to survive on the market, which may even contribute to further concentration of markets. Robust regulation can also, instead of protecting the economically vulnerable, harm the least advantaged. As Sunstein noted, everything else equal, the market will often adjust to robust regulation in ways that will harm the least advantaged (Sunstein, 1997: 319). For example, an unintended consequence of robust minimum wage laws is making unskilled workers more expensive to employ. The point here is that no policy or regulation should be taken at face value and judged only based on its intentions without taking into account the cost of unintended adverse consequences, foreseeable ancillary costs such as decreased level of economic activity and economic

diversification. The main issue with modest schemes of economic liberties is that it may enable constant political revisions and interventions which make long-term planning more difficult. Whenever individuals engage in economic activities they do it with the knowledge that the state may intervene, i.e. abrogate contracts or legitimate expectations, whenever deemed necessary. Such an environment would not be conducive to the WFE since it disincentivizes large-scale investments, which in turn has a significant impact on economic growth and creation of new employments. These issues will be addressed in greater detail later (§6.4). In general, while most egalitarians may accept “sluggish” economic performance and near-zero growth rates if that would bring about more egalitarian distribution of wealth. In actual societies, however, sluggish economic performance and growth rates have serious implications on creation of new businesses and employments, on additional investments, and on generating sufficient cooperative surplus to sustain higher levels of public spending. Even if the economy does not grow, quite a lot of economic efficiency would be required to satisfy the requirements of justice as fairness. Experiences from the “Eurosclerosis” period demonstrate that significant flexibility in regulation is required to maintain the WFE.

### ***5.2.3. Assumption of Closed Societies***

Mitigating the equality-efficiency trade-off is challenging, but it becomes even more difficult once the workings of the globalized economy and competition between countries are taken into account. Some authors have embraced these implications and shifted their efforts on developing a global conception of justice, while others address these issues as an aftermath along other problems of non-ideal theory. Rawls never considered whether POD would be well-functioning in conditions of a competitive global economy. According to Pontusson, there are serious concerns whether the pursuit of low inequality is still feasible in global economy and suggests that such issues influenced the decline in robustness of European welfare regimes since the early 1990s (Pontusson, 2005: 168). Even if the equality-efficiency

trade-off can be mitigated in POD (in favor of equality) while maintaining the WFE under the assumption of closed societies, that becomes much harder in conditions of international openness. A problem for all societies is the possibility of capital flight and reallocation of production, which has various adverse effects on maintaining narrow social inequalities and the WFE. The issue of capital mobility is a part of the problem of the “open economy trilemma”, according to which it’s impossible to simultaneously have a fixed foreign exchange rate, capital mobility and an independent monetary policy. Only two are simultaneously possible (Oxelheim, 1990). In absence of greater global coordination and full compliance from capital owners, POD may have to place restrictions on capital mobility. Without such restrictions, larger capital owners would have, as Christiano noted, leverage over governments and could pressure them into not implementing certain policies via threat of capital flight (Christiano, 2010). Imposing restrictions on capital mobility is relatively straightforward, mitigating the associated costs – not so much. Such strategy grounded the Bretton-Woods system and, despite its apparent attractiveness, generated serious problems for the WFE, which ultimately lead countries to largely abandon using restrictions on capital movement. Restrictions on capital mobility are not even an option for smaller and developing countries which, given they are not blessed with natural resources or larger internal markets, are heavily dependent on foreign direct investments and access to external markets (Potusson, 2005: 15). Such countries have little choice but use preferential tax rates as to attract foreign capital. Even for wealthier countries restrictions on capital mobility may involve problems for the WFE due to lack of external investments and competition. Unilateral implementation of capital restrictions would also not be faced with approval in the international community leading to the revival of trade wars and associated issues.

A deeper insight is that different countries (due to their specific historical and socio-cultural legacies) will promote different conceptions of justice with a varying degree of robustness.

Not all countries will pursue robust egalitarian justice. This inevitably results in “competition” between countries, which in turn makes the pursuit of robust egalitarian justice significantly more difficult both due to capital flight and increased social mobility. Even if capital mobility is restricted, the state cannot prevent emigration of talented persons (not without violating their basic rights) who, for whatever reason, do not support the implemented conception of justice and regime. Even if people are “forced” to leave their capital behind, brain-drain will have a negative impact on the WFE. Global conception of justice or stronger coordination would, of course, resolve the problems of competition between countries and capital flight. Even if such things are feasible in the near future, neither is something that can be unilaterally imposed, and no country can pressure other countries into implementing a conception of justice of similar robustness as not to undermine its own pursuit of justice. Insofar there are conflicts between countries, these issues cannot be assumed away as an irrelevant circumstance of justice. That is, it must be taken into account how global economy and competition will impact the well-functioning and stability of the implemented regime. Nothing said here should be understood as a justification of tax competition or an argument against using certain protectionist policies as to promote justice and socio-economic development. Rather, the aim was to show how the assumption of closed societies discounts for costs, and what challenges POD will face in actual open societies. Even in favorable conditions, governments face great limits on what they can do on limited public budgets, and these limits are further augmented in conditions of globalized economy. Some regimes work better and are more attractive under the assumptions of closed societies and full compliance. Pursuit of narrow distributive equality as envisioned in POD may be a viable goal in ideal conditions characterized by closed societies and full compliance and significantly less viable in conditions of a competitive global economy, especially during transition.

#### **5.2.4. Idealized Government**

The well-functioning of POD, in particular maintaining a relatively egalitarian well-functioning economy, would depend significantly more (compared to WSMC regimes) on the government making appropriate corrections to market outcomes on time. Corrections also need to be implemented as intended through the large political and bureaucratic apparatus, which in itself generates various problems including the real possibility of regulatory capture. Balancing complex macroeconomic tasks with robust egalitarian aspirations requires the government to constantly monitor ongoing economic activities and make various decisions which would have been done automatically on the markets, i.e. determining appropriate wage levels and redistributing capital, but with limited information, and without a clear threshold of justifiable wealth inequalities. How is this to be done? What prices are to be set and what left to market forces? How widely capital ownership must be dispersed? How would we reach an agreement on a consistent egalitarian economic policy capable of maintaining long-term political support given how experts often deeply disagree on economic issues?

Classical liberals often exaggerate epistemic limitations of governments as to show the superiority of the liberalized market system in coordinating economic activities and resolving the knowledge problem of societies. This leaves them vulnerable to objections that they put too much trust in the invisible hand of the ideal market, while neglecting that real-world markets are significantly different than their ideal counter-part. The same objection applies to those emphasizing “the visible hand of the state”, despite there being as many examples of government failures as there are market failures. In POD greater weight is placed on political coordination due to the normative emphasis placed on democratic decision-making. If democratic decision-making is seen as morally superior to market coordination, if the scope of social complexity is reduced through simplifications, and if governments do not face larger



limits on their competences, then political coordination will, by default, be seen as preferred solution to decentralized market-based coordination. Higher degrees of regulation and interventionism, however, are not predetermined to produce intended outcomes. Often instead of providing adequate solutions, worse problems were generated. Ideal theories significantly underestimate social complexity and, consequently, overestimate the powers of political coordination and the governments' ability to adequately deal with it. Even if sometimes exaggerated, epistemic and competence limits of governments are significant and should be taken seriously. Hayekian knowledge problems tend to reappear when least expected.

Considering this, economic challenges facing POD are actually twofold. Individuals may lack the incentive to engage in WFE enabling activities while the government lacks the necessary knowledge and capacity to produce sufficiently efficient results. All states engage in various necessary economic interventions and corrections. The issue is that in POD, due to its robust aspirations, the government will have to intervene significantly more and with a smaller margin of error compared to WSMC regimes, which can allow more decentralized economic decision-making. The fact that Nordic countries have significantly more liberalized markets than it would be allowed in POD is often underestimated. Competence limits of governments are acknowledged but the argument for POD appears to proceed as if there are no significant limits. Idealizations distort our normative reasoning. The value of market-based coordination and entrepreneurial choices (enabled by sophisticated economic liberties) in maintaining the WFE are taken somewhat for granted due to idealizations about the effectiveness of political coordination. However, if governments face significant limits on competences, then they cannot be assigned such a crucial corrective role required by the well-functioning of POD. Once the underlying idealizations are relaxed, and we acknowledge that governments may not always act prudently or competently, what is left are claims that narrow distributive inequality and the WFE would be maintained in POD by the government through appropriate

interventions, corrections and regulation, despite significant competence limits while also being subject to regulatory capture and various self-interested agendas (including its own).

One reason why Rawls favors POD over WSMC is because POD would guarantee the fair value of political liberties. The argument is that in WSCM the democratic process remains vulnerable to domination of the wealthy who can, for example, effectively block (even if not directly) robust tax and redistributive policies required by justice. There are two issues with Rawls's argument. First, if the assumption that the wealthy already control the political process is what generates the need for greater regulation and redistribution, then how can we expect the already "corrupted" political process to produce rules that would restrain the wealthy instead of the wealthy blocking regulation intended to correct the problem. Second, the issue is not just that the wealthy could block the implementation of POD but also that, if implemented, POD would remain vulnerable to regulatory capture and abuses of power, especially during transition. Concerns about usurpation of political power and corruption of the political process go both ways. The issue is not only that the wealthy could abuse political power, rather also that there may be too much power to be abused in the first place. Once it is acknowledged that people will often act in a self-interested manner, this inevitably opens a real possibility that the state itself will be run by self-interested people. As such, outside of the comfort of ideal theory, it becomes significantly more difficult to maintain that the motivations of political officials will not be corrupted by temptations to abuse state power at their disposal just as economic actors are likely to exploit whatever market power they have. It is a cliché to point out that real-world politics tends to attract self-interested people just as much as big business. Yet, it is an enduring cliché. Given its aims, the POD government would have to be assigned a greater degree of discretionary decision-making powers (as to make the required adjustments and corrections on time). Greater scope of discretionary decision-making inevitably incentivizes regulatory capture and abuse of power. One might

point to, for example, Nordic countries which have relatively large governments, but low levels of corruption, and argue that the new social motivations and norms which citizens would acquire in POD, together with the rule of law and monitoring from the civil sector, will significantly restrict political corruption. The rule of law, by itself, is insufficient to prevent abuses of political power. As Raz noted, conformity to the rule of law does not completely eliminate arbitrary use of power, it only helps to do so (Raz, 2018: 16). Therefore, if social norms and civil sector are insufficiently developed, then political power will be more or less abused regardless how many formal constraints on government power there are. The harsh truth is that even in most democratic and developed states, political power is abused to some degree despite measures designed to prevent it. Expanding discretionary government powers further incentivizes regulatory capture and abuse of political power, especially in conditions characterized by shifts in balances of power. Expanding government powers may be an attractive ideal until “Trumps”, “Putins” or “Orbans” are democratically elected into power. Then expanded powers become a problem with no easy way out. It was questioned if we can assume that once POD is implemented a “new breed of politicians”, who are fully committed to justice and will not abuse power, would regularly be elected into power. While not impossible, it is unrealistic to expect it would happen during transition. The reason why Rawls does not apply his own critique of WSMC to POD is because POD is an ideal regime; his version of WSMC is not. Compare non-ideal WSMC regimes with non-ideal POD and concerns about WSMC would appear in POD as well. Again, Rawls does not seem to take seriously that justice has to be implemented by flawed persons who will be subject to different social pressures from different groups who do not really agree on justice as fairness. This is, of course, not a definite argument against POD. However, it should be kept in mind given that POD may function significantly different than its idealized version. POD that

would incentivize a greater degree of regulatory capture and abuses of power is not as attractive as its idealized version which always works as intended.

### **5.3. Viability of Property-owning Democracy**

It was argued (§3.4.) that a theory which recommends institutional regimes for which we have, all things considered, valid reasons to believe would not be well-functioning in actual societies is either incomplete or deficient. Only sufficiently fact-sensitive theories can offer adequate moral guidance in actual societies. The appropriateness of any regime depends on the adequacy of proposed institutions, their well-functioning and the ongoing willingness of citizens to endure the burdens of upholding just institutions over time. Whether POD, or any other regime, would be well-functioning, once implemented largely depends on the WFE being maintained. Any conception of justice which cannot offer sufficient reasons therein is either incomplete (if arguments are over-dependent on idealized assumptions, i.e. about individual attitudes or capacities of governments) or defective (if arguments are underlined by unrealistic assumptions). While POD is morally attractive, that attractiveness outside ideal theory is conditional and dependent on certain assumptions, the core being:

1. Enough resources would be consistently collected and limited public budgets would be sufficient to realize different requirements of justice. There would be no significant trade-offs between requirements of justice and other social objectives (including the WFE);
2. POD would be able to generate its own long-term support. Individuals would develop an effective sense of justice and acquire additional social duties which would ground the new moral equilibrium required to stabilize POD. Public officials would acquire a greater sense of duty as not to abuse political power or misallocate and waste public funds;

3. The WFE will be maintained at greater degree of distributive equality without significant decreases in social prosperity and efficiency despite greater restrictions on property rights and economic freedoms, considerable regulation and redistribution of wealth;

These assumptions are interconnected and co-dependent, however the second one is crucial both for maintaining the WFE given foreseeable motivation problems and long-term stability. The more dependent the argument for the well-functioning of POD is on these assumption, the more historically contingent would be the establishment of POD. The issue, as Sen notes, is that Rawls's was predominantly focused on identifying “just institutions” through “an agreement” on the principles of justice, not “just societies” in which actual and foreseeable behavioral patterns would be taken into account. The choice of principles of justice is meant to ensure both the right choice of just institutions and the emergence of appropriate actual behavior. Even if we accept that the choice of just institutions would identify “reasonable” behavior, the issue remains how the chosen institutions would work in societies in which actual behavior falls short of such conduct. Sen argues that the pursuit of justice is a matter of gradual formation of behavior patterns and there is no immediate jump from the acceptance of some abstract principles of justice and a “redesign” of people’s actual behavior in accordance with the principles (Sen, 2009:67-68). By assuming that actual behavior societies would incorporate the demands of reasonable behavior corresponding to the chosen principles, Rawls significantly simplifies the choice of institutions since we are told upfront what to expect in individuals’ behavior once institutions are set in place (Sen, 2009: 67).

### ***5.3.1. Limited Time Frame***

It can hardly be denied that the current attitudes and motivations of individuals are not fully compatible with the demands of Rawlsian justice, and until they become more adjusted to justice as fairness, actual behavior of individuals will pose a serious obstacle for the well-functioning and stability of POD once implemented. The more immediate effect relates to the WFE. The issue is that, due to robust egalitarian requirements and increased wealth redistribution, not enough individuals may be sufficiently motivated to engage in WFE enabling activities (to the required degree) and uphold rather demanding POD institutions. Although there is no agreement on the scope of required efficiency-enabling inequalities, the allocative and distributive functions of the market may not be as easily separated as Rawls would require for stability of POD. The more these functions are interconnected, other things equal, the harder it becomes to maintain that robust egalitarian requirements will not significantly diminish individuals' motivation to engage in WFE enabling activities. The motivation problem arises from the discrepancy – and possibly deep tension – between what egalitarian justice requires and actual people's pluralist views about social justice and their attitudes shaped by long-standing capitalist norms. Does this mean that the requirement of maintaining the WFE inevitably justifies a significantly larger scope of socio-economic inequalities? Should individuals' preference to maximize their self-interest be accepted as fixed? The answer to both questions is no, but a qualified no. Preferences are not static, and only some attitudes may be so deeply embedded in individuals' identity as to make them practically impossible to change even at the highest levels of effort and coercion. There are certainly various valid moral reasons why we should want to influence the preference formation and to promote the development of more “socially conscious” preferences, i.e. through education. This would also be desirable in terms of the WFE since “the strengths” of self-interested motivation that contribute to market efficiency can, as Lindblom notes, cause

significant inefficiency (Lindblom, 2001: 164). For example, such motivation encourages investments into large-scale socially valuable projects but also motivates CEOs to demand extraordinary large bonuses while cutting down on employment costs, incentivize moral hazards, etc. Such motivational failures are not restricted only to the economic sphere; they are also common in the public sphere (as previously discussed). We should not fool ourselves into believing that such “public failures” are somehow less problematic and will be easier to manage. They are not, and they will not. Development of more “socially conscious” preferences cannot be achieved over night. While individuals' self-interested preferences can be changed with sufficient effort, they cannot be treated as something that can easily be managed once POD is implemented. Thus, insofar as individual attitudes fall short of being sufficiently “socially conscious”, the core insight holds: In absence of a general motivational structure conducive to justice as fairness, maintaining the WFE in POD will run into serious problems due to the motivation problem and actual behavior of individuals. No amount of political coordination, coercion or regulation can break through this problem unless enough people become more motivated by their sense of justice and social duty, rather than self-interest. Even if we are convinced by Rawls that the corresponding sense of justice will develop in POD, the issue is not whether that will eventually happen. Rather, the issue is when that would happen and, crucially, what to do meanwhile. History is full of ambitious projects, less robust than the POD, which were abandoned or reformed long before they stabilized. Any regime can be stabilized through sufficient coercion, although not indefinitely, and maybe not even for long if POD institutions start generating adverse effects on the WFE.

What some authors tend to neglect is that while the justification is different and the goals more ambitious, the general strategy underlining POD is not really revolutionary. Highly regulated and interventionist regimes (egalitarian or otherwise) combined with robust taxation and greater emphasis on political coordination have been implemented before across the

world. All of them have run into serious socio-economic problems and have either been reformed or abandoned. Nordic regimes have not so long ago been closer to the POD ideal in terms of robustness, but since the 1990s have been on the path of “slimming down” and toward “more market-friendly” welfare states largely due to sluggish economic performance. They remained fairly robust, but significantly less robust and more market friendly than how POD is envisioned. Considering this, if POD is implemented and the economy runs into foreseeable problems and these problems are not resolved in due time, then it would become rather difficult to maintain sufficient public support, especially in light of opposition to distributive egalitarianism, for the continuation of the project. This is because if the economy starts to malfunction, the blame will inevitably be placed on egalitarian policies, regardless if such policies are the actual cause of economic problems. Even if tension between distributive equality and efficiency in POD would not be as strong as speculated, it will inevitably occur (especially during transition) and then skepticism and opposition to egalitarian justice will resurface again. Therein, a pattern of events can be identified. Robust POD-like regime is implemented. It works adequately for a while until economic performance starts slowing down (due to economic disincentives and motivation problem). Sooner or later, usually as a combination of internal and external factors, economic crisis occurs. If the crisis is prolonged, the government is confronted with a dilemma: Remain committed to distributive equality and robust policies (and hope the crisis passes without structural reforms) or relax the robustness of the regime as to stimulate the economy (at the cost of promoting greater distributive equality). The preferred solution in Western societies was liberalization due to prevalence of long-standing capitalist norms and widespread belief that more liberalized economies tend to overcome crises easier than more regulated economies. It may be regrettable, but if the dilemma is between greater distributive equality and the WFE, the choice of actual governments is unlikely to be in favor of more equality at the expense of WFE. Nothing in



arguments for POD gives sufficient reasons to believe that the pattern of events would be any different in POD. It is trivially true that if enough people already had the corresponding sense of justice, there would be fewer problems in simultaneously maintaining narrow inequality and the WFE, but that is not the case and it cannot be assumed. Therein, problems Rawls ascribed to *modus vivendi* will be a threat to stability of the POD insofar the corresponding sense of justice and moral equilibrium are not developed. The catch-22 is that, in order for people to develop an effective sense of justice required for long-term stability, the implemented regime must be well-functioning and people have to perceive that justice is actually being done. However, since actual persons' attitudes are not yet in line with the demands of egalitarian justice, the regime will (more or less) malfunction, which in turn will (more or less) interfere with the process of people adequately developing an effective sense of justice. That said, although similarly robust regimes failed to generate their own long-term support and achieve stability, this does not imply that POD would be unable as well. It may well be the case that under favorable historical and social conditions, POD would be reasonably well-functioning and people would be willing to endure the costs of maintaining the POD despite occasional (more or less serious) problems. The following part addresses the question whether POD would be able to generate its own long-term given its demandingness.

### ***5.3.2. Resentful Compliance***

Rawls holds that some principles and regimes can violate the “strains of commitment” by exceeding “the capacity of human nature”. Whatever principles are otherwise regarded as just, must be tempered due to possibility that they will have consequences the parties can only accept with great difficulty (TJ: 153). Considerations of the strains of commitment, according to Freeman, require that the parties choose principles they are confident they can endorse and comply with. If the parties believe they will not be able to respect just institutions because they would be too demanding, then they should not choose these principles (Freeman, 2009: 90). Nozick argues that Rawls worried about resentment from the worst-off, but neglected the potential resentment from the more fortunate who may feel they are being “bled dry” for the sake of the worst-off (Nozick, 1999: 196). It would be cynical to argue that any non-minimalist requirement of distributive equality would be too demanding on citizens, especially given how much wealth some have accumulated. It can plausibly be argued that regimes more robust than current WSMC regimes would not be too demanding. The issue is not that some increases in taxation, redistribution and regulation can be justified. Rather, the issue is that POD requires considerable taxation, redistribution and restrictions on individuals' property rights and economic liberties. This is unavoidable since POD requires that inequalities in wealth and capital ownership remain within a narrow range. Thus, citizens would probably have to give up larger parts of advantages gained through their efforts. Pushing people too hard will diminish their motivation to uphold POD. Many citizens will not accept its normative vision to begin with and, thus, may likely perceive they are subjected to excessive demands for the sake of objectives they do not share. If so, then it becomes significantly less likely that POD would generate its own long-term support and more likely that resentful compliance would be established. Something Rawls aimed to avoid.

Persons may become resentful if their claims in freedom or equality have been improperly neglected and have not been given appropriate normative weight in a conception of justice (and the corresponding regime). The freedom-equality “trade-off” must not be too serious for either value. G.A. Cohen argues that while justice requires an uncompromising commitment to equality, it must also include a robust commitment to freedom and welfare of the community. If equality can only be “purchased” at the cost of either freedom or welfare, it would be less attractive. Each person, Cohen maintains, has “the right to be something other than an engine for the welfare of other people”. Persons are not slaves to social justice (Cohen, 2008: 10). Such considerations are not extended to economic liberties. On the Rawlsian account, with exception of personal ownership and occupation choice, economic liberties have been somewhat neglected in favor of political and civil liberties. This is especially true for productive ownership rights and entrepreneurial liberties. An implicit assumption shared by most egalitarians is that economic liberties (with the two exceptions) are not an essential part of individuals' freedom. Therein, individuals would be more accepting to restrictions on these liberties (compared to political and civil liberties) and thus would not object even to considerable restrictions (required in POD). That is an optimistic assumption, especially given how individuals' attitudes have been shaped by long-standing capitalist norms. Tomasi argues that with growth in prosperity of Western societies people increasingly find personal meaning in economic decision-making and “assign more value to economic freedom rather than less” (Tomasi, 2012b: xxiii, 61). 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). They are guilty of “economic exceptionalism” according to which economic liberties, compared to other liberties, are “singled out for relegation to a lower level of protection” (Tomasi, 2012a: 58). Economic exceptionalism is unjustifiable because the very grounds on which personal ownership and

occupation choice are justified as basic rights (adequate exercise of moral powers) can be used to show that other economic liberties are also basic (Tomasi, 2012b: 76). Tomasi's point is not that all activities which many people find valuable should be protected as basic rights, but that when many people find certain activities especially valuable, philosophers should take these attitudes seriously and reflect on their value. Since philosophers do not engage in “capitalist” activities valued by many people, i.e. business ownership, they may have underestimated the moral significance of these activities and liberties (Tomasi, 2012b: 66).

The assumption that most people place little value on their economic liberties and would not mind even considerable restrictions, or that they would not demand greater protection (even under some hypothetical choice situation), appears unrealistic. Most people would probably have little objections to regulating more strictly large corporations. When it comes to their own economic lives, they would be far less acceptable to greater interference and restrictions. No democratic society has managed to transform people's attitudes towards economic liberties, despite many efforts. Rawls appears to believe that individuals, once shielded from their purely self-interested considerations, will have no reason to demand wider economic liberties. For “Rawlsian citizens” regimes which extensively restrict economic liberties (LMS) and regimes which allow wider scope of economic liberties (Nordic-style regimes) are morally on par. Actual persons who aspire to be autonomous, however, are not indifferent about the scope of their economic liberties, even if they find the rationale for greater restrictions and regulation justified in principle. Even egalitarian philosophers are protective of their intellectual rights and academic freedoms, which in essence serve the same interests (enabling independence and control) as property rights and economic liberties. Various economic liberties would be accommodated in POD since citizens would be allowed to own property, choose their occupation, start private businesses, invest and profit therein. While that is true, what matters for individuals is not merely which freedoms they have, but also the

actual scope of these freedoms and whether they are adequately protected. Since the value individuals assign to their economic liberties as important for their autonomy has not been acknowledged in principle, commitment to economic liberties in POD may only be nominal and result in a modest scheme in practice. Inadequacy of egalitarian schemes of economic liberties becomes clear at this point. Since little normative weight was assigned to economic liberties (with the two exceptions) in principle, the loss of valuable autonomy-enhancing freedom due to significant restriction might not even be noticeable, let alone as something to be seriously concerned about. Economic liberties can be restricted in accordance with demands of distributive justice without any special justification or reference to autonomy of persons whose liberties were restricted. Almost any restriction, regardless how extensive, can legitimately be implemented through a simple majority vote or even at the discretion of the government. Individuals whose liberties have been infringed may not even have a legitimate ground to complain. Consider, for example, Dworkin's account on which a just society is defined as being properly equal, and on which liberty and equality are defined in an interrelated manner with liberty derived from the best conception of distributive justice. Other things equal, according to Williams, this means there is no relevant loss in freedom if someone is prevented from doing something that he/she would not be allowed if certain egalitarian ideal arrangements obtained. There is a loss of freedom for persons whose activities have been restricted, but that fact by itself does not give them a legitimate claim against restrictions. Individuals have a valid complaint only if they are prevented from doing something they have a right to do. As Williams notes, if this the appropriate form of valid complaints in the name of freedom, then conflicts between freedom and equality (where equality implies rights) appear to be impossible (Williams, 2005: 121). While almost any restriction (on non-basic liberties) may be justified given a suitably moralized conception of freedom, those who do not "wholeheartedly" share the particular conception of justice will

perceive it as a loss in valuable freedom, not a gain in equality. They will feel resentful at the imposed restrictions even if they are not in the right and accept the legitimacy of the regime which generated these restrictions but hold it should not have (Williams, 2005: 122; Sunstein, 1997: 104). This is especially true if they cannot even legitimately complain. Rawls mimics Dworkin by assigning little normative weight to economic liberties (with the two exceptions), especially to productive ownership rights. It is not difficult to imagine that in POD, if subjected to considerable economic restrictions and taxation, many people could perceive that justice imposes excessive burdens and justifies (in practice) a significant loss of freedom (promised in theory) they find especially valuable. Even if restrictions and regulations required by POD are perceived as too demanding or excessive, there may be no legitimate grounds (due to little normative value assigned) on which citizens could reasonably demand greater protection of their economic freedoms if they conflict with distributive justice. Individuals would have to accept considerable restrictions on their economic liberties, but what adds insult to injury is that they cannot even reasonably complain in the name of economic freedom if they perceive that excessive and undue burdens are imposed on them. Considering this, individuals living in POD could develop a sense of reasonable resent, and not an effective sense of justice as Rawls hoped, even if institutions are satisfying the demands of justice. Individuals may become resentful if their weighty interest in economic liberties has been improperly neglected, that is, if appropriate normative weight has not been assigned to their economic liberties in a conception of justice and the corresponding regime.

The core problem for stability, as Rawls realized, is that if people's good regularly "runs counter" to demands of justice, they may perceive that acting on their sense of justice is costly for them and may become alienated from their sense of justice (TJ: 295). The issue is that individuals assign significantly more value to having wider economic liberties rather than less, while Rawls's conception of justice requires significant restrictions on these freedoms.

The wider the gap therein, the more likely is that people would become resentful. The more widespread resentfulness due to neglect of economic liberties, the more likely it becomes that resentful compliance would be generated and less likely that POD would be able to generate its own long-term support. It also becomes less likely that POD would be well-functioning and stable. In conclusion, individuals' weighty interest in economic liberties (as derived from their higher-order interest in autonomy) has not been taken seriously enough into account. Rather, it was discounted for through the idealized assumption that people are more or less indifferent about the scope of their economic liberties and will be more willing to accept even considerable restrictions if that means "better" establishment of justice as fairness. Not quite. Failure to assign appropriate moral weight to individuals' economic freedoms is likely to have an adverse impact on their perception of fairness and demandingness of POD, generate a sense of resentment and significantly diminish their motivation to uphold POD over time.

#### **5.4. Idealized Persons vs. Reasonable Sceptics**

Would Rawls's conception of justice and POD, all things considered, be selected as the most reasonable options for actual societies? In this regard, it should be kept in mind that Rawls designed the OP specifically to generate his own principles (although different reasonable principles can be generated), and that the parties do not represent actual persons, rather ideal citizens. Such citizens are assumed to share (to a sufficient degree) all the relevant political values (despite FRP infecting the political set of values) required to select Rawls's own principles (including a modest scheme of economic liberties) as the most reasonable option for actual societies. By assuming that behavior in the post-contract society would correspond to chosen principles, and since experiences with POD-like regimes are not seriously considered, the parties can remain sufficiently optimistic about the stability of Rawls's principles despite their robust demands, tension with actual people's attitudes and opposition during transition. It does not appear that Rawls's principles can actually fail his

public justification and stability tests (especially if compared only to utilitarian and libertarian conceptions). Persons assessing the appropriateness of principles are specifically “designed” to select Rawls's principles despite their reasonable disagreements about justice. The same applies to POD despite previously discussed feasibility concerns. That said, almost any conception of justice and regime, regardless how demanding or controversial, can appear morally attractive and viable: (1) if assessed predominantly from the perspective of ideal citizens who are assumed to share all relevant political values; (2) if the scope of reasonable disagreements about justice is significantly limited; and (3) if full compliance and favorable socio-political conditions are assumed. However, what if these assumptions are relaxed?

Imagine that the person assessing the appropriateness of the proposed conception of justice (and the corresponding regime) is conceptualized as an autonomous person who aspires to self-author her life. Such persons, although characterized by limited altruism, have a weighty interest (if not moral reasons) to establish a Society of Equals and secure social conditions in which they are treated with equal respect and have a wider opportunity to be autonomous and pursue their conceptions of the good without unwarranted and excessive interference. While they are willing to restrict their freedoms in order to establish justice and social conditions of equal autonomy, they also want to secure a wider scope for their autonomy and projects. Such persons will object to additional units of state interference into their personal and economic lives (even if they see the need for it) and will demand that their moral obligations are confirmed by their own deliberations. Such persons will remain sufficiently motivated to comply with the demands of justice insofar they are not excessive and do not significantly clash with their own ends. The described persons, while reasonable in the Rawlsian sense, are meant to be closer to imperfect persons inhabiting actual societies than to ideal citizens. The first difference is that such persons will be more difficult to persuade to accept restrictions on their freedoms, and are not assumed to be indifferent towards the actual scope of their



economic liberties. Second, such persons will not be over-optimistic (as they often appear in ideal theories) about human ability and feasibility of proposals aiming at comprehensive macro-restructuring of their societies. They will also consider experiences with relevant historical regimes. Such persons will be reasonably skeptical towards proposed ideal regimes (even if they accept their normative vision), especially if they suspect these regimes are too idealized and may not be well-functioning in actual societies. Assume that the parties in the OP (or the constitutional body) represent such persons and take into account: (1) the scope of reasonable disagreements about justice; (2) the value such persons attach to their economic liberties in terms of autonomy; (3) that persons may become resentful if their economic liberties are significantly restricted; (4) that actual persons will not always act reasonably; and (5) experiences with POD-like regimes. Therein, given these considerations, would Rawls's conception and POD still be selected as the most reasonable options for actual societies?

Establishment of POD may be too dependent on the existence of favorable socio-political conditions (including appropriate attitudes, motivation and reasonable behavior) which may not exist or develop in time to stabilize the POD. Even if enough people would be sufficiently motivated to uphold justice, there are concerns whether POD can actually deliver (to a sufficient degree) on its promises on limited public budgets or that the WFE would be maintained. Placing more weight on experiences with POD-like regimes, in combination with reasonable skepticism, generates reasonable doubt that POD would be well-functioning and capable of generating its own long-term support. Robustness of POD itself may negatively affect individuals' motivation and willingness to uphold justice, especially if subjected to considerable economic restrictions and regulation. Therefore, reasonable sceptics may not be sufficiently confident that POD would be able to promote the development of an effective sense of justice or achieve stability. While the above-described persons are willing to restrict their freedoms in order to secure justice and social conditions of their autonomy, and many of

them would not significantly oppose the goal of promoting distributive equality through redistribution of wealth and economic regulation. However, such persons also highly value their autonomy and economic freedoms and, thus, would reject regimes in which their personal and economic liberties are significantly restricted even if they accept the broad ideal of justice as fairness. In general, considering the preceding discussion, it is not clear that reasonable sceptics would be sufficiently confident that POD can actually deliver on its promises and would actually select POD as the most reasonable regime for actual societies. Even granting that POD may be well-functioning under sufficiently favorable conditions, all things considered, ideal of justice as fairness may be better approximated in less robust and more market-friendly Nordic-style regimes, which balance commitments to social equality, fairly liberalized markets and wider economic liberties. If so, then we have reasons to doubt the effectiveness of institutions generally advocated by egalitarians and consider opting for less robust institutions. Rawls himself placed great emphasis on requirements of stability and political feasibility and stressed that the choice of regimes is not determined only by considerations of justice or in abstract. Given the interconnectedness of principles and corresponding regimes, persons who aspire to be autonomous and highly value their economic liberties may also reject principles that justify and enable significant restrictions on economic liberties by not assigning appropriate normative weight (and protection). This does not imply that such persons would reject the broad ideal of justice as fairness, but it does suggest that they would seek principles that reflect their higher-order interest in autonomy and weighty interest in economic liberties to greater degree than Rawls's own principles.

## 5.5. Conclusion

Samuel Freeman argues that one of the most persuasive classical liberal justifications of economic liberties is framed in terms of conditions required to establish and maintain economically efficient market allocations of resources and distributions of income and wealth (Freeman, 2011: 21). Although straightforward, such broadly utilitarian arguments do not really establish a bulletproof case for robust economic freedoms. Robust economic liberties, and specifically productive ownership rights and entrepreneurial liberties, are seen as having predominantly instrumental value as means to promote economic efficiency and growth. However, since we do not to maximize either because well-functioning societies (WFE) do not depend on achieving maximally efficient economies, then there is no necessity for a robust scheme in this regard. Thus, it can be argued that the modest Rawlsian scheme of economic liberties (and economic incentives) can be seen as adequate for the degree of efficiency necessary to maintain the WFE in actual societies. This counter-argument moves too fast from the premise that societies need not maximize efficiency and growth to the conclusion that the Rawlsian scheme is adequate to maintain the WFE. Buchanan argued that the DP requires a complex theory of property, which weighs advantages of strong property rights against their disadvantages, and that Rawls lacked a theory of institutional change and a fully developed theory of property (Buchanan, 1975: 425). The objection remains valid to this day. Sophisticated productive ownership rights and entrepreneurial liberties are essential for the WFE and should be assigned greater weight and protection therein. Nothing in Rawls's argument prevents assigning greater weight to these economic liberties on the grounds of their importance for the WFE. Rawls stresses that the merits of these liberties are evaluated in accordance with actual conditions in societies. All things considered, the argument that the WFE should be seen as a higher-order requirement, by itself, has enough force to grant additional protection to individuals' economic liberties from standard political decision-

making, reject extensive restrictions and regulation in favor of more flexible regulation, and to restrain (to a greater degree than on the Rawlsian account) egalitarian public finance and redistribution. While efficiency-based arguments can offer support for wider productive ownership and entrepreneurial liberties, regardless how well-developed, they cannot carry the whole normative weight of the argument. This would be true even if empirical evidence would unquestionably support such arguments, which is often not the case.

With this in mind, the second part of the argument for wider economic liberties is an autonomy-based argument which focuses on the requirement that liberal justice must secure a sufficiently wide room and diverse opportunities for individuals' autonomy. 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. If this objection is correct, then they have failed to assigning appropriate normative weight to economic liberties. Consequently, institutional regimes favored on egalitarian conceptions allow only a modest scheme of economic liberties and can be seen as inadequate since they do not secure sufficient room for individuals' autonomy in the economic sphere. The implication, as suggested, is that person who aspire to be autonomous (and for whom autonomy is not just one ideal among many) and who highly value their economic liberties can reasonably reject such regimes on these grounds. Considering this, 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. The first issue is a problem of principle, while the latter is a problem in the context of the constraints of a realistic utopia, including that the institutional

design should not make assumptions that depart too much from the observable motivations of people in actual societies. Therefore, it can 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 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. While the previous discussion offered a negative stability-based argument against POD, the following chapter goes a step further and develops a positive autonomy-based argument for economic liberties as a requirement of justice as fairness. While the focus remains on the details of the institutional scheme, some questions of principle are unavoidable. Assigning more weight to economic liberties will affect both the content of justice and the associated regime. If the argument is that we should choose a somewhat relaxed conception of justice as fairness as to assign more weight to economic liberties and, consequently, to “push” the choice towards more liberalized regimes, then we should have principled reasons for such a choice, especially given foreseeable implications. The proposed enhanced autonomy-based appreciation of wider economic liberties should first be built-into underlying principles of justice and then reflected in the institutional design. Instead of offering a direct and substantive critique of Rawlsian principles, the aim is to elaborate how considerations of autonomy recommend a refined of these principles.

## **VI Personal Autonomy and Economic Liberties**

Rawls is explicit that wider economic liberties, including productive ownership rights and entrepreneurial liberties, can be justified but are not necessary for the adequate development and exercise of citizens' two moral powers or their autonomy. This chapter challenges Rawls's view by arguing that economic liberties are important enough for individuals' autonomy as to justify reasonably widening their scope. The following arguments for wider economic freedoms are grounded in the Razian notion of self-authorship, the value of independence, and considerations of the intrinsic and instrumental value of autonomy (§4.2). The first part deals with the relationship between autonomy, self-development and economic freedoms, and examines whether considerations of autonomy favor a wider scope of economic freedoms and options. The second part is focused on productive ownership rights and entrepreneurial liberties. The overall argument is that wider economic liberties, under certain conditions, fully enable and meaningfully enhance individuals' autonomy both directly (by expanding the scope of free choice and action) and indirectly (by generating diverse opportunities for all). The crucial claim is that it is possible to assign more weight to wider, but adequately qualified, economic freedoms, specifically to productive ownership rights and entrepreneurial liberties, while maintaining the core of justice as fairness more or less intact. Thus, such a move would not drastically block redistribution of wealth and regulation required to establish a Society of Equals, social conditions of equal autonomy and relational equality (§4.1). It would place certain constraints on allowed restrictions and regulation.

## 6.1. Personal Independence

An essential element in the Rawlsian approach is the importance of the priority given to the first principle which protects certain, especially valuable, rights and liberties over other moral concerns, including greater equality in distribution of opportunity and primary goods. The more general insight, according to Sen, is that individual freedom (of certain sorts) cannot be reduced to being only a facility that complements other facilities, i.e. economic well-being. While personal freedom is useful instrumentally, as income and other primary goods, it is not important only as one of various elements affecting individuals' well-being. Sen argues that there is “something very special about the place of personal liberty” in individuals' lives and that, by focusing on primary goods as general-purpose means which enable individuals to achieve various ends, Rawls recognizes the importance of freedom in giving individuals real opportunity “to do what they would like with their own lives” [within reasonable limits] (Sen, 2009: 60). Rawls argues that the primary aim of redistribution and social transfers is to place all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality (JF: 139). The primary aim of redistribution of wealth is to promote individuals' independence and establish an environment in which citizens cooperate as equals (§2.3.1). Melenovsky argues that Rawls's argument for the basic liberty of the persons and the rule of law is grounded in the insight that core basic liberties may be undermined if a person is dominated by another and preventing her to act from her own conception of the good. Liberty of the person and the rule of law provide institutional protections which prevent the possibility of being dominated by ensuring independence of individuals and limiting arbitrary interference. Personal ownership and freedom of occupation serve the same function by ensuring individuals' control over certain resources and adequate space to act independently (and not be “trapped” in situations of domination) (Melenovsky, 2018). Therein, in broad terms, Rawls's understanding of freedom resembles the republican

ideal of independence and freedom as non-domination (Victoria Costa, 2009: 398). The republican ideal of independence can also be seen as one of conditions underlining the Razian self-authorship which grounds the following arguments. Raz argues that autonomy demands independence from constraints. Persons must be relatively free from coercion and manipulation in order to accomplish their ends and effectively pursue their conception of the good. Coercion diminishes a person's options; it invades one's autonomy and may reduce the coerced person's options below adequacy. Manipulation does not interfere with individuals' options, rather it distorts the manner in which they make decisions, form preferences and adopt their goals. Coercion and manipulation are not only problematic due to diminishment of available options, but also because of how persons are treated. They are intentional actions which subject the will of a person to the will of another. Being subjected to the will of another violates one's independence and thus is inconsistent with the ideal of autonomy (Raz, 1986: 378). Both ideas of independence and freedom as non-domination will feature heavily in the following arguments for wider economic liberties and the right of productive ownership. The focus is not on the details of the republican theory, rather only on the broader ideal of freedom as non-domination and its relationship to autonomy, independence and economic liberties.

### ***6.1.1. Independence and Non-domination***

The republican notion of freedom originated in societies characterized by the separation between free persons and unfree persons (slaves, servants, wives and children). Anderson notes that freedom referred to the social status of a person who is not subject to the arbitrary and unaccountable will of another person. Free persons can act without having to ask for anyone else's permission. Unfree persons must obey another's arbitrary orders, and their liberty is enjoyed only at "the pleasure of a master who can take it away without notice, justification, process, or appeal" (Anderson, 2015: 52). The broad ideal of republican independence (from the arbitrary will of another) can also be found in the writings of classical



liberal authors, from Adam Smith to Friedrich Hayek. In contemporary theory, freedom as non-domination is associated notably with Philip Pettit and Quentin Skinner. Pettit developed his conception of freedom in contrast to freedom as non-interference. The core of freedom as non-interference, according to Berlin, is that freedom entails absence of obstacles to choices and activities which are open to a person. Individuals are free when they have a number of options open to them, and their freedom is diminished whenever others interfere with their choice of one of available options. Pettit criticized this conception of freedom as inadequate since it fails to recognize: (1) that freedom can be diminished even in the absence of interference and (2) that not all interferences with individuals' freedom and their ability to choose are relevant diminishments of freedom (Pettit, 2011; Gil-Pedro, 2017: 106). To clarify the distinction between freedom as non-interference and non-domination, Pettit offers an example of a slave under a benign master. The master can interfere with the slave's actions, but refrains from interference, and many options and actions actually remain open to the slave. Pettit argues that if probability of avoiding arbitrary interference was the only thing that mattered, then subjection to a benign master could even be a good thing for one's freedom. It might make arbitrary interference less likely compared to other regimes (Petit, 2006: 137). Such a slave would count as being free according to freedom as non-interference since there are many options open to the slave and the master refrains from interfering with his choices and actions. List and Valentini noted the counter-intuitiveness of this conclusion given the paradigmatically unfree status associated with slavery (List and Valentini, 2016: 1052). Pettit holds that all persons who are subject to "another's arbitrary will" should be considered unfree. Even if there is no actual interference, there is a loss of liberty in such cases (Pettit, 1997: 171). Subjection to any master, benign or otherwise, means that a person is not a "freeman", rather someone who lives under the will of another, and in the arbitrary power of a master. People living under a benign master are not actually free, or in control of what they

choose. Their master might allow them to choose at will from among the available options in any instance, but only insofar as he allows them to choose. Such persons cannot act without permission (explicit or tacit) and whatever liberties they have are enjoyed only at the master's will and can be taken away without any notice or justification. Therefore, according to Pettit, even if masters are benevolent and currently refrain from interference, they can be seen as exercising remote or virtual control over the subjects' choices. Such alienation of agential control is undesirable regardless whether the subjects are aware of it (Pettit, 2006: 137). As List and Valentini note, freedom can be undermined (rendering one unfree) by the mere possibility of constraints (suitably interpreted) and "actions-being-rendered-impossible". The begin master can place restraints at any time, even if he/she currently does not. The status of the slave, as someone living in the arbitrary power of another, makes the slave susceptible to being constrained, regardless whether the master actually exercises this power (List and Valentini, 2016: 1052). In short, freedom is diminished not only by actual interference, but also by domination understood as arbitrary, unaccountable or uncontrolled power. Domination entails the possibility of some persons (or institutions) to exercise arbitrary and "alien control" over the choices of another. That is, as Gill-Pedro notes, freedom is not only compromised when person A interferes with the choices open to person B, but also when person A is able to control the choices which B makes, even if no actual interference occurs (Gill-Pedro, 2017: 107). Pettit argues that the mere fact that the dominant person has this arbitrary power will negatively affect the dominated person in three important ways: by (1) making it difficult for the dominated to plan, (2) requiring the dominated to orient their life plans around a strategy of appeasing the dominant, and (3) requiring them to recognize their subservient role (Pettit 1997: 85–90). Not all interferences with an individual's freedom or ability to choose are relevant diminishments of freedom as non-domination (and individuals' autonomy). Only intentional arbitrary interferences (constraints) are seen as relevant

diminishment therein. Enjoying freedom as non-domination, according to Pettit, means having a social status, an equal standing among fellow citizens, that protects a person against arbitrary interference and domination. A person's social status provides "a protective field" that makes one resistant (or "relatively proof") to arbitrary interference. It ensures that a person is in control of what she chooses from a given set of choices (available options). If people's freedom is not to be compromised, they must have control over the options available in those choice sets. People must not be subject to the control of others [direct or remote], having to endure, or be exposed to arbitrary interference. Freedom as non-domination requires not only that persons have a high probability of escaping arbitrary interference (by whatever means), rather that they are properly protected against such interference. In short, freedom requires that no one stand over them in the position of a master who can interfere arbitrarily into their lives and actions (Pettit, 2006: 136-140). If people's choice sets are unequally distributed, that inequality may mean that some people's freedom is conditioned more than freedoms of others. By itself, that need not mean that anyone is exposed to domination (assuming that these choice sets are not the product of domination). Freedom as non-domination, nonetheless, is underlined by egalitarian ideals and requires that citizens in a society are treated as equals with respect of that value (Pettit, 2006: 140).

That being said, although there is a wide agreement (at least among liberal authors) about the value of individual autonomy (regardless how conceived) and that certain individual freedoms, some degree of independence and adequate opportunities (including access to adequate material resources) are all necessary and essential for autonomy, there is no general agreement which freedoms contribute most to autonomy, what counts as having adequate opportunities, nor whether autonomy would better be protected and promoted in more liberalized regimes (which expand the scope of individuals' freedoms and independence) or more collectivized social regimes (which expand the scope of democratic decision-making).

The argument for wider independence and a more liberalized regime, which would aim to secure wider freedoms and opportunities for individuals to exercise their autonomy, builds on Raz's and Wall's discussion of autonomy and aims to show how intuitions about independence and freedom as non-domination transfer into the economic sphere and onto economic liberties, specifically onto productive ownership and entrepreneurial liberties.

## **6.2. General Argument for Wider Economic Liberties**

Individuals have a higher-order interest in being autonomous, not just doing certain things, but also thinking through things on their own. They want to choose their own ends because on their own reasoning these ends are worth adopting and not because they are manipulated or forced (by others or circumstances) into adopting them. Independence is essential for their autonomy, well-being and self-respect. What matters is not merely making “the right choice”, but having one’s choice count as “one’s own”, that is, as an expression of one's identity and deliberations. This requires, above all, that individuals have a sufficiently wide independence and control over their deliberation as to work things out for themselves. The importance of independence in deliberation is closely connected to what Bernard Williams called “a desire for self-respect”, a desire of individuals to identify with what they are doing and to be able to realize their own purposes (Williams, 2005: 100). Korsgaard argues that for Kant the capacity to set an end for oneself, regardless if that end is moral or non-moral, is what characterizes humanity. In combination with the demand that every persons should be treated as “an end in itself, never merely as a means” suggests that even our capacity for prudential end-setting is worthy of respect (Korsgaard, 1996: 115-120). On the Kantian account, according to Ripstein, independence is understood as independence from the choices of others, an “entitlement” of an individual to be the one who decides which purposes he will choose to pursue with the available means (Ripstein, 2006: 1399). Independence in deliberation cannot be separated from independence in action. Without independence in

deliberation individuals would not be able to choose their own ends. In absence of a comparable scope of free actions and sufficiently wide opportunities, these ends could not be adequately pursued and would remain in the domain of wishful thinking. Merely choosing one's ends and course of action in abstract is not enough, being able and free to actually pursue these ends is necessary for autonomy. Without freedom in action individuals would lose a crucial part of their autonomy although being entirely independent in their thoughts. Individuals define themselves through their actual choices and actions, not simply through their intentions. One important element in being autonomous is actually being in charge of our own lives and choices, making "hard" decisions and acting upon them. The value of independence would be significantly diminished if individuals are subject to remote control, if they are not able or allowed to act upon their ends, if their options were significantly restricted and/or if their legitimate pursuits were at risk to be overridden whenever they do not conform to majority opinions or some prescribed state of affairs. Children and slaves, even when provided with adequate options and allowed to control some resources in some (more or less) limited manner, cannot be seen as autonomous or independent since many crucial decisions about their lives are not in their hands and whatever plans they make can easily be overwritten or they can be effectively blocked from pursuing them. What they have are provisional licenses, not independence. In order to be autonomous, sufficiently wide independence is required not only in deliberation (to choose one's own ends) and in expression of our ideas in public (to tell others what kinds of plans we find worthy of pursuit), but in action as well (as to actually pursue our ends) including in the economic sphere.

### ***6.2.1. Moral Significance of Economic Choices***

Wall argues that leading a good life that is one's own requires individual decision-making since that is what gives meaning to one's life (Wall, 1998: 146-147). Economic decisions and choices are no different therein. Tomasi argues that among the most important aspects of responsible self-authorship are those that empower individuals to make decisions about the economic aspects of their lives. Indeed, many people define themselves through economic decisions they make for themselves and their families (Tomasi, 2012a: 79). Engagement in economic activities is obviously important for individuals' independence and well-being since it provides the resources for people to become economically independent, rather than depend on inheritance, public welfare or charity. It also contributes to individuals' sense of self-accomplishment which is crucial for their self-respect since people want to perceive themselves as active, rather than passive, authors of their lives. Guyer noted Kant's remarks suggesting that individuals are more content when they see themselves as active authors of their own happiness, rather than merely having happiness "wash over them" (Guyer, 2000: 111-2). All individuals are, as Dworkin argued, confronted with certain "parameters" of life and face different challenges in life. For Dworkin, living well is more about the quality of our personal response to these parameters and challenges and less about the resulting outcomes (Dworkin, 2002: 260-3). What are our lives in the end? Sets of choices in various spheres of living, which in retrospective "produce" a story about our own lives in which we had an active role in bringing it about. If I am deciding to become a philosopher, a political activist or an entrepreneur, there is no essence in me that determines me as either. It is only by choosing one or another, and acting upon that decision, that I make myself the way I am. Scanlon argues that the fact that certain actions or outcomes resulted from an agent's choice, has "obvious and immediate moral significance" (under appropriate conditions), involving both instrumental and demonstrative value (Scanlon, 1988: 151). Demonstrative

value means that outcomes will have a special meaning for a person if she is the one that chose it. The features of oneself which one may desire to demonstrate (or see realized) are highly varied (since individuals are highly varied) and may include the value one attaches to different aims and outcomes, one's knowledge, skill, etc. Individuals want to make their choices by themselves since then the outcome will indicate the importance they attach to it. This desire, as Scanlon notes, becomes even more significant in important life decisions that affect individuals' lives in larger terms, i.e. choice of career (Scanlon, 1988: 179-80).

Although often looked down upon by philosophers as mere expression of one's self-interest, economic choices form the very basis of the fundamental life challenge of deciding what should be done with one's life, talents and available resources. This challenge, facing every individual regardless how wealthy or endowed with innate talents, involves many deeply personal and economic questions. For example, given available resources, what distinctive talents to develop (and why) or what projects to engage in (and why). Such questions cannot be reduced to mere self-interest. Deciding whether to use the available resources for consumption, self-development, starting a business, or even choosing with whom to trade, may have an enormous impact on determining us as the persons we aspire to be, the life we want to live and its worth. The mere fact that some choices are entrepreneurial and income-generating cannot possibly mean that they carry any less weight for persons making them than, for example, the choice for whom to vote in elections. It also does not mean that such choices are any more self-interested than political or other choices. It all depends which choices are idealized and celebrated, and which are not. That some activities and projects are aimed at generating income (or pejoratively referred to as being "merely economic") does not imply that they are irrelevant in terms of autonomy or that they carry any less intrinsic or demonstrative value for individuals. Economic choices and projects which are more closely tied to their fundamental life challenges are especially valuable for individuals since they will

significantly contribute to giving meaning to their lives (and will be perceived as such) and thus individuals would want to make them on their own. Economic freedoms, as von Platz notes, expand the sphere of decisions where people decide on their own what types of lives to live and the range of valuable life projects one can choose to pursue, and by narrowing the sphere in which persons are subjected to democratic authority expands the sphere of personal autonomy (Platz, 2013: 13). Stiliz argues that citizens have weighty interests in economic and entrepreneurial activities that engage their talents and provide them an important sense of independence, responsibility and self-respect. If the state enforced highly collectivized productive arrangements, or prohibited its citizens from starting a business enterprise, it would fail to make sufficient space for these interests and would fail to guarantee them sufficient opportunities to develop and exercise their moral powers (Stiliz, 2014: 426). The reasons why these interests are so weighty is because they are inherently tied to individuals' higher-order interest in being autonomous, and to their fundamental life challenge and self-authorship. The following parts elaborate on these issues, so I will not dwell on it here.

### ***6.2.2. Independence and Self-Development***

Individuals are generally in the best position to make their own decisions in life since they have a privileged access to knowledge about their own values, talents, needs, interests, etc. Christman notes that some accounts of autonomy assume “herculean powers of self-knowledge” and that individuals have understanding of their motives and inner selves which “few, if any, tend to realize” (Christman, 2005: 336). Even so, most people know considerably more about themselves than others. Thus, despite imperfect self-knowledge, will still be better suited to decide for themselves what pursuits are valuable and how they could be realized. Still, most people start their path towards self-authorship not knowing much about what they want to achieve in life, or even what are their innate talents and interests. This might not matter if there were no great diversity of interest or if individuals had roughly



the same talents. If so, then it may not be unreasonable to follow the lead and directions of others. Wall notes that pluralist societies, due to combination of genetic differences, social influences and personal efforts, contain a wide range of characters and preferences. While people share some common capacities and abilities, they also have distinctive abilities. To achieve self-development, they need to develop their distinctive abilities and those shared with others. Thus, a society must contain a wide range of diverse options as to provide individuals with adequate opportunities for self-development (Wall, 1998: 152-156). Actions speak louder than words, and are often more revealing. Personal values and interests are often revealed when a person “feels strongly” about certain issues once confronted with certain choices, while talents and innate strengths (and weaknesses) are “discovered” in activities towards which persons are spontaneously drawn and happen to excel (or not). Wall argues that people who form their own judgments and act for their own reasons, other things equal, are better able to develop their talents and capacities than those who are directed by others or drift passively through life (Wall, 1998: 146-147).

Constructing and leading a successful autonomous life, in addition to having independence and adequate opportunities, requires that individuals develop certain core capacities, in particular the capacity to form and revise a conception of the good and the capacity for prudential decision-making. It also requires what Wall called the virtue of independent-mindedness or the virtue of individuals to form their judgments and act for their own reasons (Wall, 1998: 136). Development of these capacities can be seen as similar to mastering how to ride a bicycle since they cannot be learned merely through contemplation and following instructions, but largely through practice and experience which generate the necessary overall know-how for autonomy. Much of what individuals need to learn to be successful cannot be articulated verbally (advice from experienced people still helps), rather it's a matter of experience acquired through actual decision-making, observing the outcomes of choices and

learning through experiences of others. Without having sufficiently wide opportunity and independence to actually test our plans in practice could leave us delusional about the assumed value and rationality of our plans which may be misconstrued. Acting freely upon our own reasons and observance of consequences can be seen as a form of moral calibration of our starting assumptions and plans through positive and negative feedback loops, including ex-post appraisal from peers and the relevant moral community. In absence of a sufficiently wide independence from public authority, this process personal calibration might be significantly diminished since the focus will be more on external corrections, or dependence on the direction from other people, rather than individual self-corrections which is essential for personal growth. Nickel argued that in order to revise one's beliefs and way of life once must be free to try out new ideas and commitments and even fall into error (Nickel, 1994: 776). In contrast, Stephen holds that self-development depends on “strong character, which is best cultivated by subjecting people to discipline and constraint (Stephen, 1993: 31). Wall noted that such arguments neglect that discipline and constraint can close various paths and prevent individuals from pursuing projects that would best develop their capacities and talents. Discipline might be appropriate for children, but not for adults capable of self-governance (Wall, 1998: 155). Another issue is whether personal experience of failure, at least in some of pursuits, is necessary for personal growth. Strictly speaking failure is not necessary since we can, for example, imagine a person who never fails either because she always makes optimal decisions or is incredibly lucky to avoid failure in every situation. Lack of failure, by itself, does not make that person any less autonomous or preclude her from being successful in life. Even so, for most people failure in some pursuits is inevitable even under favorable circumstances. For some failure is necessary for personal growth since it generates an incentive for revision of their plans in light of new information. Individuals who do not adequately exercise their decision-making powers, and are not given a sufficiently

wide opportunity to make decisions on their own, are less likely to develop the capacity for autonomy, prudential decision-making or independent-mindedness. They are more likely to become dependent on directions of others, which may not be in their best interest.

Making responsible economic choices is essential for independence. Even if individuals are guaranteed adequate resources (required for economic independence) and opportunities (required to enable autonomy) this does not mean they will use them responsibly and not waste them on trivial pursuits. There are countless examples of people winning the lottery or inheriting great wealth, and then acting irresponsibly until their downfall. If people do not learn, and have little incentive to learn, how to be economically responsible, then no amount of socially transferred resources will secure their economic independence. Economic choices have a direct impact on individuals since they involve monetary gains or loss, which generates easily understandable signals showing them whether their choices are prudent. Regimes allowing a greater degree of independence incentivize individuals not just to make decisions on their own, but also to make responsible decisions or risk losing their resources. Making decisions on one's own and having a sufficiently wide opportunity to exercise economic agency is necessary, although not sufficient, for individuals to adequately develop their capacities for prudential decision-making and independent-mindedness. That said, the issue is not whether exercising economic agency and decision-making powers is necessary for autonomy, or that some economic freedoms are necessary therein. Rather, the issue is how much freedom is needed for an adequate exercise of economic agency. What if individuals' misguided decisions, and reluctance to make revisions, make them significantly worse-off than they might have been if their economic freedoms were more restricted? If economic responsibility is essential for individuals' independence and well-being, and they will not always act responsibly, then it may be reasonable to place greater restrictions on their freedoms as to prevent them from wasting available resources, protect them from exploitative

relationships and “nudge” them towards better outcomes. Such restrictions and nudges, if extensive, may contain an aura of distrust in persons’ capacities for decision-making and could be disrespectful. Such distrust may arise due to distrust in persons’ capacity to adequately judge what is in their own good or to effectively secure it (Tsai, 2014: 86). If so, some individuals, especially the least advantaged, may be judged as insufficiently capable of advancing their interests with the implication that the government is better suited to judge what is in their best interest and advancing it through paternalist measures. One objection to interventionism is that it’s based on the misguided belief that governments can improve people’s lives by making important economic decisions for them (Lindsay, 2015: 381). Such objections should not be exaggerated since, as Raz noted, the value of autonomy assumes that people do not have to make decisions about their survival on a daily basis, which would diminish their will to pursue their conception of the good (Raz, 1986: 379). State action certainly can, and should, enhance individuals’ autonomy and well-being by guaranteeing adequate resources and opportunities and improving (through regulation) the conditions in which individuals make their decisions. Certain mild paternalist policies aimed at protecting individuals from relationships of dependency can be justified as restrictions reasonable persons would impose on themselves. Even so, restrictive policies should never be the go-to solution without weighting their long-term consequences. We should question to what degree the state should interfere with individuals’ choices, either through ex-ante restrictions or through ex-post corrections, before such interventions start to significantly interfere with adequate development of individuals’ capacity for autonomy. That is, if we acknowledge that independence is important for learning from actual decision-making and experience, which is (more or less) necessary for the adequate development of the capacities for prudential decision-making and autonomy, then we must question to what degree individuals should be “protected” from economic challenges they have to resolve for themselves or alienated from

consequences of their choices. Individuals have to learn that their economic choices have serious consequences and how to be responsible. This may not be achieved if they know in advance that they are entitled to substantive social resources (regardless of their choices) or that their imprudent actions will be corrected at the political level (at taxpayers' cost). Anderson argues that people must bear many losses on their own and principles of justice should uphold individuals' responsibility for their own lives without prescribing how individuals should utilize available opportunities and without passing intrusive judgments on their capacity for responsibility (Anderson, 1999: 314). If people would be bailed-out from every unfavorable situation caused by their imprudence, then their incentive to act responsibly would be diminished. Anderson holds this may also give individuals an incentive to deny responsibility for their problems and foster "a passive whining victim's mentality" (Anderson, 1999: 310). Social conditions, according to Wall, do not simply provide space for the development of talents and capacities, but also constitute them (Wall, 1998: 150). Historical socialist regimes which overemphasized the state over individual decision-making generated social forms which were not autonomy-enabling and the effects (underdeveloped capacities of many people for independence) are still felt in post-socialist countries.

O'Neill argued that if autonomy is not seen ahistorically as something individuals inherently possess regardless of historical and socio-economic circumstances, but as something fostered by particular circumstances, then it is necessary to determine which freedoms and circumstances are autonomy-enabling. Mill held that liberal institutions promote autonomy by creating conditions in which human personality can be allowed to grow, while other institutions create submissive persons (O'Neill, 1980: 53-58). Economic liberties expand the sphere of personal autonomy and responsibility (by narrowing down the sphere of public authority) and thus incentivize individuals to make decisions on their own instead of expecting the state to be the ultimate problem solver. Incentive for responsibility arises

because economic choices have a direct impact on individuals since costs of imprudent choices are internalized rather than externalized (assuming that costs largely fall on the acting agents). Nikolaev and Bennett found that individuals living in countries with higher levels of economic freedom are more likely to believe that their choices and efforts matter more and, thus, are more likely to perceive greater control over their lives. People who believe they have control over their lives are also more likely to persevere through adversity, pursue achievement related behavior and are less liable to group pressure (Nikolaev and Bennet, 2016: 40). The preceding discussion suggests that if the state enforced highly collectivized regimes, in which the emphasis is on collective decision-making and political corrections instead on individual choices and self-corrections, may fail to make sufficient space for individuals to adequately develop their capacities for autonomy. Individuals who do not sufficiently exercise their decision-making powers and are not ensured sufficiently wide opportunity to make important decisions in their economic lives (and bear the costs of their choices) may not adequately develop their capacities for prudential decision-making or independent-mindedness. Mill never saw economic liberties as relevant for individuals' moral personhood. However, intuitions about the autonomy-enabling value of liberal institutions transfer into the economic sphere. Liberalized economic regimes, under certain conditions, may significantly (although imperfectly) contribute to adequate development of individuals' capacities for independent-mindedness and prudential decision-making.

### ***6.2.3. General Argument***

There is little controversy in claiming that autonomy requires the availability of adequate material resources and options. Unless individuals have an effective access to sufficiently wide and diverse options to choose from, they cannot lead autonomous lives. The issue is how wide options are required. Wall argues that autonomy does not require maximization of options, nor maximally best set of options (Wall, 1998: 186-9). Although

autonomy does not require maximization of options it is intuitively plausible that having access to a wider set of diverse options is preferable to a more narrow set. Wall notes that, in many contexts, when a person has access to a wider range of options she will choose a different option than she would have chosen if she had access to fewer options. Also, if most people are to achieve self-development, then a society must contain wider options to account for their diversity. Otherwise, it would fail to provide adequate opportunities for all. Wider options increase the likelihood that additional options would better suit individuals' ideals or talents (Wall, 1998: 156). Having wider opportunities is important to make one's choices more intrinsically valuable, but also for personal responsibility. Wall holds that wider options make us more responsible for our choices by making them "more our own". This greater responsibility reflects greater exercise of self-determination since self-determination is a function of both what we choose to do with our lives, but also of what we choose not to do. Wall offers an example of a person faced with two situations: one involves only two options (X and Y), while the other contains eight options (X, Y, and six other significantly different options). Even if the same option (X) is chosen in both situations, the person is more responsible in the second situation since she is responsible for the non-realization of seven alternatives, while in the first situation she is responsible for the non-realization of only one alternative (Wall, 1998: 149). Both Raz and Wall emphasize that what matters is not the sheer number of options, rather their diversity. Having access to two significantly different options may be better than having access to ten very similar options (Raz, 1986: 375; Wall, 1998: 141). Wall adds that a person must also have, at least, some options that are, from her point of view, worthy of pursuit. If she has access to numerous significantly different options, but none (or very few) are options she would find worthy, then such a person would not have a sufficiently wide range of options to be autonomous (Wall, 1998: 141). To be adequate, according to Raz, available options must include options with long-term pervasive

consequences and short-term options of little consequence. This ensures that individuals' control extends to all aspects of their lives as required for self-authorship (Raz, 1986: 183). Given the preceding discussion, the general argument for wider economic freedoms can be summarized as following:

**Premise 1:** Leading an autonomous and a fully good life that is one's own choosing requires individual decision-making (since that is what gives meaning to one's life);

**Premise 2:** To be autonomous and achieve self-development individuals require both sufficiently diverse opportunities and wider independence (both in deliberation and action)

**Premise 3:** Given individual diversity, to provide adequate options for all, a society must contain wider and diverse options since the same options will not suit all people

**Premise 4:** Economic decisions and choices individuals make on their own are among the essential parts of leading an autonomous life that is one's own choosing. Under appropriate conditions, they are both intrinsically and instrumentally valuable for autonomy.

**Premise 5:** Economic freedoms expand personal autonomy by narrowing the sphere of democratic authority and by expanding the sphere of decisions where people decide on their own what types of lives to live and the range of valuable life projects to pursue;

**Conclusion:** Wider and diverse opportunities and independence (in deliberation and action) are required in individuals' economic lives as well. This is enabled through widening of the scope of individuals' economic liberties (within reasonable limits).



#### **6.2.4. Necessity of Wider Economic Liberties?**

One objection to extension of economic liberties is that not all types of economic activities should be seen as equally significant for individuals' autonomy, self-authorship or adequate development of moral powers. Freeman objected to the claim that all persons must exercise extensive economic liberties since, as he notes, most people who effectively author their lives do that without being entrepreneurs (Freeman, 2012). This appears intuitively true, but only on a narrow understanding of entrepreneurship as merely “doing business” or by “isolating” the economic sphere by placing *a priori* less value on economic activities in terms of autonomy. Economic decision-making and entrepreneurship is not everything in life, and some people will place greater value on their economic liberties than others. Even so, that does not imply that economic activities are not important for all individuals in terms of autonomy. Economic choices can be seen as forming the basis of the fundamental life challenge facing all individuals and thus, due to the personal nature of self-authorship, the choices made in the economic sphere will inevitably play an important part in the overall process of self-authorship. Exercising economic freedoms is not merely about “economic calculations” and individuals maximizing their own self-interest. Rather, it's about diverse individuals, each faced with various well or ill-defined choice problems, trying to discover how to best employ their limited resources, talents and skills in the pursuit of their life projects guided by their subjective knowledge about the world they inhabit. When facing our fundamental life challenge and deciding how to actually pursue our life plans, i.e. deciding how to utilize our talents or whether to use available resources for consumption, self-development or investment into productive assets, while trying to assess opportunity costs of different options we are all essentially acting as entrepreneurs and exercising entrepreneurial freedoms, even if not always consciously. These choices could not even be executed without transaction and entrepreneurial freedoms, and without such choices we could not really

pursue our own conception of the good. If making such “entrepreneurial” choices is important for autonomous persons, then having wider independence and freedom in such choices would be seen by autonomous persons as preferable to having a more narrow opportunity. Another target of objections are individuals' consumption activities underlined by the belief that wider freedoms would lead to mindless consumerism and exploitation of individuals' weaknesses by companies maximizing their profits. Some types of consumption are more important in terms of self-authorship, i.e. reading challenging books, while others may be irrelevant, i.e. reading trash literature. The world is rarely black and white. Often many types of consumption, if considered without context might appear as irrelevant, but when contextualized may become significant. One example may be watching “B category” films which are often looked down upon. Many acclaimed directors, however, were inspired precisely by such films, i.e. Quentin Tarantino. We may speculate would they have become the same persons without such experiences or how much others would have lost if they had not. If we abstract too much from real-world individuals and their experiences, we lose many complexities and particularities of individuals' lives and diminish the value of autonomy and economic liberties. Individuals have the capacity (or will develop it through life) to self-critically assess available options and set standards for a life they consider worth living. Autonomous persons are capable to decide for themselves which forms of consumption, investment or other economic activities have genuine value for their conception of the good and the life of their own choosing. Economic freedoms only expand the range of options individuals can choose from and protect their independence in these choices from unwarranted and excessive interference.

A general objection is that while wider economic freedoms can contribute to autonomy, they are not necessary for all individuals to be autonomous and adequately develop their moral powers. Similar objections can be raised against almost any freedom. Wall argues that not even all basic liberties are necessary for the development of individuals' moral powers. For

example, political liberties are not strictly necessary for a person to develop either of moral powers. A person might not be interested in the political affairs, but still adequately develop and exercise her sense of justice in social non-political interactions with others (Wall, 2013: 524). Rawls acknowledged that political liberties generally have less intrinsic value than, for example, freedom of thought and conscience, but noted that basic liberties need not all be valued for the same reasons. Political liberties would still count as basic even if they are only essential institutional means to protect and preserve other basic liberties (JF: 143). The underlying reasons why political liberties are especially valuable in democratic societies are undeniable, however Freeman's objection against economic freedoms relates to the necessity of the exercise of these freedoms, not against the underlying reasons why these freedoms can be seen as especially valuable for individuals in terms of their autonomy. If Freeman's objection is taken seriously, then the same objection can be raised against political liberties, freedom of speech, and many more. For example, it can be argued that just as people do not have to exercise wider economic liberties to be autonomous and self-authors their lives, many people live (and have lived) autonomous lives without ever exercising their political freedoms. A person living in a large society in which her democratic vote only has a marginal impact, or who is always in the democratic minority (i.e. her preferred candidates are never elected), might plausibly find her economic freedoms (whose exercise directly impacts her life) more essential for her autonomy than the freedom to vote in elections. The same applies to academic freedoms which, although not basic, are given significant protection on all liberal accounts due to their connection with basic freedoms, i.e. freedom of speech, even though only a small minority of individuals actually exercises these freedoms throughout their lives. I suspect that close and unbiased examination would leave us with only few liberties that are strictly necessary for autonomy or adequate exercise of moral powers of all individuals.

What liberties are seen as especially valuable for individuals' autonomy is highly dependent on whose perspective is taken as the benchmark of evaluation: Perspective of public intellectuals, who emphasize engagement in the political sphere over "capitalist" activities, perspective of idealized model citizens specifically constructed for the purposes of accepting some conception of justice and scheme of liberties, or perspective of "ordinary citizens", who place less value on active political participation and would prefer to have as much control over their economic lives as possible. Fried notes that priority Rawls placed on political and civil liberties over economic liberties does not depend on the ends that parties in the OP would choose for themselves and instrumental value of different liberties in the pursuit of those ends. Rather, it reflects Rawls's own conception of the good (Fried, 2014: 438). Since on Rawls's account the parties in the OP do not know the details of their conception of the good, it appears unlikely that, once shielded from their biases and interests, they would place significantly more weight on freedoms valued by academics while being indifferent about the scope of their economic liberties. Therein, considering how Rawls argued that individuals, although willing to act justly, "are not prepared to abandon their interests" (TJ: 248) and that, everything else equal, "they prefer a wider to a narrower liberty and opportunity" (TJ: 348), there are valid reasons to hold that individuals aspiring to be autonomous would demand having wider economic freedoms and opportunities to engage in economic activities deemed worthy of pursuit. Having wider independence in their economic lives is especially valuable for individuals' autonomy, not just instrumentally valuable, and this is a weighty interest they would not be prepared to abandon so easily. Rawls himself questioned whether his list of basic liberties is grounded in the assumed desires and ends of others or in a perfectionist notion of what they should desire, and argued for the latter (TJ: xiii; 139; Rawls, 1980: 525-7). While philosophers, who see economic liberties as being less important for autonomy, may find a modest scope of economic liberties as adequate, this does not mean that actual

citizens, who greatly value their economic liberties, or the parties who represent them, would not want to secure a wider scheme of economic liberties and opportunities in any regime (§5.4). Demands for wider economic liberties may be even stronger if individuals knew they would be guaranteed the social conditions of their autonomy, that is, adequate resources, real freedom, and substantive opportunities to engage in meaningful economic activities<sup>3</sup>.

The preceding discussion aimed to show that considerations of autonomy and independence transfer into the economic sphere and onto economic liberties to a greater degree than generally acknowledged by egalitarians. Such considerations support the overall argument for reasonably widening the scheme of economic liberties (compared to Rawls) and “push” institutional choice towards more liberalized regimes. Two important issues remain open. The general argument does not say anything about how wide individuals' economic liberties and opportunities in the economic sphere should actually be. It also leaves open the question which specific economic liberties require wider opportunities for their exercise and which are of lesser importance (even if not entirely irrelevant) for autonomy. Some freedoms are, of course, more essential than others, and some economic freedoms are more essential than other. The most controversial issues are not really related to personal ownership, occupation choice or consumer liberties, rather disagreements among liberals are predominantly related to the scope of productive ownership rights and entrepreneurial liberties (and by association labor rights). The general argument supports a wider scheme of liberties and opportunities, but it does not specify what particular opportunities must be secured. It only requires that available opportunities are sufficiently wide and diverse. That is, it does say why productive ownership and entrepreneurial liberties specifically should be widened. Given that these

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<sup>3</sup> Such a claim also corresponds to the Razian social forms argument and Wall's argument that in Western societies personal autonomy for individuals is not just one ideal among many, but one that is intimately bound up with a fully good life (Wall, 1998: 167). Similar intuitions play an important role in Rawls's argument for the priority given to the principle of equal basic freedoms. The idea is that once a certain level of socioeconomic development and prosperity has been achieved parties in the OP will not exchange a lesser liberty for an improvement in their economic well-being (Barry, 1973: 286).

liberties would be accommodated in POD, it can be argued that the requirement of wider opportunities can be satisfied by widening various economic liberties without having to widen the scope of productive ownership and entrepreneurial liberties. The following part offers more specific arguments for productive ownership rights and entrepreneurial liberties.

### **6.3. Productive Ownership and Entrepreneurial Liberties**

Why are private property rights necessary for autonomy? Again, Rawls justifies personal ownership on the grounds that such a right allows sufficient material basis for independence and sense of self-respect, which is necessary for the adequate development and exercise of individuals' moral powers (§2.3.3). Likewise, for republicans ownership is seen as essential for ensuring effective access to material resources required for economic independence on which freedom as non-domination depends (Pettit, 1997: 158–159; Pettit: 2006: 141). Without adequate resources individuals may be forced into relations of dependence and subjected to the arbitrary power of another (Pettit: 2007: 5). The possibility of exit, provided by ownership of adequate resources, prevents individuals from being trapped in exploitative and dominating relationships (Bryan, 2021: 3). Private property rights, according to Ripstein, have a crucial role in enabling autonomy, by ensuring a degree of individuals' independence necessary for their choices to count as their own, and in the Rawlsian idea of division of responsibility. Individuals cannot be required to reconcile their actual pursuits, instead the requirements are that they avoid interfering with each other's person and property and that collaboration must be voluntary. Voluntariness of cooperation, which presupposes property rights, is essential for the capacity for a conception of the good, otherwise people could be compelled or pressured into aiding in the pursuits they have not set for themselves (thus, would be blocked in exercising their capacity for the conception of the good) (Ripstein, 2006:1403-8). The focus of the Rawlsian notion of division of responsibility is not on the ends people pursue but on the means used in these pursuits, with the idea being

that individuals may only use the means at their disposal while the society in pursuit of collective goals may only use the means which are consistent with the freedom of separate persons (Ripstein, 2006:1404). Although the value of personal ownership is universally accepted among liberals as required for autonomy and independence there is no consensus that robust ownership rights are required to secure these values, let alone that productive ownership rights are necessary (although again they will be accommodated).

In general, the right to productive ownership covers the ownership (and corresponding transaction liberties) over property (resources, assets) used for productive and economic purposes. The term “productive property” corresponds to what economists call “the means of production” or “factors of production”. Roughly understood factors of production include fixed, financial, intellectual capital and human capital (Freiman and Thrasher, 2018; JF: 140). In terms of autonomy, the line between personal and productive ownership has been somewhat arbitrarily drawn on Rawls’s account. The line between personal and productive ownership, as demonstrated by sharing economies, is often blurred since most goods are heterogeneous. Personal ownership can be transformed from non-productive into productive ownership even without formally establishing a business. For example, a personal computer for independent app developers is both a means of leisure and a productive asset. In terms of contribution to autonomy, it cannot possibly mean that the freedom to use one's resources to start a political party for self-interested reasons (protected as a basic right) is more essential for autonomy and adequate exercise of moral powers than the freedom to use available resources for socially valuable productive or entrepreneurial purposes. Thereby, it can be said that the right of productive ownership serves the same function as personal ownership: (1) it ensures a sufficiently wide degree of individuals' independence in economic projects (necessary for their choices to count as their own); (2) it protects individuals from being blocked in exercising their capacity for a conception of the good; and (3) it protects

individuals from arbitrary interference and remote control. The following parts examine how the values of autonomy (self-authorship) and independence (non-domination) transfer onto (qualified) productive ownership and entrepreneurial liberties. While following arguments share common points with Tomasi's arguments, there are significant differences in how they are framed. The crucial difference is that the arguments are envisioned to be supported by various public policies and an asset scheme (akin to Williamson's proposal) which aims to ensure starting productive asset-ownership for all citizens. Details are elaborated later.

### ***6.3.1. Argument from Economic Independence***

The first argument to be explored is the argument from economic independence and non-domination. The question here is whether ownership of productive assets is one of the (primary) goods required for autonomy, independence, non-domination. Tomasi argues that ownership of productive property, i.e. savings in the form of stocks and bonds, can provide individuals with security, a degree of independence, and protection from domination. People with ownership stakes in productive property are, by that fact, able to “stand on their own feet” and make important life choices. Tomasi holds that without such ownership people depend on “the decisions of committees or outcomes of political campaigns”. Productive ownership is not only important for entrepreneurs, rather can also “free” the working-class people from “forced dependence on the state and its agents” (Tomasi, 2012b: 78). As Wells notes, the idea is that productive ownership offers greater financial security and economic independence since productive property is an income-generating asset. Tomasi’s emphasis is also on how productive ownership would enable individuals to be independent from the state. In cases of emergency, financial troubles or unemployment, individuals would be provided for without having to rely on the state for support. Therefore, ownership of productive assets protects individuals from domination by preventing individuals from ending in situations where lack of subsistence would place them at the mercy of another (including the state)



(Wells, 2019: 695). Thereby, productive ownership serves the same function as personal ownership for Rawls and republicans. Tomasi's argument supports only a qualified right since productive property can still provide security, and private businesses can be started and managed, even if taxed and regulated. Wells argues that Tomasi's argument does not hold even when framed as an argument for a qualified right of productive ownership, especially if such a right is meant to be a replacement for traditional public social security measures and transfers. On the Rawlsian account "social minimum providing for the basic needs of all citizens" will be guaranteed (JF: 48). Covering for citizens' basic needs, according to Wells, already does the task Tomasi argued a basic right of productive ownership would do. Public provisions ensure that citizens' basic needs are met and that they are not placed at the mercy of another due to lack of subsistence or the means by which to satisfy other basic needs (Wells, 2019: 695). The guaranteed social minimum would be rather generous containing various resources and goods required for individuals' economic independence. Many authors favoring POD have also argued that ownership of productive assets should be widely dispersed as to "blur" the distinction between capitalists and workers and protect people from domination. As White noted, in POD citizens would be both capitalist and workers earning income both from their labor and from capital (White, 2016: 2-3). Williamson's asset scheme also aims to guarantee substantive financial, investment and productive capital for all citizens (Williamson, 2012: 230). Therefore, it can be argued that in POD individuals' independence and protection from domination would be secured without expanding the right of productive ownership. In order for Tomasi's argument to hold, it needs to be shown that a stronger right of productive ownership would be superior to state programs when it comes to providing security and independence for citizens. As Wells notes, this appears to be Tomasi's view since he rejects the state as a source of support and emphasizes that independence from the state is one of the important goods meant to be provided by holdings of productive property

(Wells, 2019: 695; Tomasi, 2012b: 78). Such reasoning is characteristic of American conservative authors, and it has more to do with the specific ideals of personal responsibility as self-sufficiency and deep mistrust towards “big government” found in such accounts than with effectiveness of different state programs in promoting citizens' economic independence. Even on limited public budgets, developed welfare states have been effective in enhancing individuals' independence through various social security programs and transfers without undermining their freedom. Nordic countries have also managed to promote individuals' independence and maintain a relatively lower degree of social inequalities (especially when compared to the USA) while remaining committed to a fairly liberalized and flexible market system. Wells notes two core problems with Tomasi's argument. First, the argument that ownership of productive property would provide security and independence underestimates how risky such holdings may be and, consequently, overestimates how much actual security and independence they can provide on their own. Therein, unlike guaranteed income from government, they may not be able to provide the required support when they are most needed. Second, the argument from economic independence clearly supports a right to actually hold productive ownership of the relevant sort, not just to have a formal right to own it. Legal right to own productive property, by itself, does not ensure that citizens are economically secure, independent or free from domination. Only actual ownership does. Since a right to actually own productive property (even at a modest level) requires various state measures, including some redistributive policies, to be secured for all citizens, such a right would be rejected by Tomasi (Wells, 2019: 695-697). Tomasi's argument is underlined by speculations that the working of a LME in which “thick” economic liberties are protected as basic rights would drastically increase the aggregate wealth of all citizens and thus enable them to acquire productive ownership on their own. Whether this would happen is an empirical issue, it is certainly optimistic given how real-world market systems operate. Under certain idealized

conditions it may be possible. However, under certain idealized conditions POD can also be fully established and in POD all citizens would be guaranteed substantive productive and investment capital. In fact, even in most developed countries, a large number of people are unable to acquire or invest into productive assets despite significant increases in aggregate wealth and the number of opportunities to do so (Khan, 2009: 3). Without an effective access to productive ownership, most individuals cannot acquire productive property and, thus, cannot enjoy the enhanced economic security and independence which come with it. Furthermore, value of holding productive ownership significantly increases if there is a supportive social infrastructure since it enables both an effective opportunity for individuals to actually acquire productive property and ensures material resources and skills necessary to actually meaningfully utilize it. Without such supportive measures holding some productive ownership may not generate the conditions of economic security, let alone secure the conditions of independence and non-domination for all. The argument for productive ownership from economic independence works best when framed as an argument for a universalized private ownership of productive assets and when combined with other forms of social security and measures aimed to promote individuals' independence, i.e. high-quality public education and healthcare. Some may find such acknowledgments as confirmation that productive ownership is not really necessary for economic independence or freedom as non-domination. For example, Bryan argues that POD can ensure the conditions of economic independence without incorporating a robust right of productive ownership (Bryan, 2021: 14). Furthermore, it can also be argued that POD: (1) would accommodate individuals' right of productive ownership (albeit in limited manner); (2) would ensure that all citizens have some ownership of productive capital; and (3) would ensure that the economy is adequately regulated and capital ownership widely dispersed as to protect individuals from domination. Thus, in terms of ensuring economic independence, POD can be seen as superior to regimes

which expand productive ownership rights, but do not guarantee actual productive ownership or maintain sufficiently dispersed capital ownership. This counter-argument moves too fast from the acknowledgment that, by itself, productive ownership is not sufficient for individuals' economic independence to conclusion that it is not necessary (on which there is no consensus even among egalitarian authors). It also presumes that POD would deliver on its promises and would adequately accommodate individuals' weighty interest in entrepreneurial activities. As discussed, there are reasonable concerns whether POD could actually deliver on its promises. There are also doubts whether POD can adequately accommodate and ensure individuals' effective rights to engage in entrepreneurial activities, i.e. business ownership, given its robust regulatory and tax requirements (§6.4.1).

Although holding that robust productive ownership rights are not necessary to secure independence or freedom as non-domination, Bryan acknowledges that within certain constraints a universalized private ownership of productive assets can generate the conditions of economic independence for all. Individuals who own productive property are better protected against volatility and changing circumstances on the market and against “the wills” of other citizens and groups. They also have an enhanced opportunity to engage in a wider range of activities associated with different economic liberties, i.e. start a business, engage in trade or investments, etc. (Bryan, 2021: 13). Given the aim to ensure productive capital for all citizens, many Rawlsians also (albeit implicitly) acknowledge both the importance of holding productive assets for reasons of economic independence and the value of entrepreneurial activities, i.e. starting one's business. Two main conclusions follow. First, while the argument itself is plausible since ownership of productive assets can enhance individuals' independence and economic security, it need not work within Tomasi's own account given his hostility towards state policies and schemes aimed at promoting economic independence and dispersing actual ownership among individuals. Second, although productive ownership, by

itself, is not sufficient to secure the conditions of economic independence and autonomy for all, when combined with other forms of social security and public policies aimed to promote individuals' independence, ownership of financial and productive assets can offer an enhanced degree of economic security and independence for individuals. Considering this, if the value of the wider right of productive ownership was only about holding such property for reasons of economic independence in the narrow sense of protecting individuals from being forced by economic need into dominating relationships, then disagreement with Rawls would be almost non-existing. Williamson's scheme, if implemented, could provide individuals with adequate assets as to enhance their independence without expanding their entrepreneurial liberties. The value of productive ownership rights, however, is not just about holding productive property for reasons of economic security, but also about what it enables individuals to do. It is about the enhanced opportunity to engage in a wider range of activities associated with different economic liberties, including business ownership, and the value of such liberties in generating diverse opportunities for others.

### ***6.3.2. Argument from Occupation Choice***

Patten argues that the right of productive ownership can be justified from freedom of occupation. Occupation choice (against a background of diverse opportunities) is already recognized as a basic liberty, and the right to start and manage a business can be regarded as an aspect of that freedom. Hence, a qualified right of productive ownership should be protected as a basic liberty on the grounds that it is implied by a commitment to freedom of occupation (Patten, 2014: 364). There are various reasons why freedom of occupation is so important. For example, according to Thrasher and Hankins, freedom of occupation is seen as especially valuable since individuals' occupation is often closely connected to their identity and often helps to give meaning to their lives. What makes freedom to choose one's occupation so important are the myriad values, interests, and larger-scale projects that

individuals have which give them reasons to shape their identities in various ways (Thrasher and Hankins, 2015: 185). Regarding the right of productive ownership, according to Patten, the freedom that is most important is the freedom to start and control one's own business, rather than to rely for employment (and direction) in an enterprise controlled by others (Patten, 2014: 364). Having this freedom means that people are not only able to choose their occupation from the available employment options (whatever they may be), but also empowered to create employment options for themselves, options that may better fit their life goals, available resources and talents. In this regard, freedom of self-employment plausibly enhances individuals' independence since it makes them less dependent on either employment from others or the state, or public support. Creating employment options for oneself (and others) requires the right and the freedom to use the available resources for commercial and entrepreneurial purposes, including the right and freedom to engage in business ownership. It also requires that individuals are protected from excessive, arbitrary interference and domination. Anderson notes that the idea of productive ownership rights being valued as means of enabling self-employment goes back to Adam Smith and "commercial republicanism" (Anderson, 2015: 50). The aim was to secure individuals' independence from subjection to arbitrary government of other through expansion of commerce and a property regime that promotes self-employment. To labor for others makes one unfree since workers can be subject to the arbitrary government of employers. Productive ownership rights, according to Anderson, were not only important for citizens because of what they were free to do with it. It was essential for securing their status as free persons by generating income sufficient to be independent without having to work for others (Anderson, 2015: 57-59). Various authors favoring POD also recognize this value of productive ownership. Again, in POD citizens would be guaranteed productive capital, from which they would derive part of their income, as not to be dependent on income from their labor (current employment).

Although productive ownership can be valued only in terms of holding such property for reasons of economic independence, Taylor and Thomas have suggested that in POD workers should also be empowered to “create, join, or exit any kind of workplace they wish” (Taylor, 2014: 445; Thomas, 2017: 261–26). Williamson aimed to ensure substantive investment funds which individuals could use for entrepreneurial and investment activities (Williamson, 2012: 230). If there was little value in individuals' freedom to seek self-employment, engage in entrepreneurial and investment activities on their own, Williamson would have fused the proposed investment and capital funds into one fund aimed at securing holdings of productive ownership (through coupons and mutual investment schemes) for reasons of economic independence. Even so, egalitarians are not ready to widen individuals' freedom to own and manage private businesses. The main concern is that wider freedoms would enable owners to exercise arbitrary and unaccountable power over the employees (Anderson, 2015: 64).

Various authors have advocated workplace democracies and workers-owned companies on the grounds that such arrangements would better protect workers from domination of employers and enable them a degree of substantive control over their working conditions. Two things should be noted. First, despite being organized in accordance with democratic principles and aimed at empowering workers, workplace democracies – if mandatory – could also be a source of exploitation and domination just as hierarchical private enterprises. Arnold argued that in workers' cooperatives, where pay rates are decided collectively, the less productive workers are likely to exploit the more productive workers, while also encouraging wage compression (Arnold, 1994: 176). Another issue is that, if some worker perceives he/she was exploited or unfairly paid, and the democratic majority in the enterprise disagrees, that worker cannot simply move to another company. Namely, in mandatory workplace democracies, collective decision would likely be required also to hire new employees and lay-off those employed. Bryan argues that cooperatives that would restrict individuals' capacity to

withdraw from an enterprise, for example, by preventing the alienation of capital or requiring the consent of others for an individual to withdraw, can enable relations of dependence and domination. Property arrangements in which barriers to exit are too high would fail to secure the conditions of independence for citizens (Bryan, 2021: 11). Workplace democracies in POD need not, of course, be mandatory or function in this manner, but they could. This is another example of the gap between ideal and non-ideal theory. What appears morally attractive in ideal theory need not be as attractive in the real world. Second, as Roemer noted, there is an “infinite gradation of possible property rights” between laissez-faire capitalism and socialism, but the widest variety of property forms (non-profit firms, partnerships, public-private partnerships, workers-owned firms, etc.) became visible in modern capitalism, not socialist regimes (Roemer: 1995: 23). Nothing in my arguments depends on denying the value workplace democracies can have. Insofar such arrangements remain non-mandatory; they are fully compatible with the proposed account of autonomy and productive ownership rights.

Are formal productive ownership rights necessary for self-employment? Strictly speaking, they are not. Even without such rights, people are able to engage in various productive and entrepreneurial activities and seek self-employment on extra-legal markets. Indeed, as Anderson notes, millions of people across the developing world conduct most of their economic lives outside the law, offer services and obtain their necessities in extra-legal markets. While rates of self-employment are high, informal property and contract conventions cannot support economies of scale or trade with foreigners since they only hold locally. Referencing Hernando de Soto', Anderson argues that to enable property to function as capital or an asset which can be utilized to build-up wealth, individuals require the state to formalize their property rights (Anderson, 2015: 61-62). Inadequate property rights are among the reasons why most poor people who engage in extra-legal self-employment remain poor (unless they become successful criminals). Minimalist and weakly-protected property rights



are also inadequate since they leave many aspects of individuals' economic lives unprotected and may expose individuals to domination from others and even the government (§6.4.2).

It may be objected that individuals can adequately be protected from dominating employment relationships through stronger labor rights and regulation. Furthermore, if workers can easily unionize, and if disputes with employers are resolved by independent courts that represent both sides fairly, then even employers with wider discretionary decision-making powers may not be dominating. It follows again that individuals' independence can be secured without widening their productive ownership rights. These are all important and necessary measures to protect individuals from domination on their workplaces. However, such an objection does not defeat the argument for productive ownership rights. Patten's point was that individuals should not have to rely on employment (and direction) in enterprises controlled by others. What matters is not only that individuals are well-protected on their workplaces, but also that they have an effective opportunity to earn their income not as “smaller cogs” in a larger corporate structure where they may be at constant risk to whims of supervisors and managers, but as independent entrepreneurs. That is, to be their own bosses. Even well-paid employees with significant savings (who are therefore economically independent and less vulnerable to domination) are still subject to the will of others in corporate organizations. Employment relationships can be dominating even if adequately regulated. Productive ownership rights add a second layer of protection on top of above-mentioned measures. Such rights ensure, under certain conditions (§7.1), that there is an effective opportunity for all individuals not to rely on others for employment. These rights enable individuals to start their own independent ventures, and not just be one part of someone else's enterprise and having to follow their directions and visions. The wider the scope of productive ownership rights and entrepreneurial liberties, the more diverse would be the opportunities to seek self-employment and the more different types of ventures could be started. Therein, wider entrepreneurial

liberties do not only enable an effective opportunity for individuals to seek self-employment, but also expand their possibilities; they make it “easier” for diverse individuals to use their limited resources and actually become independent entrepreneurs. In this sense, wider liberties are not only “useful” for those well-off, who are arguably less vulnerable to potential domination, but especially for those less advantaged who in absence of wider opportunities might be trapped in dominating relationship without either an effective exit or an alternative to having to work for somebody else. For the less advantaged, being able to seek self-employment and have wider opportunities to actually start their own ventures is an important element in the overall scheme which protects them from domination. That said, if everybody has an easier access to self-employment (enabled through wider entrepreneurial liberties) and to start their own ventures then, in combination with other protective devices, no one would be dominated, not even well-paid employees on adequately regulated workplaces.

### **Indirect Argument**

How are productive ownership rights important, in addition to enabling self-employment, for the freedom of occupation and freedom as non-domination? Wells suggests that the most plausible argument would be that such rights are essential to ensure a “background of diverse opportunities” and that “a wide range of projects” is available to citizens (Wells, 2019: 694). Therefore, exercise of productive ownership rights, especially in creating new businesses, is necessary to create employment opportunities for others and thus ensuring the required background of wide and diverse opportunities. It can easily be underestimated that large parts of what constitutes fully adequate opportunities for all individuals cannot be provided solely through state measures, rather in combination with private economic actors. Well-functioning and diversified economies require some people (entrepreneurs) taking risks others are not willing (or able) to undertake and experimenting with different options others might not perceive as worthy of pursuit. System of sophisticated

property rights and entrepreneurial liberties, under certain conditions, facilitates proliferation of private initiatives, creation of new enterprises and employments, development of new technologies and economic practices. That some innovations may be of questionable value does not diminish the underlying point that economic systems which allow more freedom for economic experimentation tend to be more diversified with a faster rate of creation of new employments. Wells argues that such indirect arguments fail, even when framed as arguments for qualified productive ownership rights, since even highly collectivized LMS would create new enterprises and employments without protecting the private right of individual to start a business (Wells, 2019: 695). It is true that, under certain conditions, even in collectivized LMS fully adequate and diverse opportunities could be generated. Whether that is actually possible (or realistically probable) depends on prevailing (favorable) conditions, including individuals' appropriate motivation to engage in WFE enabling activities. Real-world highly collectivized and regulated regimes fairly often failed to generate adequate opportunities. Again, issues of long-term unemployment and lower rates of employment growth are more prevalent in continental CMEs rather than in more market-friendly Nordic regimes. One issue with highly collectivized and regulated regimes arises from higher costs of doing business which makes smaller actors less likely to survive on the market. Consequently, availability of adequate employment opportunities tends to be reduced in such regimes. Even if the sheer number of employment opportunities may not be significantly reduced, their diversity will.

In general, maintaining the WFE is not just essential for the well-functioning of societies and generating diverse employment opportunities (required by freedom of occupation), but also to secure any conception of justice. The WFE is necessary to generate sufficient cooperate surplus required to maintain higher levels of public spending necessary to satisfy various requirements of any reasonable conception of justice, including adequate protection of basic liberties, equal opportunities and appropriate social conditions of autonomy. Framed in this

way, maintaining the WFE and sophisticated productive ownership rights ceases to be an end in itself and becomes one of core requirements of any reasonable conception of justice. Rawls justifies political liberties as basic rights on the grounds that they are “important enough as essential instrumental means” to secure other basic liberties (PL: 299, 330). A similar point can be made about the importance of productive ownership rights and entrepreneurial liberties in maintaining the WFE, which is essential for generating the conditions necessary to secure all basic liberties and justice. Thereby, if maintaining the WFE is essential, and if the WFE itself is dependent on an adequate scheme and protection of productive ownership rights, then these rights can be seen as being in Rawls's words “important enough as essential instrumental means to secure” the WFE, which is indispensable for maintaining the conditions necessary to secure basic liberties and satisfy the requirements of justice<sup>4</sup>. Therefore, assigning greater protection to the right of productive ownership (and widening its scope) can be justified in the same way Rawls justifies political liberties, personal ownership and occupation choice as basic rights, indirectly, as required for securing any of the liberties immediately necessary for the development and exercise of either of the moral powers and securing justice<sup>5</sup>. Considering this, if the primary subject of justice is the basic institutional arrangement that generates people's opportunities over time, and if what is necessary for autonomy and freedom of occupation is not the sheer number of options but their diversity, then regimes (and schemes of rights) which generate wider and more diverse opportunities should be preferred over those which do not. Furthermore, everything else equal, the wider and more diverse individuals' opportunities are, the less dependent individuals are on other

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<sup>4</sup> Cheneval defends entrepreneurial rights as basic rights in a similar manner but grounding the justification in the duty of assistance. The argument is that if A has a duty of assistance towards B, then A also holds the right to create the necessary economic surplus necessary to assist B (and vice versa). Cheneval argues that since the necessary surplus can only be created through entrepreneurial activity, entrepreneurial rights can be seen as “enabling rights” of duty bearer (Cheneval, 2019: 114; 128).

<sup>5</sup> A more direct example has to do with private ownership of the press as important for freedom of speech. As Sunstein argued if the government owns all the presses and newspapers, or the means of distribution, there will be a serious problem for the freedom of speech and expression (Sunstein, 1997: 236).

persons and circumstances, i.e. for employment, public support or charity, and the more normatively significant their choices become. Greater diversity of opportunities, both for self-employment and employment, especially when combined with other forms of social security and public policies, increases individuals' independence and ability to manage their own affairs in accordance with their choices, rather than being forced by economic need and lack of options to choose whatever employment opportunity is available. Greater availability and diversity of available options also contributes to securing freedom as non-domination.

The idea that a well-functioning market system, underlined by sophisticated private property rights, can reduce dependency and domination (instead of perpetuating them) has a long-standing tradition going back at least to Adam Smith (Pettit, 2006: 142). The argument is that in well-functioning markets (approaching the ideal of perfect competition) no person would depend on any particular master for employment (since there are many potential employers, none of which yielding great economic power) and therefore no person would be at the mercy of a master. In the case of suffering arbitrary interference or domination, individuals can easily change employments (since exit is costless) or seek self-employment (Pettit, 2006: 144). Real-world markets are often not like their idealized counter-parts. In the real-world, the system of private ownership rights can generate conditions of domination and exit is far from being costless, especially for the less advantaged. The intention here is not to offer apologies for how many companies are managed, deny the necessity of adequate regulation as to protect individuals from domination, or underestimate the importance of various public measures required to secure individuals' independence. The presented argument for productive ownership rights works best if all citizens are guaranteed an effective access to productive ownership and when combined with various public measures aimed at securing and promoting individuals' independence. However, if these preconditions can be sufficiently satisfied, then it is plausible to argue that wider productive ownership rights can significantly

enhance individuals' independence and autonomy by enabling wider and diverse economic opportunities both for engagement in entrepreneurial activities and employment. Combination of an effective access to productive ownership, wider opportunities and real freedom to meaningfully utilize it significantly reduce the possibility of dependency and domination by enhancing individuals' possibility of exit from exploitative and dominating relationships (even if domination may not be entirely eliminated). This is especially true if citizens are ensured some starting productive capital and have an effective opportunity to develop the necessary skills to meaningfully utilize their assets for productive purposes. In order for productive ownership rights to be effective for all citizens, and for them to be able to seek self-employment, the overall economic environment should be supportive of self-employment and reasonably business friendly, especially for smaller actors and newcomers (§6.4.1).

### **Passive and Active Independence**

Liberal egalitarian authors may insist that POD can adequately secure the conditions of economic independence without incorporating a wider right of productive ownership. Given all of the necessary preconditions, qualifications and risks involved, is widening of productive ownership and entrepreneurial liberties really “worth the trouble”? For the sake of the argument, assume that the POD will deliver on its promises. The required material conditions of independence would be secured for all citizens, the regime would generate adequate employment opportunities, and the government would promote workplace democracies. Citizens would also be guaranteed ownership stakes in existing companies (via mutual investment funds), meaningful control over their workplaces, and a modest opportunity for business ownership. Would wider entrepreneurial liberties and options for self-employment still carry as much value for individuals in terms of their overall independence and autonomy? Even if people's basic needs are met and they are provided with substantive ownership stakes in productive means, and there are diverse employment opportunities to choose from, a great

number of individuals would still not be prepared to abandon their weighty interest in self-employment and business ownership. These interests are so weighty because they are inherently tied to their fundamental life challenge and the higher-order interest of being autonomous in their (economic) lives. These interests would carry the same high value for individuals regardless whether they inhabit capitalist or socialist, inegalitarian or egalitarian societies. Furthermore, as suggested, the demand for wider economic liberties may be even stronger if adequate resources, substantive opportunities and starting capital are ensured for all citizens. What some authors appear to significantly underestimate (or fail to appreciate) is that people want to achieve things and succeed on their own, and not just be provided with everything they would need in life. They want to perceive themselves as active authors of their success, and not merely having success wash over them (§6.2). Holmgren argues that people have a fundamental interest not simply in doing well in life, but doing well as a consequence of their own choices and efforts (Holmgren, 1986: 273-5). Patten also holds that agency, rather than mere enjoyment of benefit is central to leading a meaningful life (Patten, 2014: 373). Of course, it would be absurd to claim that various public provision or social transfers aimed at promoting independence would somehow undermine individuals' agency or self-respect just because these goods have not been personally secured. Nevertheless, Sen argues that greater emphasis should be placed on freedom to achieve (given by a set of opportunities), rather than actual achievements (Sen, 2009: 238). That said, although often seen as being more trouble than worth, productive ownership rights and entrepreneurial liberties protect (and promote) that fundamental interest. They expand individuals' freedom to use their talents, skills and resources productively and commercially and, thus, enable them to promote their own well-being without having to depend on employment from others or public support (which may or may not be adequate). Wider liberties and more diverse opportunities make it more likely that different people will be provided with opportunities that best suit

their limited resources, talents and skills. Different people engage in various entrepreneurial activities and start their own business for different reasons and not merely to profit from them or accumulate wealth (of course, some just to profit). These reasons are as diverse as people themselves are diverse, but they are always their own reasons and, because of that, they are especially valuable. The value of self-employment (any freedom for that matter) arises from doing certain things on one's own without being subjected to control (direct or remote) and direction of others. Rawls argued that what individuals seek is meaningful work (TJ: 257), and while the term "meaningful work" remains vaguely defined self-employment would certainly fall into the category of meaningful work, regardless how defined. What can be more meaningful for a person who aspires to be autonomous than employment created by herself for her own reasons in which she has wider independence from external control? Being one's own boss is a dream shared by countless people across the world, and countless people start their own businesses despite being well-aware of the risks involved and the fact that most small businesses fail within the first couple of years. It is that valuable for them. These insights are in the core of the final argument from self-authorship.

### ***6.3.3. Argument from Self-Authorship***

Tomasi's core argument is that starting and managing a business is an important instance of self-authorship, and that created businesses can be seen as an extension of the person(s) who created it. Tomasi argued that personal ownership can be defended on the grounds that such possessions serve as an expression of identity and "the things one lives with and attends to on a daily basis help provide moorings to people, providing a kind of stability of life experience through time" (Tomasi, 2012b: 78). As Wells notes, the idea that property ownership can be connected with identity (and bound with personhood) is prominent in



literature, although mainly discussed in connection with personal ownership<sup>6</sup>. Tomasi holds that the right of productive ownership can be defended on the same grounds since individuals have what he calls “identity-casting relationships” with productive property. Productive ownership for many people can be bound-up with their identity. For example, owners of a small business may identify with her shop, employees and customers<sup>7</sup> (Wells, 2019: 692). Tomasi holds that what matters is not only that individuals have the right to start a business, but also that they are not subjected to excessive regulations and “onerous levels of taxation”. Therein, if restrictions on the scope of possible actions are too extensive, then some of individuals' actions will be predetermined and might no longer “feel” as their own. If so, activities of self-authorship may be undermined (Tomasi, 2012b: 94).

Carens suggested sympathy with Tomasi’s argument that business ownership can be an important source of self-realization, but only in cases of smaller businesses which can plausibly be seen as an extension of the owners. Larger corporations do not serve the same function and it would be mistaken to justify them on such grounds. Modern corporations are not just an extension of the owner(s), but a distinct legal entity with special privileges (Carens, 2014: 288). Wells notes that people may also identify themselves with larger businesses. For example, if a small business is successful and expands into a larger company, there is no reason to hold that the owner(s) would stop identifying with it. The argument may also hold if the companies are run by family members or descendants of the founders (Wells, 2019: 693). Tomasi's idea that business ownership can be an important source of self-authorship and that many people would closely identify with their businesses, just as with any other creation which they brought up, in morally significant ways seem plausible. Sherwin

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<sup>6</sup> For example, Radin notes that: “Most people possess certain objects they feel are almost part of themselves. These objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world. They may be as different as people are different, but some common examples might be a wedding ring, a portrait, an heirloom, or a house.” (Radin, 1982: 959)

<sup>7</sup> Tomasi’s often cited example is that of a college dropout Amy who started her own pet shop (Tomasi, 2012b: 66).

argues that people build their family lives and businesses in the expectation of control over certain resources. They endow their holdings psychologically, placing more value on keeping them than they might have placed on acquiring the same holdings initially. They put their resources to personally important uses and are proud of what they do with them. Property rights become integrated into people's lives in morally significant ways and loss of property, or even the threat of loss, has a significant impact on their sense of freedom, well-being and personal identity (Sherwin, 2007: 1939). That some of these uses are income-generating cannot be the only reason why productive ownership would be less important in terms of self-authorship. Business ownership or engaging in entrepreneurial activities, just as choosing any other occupation, career or project, is often closely tied to individuals' identity and can give meaning to their lives. The very decision to engage in business ownership, given the risks involved, is an important life decision which will affect, whether positively or negatively, a person's life in larger terms and will play an important part in the overall process of self-authorship. Such a decision carries even more weight for the less advantaged since for them risk is enormous. Different individuals have different interests and goals in life and, consequently, will place different weights on different liberties corresponding to these interests and goals. For some people, entrepreneurial activities carry little importance while for others such activities, including business ownership, are among the central elements in their own conception of the good. Nonetheless, if a great number of people did not have a weighty interest in business ownership, there would not be so many disputes about private ownership rights. Democratic socialism would have been implemented a long time ago and people would wholeheartedly accept such regimes without even complaining about not having the freedom to start their own business. Obviously, this is not the case. People across the world have an enduring preference for productive ownership and economic freedoms.

Tomasi never elaborated on the relationship between business ownership and self-authorship, nor specified what regulations (and at what levels) would diminish individuals' autonomy in relevant manners. The intuition that above certain thresholds (even if vaguely defined) interferences into individuals' economic lives and projects (through ex-ante restrictions or ex-post corrections) can be seen as unjustifiably interfering with their autonomy and self-authorship appears plausible. What matters for self-authorship is not merely making "the right choice" but having one's choice count as "one's own". This insight also coincides with Pettit's argument that for individuals to enjoy freedom as non-domination they must not be subject to "remote or alien" control of another who could exercise that control over the choices individuals make (directly or indirectly) and interfere with their actions without having to consider their interests (i.e. interest in wider economic liberties). Of course, democratic governments have the legitimacy to regulate businesses in accordance with justice and public interest. No objections there. Even if extensive regulations can be justified in principle does not imply that they would not be excessive (or impose undue burdens on some) and/or that they would not interfere with individuals' autonomy and legitimate projects in unjustifiable ways. The following parts elaborate how the freedom to start and manage a business is connected with the overarching value of autonomy as self-authorship.

### **Economic Projects as Authored Visions**

Who exactly is "an author" and how do individuals "self-author" their creations? In the broadest meaning, an author is someone who is the creator of something in the sense that the creation can be traced causally to her. Not all creators are also authors. For example, making a film is a joint-production involving many persons, but authorship of the film is not attributed to all participants, but generally only to the director(s). This is because the director has a key role in the production; he/she is the one who chooses the cast members, the production design and the creative aspects of filmmaking. The director gives direction to the

crew and creates an overall vision through which the project is realized. These are not merely technical issues; rather each choice is a conscious decision which results in how the film turns out in the end. If the core decisions had been different, the outcome would not have been the same. For example, even if they share certain common themes and elements, Tim Burton's films cannot be mistaken for Guillermo del Toro's films because ultimately their creative visions are vastly different. According to the *auteur theory*, the film is the director's personal creative vision since it is the director that brings the film to life and uses the film to express their thoughts and feelings – not just about the subject matter – but also about a certain worldview (Thompson, 2010: 381-3). This reasoning can be applied to various other creations. For example, creating *Theory* as it was ultimately published involved many people other than Rawls, including editors, lecturers and commentators who helped Rawls form his argument. Despite being a joint-product, authorship is attributed only to Rawls. Other collaborators, regardless how important their contribution was, are not assigned authorship rights and could not demand any changes in the argument. Even if they did, it would be Rawls who, as the author, had the final say since it was his own vision that brought *Theory* into existence. We may ask, would Rawls's vision be preserved if he faced extensive interferences, or if he was given a long list of conditions under which he could conduct his research project? Would he perceive *Theory* as his own work if parts of his argument were removed or “improved” through editorial decisions? The answer is he would not. There are plenty of examples, to return to the filmmaking analogy, when the author's creative voice and vision may be lost due to interferences resulting in creations which might be successful, maybe even better than the original vision, but alien to the director who does not perceive it as her own anymore.

Private economic and business projects, although profit-seeking, in essence are no different than any other private or social project. They are creative projects built around some specific

purpose and a creative vision of how that purpose is to be achieved (plan and strategy). Although sharing common elements, creative visions underlying Google or small local pubs are as different as Burton's films are from del Toro's or as Rawls's project is from Nozick's. Individuals' creative visions, embedded in their projects, are as different as the persons who developed them, but they are always an extension of these persons, their deliberations, values, and worldviews. Just as Rawls, as author, enjoyed independence and creative control over his project, so do business owners, as authors, have the same weighty interest in meaningful independence in managing their own creative projects. Often it is not even about maximizing profits, especially in smaller companies, but doing certain things in the manner of one's choosing and "arranging" them in one's project as to make it feel as one's own home. Within reasonable limits, this freedom is an important part of the capacity to pursue a conception of the good. Even if some owners might abuse their liberties, there is certainly something the owners, who carry the greatest responsibility for the project, can use as grounds for greater decision-making powers in relation to other members and the public. For individuals it matters less whether their enterprise would be better managed by others, what matters is that they retain meaningful control over their projects, embodying their creative visions, in which they have invested their talents, time, efforts and resources by choosing how their vision is brought about, associates and even deciding to foreclose or ruin the project. What ultimately matters for them is to be able to start and manage their own (business) projects without excessive interferences, or from being subjected to the remote control of another, as to preserve their creative vision and author their projects. This creative vision, and bringing it about, is what persons are identifying with and not with property ownership as such. Property ownership is only an enabling device which ensures the degree of independence necessary for autonomy and self-authorship. The reason why persons' are identifying with their creative visions is because they are the extension of the person who developed it, her deliberations and

values. It is their unique way of resolving their fundamental life challenge. Economic projects may be small or large, profitable or struggling, however through authorship of these projects, they become more than mere income-generating devices, they become deeply tied to individuals' personhood and an important element in self-authoring their own lives. To repeat the insight from the filmmaking analogy, the author's creative vision (and meaningful control over the project) can be lost at higher degrees of external interference since the degree of independence required to have one's choice count as "one's own" may be significantly diminished or even undermined. Just as Rawls would not be able to author *Theory* if he was not ensured a wider degree of independence, neither can business owners meaningfully author their creative visions if they face extensive interferences into their projects, or are subjected to remote control of another who could interfere with their choices even if that control is not currently exercised. A meaningful degree of independence is essential to ensure a degree of control over the creative vision of the project as a whole. In general, as Patten notes, the ideal of self-authorship is largely open-ended. It is an ideal that is realized to the extent that a person's decisions are her own (Patten, 2014: 12). Although having adequate and sufficiently wide opportunities is essential for autonomy, it should always be kept in mind that people do not author their lives (and projects) by having adequate options, but by making specific choices in accordance with their deliberations (Arvantis and Kalliris, 2017: 12). It matters less whether others might be better at managing one's own affairs or that through external direction (or remote control) persons may better accomplish her goals. A person's life is not the life of others, and her goals and projects are not theirs, but her own. Individuals want to remain in control of crucial decisions regarding her goals and projects, regardless whether they are non-economic or economic. This is why protection of individuals from arbitrary interference, domination and remote control is so crucial for their autonomy.

Wells argues that the main problem is that identity arguments for ownership are difficult to establish since it can be questioned how important a continued relationship with certain objects really is to the persistence of identity. People can tolerate even the loss of cherished items without deeply damaging consequences to their identity, or without the consequences of this loss being so grave that individuals lose a sense of self to such extent that they cannot continue to carry out their plans and projects. Wells holds that the failure of an individual's business may cause feelings of loss, but not to the degree that it would undermine their capacity for a conception of the good (Wells, 2019: 694). Wells sets the standard too high since almost no loss in one's own life, except maybe the loss of one's near and dear, would have such a damaging effect on individuals. The issue with identity-based arguments is that they are subjective. Some people will deeply identify with their possessions (including their businesses), while others may not, at least not to the degree required for the argument to hold. Some people are merely attached to their ownership due to the material benefits it provides. Therefore, if the identity argument is to carry the whole normative weight for productive ownership rights, then such an argument will inevitably fall short. The presented self-authorship argument, however, goes deeper than mere possession and holding onto assets or even identification with one's business. The argument is also not about losing one's ownership or a failing business which fail for various reasons, including individual's poor choices in management and unforeseeable changes in wider circumstances. Countless people start their businesses while being well-aware that many of them are likely to fail within the first couple of years. Rather, the argument is fundamentally about the value of independence and having meaningful control over one's own projects and developing them in accordance with one's creative vision. While Tomasi's emphasis is on identity, the presented argument is about the value of personal ("creative") independence and control over one's creative vision and legitimate projects. Independence and control rights are important, as devices which

enable and reasonably enhance individuals' autonomy, regardless whether individuals identify with their projects or not. Identification is important, but similar to how self-development is. It is a further value which, if achieved, reinforces the importance of having a wider scope for independence and control rights to enable it.

Why is wider independence important for individuals in managing their projects? Imagine if Rawls's control over *Theory* was taken out of his hands and if crucial parts of his argument were removed or changed through editorial decisions, would he still be able to tolerate that particular loss of control in this one project without undermining his capacity to continue to carry out his other plans and projects? Everything else equal, he probably would, but that is not the point. We would still find such deliberate interferences into his legitimate project (which was of great importance for him) unacceptable and would hold that significant moral harm was done to him even if he could tolerate such a loss. We would also find it objectionable and unfair that he was not given a sufficiently wide degree of independence in his legitimate project and was unjustifiably blocked in exercising his capacity for the conception of the good. Different people value different projects and liberties, and to suggest that out of all possible projects people could engage in, economic projects are the ones in which wider independence and control rights are the least important is arbitrary. For many people developing their business is as important for their autonomy and self-authorship as developing *Theory* was for Rawls, or as important as “building” a family or political projects are for others. Wider degree of independence, in contrast to being subject to remote control or given a long list of restraining conditions, is necessary to enable individuals' autonomy in their projects, regardless whether non-economic or economic. In terms of autonomy, it would be arbitrary and unfair to exclude only economic projects from consideration. Joshua Cohen argued that it would be an unreasonable failure to treat others as equals if we would subject them to conditions to which we would not subject ourselves (Cohen, 2003: 106). Imagine if



various non-economic projects (which can also be dominating) were subjected to the same degree of economic regulation generally advocated on egalitarian accounts, would the authors advocating such regulations object? Imagine if academic projects would be subjected to such regulations, would these authors then object? There would surely be strong objections framed in terms of the affected parties not being ensured a sufficiently wide scope for independence in projects that are most important to them. It seems to me that not granting at least a comparable degree of independence and control to individuals' in their legitimate economic projects and subjecting them to significantly more extensive regulations would be failure to treat them as equals. Not in the same way as when denying individuals equal basic liberties. That would be an absurd claim. Rather, in the sense of not taking seriously into account their weighty interest in being autonomous in their economic lives and, consequently, denying them a sufficiently wide degree of independence in their legitimate economic projects, which for many constitute an important element of their conception of the good and self-authorship.

### **Concluding Remark**

The presented arguments work best in synergy since each argument addresses one dimension on which productive ownership rights and entrepreneurial liberties are especially important for individuals' autonomy and freedom as non-domination. The first argument focuses on economic independence (in the narrow sense), the second on occupation choice and the value of self-employment as relevant for freedom as non-domination, while the final argument connects productive ownership, specifically the freedom to start and manage a business, to the ideal of self-authorship. Each argument also corresponds to different reasons individuals have for valuing productive ownership. Some individuals want to acquire and hold productive assets for reasons of enhanced economic security, some are more interested in how productive assets can be used for self-employment and “be their own bosses”, while others have more personal reasons for starting a business, which are more closely connected to their conception

of the good and self-authorship. Regardless on which specific reason the emphasis is placed, all of them are inherently connected to individuals' weighty interest in being autonomous in their personal and economic lives. These arguments are only plausible as arguments for a qualified (and adequately regulated) right of productive ownership since people can acquire productive ownership (and hold it for reasons of economic security), start and manage a business, or self-author their economic projects in regimes in which private businesses are taxed and adequately regulated. However, regulation must not be restrictive. Rather, it should secure a wider opportunity (within reasonable limits) for independence as to enable individuals to manage their own affairs, including their legitimate economic projects. Regulation that would not leave "enough breathing space" therein would be problematic.

#### **6.4. Issues with Property-owning Democracy**

Rawlsian POD would accommodate some degree of private business ownership, entrepreneurial liberties and small-scale profit-making (Wells, 2019: 689). Citizens would also be ensured productive capital as to enable engagement in entrepreneurial activities. Thus, it can be argued that individuals would be given adequate opportunities to engage in entrepreneurial activities, including business ownership, provided the background conditions of fairness are secured. It may also be claimed that POD would be small business friendly (assuming widely dispersed capital ownership). As such, one could reasonably ask, if productive ownership rights would be accommodated (albeit modestly) and democratic governments can legitimately regulate and tax private businesses in accordance with justice and public interest (including to secure conditions of relational equality and non-domination), where exactly is the problem? Issues arise from how productive ownership rights would be accommodated in practice and from insufficient weight assigned to these rights in principle.

#### **6.4.1. *The Ineffective Liberties Objection***

In general, the more robust requirements of distributive justice are, the more regulated the economy needs to be to satisfy these requirements, which means less space for individuals' independence and possibly less effective opportunity to engage in entrepreneurial activities. Although it is unclear how many restrictions on economic rights would actually be required to maintain POD, given its aim to be significantly more egalitarian than any WSMC regime, we can speculate that POD would require considerable economic regulation and taxation. More regulation inevitably means higher costs of market entry and “doing business”, which in turn makes smaller businesses significantly less likely to survive on the market. Christiano notes that sometimes even minimum wage laws, if combined with the demand that small businesses absorb a significant amount of the cost, may make these businesses insolvent. If so, that may make the imposition and demand an undue burden. The aim of minimum wage laws is to increase the benefits of the worst-off workers by imposing the costs on business owners. Sometimes these costs can be spread throughout the society by increases in prices of consumer goods (cost externalization), however that is generally not possible for smaller and upcoming businesses, which are often struggling (Christiano, 2010: 212). Minimum wage requirements are just one part of various fiscal, parafiscal and regulatory burdens imposed on private businesses which constitute the overall business costs. Costs of doing business are generally higher in CMEs compared to LMEs or Nordic regimes and are likely to be even higher in POD given its robustness. In short, the higher regulatory burdens and overall costs are, the less likely it becomes that smaller businesses will survive, or would be even started (due to foreknowledge of higher market entry and business costs). This is especially true for less advantaged newcomers since their resources are significantly limited. The second issue is related to fairness in distribution of regulatory and tax burdens between smaller and larger actors (and public companies). One idea behind the notion “level playing

field” is that all actors have an effective access and roughly similar opportunities on the market. Ensuring level playing field requires, for example, that market entry costs are kept reasonably low, that markets are not too concentrated, and that no actor is arbitrarily privileged. Robust (one-size-fits-all) regulations may, instead of securing level playing field, unfairly privilege public companies and larger businesses over smaller businesses. Public companies are privileged since they are supported by the state (at taxpayers' cost), regardless how high business costs become or how inefficiently they operate, since their survival is deemed to be in the public interest. Larger businesses are privileged because they can absorb higher costs of regulation or externalize them. They also derive additional benefits from the decreased competition since higher costs make it more difficult for smaller actors to enter and survive on the market. Robust regulation can also limit the scope for experimentation and thus may deny a fair chance for newcomers to challenge the established actors through innovative practices. Indeed, restrictive regulation although advocated on grounds of fairness and public interest, is often driven by interests of the established actors to prevent newcomers from challenging their market position.

Thus, if POD would function as existing regimes of comparable robustness, it would not be small-business friendly. Rather, it may be significantly more difficult for the less advantaged to start and manage a business, even if guaranteed substantive starting capital. Instead of effectively dispersing capital ownership and securing level playing field, robust regulation in POD may have the same effect as highly concentrated economies. It may even contribute to further concentration of the economy due to high regulatory costs. A deeper issue is that, due to the high regulatory and tax burdens, the right of productive ownership would be made (more or less) ineffective in practice (and less valuable) for some citizens, especially the less advantaged. If so, then there are reasonable doubts whether opportunities provided in POD would indeed be adequate as to make sufficient space for individuals' weighty interest in

entrepreneurial activities. In other words, the state would fail to ensure sufficiently wide options for all citizens to engage in entrepreneurial activities, including the effective option to start and manage a business. It would also fail to secure a broadly playing field on the market. Taken together, due to the “business unfriendly environment”, some people would be denied a fair chance to succeed in their economic projects. While larger capital owners may not legitimately complain against the robustness of POD, smaller owners and less advantaged citizens aspiring to become business owners can certainly legitimately complain.

It may be argued that such issues could appear during transition but would not be as prominent in a fully established POD characterized by widely dispersed capital ownership. The reasoning here is that ineffectiveness of entrepreneurial liberties for some is due to their inadequate resources and larger distributive inequalities. First, granting that POD can be established as envisioned, a fully established POD cannot dispense with considerable economic regulations and taxation. Namely, if established, narrow inequalities in wealth and capital ownership have to be maintained over time, which requires robust regulation and taxation. While many individuals do not have an effective access to markets due to inadequate resources, the above-mentioned issues arise from high regulatory and tax costs and would appear even if adequate resources are secured for all. Imagine people playing Texas Hold'em Poker. Each player starts with an equal share of substantive resources (investment capital), but the antes are set high from start and they keep increasing every couple of rounds. The logic of the game (not so dissimilar to the market game) dictates that if you do not win constantly, and win big, the antes will “eat away” your capital, and you will be “expelled from the game. The similar thing happens in economic regimes in which the costs of market entry, regulatory and taxation costs (antes) are set high from start: Unless you win constantly, and win big (at least from time to time) you will struggle to survive on the market and then expelled from the market once you run out of available resources. However, if the costs of

playing the game are held lower, then you have more opportunities to continue playing the game without essentially depending on the uncertain chance of “winning big”<sup>8</sup>. The freedom to start and manage a business in a fully established POD would be significantly diminished (and could easily become ineffective) for some if the regulatory and fiscal costs are too burdensome to keep smaller businesses afloat (without “winning big”) just as it is diminished when people do not have access to adequate resources to start a business. Second, even in a fully established POD, large companies would exist (private or public) due to the benefits of economies of size and scale and would be privileged over smaller actors (as described). It may also be argued that POD would not be as rigorously regulated and would actually function similarly to Nordic regimes (albeit with increased pre-distribution of wealth). Nordic regimes are known for having fairly liberalized economies and allowing wider options for entrepreneurship despite strong commitment to social equality. If so, then this further supports the claim that in less flexible and more regulated regimes, all citizens would not be provided with fully adequate options, especially with respect to their entrepreneurial liberties.

#### ***6.4.2. The Bare Liberties Objection***

The issue is not only how wide individuals’ economic liberties are, but also how secure they are, that is, how easily the state can infringe or make them ineffective in practice. Although productive ownership rights and entrepreneurial liberties would be accommodated in POD, on the Rawlsian account these liberties are considered of lesser importance for citizens' moral power and autonomy. Thus, they are assigned little normative weight (§5.3.2). Their merits are considered only in terms of their importance for the WFE. Their actual scope, conditions of exercise and corresponding entitlements are determined democratically. Since entrepreneurial liberties are not seen as necessary for individuals' moral powers or autonomy,

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<sup>8</sup> The necessity to win big, almost as a general rule, regardless whether we are talking about sport or business incentivizes cheating and use of unfair (business) practices.

almost any restriction and regulation, regardless how extensive, can be legitimately implemented (if that would mean better satisfaction of FEO and the DP) without any special justification or reference to autonomy of persons whose liberties were restricted (or made ineffective in practice). The core issue is that, since so little normative weight was assigned to entrepreneurial liberties in principle, the loss of valuable autonomy-enhancing freedom due to significant restrictions and regulation may not even be noticeable, let alone problematic (§5.3.2). While POD aspires to protect entrepreneurial liberties, this aspiration might not amount to much in practice since their scope and conditions of exercise can be changed by simple majority vote or even at government discretion whenever deemed necessary. In Stilz's terms (2014), productive ownership rights, even when highly qualified, are treated as bare freedoms, no significantly different than the freedom to work for less than the minimum wage or to jaywalk. Since they are considered less important for individuals' autonomy they may be regulated in whatever way best facilitates public order and social coordination. The issue here is not whether entrepreneurial liberties should be adequately regulated. Rather, the issue is that almost any restriction and regulation, regardless how extensive, can be justified without any reference to autonomy of persons whose liberties were infringed. One need not subscribe to libertarianism to acknowledge that on the Rawlsian account individuals are granted only modest and weakly protected productive ownership rights and a "promise" that their weighty interest in entrepreneurial activities will be taken into account. Individuals are, however, given little assurance that they would indeed be provided with sufficiently wide opportunity to engage in various entrepreneurial activities and that state regulation or taxation would not make their productive ownership liberties ineffective in practice.

The main issue with modest and weakly protected scheme of economic liberties is that it would leave many aspects of individuals' economic lives unprotected and potentially open for political revisions and interventions. The legitimate scope of economic activities individuals

can engage in may be significantly limited and, more importantly, whenever they do engage in economic activities they do so with the knowledge that the state may intervene, i.e. abrogate contracts or legitimate expectations, whenever deemed necessary on the current political agenda. This need not, of course, happen in a well-ordered POD, but nothing really prevents it since productive ownership rights and entrepreneurial liberties are not given any special protection. Pettit argued that persons living under masters, who refrain from interference, are not actually free. They are subject to remote control, and whatever liberties they have are enjoyed only at the master's will and can be taken away without any notice. The mere fact that the dominant person has such power will negatively affect the dominated persons and make it difficult for them to plan (Pettit 1997: 85–90). Whatever plans such persons make can be overwritten or they can be blocked from pursuing them without any special justification. What they have are provisional licenses, not independence. Sunstein argues that a high degree of stability is necessary to allow people to plan their affairs and reduce the effects of interest group power in government. Without adequate protection of property rights, there will be constant pressure to adjust distributions of property on *ad hoc* basis (Sunstein, 1997: 237). Democratic governments can legitimately regulate individuals' economic activities. That is not in dispute. The issue arises from the combination of modest weakly protected economic rights and greater discretionary powers of the government (which may be required in POD), which generates significant uncertainty in individuals' economic lives. Most people cannot reasonably predict when (and how) the government will intervene or introduce some new regulation, or their long-term implications. Higher levels of uncertainty make individuals' long-term planning much more difficult. White argues that to live under another's power of discretionary interference can be considered as a relevant diminishment of freedom (White, 2006: 62). To live subject to the will of another in such a way, according to Pettit, is “to suffer an extra malaise over and beyond that of having your



choices intentionally curtailed” and to endure a high level of uncertainty which makes planning much more difficult as “strategic deference and anticipation forced upon you at every point” (Pettit, 1997: 85-87). Even if larger state interventions would not happen very often in POD, the mere perception that it could happen anytime, even at government discretion, inserts great uncertainty into individuals’ long-term planning. Add to the equation ongoing disagreements on justice and that the DP is a somewhat vague principle which can be interpreted in different ways (with different implications) ranging from stricter to more laxed interpretations, combine it with how real-world governments operate, and there are all the necessary ingredients for significant political volatility which would make individuals’ economic rights insecure and open to constant political revisions in POD. Higher levels of uncertainty make individuals’ long-term planning difficult, while government discretion leaves them vulnerable to unjustifiable forms of political domination in their economic lives and without a stronger moral ground to complain in the name of economic freedom even if the implemented restrictions and regulations are perceived as unwarranted and excessive. Reasonable skeptics capable of imagining such issues arising would not risk their valued economic liberties by leaving them lightly protected and at the mercy of the real-world politics, especially not if the government is granted greater discretionary powers. That being said, it makes a big difference whether justice can accommodate some degree of productive ownership rights, but need not secure sufficiently wide opportunities for their exercise, or whether justice demands these rights and the state is obligated to provide sufficiently wide and reasonably effective opportunity for their exercise without excessive interference.

## 6.5. Reasonable Expansion

Tomasi argued that the grounds on which personal ownership and freedom of occupation choice are justified as basic rights can be used to justify various other economic liberties as basic rights, including productive ownership and entrepreneurial liberties, rights of individuals to personally negotiate terms of their employment (wages, work hours, etc.), and the right to use one's resources for savings, investments, exchanges with and gifts to others (Tomasi, 2012b: 22–23). Tomasi holds that a “thick” conception of economic freedom is a necessary condition of self-authorship and, thus, wider economic liberties should be protected as basic rights (Tomasi, 2012b: 90). Freeman maintained that extensive economic liberties cannot be considered as basic rights since these rights are not necessary for the development and exercise of moral powers of all citizens (Freeman, 2012). Stiltz notes that Tomasi failed to consider how protection of thick economic liberties as basic rights would affect other basic liberties and the adequacy of the overall scheme (Stiltz, 2014: 428). Core problems with Tomasi's argument arise because extensive economic liberties cannot easily be reconciled with the Rawlsian scheme of basic liberties. The core dilemma, according to Patten, is that the more the priority of basic liberties including wider economic liberties is emphasized, the less confidence there is that an adequate social minimum can be ensured for all citizens. Namely, if extensive economic liberties are protected as basic liberties, then social transfers required to enable all citizens to effectively exercise their basic liberties and take advantage of social opportunities are rendered as unjust violations of individuals' basic economic rights (Patten, 2014: 366). Even modest classical liberal provisions and efficiency-enabling regulations could be ruled out (Freeman, 2012). Thomas argues that Tomasi's scheme of basic liberties must satisfy Rawls's compossibility requirement. This requirement, in combination with his perfectionist ideal of the person, demands that citizens are ensured resources and opportunities required to lead a life involving self-authorship (Thomas, 2017: 281). This

requires various state measures, even redistribution, which Tomasi explicitly rejected. All things considered, Tomasi's self-authorship argument cannot support his extensive scheme of basic liberties. It may also be inconsistent with classical liberal accounts. Freeman notes that while classical liberals considered economic liberties as especially important, they did not consider them as basic in every respect. For example, in contrast to basic rights, classical liberals allowed restrictions and regulation on economic liberties on various non-liberty grounds, i.e. to secure economic efficiency and public goods (Freeman, 2011: 20-21).

In general, arguing for wider productive ownership rights is an ungrateful task, especially when observing how real-world markets and private companies tend to operate. Productive ownership rights have a pervasive impact on social equality and on the distribution of economic and political power, especially on the fair value of political liberties. Furthermore, productive ownership rights can be a serious source of domination and exploitation of the less advantaged. The concern is that, if unreasonably expanded and assigned special protection, the system of robust property rights will result in a society in which numerous citizens are dominated by economic elites. The more immediate effect is that the workers' right to negotiate fully adequate terms of their employment and fair wage would be significantly diminished, if not undermined. The long-term effect is that, due to privileged position, large capital owners would be enabled to dominate economies and interfere with democratic decision-making, even if not directly (Christiano, 2010: 1997-201). My objection is not against the Rawlsian critique of capitalist societies, rather against the proposed solution which goes too far in the opposite direction as to nullify the pervasive impact of private ownership rights and assigns them insufficient normative weight in principle and institutional design. That said, wider productive ownership rights and entrepreneurial liberties can be adequately justified only in a Society of Equals characterized by an inclusive, adequately regulated, economic system and sufficiently dispersed ownership. If engagement in economic activities

is of such great importance for individuals, and having wider economic freedom is necessary for a fully autonomous life involving self-authorship, then it must be ensured that all individuals engage in economic activities out of choice, not basic need, and that no person is marginalized, discriminated, manipulated, dominated or exploited in their economic lives. Nothing in the concern for autonomy, freedom as non-domination or the WFE implies that individuals may unilaterally impose the basic terms of cooperation onto others, or that their opportunities to utilize their property rights should be maximized, or that they may maximize their advantage and wealth irrespective of how such pursuits would impact others. Since autonomy does not require maximization of options, neither do productive ownership rights. These rights and liberties can still be qualified and reasonably widened in a Society of Equals.

## **VII Economic Liberties in a Society of Equals**

This chapter elaborates on the institutional scheme that would substantiate the envisaged intermediate position between Rawlsian liberal egalitarianism and Tomasi's free market fairness. 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 and relational equality. The second part discusses the details of the underlying asset-based scheme and the regulatory framework. The main issue is how to qualify the right of productive ownership to make it "weak enough" to be consistent with core requirements of relational equality and justice as fairness, while leaving it "robust enough" to fully enable individuals' autonomy in their economic lives, ensure adequate control over their economic projects and a wider degree of independence required for self-authorship. The better ownership rights are specified, the less need there will be for post-hoc state intervention and corrections (not to mention discretion) and easier it would be for individuals to focus on long-term planning. It is beyond this chapter to address all relevant issues and controversies surrounding private ownership rights. The focus is only on some of the crucial qualifications. In order to have a better idea how ownership rights should be qualified, the prior step is to examine the requirements of relational equality and wider autonomy, specifically what would count as having "fair opportunities" and "wider opportunities" in the economic sphere.

### **7.1. Relational Equality and Wider Opportunities**

Autonomy requires the availability of adequate resources and opportunities. Unless people have an effective access to sufficiently wide and diverse options to choose from, they cannot lead autonomous lives. Much of the discussion on the adequacy of options requirement has predominantly been focused on justice and equality in social distribution of resources and opportunities, and somewhat less on the actual wideness of available opportunities beyond

some threshold of adequacy. It would be uncontroversial to say that individuals' freedoms and options should be as wide as possible, provided they are consistent with the requirements of justice and other social values, including the requirement that all citizens are guaranteed adequate resources, substantive opportunities and social conditions of equal autonomy. Such a claim, however, does not mean a lot without further elaboration on what justice requires; what resources and goods are necessary for all persons to be autonomous and treated as equals, what counts as having “substantive”, “adequate”, “equal”, “fair” or “wider” opportunities, etc. These issues are subject to ongoing (more or less) deep disputes, which are likely to continue indefinitely due to reasonable disagreements on justice. On the proposed approach (§4.1) the underlying notion of equality, embedded in the principle of equal respect for persons and their autonomy, is primarily concerned with establishing a Society of Equals, in which citizens stand in relation of equality, and only indirectly with distributive issues. People in a society relate as equals when all members are enabled to be fully functioning members of a society. Equals are not subjected to coercion or manipulation; they are not wrongly discriminated, marginalized or exploited, treated as inferiors (or subjected to state paternalism). They are ensured a sufficiently wide opportunity to be autonomous and real freedom to pursue their legitimate ends and projects without arbitrary and/or excessive interference. Citizens are treated with equal respect when it is recognized that each of them has equally valid interests to be considered in the process of public justification. All citizens, according to Anderson, are fully functioning members of democratic society when they are able to participate to a “good enough” extent in all of its core institutions and practices (Anderson, 1999).

### ***7.1.1. Effective Access and Fair Chance***

Rawlsian FEO principle should ensure that those with the same level of talent and ability and the same willingness to use them have roughly the same prospects of success regardless of their social background. The aim is to place all citizens in a position to manage their own affairs of a footing of suitable degree of socio-economic equality (TJ: 63). One core idea behind Rawls's FEO is that inequalities must be "open to all". James Buchanan also endorses a requirement of substantive access to opportunity (not equality of opportunity, which he holds is unrealizable) on similar grounds. Buchanan argues that when there is only "one game in town" everyone must be given "a fair chance of playing" since one cannot demand from individuals to accept the rules of the game in which they did not have a fair chance of playing (Buchanan, 1985: 132). Scanlon notes that "openness" or effective access for Buchanan does not apply only to positions for which individuals are selected, but also to things such as success through starting a business (Scanlon, 2018: 54). Tomasi also acknowledges that a game [Monopoly] in which some players start with substantially larger amounts of money than others would be unfair (Tomasi, 2012b: 88). One objection to market societies is that such regimes enable those with better social upbringings (and starting inheritance) to accumulate wealth and increase their bargaining power over those who lacked access to adequate resources and opportunities from start. The issue is not only that the less advantaged lack adequate resources, but also that often they lack the know-how to success in such societies. As White notes, while those with better social upbringings have developed capacities and skills required to prosper in such societies, others have not and their behavior is more suited for surviving on the social margins than succeeding in the mainstream (White, 2006: 65). In order to justify social inequalities it must be determined whether the less advantaged have a legitimate claim that they were not ensured a fair chance to succeed. Assuming no arbitrary discrimination on grounds such as race or gender, there appears no

unfairness involved if individuals did not have the necessary qualifications, other means, or even lacked “good luck” to do better in competition for advantage. Rawlsian FEO requires that people with the “same level of talent and ability” should have roughly the same chance for success, not that everybody is ensured an equal chance for success regardless of their talents, ability or even willingness to use them. Scanlon argues that problems arise if persons did not have an effective access to substantive opportunities, i.e. education and resources, required to develop their talents and abilities as to become “good candidates”. The requirement of procedural fairness is satisfied when no person has a valid complaint that she lacked effective access to conditions necessary to qualify for the competition for positions of advantage (Scanlon, 2018: 53). Scanlon correctly claims that individuals are not entitled to good outcomes and that there are limits to conditions a society must guarantee. Everybody must be provided only with sufficiently good conditions and substantive opportunities. A person who fails to qualify for some advantage because she failed to choose appropriately under such conditions may “have no complaint” (Scanlon, 2018: 62-64). Rawlsian FEO is about openness and effective access for all, not about guaranteeing equally good outcomes for everybody irrespective of their choices and actions. That would be also unfair, not to mention demotivating, for those who made prudent choices, took greater risks, etc.

On the proposed account, commitment to ideal of autonomy as self-authorship requires that all individuals are ensured wider and more diverse opportunities to be autonomous, the real freedom to pursue their legitimate ends, and a reasonably fair chance to succeed in their pursuits. In combination with the ideal of relational equality, commitment to autonomy requires that all citizens are ensured resources and opportunities required to be treated as equals, lead a life involving self-authorship and benefit fairly from social cooperation. Justice “only” requires that social distribution of resources and opportunities across members of society should not subvert the equal status of all citizens as autonomous persons, and “only”



that citizens are placed in sufficiently good conditions in which they have real freedoms and wider opportunity to be autonomous and a reasonably fair chance for success in their pursuits. This need not, strictly speaking, involve equal resources or equal opportunity for any other sort of advantage. The fact that some people are more advantageous, or have significantly more wealth relative to others, need not by itself be an impediment to maintaining relational equality and social conditions of autonomy. In contrast, if some people are effectively excluded, due to inadequate resources and opportunities, from freely participating in the core social institutions and practices, or are marginalized or exploited, or if they do not have a reasonably fair chance to succeed, that would violate the principle of equal respect for persons. Once all citizens are guaranteed a fully adequate set of freedoms and social conditions required to be treated as equals and to enable (and meaningfully enhance) their autonomy, wealth inequalities (even inequalities of opportunity) become less problematic in themselves. The degree of acceptable inequalities cannot be fully specified in abstract. In general, once the social conditions of relational equality and autonomy are reasonably secured, the stronger safeguards against economic vulnerability, social marginalization and exploitation of the less advantaged, and against concentration of economic power and corruption of politics, the more acceptable even larger social inequalities could be.

### ***7.1.2. Main Institutional Guarantees***

Not all inequalities call for intervention, only those arising from one's social background. Under sufficiently good conditions, if someone imprudently exchanges, consumes or wastes her legitimately owned resources, the loss may be misfortunate but not unjust and it would not require correction even if that means that some would be less well-off than others. Individuals are not entitled to good outcomes and cannot demand to be entirely publicly subsidized in their pursuits, protected against or compensated for all losses due to their imprudent choices or behavior. Individuals are "only" guaranteed effective access to

social conditions of autonomy and a reasonably fair chance for success throughout life. Since justice doesn't demand short-term equalizations of distributive shares, people must bear certain, even many, losses on their own. Again, if they would be bailed-out from every unfavorable situation caused by their imprudence, their incentive to act responsibly would significantly be diminished. We should also be concerned if public provisions would generate disincentives for recipients to engage in productive activities or dependency. Public provisions must not establish a parasitical relationship among citizens which would allow able-bodied persons to free-ride on the productive efforts of others by guaranteeing them generous resources without demanding productive contribution in return. Since some goods are more important than others, it is necessary to distinguish between guaranteed and unguaranteed goods, and to insure individuals only against the loss of the former throughout their whole lives (Anderson, 1999: 327). Such guarantees, reflecting Rawlsian primary goods, include freedoms, opportunities and resources required for all citizens to be placed in sufficiently good conditions to effectively take advantage of society's opportunities.

<b>Main Institutional and Social Guarantees of Autonomy<sup>9</sup></b>	
<b>Rights of Human Beings</b>	<ul style="list-style-type: none"> <li>• <b>Effective access to means of sustaining one's biological existence</b> (nutrition, shelter, basic healthcare, etc.);</li> <li>• <b>Basic security rights</b>, i.e. protections against murder, torture, arbitrary physical and psychological violence and harm;</li> <li>• <b>Effective access to the basic conditions of human agency</b>, i.e. social conditions of autonomy, freedom of thought and choice, religious freedoms, freedom of movement, etc.;</li> <li>• <b>Effective and transparent access for non-citizens to the process of obtaining citizenship</b></li> </ul>
<b>Rights of Social and Economic Agents</b>	<ul style="list-style-type: none"> <li>• <b>Effective access to higher-quality education</b> required to develop individual talents and skills</li> <li>• <b>Effective access to economic markets</b></li> <li>• <b>Freedom of personal ownership</b>, including transaction and consumer rights and liberties</li> <li>• <b>Freedom of occupation choice</b>, including the right of contract and to engage into collaborations with others;</li> <li>• <b>Effective right of productive ownership</b>, including the corresponding entrepreneurial liberties and income rights;</li> <li>• <b>Effective access to productive ownership and assets;</b></li> <li>• <b>Effective right to receive fair compensation for contribution</b>, including labor and anti-discrimination rights</li> </ul>
<b>Rights of Democratic Citizens</b>	<ul style="list-style-type: none"> <li>• <b>Political liberties</b></li> <li>• <b>Effective access to public goods and relationships of civil society</b>, i.e. freedom of association, access to public spaces;</li> <li>• <b>Effective access to private spaces</b> protected from scrutiny, intrusion and interference from others;</li> <li>• <b>Rights to privacy and protection of personal data;</b></li> <li>• <b>Due process rights</b>, i.e. rights against arbitrary arrest and detention, fair hearing or trial in civil/criminal matters and legal assistance;</li> <li>• <b>Citizens' stakeholder grant upon reaching adulthood</b>, including vouchers for corresponding services, i.e. counseling</li> </ul>

<sup>9</sup> The following proposals are heavily inspired by Anderson's account of democratic equality (Anderson, 1999)

### ***7.1.3. Wider Adequacy of Opportunities***

The preceding discussion suggested that, due to the value of autonomy and its central role for many individuals in living a good life, we should not aim at satisfying some “modest” threshold of adequacy, rather aim at a fully adequate set of options. The aim should be to secure wider and diverse options for individuals to be autonomous in all social spheres, consistent with equal autonomy of others. Available opportunities need not be, strictly speaking, perfectly equal for all citizens. Such an ideal would be too demanding and unrealizable, while denying available opportunities to some is vulnerable to the leveling down objection. Even if some people are unable, for whatever reason, to utilize some economic opportunities, they can still indirectly benefit when others utilize them. However, due to the principle of equal respect for persons and their autonomy, all citizens must be guaranteed effective access and sufficiently good conditions to make use and benefit fairly from available opportunities. What does it mean to have wider options with regards to entrepreneurial liberties? To have wider options roughly means that all individuals who want to engage in various entrepreneurial activities have fully effective freedoms and significantly diverse opportunities to do so. Assuming they have effective access to adequate resources (starting assets, access to business loans, etc.) sufficient to engage in entrepreneurial activities, effectiveness of their entrepreneurial liberties must not be made ineffective in practice (or significantly limited) by the structure of the economic system and/or state action (regulation, taxation). For example, if someone aims to start a business, then for her to have access to fully adequate options and effective freedoms, the economic environment must neither be too restrictive nor “business unfriendly” in terms of market entry, regulatory and tax costs. That said, regardless how well-specified, the requirement of wider adequacy of options will remain vague to some degree and subject to various empirical issues and controversies. The requirement falls somewhere between minimal and maximal requirements, relatively closer to

the maximal end. Its exact position on the continuum depends on what considerations are taken into account. As an ideal it is still useful since it expresses two important aspirations. One is that individuals' options and freedoms should be reasonably extended whenever possible and as widely as possible as to fully enable (and meaningfully enhance) their autonomy. The other is that significant restrictions on individuals' liberties need to be justified to persons who will be affected the most by such restrictions, and with reference to their autonomy. This rough standard of wider opportunities defines a threshold of opportunities which individuals need access to in order to be autonomous in their economic lives and which must be satisfied in order for the right to be effective for all. With standards of fair and wider opportunity roughly defined the next part deals with qualifications of ownership rights.

## **7.2. Qualification of Productive Ownership Rights**

The concept of private ownership can be understood in two main ways. First, a person's property can be seen as some object or a thing related (morally and legally) to that person. Ownership only involves possession over some physical object(s). Ownership as possession, as Brettschneider noted, is a very weak account of private ownership since many forms of ownership do not involve tangible resources that can be possessed and it cannot account for complex modern forms of ownership. For example, owning stocks, timeshares or intellectual property does not involve possession of any tangible object (other than legal documents acknowledging ownership) (Brettschneider, 2012: 57). Second, ownership can be understood not only as possession over physical things, but as a bundle of rights which define and specify the owner's rights (liberties, powers, and liabilities) to control some property (tangible or intangible things, resources or assets) (Christman, 1994: 226). On this conception, owners can take advantage of their property's fungibility options, i.e. exchange it for something, sell or loan it, productively use it, or choose not to use it. Since private ownership depends on one's ability to have exclusive control over some property, it must necessarily

include the right and the power to exclude non-owners from using one's property without permission, from interfering with the decisions regarding one's property and from expropriation (Hohfeld, 1913: 22; Brettschneider, 2012: 57-60). Although there are various disputes, the relevant core elements of any conception of ownership rights are the following:

- The right to possess and exclusive control rights over the use of property:
  - The liberty-right to use or not use it (non-interference),
  - The claim-right that others do not use it without permission;
- The right to capital (including the rights of alienation, consumption, and modification);
- The right to manage and contract with others regarding control over the uses of property;
- The right to transfer ownership rights to others, i.e. by sale, rental, loan, gift or bequest;
- The right to the income (increased economic value and benefits) generated from the productive utilizations, sale, rental or lease of property ownership;
- Rights to security in the possession of ownership rights, that is, immunity rights against illegitimate expropriation or the non-consensual loss of any of the ownership rights;
- Rights to compensation if others use it without permission;
- Enforcement rights to prevent infringement or extract compensation for infringement;
- Absence of term limits on the possession of these ownership rights.

(Christman, 1994: 227; Brettschneider, 2012: 57-60; Wells, 2019: 690)

Even if ownership is seen as a single bundle of rights, with all of its core elements being necessary for the meaningful notion of ownership, ownership as a bundle of rights is not all-or-nothing concept. It can be qualified (that is, limited and regulated) in different ways without denying any of the core elements, depending on how the corresponding liberties, powers and liabilities are specified. Different aspects of ownership rights can be assigned different weight and degree of protection without undermining the notion of ownership itself.

What matters is whether the bundle of rights as a whole is fully adequate. Neither maximal, nor minimalist schemes are appropriate, rather we have to find some “middle ground” on which individuals’ ownership rights would be sophisticated and well-protected (“robust enough”) while consistent with other values (“weak enough”). In order to balance the requirements of autonomy and relational equality, some aspects of ownership rights should either be disabled (hard restriction) or conditioned upon other considerations (softer constraints), especially upon considerations regarding autonomy (widening considerations) and relational equality (limiting considerations). Most of the qualifications simply cannot be done at the level of abstract theory, rather through ongoing public discussion, which takes everyone's interests into account. Abstract theory gives us crucial guiding principles and limits that structure the process of qualification and refinement of ownership rights.

### ***7.2.1. Determination of Qualifying Criteria***

Central to the proposed ideal of a Society of Equals are commitments to autonomy, relational equality and reciprocity in justification of coercive institutions. Justification of private ownership, according to Brettschneider, is a problem that must be addressed by reciprocal reasons between citizens. Since the right of private ownership involves the right to exclude and imposes a duty of non-interference, those excluded have to be given sufficient reasons why they should accept exclusion. Since the state enforces property rights, for this coercion to be fully justified all citizens must have a duty to respect property rights of others. Such a duty should be established through public justification (Brettschneider, 2012: 59-60). Ripstein argues that if my claim to some property is to apply to others, then there needs to be a public perspective from which others are “somehow party to my act of acquisition” (Ripstein, 2006:1424). Coercion and restrictions on individuals' freedoms and equalities (at least significant ones) must be justifiable to all citizens on the grounds they cannot reasonably reject. Whether some policy is justified, according to Scanlon, is determined by the relative

strengths of the reasons some have for objecting to burdens it involves for them and the reasons others have for objecting to alternatives not involving these burdens (Scanlon, 2018: 55). The reason why ownership rights must be limited is straightforward: If productive ownership rights can be justified only in a Society of Equals, then the requirements of a Society of Equals limit their scope. After all required qualifications, individuals' ownership rights should remain “robust enough” to ensure a wider degree of individuals' independence in their economic lives. In order to determine the necessary limiting and widening criteria for qualification, and to delineate between permissible and impermissible restrictions, the focus is on the requirement of mutual justifiability. The emphasis is on what kinds of demands persons, who aspire to be autonomous, can make against each other as equals in public discussion in the name of (relational) equality and (economic) freedom. The limiting and widening criteria are determined by the reasonable demands citizens make against each other. Their merits are determined by the relative strengths of these demands. In accordance with justice as fairness, the demands of the least advantaged generally carry the most weight. Finally, standards of “fair opportunity” and “wider opportunity”, in combination with effectiveness of rights, define a threshold of opportunities which must be satisfied and serve as a benchmark against which the proposed limitations and regulations are assessed.

### ***7.2.2. Core Limiting Criteria***

Since private ownership is a moral and legal relationship which imposes duties on the excluded in order for individuals to acquire, take control over and potentially derive benefits from it, some crucial moral liabilities to the public (compensation for exclusion) and to collaborators (requirement of relational equality) must be cleared before justifiably acquiring property and having independence in its disposal. These corresponding duties and moral liabilities represent the limiting criteria on ownership rights. The relevant limiting categories include: (1) limits on what can be privatized and under what conditions (in accordance with



justice and public interests); (2) limits to capital accumulation, including corresponding limits on acquisition and transfer rights (as to ensure effectiveness of rights and fair opportunity for all); (3) limits on income rights (as required by the duty to contribute one's fair share in taxation); (4) limits on control and management rights (as to ensure relational equality).

### **Restrictions on Privatization**

There are two main limitations regarding legitimate acquisition of private property: (1) limits on what can be privatized and (2) conditions under which property can be acquired. Both limitations follow from the requirement that private ownership should be justified from the public perspective which takes everyone's interests into account. There are no reasons why certain areas, resources and entities should not entirely be excluded from privatization and remain in common ownership as to ensure that everyone has access to them. Law enforcement, access to public spaces, certain natural resources and other areas of vital public interest should be excluded from privatization. Privatization in these areas would make citizens' basic rights insecure (i.e. freedom of association requires access to public spaces) or enable owners, for lack of a better word, to blackmail the public. Even if ownership or management of some public areas and services is granted to private actors (as a matter of public interest) this should be done in form of limited concessions in which the public remains the controlling shareholder. This is an controversial requirement since the right of private ownership, however robustly conceived, only implies and requires that some, resources and things can be privatized, not all of them. Guaranteeing the (effective) opportunity to acquire property, according to Waldron, is sufficient for respecting the right of acquisition (Waldron, 1988: 396). It might be argued that individuals' opportunities for private acquisition should be widened as much as possible in the sense that as many areas and resources as possible should be made available for privatization. Since autonomy (with the

requirement of wider options) does not require maximization of options, I need not be committed to such an extensive opportunity for acquisition. Insofar there are sufficiently wide opportunities for individuals to acquire private ownership in significantly diverse areas, resources and assets as to be able to engage in business ownership and entrepreneurial activities, the right of productive ownership is not undermined in any relevant manner (provided also that the conditions of legitimate acquisition are not too restrictive). Second, taking everyone's interests into account implies that the state also prescribes, in accordance with justice and public interest, conditions of legitimate acquisition. Paradigmatic examples of illegitimate acquisitions include theft, coercion or manipulation. What areas are excluded from privatization and conditions of legitimate acquisition are matters decided democratically through public discussion, which takes everyone's interests into account, including their weighty interest in business ownership. Although this limiting criterion is uncontroversial in principle, there are many difficult issues which will arise in practice.

One issue is whether there should be some term limits on owning productive property. As a general rule, I would argue against placing any term limits on owning legitimately owned productive property. As noted, people build their family lives and businesses in the expectation of control over certain resources and they place more value on keeping them than on acquiring them initially. Property rights become integrated into people's lives in morally significant ways and loss of property may have a significant impact on their sense of freedom and well-being (Sherwin, 2007: 1939). Imagine a person starts her own business, works hard on developing it, while being well-aware that sooner or later she will lose all claims regarding that business. Knowing that her rights are only temporary would be demotivating to say the least. It would also put a pressure on her to maximize the benefits of productive ownership before the term limit and not “enjoy” other values and benefits associated with business ownership. Long-term security in possession of ownership rights and absence of term limits

enables individuals to focus on long-term planning instead of worrying about the upcoming expiration of their rights. There are exceptions to the general rule of absence of term limits. One relates to ownership (or management) rights in public areas that were granted in the form of a limited concession. By definition, such concessions involve term limits. The second exception relates to patents. The right of patent, namely the right of monopoly powers over certain intellectual property, even when justified as an economic incentive for innovation is a highly controversial issue with disputes on both its advantages and disadvantages. There are three main disadvantages. First, although patent rights can incentivize innovation, they can also prevent it by limiting market competition. Second, patents prevent access to certain resources and know-how even when general access would be in the best public interest. A case in point is the COVID-19 pandemic and patents on vaccinations. Finally, robust patent rights are likely, especially in absence of adequate tax system, to lead to growing inequalities. As Scanlon noted, shareholders of large corporations would not be as wealthy if patents and copyrights held by those corporations did not last as long as they do (Scanlon, 2018: 102). Although patents can be justified on the grounds that such rights are necessary for the WFE and/or to protect authors' creative visions, such justification does not support the absence of any term limits on monopoly powers related to patents. The right of patent is a special privilege granted by the state on top of ownership and control rights regarding property in question. Even in absence of patent rights, owners could still control and manage their inventions and intellectual property; they would just not be able to profit as much from them. Therefore, if granted, placing certain terms limits on patent rights would not undermine the ability of owners to manage their businesses. A case in point is Volvo and their three-point seat belt. The decision not to patent this invention did not really undermine the company, or the ability of owners to manage it. There are also plenty of examples of different companies being able to derive significant profits from intellectual property in the public domain.

Expiration of patent rights does not mean that all ownership rights related to property in question would be lost. It only means that the knowledge embedded in the property would become available to others. Original inventor's interests can adequately be protected by the right of trademark, namely by placing a requirement that alternative versions of the product developed on the basis of the patent must be sufficiently different from the original. In conclusion, while patent rights can be justified, these rights do not imply absence of any terms limits since such rights are not essential for ownership as a whole. Indeed, it might be in the best public interest to limit them, provided that such limits do not undermine the owners' ability to manage their businesses or their fair chance to succeed on the market.

### **Responsibility for Costs of Negative Externalities**

One important duty, often not taken seriously enough, relates to owners' responsibility for the costs of negative externalities of their businesses on common ownership. Private ownership can be seen as implying responsibility for the costs of negative externalities for which individual and corporate actors can reasonably be held responsible. The same applies when state actions impose such costs on private owners. It is in public interest to enforce this duty for various reasons, including the protection of the value of common ownership which would be diminished due to actions of private businesses. For example, if an environmental catastrophe such as oil spills is caused by some private business, then it is the responsibility of the owner(s) to cover for the generated costs. This requirement is an important duty towards the public since it would be unfair that excluded parties, as taxpayers, share in these costs without getting anything in return. It is also essential for ensuring personal and corporate responsibility. This point especially applies to bail-outs of corporations. The scope of justified bail-outs must remain minimal and never unconditional due to scarcity of public resources. I would argue that when companies fail due to irresponsibility or moral hazards, bail-outs should be conditioned with ownership shares in companies as compensation to the public. As

Friedman said, there is no such thing as free lunch. This requirement can be conceptualized as one condition of legitimate acquisition and thus can be seen as being built-into the right itself. By acquiring private property the owners also accept this duty. Denying this duty would also deny the legitimacy of owned property and the owners' demand for wider independence.

### **Limits to Capital Accumulation and Business Size**

The requirements that all citizens should be placed in a sufficiently good position, have an effective right of productive ownership, compete on a broadly level playing field and have a reasonably fair chance for success, suggests that the economy must not be too concentrated and/or dominated by large actors. Highly concentrated markets have the same effect as highly collectivized and regulated regimes. In both, productive ownership rights can be made ineffective in practice for some, especially for smaller actors, due to higher market entry and business costs. To ensure a sufficiently wide opportunity for all to exercise their productive ownership rights, the state should prevent market concentration and maintain capital ownership sufficiently dispersed. In addition to measures aimed at ensuring ownership for all, this implies well-known measures required to maintain the competitiveness of markets, limit the abuse of dominant market position and prevent unfair business practices. Especially problematic are practices by which large actors use their dominant position to intentionally harm their competitors' ability to compete on the market. The point is that there are limits to which businesses can expand (measured in terms of market share) before their size, despite implemented regulations, starts interfering with the above-mentioned requirements. This suggests that, in order to satisfy these requirements, the right of capital accumulation should be limited by setting the upper limits of capital accumulation and limits to which businesses can grow in size. These upper limits can be thought to be built-into ownership right itself. In such a way, state intervention becomes entirely predictable, so existing and would-be owners

can incorporate this knowledge into their long-term plans from start. Determining appropriate upper limits should take into consideration the social benefits of economies of scope and scale as part of the WFE requirement. Dispersing capital ownership too widely risks missing-out on these benefits and not necessarily gaining more in terms of overall equality. Greater equality and wealth may be achieved, but at cost of lower level of overall social prosperity due to diminishments in the WFE. Establishing a broadly level playing field can be achieved through adequate regulation even in conditions of somewhat wider inequalities in capital ownership.

### **Limits on Acquisition and Transfer Rights**

Limits on business size and capital accumulation imply certain limits on the rights of acquisition and transfer. As with other elements, whether the right of productive ownership includes transfer rights (rights of purchase, sale, gift and bequest) is not an all-or-nothing affair. These rights can be adequately limited in different ways, other than through hard restrictions, without significantly diminishing their scope (or wideness). Waldron notes that transfer rights can be limited through taxation on certain transactions. Taxes can be applied either on the transferor (payroll taxes, gift duties, etc.) or on the transferee (income tax, capital gains tax, etc.). In these cases, transfer rights and transfers in question are enabled, but subjected upon certain conditions (and thus encouraged or discouraged). For example, the condition may be that gifts over some amount cannot be made, or income cannot be received without paying tax (Waldron, 1988: 435). Given the requirement of upper limits on business size and capital accumulation, there are also some necessary hard restrictions on transaction rights if particular transactions or transfers of ownership would mean that the upper limits (regardless where the threshold is set) are breached. So understood, these restrictions can also be seen as limits on acquisition rights of the transferee and not just as limits on transfer rights of the transferor. The obvious example is preventing acquisitions, mergers and transfer which would undermine market competition and allow unacceptable concentration of market power.

An active role of the state is required to ensure a broadly level playing field and effectiveness of productive ownership rights for all. The scope of required measures, regulations and corresponding limits on productive ownership rights depends on various empirical issues, including restraints imposed by the requirement to maintain the effectiveness of ownership rights and liberties for all, the reason why such limits are required. Regardless at what threshold upper limits to capital accumulation are set, small and medium size actors are unlikely to ever face the required limitations on acquisition and transfer rights. These limits are faced mainly by larger actors. Since larger actors derive other benefits from their size, i.e. increased profits and market security, the trade-off can be justified insofar they still have access to sufficiently wide options. Tipping the scales to the side of smaller actors does not appear unfair if, on balance, all citizens are placed in a sufficiently good position, have effective productive ownership rights and can compete on a broadly level playing field.

### **General Limit on Income Rights**

One of the core elements of the right to productive ownership is the corresponding claim-right to income generated from its use, sale or exchange, and lease. This right is conditional upon the cooperation of others. As Christman explains, if people in the area stop trading and cooperating with me, and thus preventing me from profiting, income rights do not give me a power to make them trade or cooperate again (Christman, 1994: 246). In addition, the right to private productive ownership, even if conceived as a basic right, would not imply the corresponding right to full income generated from its utilization. One reason for that arises from the costs of enforcing property rights, which have to be covered. Due to the free rider problem, effectiveness of ownership rights depends on the taxation essential to cover the costs of enforcing them, including the costs of a legal system to regulate them. As Sunstein argued, if various rights protection services are necessary to preserve the point of ownership rights, these rights must be specified in such a way to allow taxation for this purpose, if rights

protection services cannot be voluntarily financed. If so, the same reasoning must apply to other services, i.e. provision of public goods and an adequate social minimum, which also preserve the point of ownership rights (Sunstein, 1997: 235). Reasonable taxation, which does not impose excessive and undue burdens, cannot be a violation of individuals' autonomy or their ownership rights since securing both is dependent on certain taxation. Productive ownership rights are not undermined by reasonable taxation since individuals would still be able to start and manage a business. The libertarian objection that taxation involves coercion is beside the point and cannot defeat the argument for taxation because, after all, enforcement of ownership rights also involves coercion. Again, if ownership rights impose a general duty onto others, which is coercively enforced, then such coercion needs to be justified from the public perspective, which takes everyone's interests into account. Privatization requires some compensation for the exclusion of others, which can be achieved through the contribution of one's fair share in taxation required to maintain the system in which such acquisitions were allowed under the condition that all citizens have an effective opportunity to acquire productive ownership and enjoy its benefits. Everyone would, of course, like to enjoy the benefits of private ownership and independence, while avoiding the corresponding duties and costs, but that is not how things go. There is no such thing as free lunch and this essential liability towards the public must be cleared for private productive ownership to be publicly justified. Excluding strict libertarians, nobody really sees the requirement that all able-bodied citizens, earning their income, should contribute their fair share in taxation as controversial in principle. The dispute, as always, is about the appropriate forms and robustness of taxation.

Since private ownership needs to be justified from the public perspective, which takes everyone's interests into account, the justified scope of taxation and one's fair share should be defined in terms of equal burden in maintaining the regime. These burdens include costs of maintaining justice and public order, social conditions of autonomy, relational equality and



fair opportunity and measures required to ensure that all citizens have an effective access to acquire meaningful ownership (since these are all in everyone's interest). The requirement of equal burden follows directly from the ideal of relational equality according to which all citizens are equal in their rights and duties. Anything less than an equal burden in taxation (and regulatory burdens) would be unfair towards those who would have to endure higher burdens therein. Such taxation could not be reasonably rejected by citizens since their economic advantage would not be possible without the state enforcing property rights and the willingness of others to endure the burdens of such a regime even when it may not favor them. What counts as one's fair share in taxation and regulatory burdens and what is the most reasonable taxation scheme cannot be determined in abstract. This is because we cannot know in advance how different forms and degrees of taxation will interact with individuals' motivations and the WFE. Rather, these questions can only be answered through the ongoing public discussion, which takes everyone's interest into account, including individuals' reasonable ownership claims and motivations. As a general rule, we should aim at the highest reasonable and sustainable level (without being too demanding or excessive) consistent with individuals' willingness to endure these burdens over time and motivations to engage in WFE enabling activities. As discussed (§6.4.1), higher levels of taxation can make productive ownership rights ineffective in practice for some. If the state imposed excessive and undue burdens onto private businesses, the owners could legitimately complain that they were not placed in a sufficiently good position to exercise their productive ownership liberties.

When it comes to the design of the taxation system, the focus should be on finding the most effective combination of different taxes, which has a higher probability of generating sufficient political support and the least disruptive impact on the WFE. For example, a combination of progressive consumption and acquisition taxes may be more effective than high marginal income and capital gains taxes, which tend to have adverse effects on the WFE

(and incentivize tax avoidance). Maybe high inheritance taxes, albeit justified, simply cannot generate the necessary political support. It all depends on the actual socio-political circumstances. As long as the system is effective and people contribute their fair share, it matters less what specific combination of taxes is implemented. Considering the preceding discussion, the appropriate level of taxation, all things considered, may not be as robust as many liberal egalitarians argued is required by justice. Almost any degree of taxation, regardless how robust, can be justified in abstract. Effectively implementing and sustaining such taxation over time while avoiding its adverse effects is a different matter altogether.

### **Limits on Control and Management Rights**

This limiting criterion relates to the requirements of relational equality, specifically to moral responsibilities towards collaborators (associates, employers, and consumers) in economic projects (requirement of treating persons as equals) and towards competitors (requirement of fair play). It concerns limits on owners' control and management rights over their business. Business owners, and by association company managers, have a duty of treating associates, employees, consumers and competitors as equals. People are treated as equals when they are not wrongly discriminated, dominated, exploited or treated as inferiors. Among other things, treating people as equals (and not merely as productive tools) means that the owners have a duty to provide adequate cooperative and working conditions and to fairly compensate their associates or employees for their contribution. With regards to fair play between competitors, that duty means that competitors should abstain from using unfair business practices as to intentionally harm their competitors' ability to compete on the market. Wrongfulness of treatment of persons, understood as not treating others as equals, always overwrites ownership rights regardless how robustly they are conceived.

To make this point clear, consider an analogy with one's private home and visitors. The owner wants to arrange things as to make it feel as a home. Others cannot have the right to be invited to one's home (and in what capacity) since that is clearly the owner's prerogative. The invited also cannot demand an equal right in making decisions about how things in someone's home are arranged to better suit their preferences (needs, beliefs, etc.), but they can demand to be treated as equals and not wrongfully mistreated. Thus, just as the state should legitimately intervene when visitors are abused in someone's home, the same must apply in private and public companies if employees are mistreated or abused. For example, if employees are not ensured appropriate working conditions and fair compensation, if they are discriminated on grounds unrelated to the ability required for the task at hand, namely on the grounds such as race, gender or social background. Wrongfulness of treatment also includes unfair and unethical business practices since these are a form of mistreatment of competitors and customers. Wrongfulness of treatment of persons always overwrites ownership rights because it violates the core principle equal respect for persons and their autonomy and, thus, the very grounds on which ownership rights were assigned, namely to protect person's higher-order interest in autonomy (independence) and to be treated as an equal. In general, similar to Quong's suggestion, the requirement of relational equality is understood as a "principle to regulate cooperative activity", a set of fair terms and normative constraints on existing cooperative activities between individuals (Quong, 2010: 83). It follows that once people cooperate, they have a duty to respect terms that fairly regulate their cooperation and ensure that all participants are treated as equals. In practice that means that neither party in cooperative activities has the right to unilaterally determine the basic terms of cooperation. Therefore, the right of productive ownership, to be consistent with the requirements of relational equality, does not involve the liberty of owners to unilaterally determine the appropriate minimal standards related to workplace conditions, i.e. healthy, safety, working or

the conditions under which wages and terms of cooperation are negotiated (as to ensure labor rights, avoid wage slavery and protect workers from domination and mistreatment), or standards related to the quality of products and services offered (as to ensure consumer rights), or the general conditions of market competition (as to ensure fair competition). Other requirements can be attached to owners' rights. For example, owners may be strictly required to collectively negotiate terms of contract, wage and other benefits with relevant workers' unions or in forums established to resolve disputes and employees' complaints in cases of mistreatment. Although this is not strictly related to owners' rights, workers should be ensured an effective possibility of appealing against certain legitimate owners' decisions that affect or disadvantage them. These issues, and further requirements, are determined democratically through a process that takes everyone's interests equally into consideration. There are no obvious reasons why owners' lack of control in these matters would undermine their ability to start and manage a business, as long as the ability has not been rendered ineffective or trivial by unreasonably demanding standards. The right of productive ownership does contain, for lack of a better term, right of flexibility in management, or wider liberty to determine the inner structure, aims and workings of a business above the minimal threshold required by relational equality (more on that shortly).

Balancing conflicting interests of different economic actors, especially between business owners and workers, requires an adequate system of regulation. Purely academic debates aside, nobody truly holds that minimally regulated economic systems would be well-functioning, autonomy-enabling and reasonably fair for all. Political regulation can easily be justified when it can plausibly be shown that it "improves things" for all parties. The value of regulation also arises from our concern for ensuring that, when people voluntarily cooperate or associate, no person is to be co-opted into cooperative practices except on her own terms and that the interests of each participant are adequately and fairly served by these arrangements

(Arneson, 2003). The issue is not whether economic activities (and businesses) should be somehow regulated as to maintain effective social coordination and ensure that the interests of each participant are adequately and fairly served, but rather – how and to what degree. Buchanan argues that, instead of asking whether equality and freedom are compatible, the question might be restated as what sorts of restrictions on liberties are required by equal respect for persons and their autonomy (Buchanan, 1984: 81).

### ***7.2.3. Core Widening Qualifiers***

Neither of the previous limiting criteria, in abstract, is particularly controversial among liberals. The dispute is about the robustness of these requirements and how much weight should be placed on individuals' autonomy and economic liberties before and during the necessary qualifications. The latter considerations will have a significant impact on determining the scope of regulation and taxation, but also on the requirements of justice. The more weight is placed therein, the less robustly conceived the distributive requirements of justice would be in the first place. Details and robustness of either limiting criterion cannot be determined at the level of abstract theory, rather only through an ongoing public discussion which takes everyone's interests into account, including owners' reasonable interests. While owners may wish they had absolute control over their businesses, lack of such control does not significantly diminish their autonomy or ability to manage a business (insofar that ability has not been rendered ineffective or trivial in practice). Reasonable restrictions, regulation and taxation, which do not impose excessive burdens, do not unjustifiably violate individuals' autonomy or productive ownership rights. The issue is to determine the extent of justified limitations, and delineate between permissible and impermissible interventions and regulation. The line between permissible and impermissible interventions is determined through mutual justification. The preceding discussion can be seen as addressing demands people can legitimately make in the name of equality. The proposed limits on productive

ownership rights represent answers to these demands as part of the requirements for all individuals to be treated as equals and placed in a sufficiently good position. The following part addresses the other side of the coin, namely what demands individuals can legitimately make in the name of their autonomy and their weighty interest in economic liberties. The question is what autonomous persons can reasonably demand with regards to productive ownership and entrepreneurial liberties. The answer to this question represents the limits of the justified extent of state action. In this sense, economic rights are understood as claims citizens make against each other to abstain from arbitrary and unwarranted interferences with each other's legitimate ownership and economic freedoms or, more generally, from arbitrary, unwarranted and excessive intrusions into each other's economic lives.

Regarding productive ownership rights, what ultimately matters in terms of autonomy and independence, is the effectiveness of these rights, their actual scope and wideness, and how easily the state can infringe them (or make ineffective in practice). Assuming that all citizens are placed in a sufficiently good position and relational equality was reasonably secured, the extent of permissible state action and restrictions on individuals' productive ownership rights is, first and foremost, limited by the requirements: **(1)** that a fully adequate scheme of ownership rights and wider opportunities for their exercise are secured; and **(2)** that these economic rights and liberties remain reasonably effective for all. While individuals cannot reasonably demand maximization of opportunities, they can demand that their weighty interest in economic liberties is taken seriously into account and that significant restrictions are publicly justified. They can also demand that sufficiently wide options are ensured and expanded whenever feasible within the limits of the requirement of relational equality. When combined with the requirement of mutual justifiability and the standard of wider opportunities, citizens can also demand: **(3)** some degree of stronger presumption of non-interference into the core elements of their legitimate economic projects; **(4)** judicial review of

the proposed restrictions and regulations; and (5) least intrusive interventions and regulations. All of these widening qualifiers, understood as reasonable claims of individuals as citizens and owners, follow from the previous arguments for productive ownership.

### **Fully Adequate Scheme of Liberties**

To secure a fully adequate scheme of liberties, ownership rights must contain corresponding entrepreneurial and transaction liberties which enable individuals to take advantage of their property's fungibility options and talents. This is crucial for the effectiveness of ownership rights and independence. Children or slaves, even when allowed to control some resources with more or less freedom are not really autonomous since whatever plans they make can easily be overwritten. Again, they have provisional licenses (which can be revoked without any special justification), not independence. The same could be said if ownership rights did not involve the corresponding entrepreneurial liberties. Individuals would have possession rights, but would not have independence in their legitimate pursuits. The meaningful notion of independence is that of active independence, rather than passive independence (§6.3.2). Regardless how robust, ownership rights in themselves would not mean much in terms of active independence without the corresponding liberties to actually utilize resources (assets, talents) at one's disposal in the pursuit of one's ends. Ownership becomes much more valuable if, besides holding and security rights, individuals also have the liberties to exchange it for something else or use it for productive purposes. The same applies to productive ownership; it becomes significantly less valuable without the corresponding control, transaction and entrepreneurial liberties. Considering the enhanced autonomy-based appreciation of economic liberties, the focus is not only on what resources and options are guaranteed, but also on the actual wideness of individuals' liberties. The aim is to secure the necessary resources and opportunities, rather also to reasonably expand individuals' economic

liberties as to ensure wider opportunities for them to economically utilize their productive assets. The wider the options are, the more diverse economic projects can be undertaken with available talents and assets. Although autonomy does not require maximally wide options, the wider the options are, the more likely is that a great number of people would be enabled to engage in meaningful economic activities, including business ownership. More importantly, the more likely is that diverse individuals will be provided with opportunities better suited to their talents, limited resources and plans. Within the requirements of relational equality and the upper limits of capital accumulation, unless the purpose is to intentionally harm the ability of others to compete through unfair practices, individuals should have a wider set of corresponding entrepreneurial and transfer rights. They should be granted wider opportunities to acquire, utilize, transfer and manage their productive assets without unwarranted and excessive interference. Growth of sharing economies and the ongoing cryptocurrency craze have shown that, even modest resources may be sufficient for people to engage in small-scale entrepreneurial activities if their economic liberties are wide enough. It also shows how a system of wider liberties can generate diverse opportunities to engage in such activities for individuals who otherwise may not be able to. Are sharing economies just the most recent form of exploitation of workers? Is crypto-investing just another form of speculation and gambling which will bring ruin to large number of smaller investors, or something socially valuable? These are open questions. What is clear is that numerous individuals were encouraged to engage in small-scale entrepreneurial and investment activities, some even for the first time, which got them thinking about other possibilities they could do with their limited resources and available opportunities. The general point is, such engagements were enabled by their economic liberties and lower costs of engagement, something which would be significantly harder to achieve in a robustly regulated economic system.



## **Business Friendly Environment**

In order for economic liberties to be effective and for individuals to take advantage of available opportunities, i.e. seek self-employment or start a business, the overall economic environment must be supportive of these liberties. One issue here is the availability of adequate resources (especially of starting assets) and the other is about the appropriateness of regulation and taxation. For individuals to have an effective access to wider opportunities, economic regulation and taxation should be “business friendly”. We can understand this requirement, to paraphrase Tomasi, as freedom from “onerous levels of regulatory costs and tax burdens”. Patten criticized Tomasi for not clarifying how freedom from taxation is related to individuals' autonomy and self-authorship. High taxes may make persons less likely to devote more effort into managing their businesses, but not necessarily less free to do so (Patten, 2014: 365). This is especially true for large corporations which could endure significantly higher tax and regulatory costs (compared to current levels) without becoming insolvent or without having less effective access to available options. Owners and investors may, consequently, be less incentivized to engage in WFE enabling activities, they may reallocate production, and avoid or externalize these costs. These are separate issues not directly related to the adequacy of options requirement. Patten’s objection is on point when it comes to larger companies. However, as discussed, situation is radically different when observed from the perspective of smaller actors and newcomers. For them, higher levels of regulation and taxation significantly reduce their options and freedom to start and manage a business, with the options being win big, struggle to survive or become insolvent. Businesses fail for various reasons, but there is certainly something to be concerned when they fail due to unreasonably high costs and standards imposed by the state since that would mean that some individuals have been denied a fair chance to succeed in their legitimate pursuits. State measures which would, due to unreasonable robustness or rigidity, make productive

ownership rights practically ineffective for some, especially for the less advantaged, is an impermissible interference since it violates the requirement that all should be placed a sufficiently good position to exercise these rights. In this regard, we should especially be concerned with ensuring that the environment is friendly for small and medium-size businesses since higher regulatory and fiscal costs affect these enterprises the most. Economic regulations should not only enable effective market entry, but also encourage (that is, make easier) for smaller actors and newcomers to engage in entrepreneurial activities, start and manage a business and experiment with their assets, and not unintentionally and unfairly disadvantage them in the name of justice. This can be achieved by simplifying the procedure to start an enterprise (it may be reasonable to maximally simplify the bureaucratic procedure) and by ensuring that regulatory and fiscal burdens are actually reasonable and appropriate for actors in question. While larger actors can cope with higher regulatory and fiscal burdens, smaller actors cannot. Furthermore, as Sunstein argued, governments should be constrained from imposing special disabilities on private enterprises by regulating, taxing or discouraging private actors from operating on equal terms with public companies (Sunstein, 1997: 247).

### **Reasonably Wider Management Liberties**

This widening qualifier follows from the argument from independence and self-authorship and is, by definition, in tension with requirements of relational equality in the workplace. Ownership rights, as noted, do not involve the liberty of owners to unilaterally determine the basic terms of cooperation or the minimal workplace standards. Various labor laws and regulations, sometimes even hard restrictions, are necessary to prevent mistreatment of workers, discrimination in hiring, enable workers' right to fair compensation, etc. These are all crucial for workers' well-being and to be treated as equals. Any argument for productive ownership denying these limitations to owners' management rights would be unreasonable. Lack of full control in these specific matters need not undermine the owners' overall ability to

effectively manage a business, provided the ability has not been rendered ineffective or trivial by unreasonably demanding standards and rigid regulation. The need for discretion in management, as Hsieh noted, is a fundamental feature of economic activity and there are limits to how much managers' discretion can be restricted before the “very nature of what makes economic enterprises” initially valuable is undermined (Hsieh, 2012: 155). From the economic point of view, the ever-changing circumstances on the market, especially in globalized economies, requires flexibility. For example, to adequately adapt to changing market circumstance, managers require significant flexibility in hiring and firing. Assuming that individuals have been placed in a sufficiently good position, flexibility in employment regulation may also be conducive to workers' right of exit. In mandatory workplace democracies, as discussed, exit may be significantly diminished due to stricter procedures regarding hiring and firing workers, which may leave workers exposed to domination just as in unregulated labor markets. Different companies develop different internal rules for their employees and customers. Advantage of flexibility is that internal rules can be “tailored” to differing circumstances (employees, customers). Lack of flexibility in management can prevent actors from developing “more appropriate regulations” for their specific situation and from quickly adapting to changing market circumstances.

In terms of autonomy and non-domination, what ultimately matters for owners is that they have a meaningful degree of actual control over their projects and manage them without excessive interferences or remote control. Sufficient flexibility in management is necessary to ensure a sufficiently wide degree of individuals' independence in their economic projects. Enterprises can be organized in different manners, ranging from strictly hierarchical to loose network-based organizations, and the owners should have a significant degree of independence (within requirements of relational equality) in choosing the internal structure that best suits their own vision. Considering the example of home-owners and visitors, now

observed from the perspective of owners, while visitors (employees, associates, customers) can demand to be treated as equals (and the state should ensure that they indeed are), they cannot demand to be invited (employed, served) or an equal right in decisions regarding how things in one's home (business) are arranged. Within reasonable limits, that remains the owners' prerogative. This does not imply that workers' voice cannot somehow be enhanced, it just means that they do not have an equal say in how one's private business is conducted. Workers' voice can be enhanced indirectly through democratic decision-making in which everyone's interests are taken into account (leading to various labor regulations and protections) or more directly through collective bargaining (leading to refinements in terms of cooperation). Due to asymmetry of power between capital and labor, it may also be fair to somewhat tip the scales in favor of workers and the less advantaged. Even so, the owners can reasonably demand sufficiently wide options and flexibility to manage their businesses without unwarranted interference or remote control. Assuming that requirements of relational equality are reasonably secured, wider independence and flexibility should be ensured in the choice the enterprise structure, its aims and strategy, internal rules and procedures, and in hiring and firing of employees. Such demands can be accommodated through more flexible regulations set against the background of collective agreements consistent with relational equality. Regulation is not an all-or-nothing notion. Different regulative systems can adequately ensure relational equality, and restrictive regulation need not always be seen as preferred to flexible regulation. Workers significantly disadvantaged by flexible regulation should be compensated, i.e. through the social security system.

## **Conditional Special Protection**

Principles of reciprocity and presumption of liberty are close-knitted. Without the latter, the value of the former may be diminished. People may perceive that their weighty interests and liberties have not been taken seriously into account and are vulnerable to be overwritten without proper justification. Productive ownership rights cannot be assigned the same degree of strict priority (as core basic rights) over other moral concerns. However, given individuals' weighty interest in these liberties and issues with weakly protected rights (§6.4), there are plausible reasons why presumption of liberty should still apply concerning the core elements of economic projects. That is, there are autonomy-based reasons why these liberties should be granted some weaker and conditional degree of special protection from standard political decision-making and a stronger presumption of non-interference into core elements of individuals' ownership rights and legitimate economic projects, even if that comes at some cost in terms of the distributive ideal of justice. Securing appropriate conditions relational equality takes precedence since, as noted, wrongfulness of treatment of persons overwrites ownership rights regardless how robustly conceived. Considerations of autonomy, given its central role in individuals' lives, place certain reasonable restraints therein. Since these intuitions transfer into individuals' economic lives and onto productive ownership rights, the same restraint should apply when determining the robustness of the previous limiting criteria. Considerations of autonomy also justify some non-trivial degree of special protection conditioned upon the requirements of relational equality being reasonably secured.

The emphasis in arguments for productive ownership was placed on the notion of active independence and freedom from remote control. The core of Pettit's argument is that for individuals to enjoy freedom as non-domination they must not be subject to remote control of another who could exercise that control over individuals' choices and/or interfere with their

actions without taking their interests into account. Freedom as non-domination requires not only that individuals have a high probability of escaping arbitrary interference, rather that they are adequately protected against it (Pettit, 2006: 137). Freedom requires that nobody stands over individuals in the position of a master who can interfere with their lives and choices without notice, proper justification or appeal. Democratic governments have the legitimacy to regulate private businesses in accordance with justice and public interests. The issue arises when individuals' productive ownership rights are not assigned sufficient normative weight in principle. Considering the "bare liberties objection", if productive ownership rights are seen as less important for autonomy, the state is not obligated to ensure wider degree of independence and options for their exercise, nor provide any special justification for interference, restriction or regulation (regardless how extensive) or even take into account that some people's rights could be made ineffective in practice by state action. Furthermore, unless adequate weight is assigned to these liberties in principle, individuals may not even have a legitimate ground to complain, in the name of economic liberties or demand that their weighty interest in these liberties is taken seriously. If individuals are to remain autonomous in their projects and enjoy freedom from remote control, they must be ensured some degree of "unreviewable authority" over the core elements in their projects, against which there would be a stronger, but conditional, presumption of non-interference. Although this presumption is conditional upon requirements of relational equality being reasonably secured, it would place some restraint on standard political decision-making and state action, especially on how significant restrictions and regulations are introduced.

The "least" controversial aspects of productive ownership rights which qualify for such special protection are the right to possess productive ownership (including security rights and absence of term limits) and the freedom of choice of economic pursuits. Both rights can be seen as logical extensions of the right of personal ownership and freedom of occupation. First,

concerning the right to possess, special protection of legitimately owned property relates to protection against expropriation without due process and compensation. Sunstein argues that citizens should be provided with a hearing before the government interferes with their holdings. Hearing before an independent court ensures that legitimately owned property will not be arbitrarily expropriated by the government on the basis of whim, for discriminatory or irrelevant reasons. Due process involves presenting facts that justify expropriation as a matter of law. This requirement also improves governmental legitimacy since, as Sunstein notes, there is considerable evidence that people feel more secure and trustful if government gives them an opportunity to be heard before undertaking action harmful to their interests (Sunstein, 1997: 243). Second, freedom of choice of economic pursuits concerns what kinds of projects and businesses can be pursued with legitimately owned property. What economic pursuits are legitimate? As a general rule, all economic pursuits and projects that are consistent with relational equality, that is, not obviously morally wrongful, unreasonable or especially harmful to parties involved or society should be given benefit of the doubt and allowed until evidence suggesting unreasonableness, wrongfulness or harmfulness is presented. Projects shown (not just presumed) to be morally wrongful or harmful should be prohibited or more strictly regulated. Paradigmatic cases of wrongful and harmful economic pursuits or businesses are straightforward. For example, producing and/or selling hard drugs is extremely harmful for persons given the impact such drugs have on their well-being. Distributing such drugs, while being well-aware of their effects, certainly counts as morally wrongful. Another clear example is contracting for murder. While paradigmatic cases are clear, there are many grey areas with no clear answers. Should a business dealing with soft drugs, for which there is no evidence of being significantly harmful unless abused, be allowed? If not, should we also prohibit businesses dealing with alcohol, which can certainly be harmful if abused? What about worker-owned brothel in which sex-workers are guaranteed fully adequate working

conditions and fair compensation? There are various reasons why prostitution should be prohibited and also why hard restrictions remain ineffective. If so, would it not be preferable to reduce the black market by allowing legal businesses in which sex-workers are, all things considered, better protected? I am willing to bite the bullet and argue that all morally grey pursuits, for which there are no clear evidence and/or sufficient agreement on whether they are wrongful or harmful, should be given benefit of the doubt until evidence suggests otherwise. Morally grey pursuits should be evaluated on a case-by-case basis through public discussion. Since these two aspects of productive ownership rights are logical extensions of the basic right of personal ownership and freedom of occupation, they should be, for all intents and purposes, treated as such and assigned the same degree of protection. That is, whatever interferences are deemed unjustified regarding the right of personal ownership and freedom of occupation, by association, transfer onto these two aspects of productive ownership rights. This “special protection by association” relates only to legitimately owned property and need not extend to other aspects of productive ownership rights. For example, regarding acquisition and transfer rights, conditions under which productive ownership can be legitimately acquired and transferred may be stricter compared to personal ownership. The same applies to income rights and capital accumulation. In these cases, corresponding limitations have precedence. Individuals can still legitimately complain if these stricter limits are excessive and demand sufficient evidence that they are necessary and appropriate.

Some degree of special protection, although highly qualified and significantly weaker than in the previous two aspects, should also be extended to control and management rights, but only in the core areas of management of legitimate projects as to ensure adequate flexibility therein. This protection is conditioned upon requirements of relational equality already being reasonably secured. If so, stronger presumption of non-interference would apply in the core matters of business management, including the choice of internal structure and rules of



enterprises, general aims and strategy, choice of associates, and discretion in hiring and firing of employees (against the background of collective agreements). Within the corresponding limiting criteria, the same presumption of non-interference would apply to individuals' transfer rights. Once businesses reach the upper size limits, this presumption of non-interference in transactions becomes null and void as to ensure that individuals are placed in a sufficiently good position to compete on a broadly level playing field and that productive ownership rights are effective for all. Since owners cannot unilaterally impose basic terms of cooperation onto others, this presumption of non-interference does not apply in matters related to basic terms of cooperation, minimal standards of workplace adequacy or quality of products/services. It also does not apply to income rights and the right to accumulate capital. How much of generated income and wealth individuals can legitimately retain is a matter decided democratically through ongoing public discussion. Therein, restraints on state action are imposed by the requirement that productive ownership rights should remain effective for all (implying freedom from onerous taxation and regulation) and by the WFE requirement (implying adequate economic incentives). In the appropriate core areas of management of legitimate projects, liberty should have priority unless sufficiently strong evidence is presented that interference and restrictions are necessary and appropriate to secure equal autonomy, relational equality, public order and effective social coordination (WFE). One implication of such presumption of non-interference is that, even when there are valid reasons for hard restrictions and stricter regulation of the core elements of individuals' economic projects, those affected have the right to demand (not just plead) that such interferences are publicly justified. Legitimate complaints can also be made if their productive ownership rights have been made ineffective due to state action. Whether owners indeed have a legitimate complaint that they were treated unfairly is a matter resolved through public discussion, not through government discretion under the pretense of public discussion. Their

complaint may, all things considered, still be overruled but the complainants would have assurance that their objection was taken seriously and that projects and liberties they find especially valuable are not treated as bare freedoms left at the mercy of real-world politics.

Granting non-trivial degree of conditional special protection to individuals' productive ownership rights does not mean that these rights should be protected as rigidly as basic liberties. The first way how such protection can be assigned is through the procedural requirement of hearing before the government may interfere, as in the case of protection against expropriation. The second way is by "slowing down" the process of "tinkering" with these rights by demanding public discussion, a more qualified majority (less demanding than for constitutional changes) to pass legislation aiming to make significant (and controversial) changes in the core ownership rights, and judicial review if controversies arise as to evaluate whether proposed and implemented restrictions are indeed necessary and justified. In practice, these protective devices essentially serve the same function as the presumption of innocence in criminal law. These requirements may also be prudent for ensuring the fair value of political liberties since they will make regulatory capture, i.e. one aiming to nullify the required limits on ownership rights, significantly less effective due to the required qualified majority to pass such legislation. The primary aim of the proposed higher degree of protection is not to disable state action required to establish a Society of Equals, rather to limit government discretion, force public discussion and justification of more controversial legislation aiming to significantly limit individuals' legitimate economic rights and liberties. Although such highly qualified protection may appear trivial to some, its significance lies in providing citizens a legitimate ground to complain in the name of economic freedom and demand their complaint to be taken seriously into account (even if ultimately overruled).

Individuals can also reasonably demand that necessary restrictions and regulation are as least intrusive and disruptive as possible. Schouten argues that since political interventions and regulation which promote certain goals may frustrate others, citizens generally will not accept a more forceful intervention where a less intrusive option is available. Liberal principle of legitimacy, as Schouten concludes, imposes a presumption in favor of gentlest interventions sufficient to accomplish the objective in question (Schouten, 2013: 379-383). In practice, this means that the government must offer sufficient evidence that significant interventions and regulation are not only necessary, but also that these interventions and regulations are the least intrusive option. For example, other things equal, flexible regulations (set against collective agreements) are less intrusive than rigid command-based regulations since they leave more freedom for individuals (and less disruptive for WFE).

### **7.3. Institutional Scheme I: Basic Capital Assets**

In general, ensuring that everyone have a reasonably fair chance for success in market societies requires: (1) a fully adequate scheme of liberties and substantive opportunities (wider opportunities are preferable); (2) adequate social minimum; (3) basic human capital, in particular effective access to healthcare (health is essential for individuals' well-being and productive ability) and higher-quality education (as to develop capacities and skills); (4) starting productive and financial capital. These primary goods have a prior claim on scarce resources (once basic liberties and public order are secured). Among them, securing adequate social minimum and investing in human capital has priority over securing starting capital ownership for all, which has priority over less essential areas of public spending. That citizens should be guaranteed an adequate social minimum, higher-quality education and healthcare (outside the USA) is not a controversial requirement of justice. Provision of these goods has been one of long-standing cornerstones of modern welfare states. Their quality varies across countries, but there is no real opposition to these and various other public provisions. The

demand that all citizens should also be guaranteed some starting asset-ownership and productive capital is significantly more controversial. Disagreements are less about the ideal of “ownership for all” and more on how all citizens would be guaranteed non-trivial starting assets (alongside other public provisions) on limited public budgets and without pushing taxation to economically and politically unsustainable levels. As noted, the presented arguments for productive ownership rights presuppose that all citizens have an effective access to starting ownership of productive assets, or basic productive capital. Such ownership (human and non-human) is necessary to ensure the social conditions of individuals' autonomy, economic independence and freedom as non-domination (§6.3.1). The following part elaborates on the asset scheme which would ensure such ownership for all citizens.

### ***7.3.1. Starting Asset-ownership***

Why does asset-ownership matter for individuals' active independence? Consider first an example of a person facing an unexpected but necessary cost, i.e. urgent home repair. Everybody faces such situations throughout life, and for people who accumulated “rainy day savings” such costs can be covered without too much worry. Many people struggle to accumulate savings, and those least advantaged simply cannot afford to save. Persons with little savings, when faced with crises, are forced to sell-off their possessions or borrow money to cover for unexpected costs. For the economically vulnerable any change in circumstances can lead to financial ruin, forcing them to turn in desperation to loan sharks or degrading work. Lifetime consequences for the asset-poor include limited access to higher education, limited options in choosing first employment, limited capacity for property acquisition, decreased overall quality of life, etc. The asset-poor are less likely to enter higher education, invest in themselves, or start a business and more likely to have higher unemployment rate and lower earnings through life (Khan, 2009: 3). This further limits their ability for self-investments, to accumulate assets and take advantage of available opportunities. The less

starting assets people have, the fewer their opportunities are to accumulate assets. The fewer assets people accumulate, the more likely is they will take on credit. The greater the debt, the less disposable income is left for self-investments and asset-building. The ongoing COVID-19 pandemic only reaffirmed the various weaknesses of existing welfare states, and their inability to effectively deal with widening social marginalization and how these weaknesses are further augmented when the stream of income is abruptly stopped or becomes limited for those less advantaged. Jackson summarizes why financial assets are crucial for individuals' autonomy and well-being: (1) assets are important in giving people meaningful control over their future; (2) assets enable individuals to make significant purchases leading to other opportunities; (3) assets provide the basis for beneficial risk-taking; (4) asset enable individuals to withstand interruptions of income and deal with financial emergencies; (5) without financial assets lower-income individuals remain in an economically vulnerable position (Jackson, 2004: 3). Starting asset-ownership, if non-trivial and paired with other public goods, empowers people to be more independent. It enables effective access to valuable opportunities and expands individuals' real freedom to choose their pursuits and focus on long-term planning instead of being forced by circumstances to accept any employment just to make ends meet. The asset-poor, being dependent on income from employment, have a limited opportunity to consider how their talents, skills and resources could best be utilized. Enhanced economic security generated by asset-ownership enables people to engage in beneficial risk-taking, i.e. investments in specialized education, which may not pay-off in short-term. Sherraden argues that while income supplements help people to meet basic needs and maintain their consumption, they do little to change their behavior in ways that would help them escape poverty, accumulate assets or develop capacities required to prosper (Sherraden, 1991: 13). The speculation is that asset-holding would create a "virtuous cycle". It increases citizens' capacity to focus on long-term planning and self-

investments and engage in creative risks, which opens new opportunities and leads to increases in social status, connectedness and participation in public affairs. Although evidence on this “asset-effect” is inclusive, recent studies offer stronger support for it (even at modest asset-ownership) As Scanlon and Adams note, knowing that they will have some financial assets upon reaching adulthood helps people to “imagine a future” with different options, not just the one in which they have to get employed as soon as possible (Scanlon and Adams, 2008: 37). Asset-ownership alone, without complementary higher-quality education and other public goods, would not generate the speculated transformative effect.

Different governments have used policies which, directly or through tax measures, subsidise or otherwise encourage people to acquire assets such as financial savings, homeownership, retirement funds or productive capital (OECD, 2003:7). Several comprehensive asset-based schemes have been developed: (1) Individual Development Accounts (IDA) with matched contributions; (2) Child Development Accounts (CDA) with one-time or periodic public contributions (British Child Trust Fund) or life-long public deposits (Williamson’s scheme); (3) one-time grant to citizens upon reaching maturity (Ackerman and Alstott’s stakeholder grant); and (4) universal basic income schemes (UBI). Basic income schemes are most experimented with, especially on local levels. Despite commanding wider academic support, UBI schemes are yet to generate political support required for large-scale implementation<sup>10</sup>. UBI is a simple and attractive idea, which is capable of generating society-wide support. It will almost certainly be implemented in the most developed countries in the near future. In an ideal world, not troubled by limited public budgets and political disagreements, the best overall scheme would combine CDA and UBI schemes as to ensure starting asset-ownership and non-trivial basic income post-adulthood. Since such comprehensive schemes are unfeasible in the near future, the following proposal

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<sup>10</sup> The general overview of various experiments with asset-based policies see: OECD (2003); Sherraden (2008)

focuses on how starting asset-ownership could be secured for all citizens on limited public budgets. The following proposal combines the idea of CDAs with Williamson's scheme (§2.3) and the now-defunct British CTF into a comprehensive asset-building program. Loke and Sherraden summarize why CDAs, targeting children and engaging more people into the asset-building process is essential. First, asset-building is a long-term process, so starting from birth would result in greater accumulations. Second, asset-holding may change individuals' attitudes in positive ways, which is more effective earlier rather than later in life (basic income schemes may come too late to make a difference). Third, asset-based policies targeting children may have a multiplier effect by engaging the larger family in the asset-building process. Members of the extended family may learn from this process, and parental expectations for children may be positively affected (Loke and Sherraden, 2009: 1).

### ***7.3.2. British Child Trust Fund***

The CTF scheme was introduced in 2005 by the Labour government. Each eligible child (born after 2002) received a voucher at birth, which parents/custodians would use to open a savings and investment account (CFT) with private providers on the child's behalf. If CTF was not opened within 12 months, the government opened it upon expiry of vouchers. The state contributed to each CTF, depending on parental income, an initial sum of £250-500 and then made subsequent smaller payments at certain ages (with higher endowments for lower-income families). Children in care received extra £100 per year. Additional (unmatched) private contributions to accounts could be made, up to £1,200 per year. CTF funds are invested for long-term period and managed by parents until children were 16 years old. The funds cannot be withdrawn until they are 18. The idea of the scheme was that deposited funds are invested until adulthood, would accumulate and result in a modest capital stake on maturity to be used without restrictions (though with prior financial education and consultations) (OECD, 2003; White, 2006). The scheme combined state action and family

saving to create a universal capital entitlement as to ensure that all citizens start their adult lives with some financial assets (White, 2010). The scheme contained an element of progressivity in the form of supplementary government contributions for children from lower-income families and children in care. The scheme can be seen as a compromise between universal approaches to social policy favored in Europe and targeted approach favored in the USA, resulting in a hybrid model of progressive universalism. Idea was to provide benefits to all citizens, but progressively more benefit for the disadvantaged (McCauley, 2011: 4). Implementation involved a division of work between the public and the private sector. The government was responsible for creating a regulatory structure of investment accounts and certain contributions while the financial industry covered all other functions. Families opened CTFs with eligible private institutions, which were responsible for servicing CTFs, facilitating contributions, making investments, etc. Providers were required to offer a basic CTF product that capped fees at no more than 1.5% each year (Zichawo, et al. 2014: 3). The advantage of a retail model, utilizing the existing industry structure as the delivery system, is that it makes policy implementation less complicated and less costly since there's no need to develop the supportive and delivery infrastructure from scratch. Through CTF lower-income families, currently outside of the financial mainstream, gained easier access to financial institutions and to a variety of financial services at a lower cost. Direct involvement of private financial institutions may stimulate savings through marketing and help achieve the goal of ensuring a modest financial asset for citizens upon reaching adulthood (Mensah, 2009: 4). One issue with the scheme was its modesty. Value of individual CTFs is difficult to calculate in advance since it depends on the size of additional contributions and return on investments. Children's Mutual, the leading provider, estimated that by 2020 (first pay-outs) the average value would be around £9,500 (€11,000). If regular contributions are raised to £100 per month, the CTF would be valued over £25,000 (€30,000). Without additional contributions



beyond the initial endowment and subsequent top-up, even assuming annual 5% growth, the value falls below £2,000 (Sherraden, 2008: 7). Assuming that everybody would receive at least €10,000, the question is what can be achieved with such an amount. Such figure would somewhat increase economic security (provided other social security measures) and may expand opportunities for lower-income citizens. This is especially true given that most lower-income families would be unlikely to have any savings at all, let alone open a child savings account at birth. While having €10,000 upon reaching adulthood would help expand lower-income individuals' opportunities, such a modest amount goes only so far in enabling people to invest in themselves, acquire additional assets, and be economically independent. The scheme may be adequate for dealing with the most pressing issues of economic vulnerability, and it may contribute to improvements in individuals' well-being. Nonetheless, it is inadequate for securing the social conditions of autonomy and (active) independence.

### ***7.3.3. Building on the British Legacy***

Williamson's generous scheme can be seen as superior to the British scheme (and to the following proposal) and desirable in terms of egalitarian justice, especially if complemented with equally generous public provisions of higher-order goods. The issue remains that such generous schemes may not be sustained on limited public budgets without significant trade-offs with complementary higher-order goods and other essential areas of public spending and/or without pushing taxation to unsustainable levels (5.2.1). The British scheme, a significantly less ambitious, was abruptly cancelled after only 5 years, despite showing promise, as part of the government's austerity agenda during the 2010 recession-era. Political disagreements about the ultimate aims of the program did not help either (Prabhaar, 2009: 16-18). Williamson's scheme, despite its attractiveness in terms of egalitarian justice, may not realistically be implemented on current limited budgets and in light of foreseeable political opposition to such a robust scheme. Even in favorable conditions, only few

wealthiest countries could effectively implement it without significant trade-offs with other social objectives and public goods. There is currently simply not enough political support (in any country) for considerable increases in taxation required to accommodate such a scheme. Even modest UBI scheme has failed to generate sufficient political support, and that proposal commands stronger support across the political specter. This may be regrettable, but regret will not change things, being more pragmatic might. Feasibility issues and budgeting problems need not discredit the proposed ideals, but they do demonstrate the importance of being sufficiently realistic about human ability and willingness to cooperate and, crucially, the need to build-up sufficient support prior to implementation. Otherwise, there is always a real possibility the implemented program may be abruptly cancelled whenever another recession or austerity agenda inevitably reappears. The core of Williamson's proposal can be preserved with some reasonable compromises, i.e. less generous scheme with cuts in less essential areas of public spending; with division of responsibility between the public, the private and civil sector; and by actively involving the recipient individuals in the process of asset-building. Certain increases in taxation might be unavoidable, but there are different sets of taxes which could be implemented without pushing overall taxation to unsustainable levels.

Any proposed standard of reasonable taxation, regardless how robust or relaxed, begs certain questions for being too modest or too demanding. I will proceed on a modest assumption of an overall tax rate which does not significantly exceed the total tax rate of 50-60% of citizens' overall personal estate, applied periodically during their lifetime (with some special taxes discussed later). This rough standard, even if some may find it too modest, serves as a guiding light and sets the parameters within which it can be reasonably argued that the proposal can be sufficiently realized in actual societies. If it would be possible to build political support for higher levels of taxation (however unlikely that may currently seem), even better since there would be more resources to work with. I do not want to proceed on such a strong assumption.

The fact is that there will never be enough resources for all social objectives worthy of pursuit and individuals' willingness to endure demanding tax burdens is likely to remain limited. It is preferable to be more realistic, especially if the aim is to advance justice "here and now", and balance our aspirations with probability of success while also working on building-up stronger political support for more ambitious projects in the future. The following proposal may seem modest compared to Williamson's, and yet it is more extensive than any existing CDA scheme. The crucial thing is to get the project off the ground and stabilize it. Once stabilized, we can consider additional upward adjustments and expansion.

#### ***7.3.4. Sketch of the Proposal***

The proposed starting target (for developed countries) is that each citizen, upon reaching adulthood, would have access to roughly €30,000 net assets (plus accumulated interests), diversified over four platforms: €15,000 in cash assets (€10,000 in an unrestricted fund, €5,000 in a restricted emergency fund) and €15,000 in investment capital (€10,000 in an unrestricted fund, €5,000 in a back-up fund). Most of cash assets (€10,000) should be unrestricted upon reaching adulthood at age 18 (with prior financial education and consultations). Access to the emergency fund might require filing of a statement of need and financial consultations (at suitable age, i.e. age 30, access to the emergency fund would be unconditional). Resources in the main investment fund would stay "locked" and invested for a longer period and access would become available at later age, i.e. age 25. Access to the back-up investment fund would become available at age 30. There are two reasons why investment funds should be locked for a longer period: (1) to further increase its size (beyond the minimal target) and (2) to allow individuals to gain more financial experience before engaging in higher-risk investments (and not jump on the first risky bandwagon investment scheme). Different people mature at different ages, and some are inevitably more talented for entrepreneurship. Access to investment funds could be made available at an earlier stage if the

person gives sufficient reasons for that, i.e. presents a sound business idea. Citizens are allowed to move resources from the cash fund to the investment fund, but not the other way around. The only restriction is that investment funds cannot be used for speculation. Unless speculative activities are entirely forbidden (something I would argue for), cash assets could be used therein. Housing assets can be provided through subsidized housing saving for lower-income citizens. Williamson's coupon system can be dispensed with since providing investment capital is sufficient to ensure effective access to productive ownership (implementing it may also be a costly macroeconomic nightmare in practice).

In order to reach the minimal target over 18 years solely through public funding means that the state has to deposit around €1,700 per year to each CDA (distributed over four funds). If account owners (namely, their parents/custodians) also made regular monthly deposits of only €50 over 18 years, that would be additional €10,800. Assuming reasonable returns from investment of these funds, each person upon reaching adulthood would have access to more than €40,000 in assets. This would be the best-case scenario. Its feasibility depends on the actual size of public budgets and political support for such a scheme. Alternatively, we could divide the responsibility for asset-building between the state and the recipients (their parents/custodians), while also adding an element of progressivity. The state would make a starting deposit between €500-1000 (depending on parental income) to each CDA. Thus, the starting payments would be €4,000 for children from lower-income families and €2,000 for others. The state would then deposit between €500-1,000 per year to each CDA. In total, the state would deposit €22,000 over 18 years for the less advantaged, and €11,000 for others. Assuming that parents make regular monthly deposits of €50 over 18 years (€10,800 in total); the minimal goal would be reached for less advantaged<sup>11</sup>. Others would reach the minimal goal

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<sup>11</sup> Even with regular monthly payments of only €25-30 over 18 years, in combination with state deposits, the value of CDA would be around €28,000. I do acknowledge that there is an issue with expecting additional deposits from families with more than 2 children..

with regular monthly payments of €85, which does not appear unreasonably demanding. Children from lower-income families and children in care would still receive the full minimal amount. Assuming minimal private deposits of €50/85 and reasonable returns from investment, each person upon reaching maturity would have accumulated more than 30,000 in assets. If regular monthly private payments are raised to €100 (maximum) over 18 years, the less advantaged would accumulate over €40,000 without any returns on investment funds. Such monthly amount is likely to be too demanding for the less advantaged, but it might still be possible with a system of matched contributions in which the third party, i.e. private foundation, would match each deposit on a 1:1 ratio.

#### ***7.3.5. Society-wide Platform***

In the proposed scheme, the focus is not on direct redistribution of existing assets, rather the emphasis is placed on the life-long process of building financial assets from childhood. In this asset-building process, citizens should not be seen only as passive recipients of assets, but as active participants. Ackerman and Alstott's proposal, Williamson's and CDA schemes have the same goal (ensure starting financial assets), but they achieve it differently. The former merely grants assets (funded solely through taxation) as a matter of citizens' right, while CDA schemes actively engage people and various supporting institutions in asset-building instead of relying on the state alone to "create it". Williamson's scheme involves increasing the value of public deposits through investments (as CDA schemes); but reaching the minimal target doesn't presuppose any private contributions, nor aims to stimulate them via matching funds during the pre-adulthood stage. The first issue with such strategy is that granting assets to citizens, without their active involvement, may have the same effect as "winning the lottery" (and involve a risk of stakeblowing) since no personal resources had to be invested. It may also have a limited impact on development of individuals' capacities for prudential economic decision-making. Williamson's proposal

involves financial education, but that education lacks the practical component during the formative years. There are reasons to believe that individuals would fully benefit from financial education only if they have an opportunity to actually practice somehow their financial education while receiving it (Emmerson and Wakefield, 2011). If actively involved in the asset-building process (by encouraging their deposits to CDAs), members of the extended family may learn from this process and acquire saving habits, and transmit them to their children (who themselves will get more actively involved during financial education). The second issue is that of costs: Reaching the targeted amount on limited public budgets is certainly more difficult with the state being the sole funder. Williamson assumes there will always be enough of resources, but dividing the responsibility between the state and the recipient (namely, their parents/custodians) and/or non-government actors would make it easier to reach the targeted amount. Upon reaching adulthood, citizens should further be encouraged to continue investing into their assets. This encouragement could take the form of matched contributions in which the state (or preferably some third party) matches private deposits (up to some annual ceiling). Building on the progressivity of the CDA scheme, these matched contributions should be limited only to lower-income families. Reducing tax burdens for the worst-off and placing greater emphasis on taxing consumption instead of income would also encourage additional investments. By encouraging individuals to invest into their assets from early adulthood, they would not only enlarge their size (and perceive they and their parents had an important stake in their development), but would also have a stronger impact on the development of necessary capacities (prudential decision-making) and skills (saving and investment) to succeed in market societies in which they are expected to take responsibility for their own lives. This educational component is essential since many people lack both the necessary resources and the know-how to succeed in market societies.

How to reach the targeted amount (€30,000) without unsustainable increase in taxation, reallocation of resources from essential areas of public spending, or without demanding too much from the recipients? The “easiest” solution would be to cut-down on non-essential expenditure, and there are certainly plenty of those since wasteful management of public resources troubles all societies. We may want to start from inessential military expenditure and public subsidies given to large private/public companies (which tend to be enormous, especially in cases of bail-outs) and larger professional sport clubs. Cuts to benefits of government officials are also long overdue, and these range from “small things” such as acquisition of expensive official cars to privileged pensions and other post-service benefits. Privileged pensions are especially problematic since high-ranking politicians tend to get significantly wealthier during service (and gain valuable connections allowing them excellent employments afterwards). Rationalizing the size of the public sector and outsourcing certain public services can also save significant resources. Some countries are “blessed” with natural resources (and other comparative advantages) and could reallocate more resources into funding the asset scheme. There, ensuring the minimal target in assets could be achieved without significant increase in taxation, i.e. through budget reallocations, modest wealth tax and facilitation of private contributions. Developing countries are not as blessed, neither in resources nor in “super-rich” citizens which would be additionally taxed. In such countries the targeted minimal amount would have to be adjusted to available resources (and other specific circumstances) until they reach a certain level of development. Existing sovereign funds (which in many countries are used to fund public services) can be repurposed for long-term funding of the CDA scheme. In addition to how existing sovereign funds are collected (i.e. from revenues from commodity exports), public fundraising events could be organized annually to attract more resources into the fund with rewards for the largest contributors. “Made-up” awards and utilizing the interest of private companies to maintain positive public

image are often especially effective. In short, instead of funding the scheme directly from public revenue, resources would be pooled from different sources into the sovereign fund, invested, and then after a certain investment period, profits would be allocated to individual CDAs. Such a multi-donor trust fund may be more stable in the long-run and likely greater in size since the pooled resources would first be invested before allocated into individual CDAs. The government should have a restricted access to these resources as to reduce the risk of misallocation and waste of resources. This can be ensured by demanding a more qualified parliamentary majority whenever it is proposed that these funds should be used for purposes other than asset-building or investments into essential public services.

There are two main reasons why greater involvement of the civil and private sector is crucial for the long-term effectiveness of the scheme. First, greater involvement of private financial institutions can significantly reduce implementation costs (and facilitate private deposits). Considering British experience, experimental public policies (not commanding stronger political support) are always in danger to be down-sized or cancelled during whenever some austerity agenda reappears. Without “reaching out” to civil and private sector, funding the scheme through public spending alone may become unstable over time. On my proposal, asset-building is envisioned to be facilitated (and expanded in adulthood stage) through a system of social entrepreneurial networks in which the state delegates various roles to the civil sector, public-private partnerships and local communities while retaining the crucial investment, coordinative and supportive role. The first way how non-government actors could financially support the scheme is through matched contributions, which were proven to be effective for incentivizing people to save. American grassroots asset programs showed that private and civil actors are willing to engage in such programs (OECD, 2003). The state doesn’t have to be the direct provider of incentives, but their facilitator. Second, just as policies targeting children may have a multiplier effect by engaging the larger family, the



same applies for engaging the broader community. Including different local communities and social organizations essential for building-up financial assets, to reduce the pressure on the government, and for the development of social and community assets, i.e. communal investment funds, connecting people to these assets, and involving people in the life of their communities. The proposed scheme is conceptualized as a society-wide platform for life-long asset-building, interconnecting various (already existing) saving schemes with supportive social and private foundations and organizations. In the pre-adulthood stage, assets are created through combination of public funds and contributions from recipients. After citizens gain access to their assets, non-government actors would take centre stage as to incentivize individuals to further invest in their assets and to expand the opportunities for their utilization.

It may be objected that investment assets on my account are insufficient for the great majority of people to start a business or acquire a meaningful share of society's productive ownership. The objection is short-sighted and neglects that single-person private ownership and public ownership are not the only possible forms of ownership. There are many other options ranging from partnerships to workers-owned companies. Also, the sharing economies and crowdfunding platforms made it easier than ever before for individuals to acquire productive ownership, or start their business. The ever-expanding power of the internet shows how much easier it has become for people to connect their business ideas and projects with investments. The proposed account is not only compatible with various ownership forms, (non-mandatory) mutual investment funds and worker-owned firms, but also its emphasis on the requirement that economic regulation should facilitate various entrepreneurial projects would make it easier for such projects to survive on the market. Some authors always seem concerned that if common-ownership projects or mutual investment funds are not mandatory, people would not recognize their value and benefits and will not be interested in joining. Treating people as equals means trusting in their capacities for judgment and not subjecting them to unjustifiable

paternalism. Once given proper education and adequate information about the potential benefits and risks of such projects, individuals can determine on their own the value of joining. If there is value in such projects, and less risk than investing on one's own, then why exactly would not people less interested in entrepreneurship join? Should the state support worker-owned firms? Given how all states engage in financially supporting small and upcoming businesses, if there are resources left once essential requirements of justice are sufficiently satisfied, and if such support is transparent and open for all, I see no obvious reason why it should not. It is certainly more justifiable than supporting large businesses or inefficient public firms. The priority remains on ensuring non-trivial starting assets for all and securing an economic environment that is business friendly to newcomers.

#### **7.4. Institutional Scheme II: Tier-based Flexisecurity**

A well-functioning market system, underlined by sophisticated property rights, under conditions which include guaranteed starting asset-ownership and substantive opportunities, can reduce dependency and domination. The idea is that no person would depend on any particular master for employment. In case of suffering arbitrary interference or domination, individuals could easily change employments or seek self-employment (§6.3.2). The real-world is not quite like that. Economic regimes in developed countries, in which greater emphasis is placed on knowledge-based sectors and personal choice, have increased the autonomous control for many workers over their working lives (even their bargaining power). Production is much more “personalized” than it used to be (even 20-30 years ago) and creativity, independence, and innovation are rewarded in such regimes. Nevertheless, as Clayton and Stevens note, the advantages of personalized economies are not yet “open” to all individuals and the great majority of people, especially less-skilled workers, still work at routinized and mundane jobs which require discipline and conformity. Such employments are also not very well paid and rarely offer long-term security (Clayton and Stevens, 2015: 7).

Considering how real-world markets operate and concerns about eroding labor rights, robust productive ownership rights can be a serious source of domination (Anderson, 2015: 64). The following part elaborates on the regulatory scheme that could balance the proposed wider scheme of economic liberties with requirements of relational equality (§7.2.2.-3).

#### ***7.4.1. Exit, Regulation and Voice***

There are three general strategies how workers can be protected from domination on their workplaces: exit, voice and regulation. Libertarians prefer exit over regulation as a way of protecting workers' interests. However, as Anderson notes, right of exit from workplace is not a substitute for adequate regulation and adequate labor rights. In absence of adequate regulation, employers could legally order employees do to anything not against the law. Upon entering their workplace, workers would lose all liberties relative to their employer, except those specified in a negotiated contract and the right to exit (Anderson, 2015: 66). Hsieh argues that in the employment relationship, the interests of employers are privileged since employers possess residual rights of control, namely the right to decide on matters that are left undecided in the context of the employment relationship (Hsieh, 2012: 157). Another issue is that exit is often not costless, especially for the less advantaged. Workers have substantial costs in searching employment and often lack important information about options (Anderson, 2015: 66-67). In absence of adequate regulation and protective measures, some people would be left vulnerable to dominating relationships. In addition to exit and adequate regulation, the third option would enhance the voice of workers in the constitution of legislative power within companies. Anderson argues that many managerial decisions involve legitimate trade-offs between productive efficiency and workers' liberties which cannot be dealt with labor rights. Since employers exercise market power over workers, any workplace authority vested exclusively in the management will not give sufficient weight to workers' interests (Anderson, 2015: 68-69). Hsieh notes that widespread ownership of productive assets may help to protect

both against status inequality by ensuring that capital owners are not privileged and against arbitrary interference at work by reducing the extent to which individuals are dependent on their labor for income (Hsieh, 2012: 154-157). That being said, the proposed combination of starting asset-ownership, wider opportunities and real freedoms to meaningfully utilize it (or seek self-employment) would significantly reduce the possibility of dependency and domination by enhancing individuals' possibility of exit from exploitative and dominating relationships (even if domination may not be entirely eliminated). The argument still depends on adequacy of regulation (as to ensure relational equality) and on the quality of the overall social security system aimed at promoting independence and protecting the economically vulnerable. In absence of adequate regulation, asset-ownership (unless abundant) would not be sufficient to protect individuals from domination. Adequate regulatory system should ensure that all citizens are treated as equals and placed in a sufficiently good position to be autonomous, compete on a broadly level playing field and have a reasonably fair chance for success. On the proposed account, commitment to autonomy implies a further commitment to create an environment which ensures wider independence in exercising one's economic liberties. The actual scope and robustness of regulation is determined through public discussion in accordance with the previously discussed core limiting and widening criteria. The aim is to develop effective and flexible regulation, which protects individuals from arbitrary interference and domination while simultaneously secures their independence (in the active sense) and expands their opportunities to exercise their personal and economic liberties whenever realistically possible (within the limiting criteria). Restrictive regulation which would not leave sufficient "breathing space" for individuals to manage their own economic affairs and business projects would be impermissible on the proposed account of autonomy.

#### ***7.4.2. Danish Flexisecurity Model***

Political solutions to the problem of effective coordination are generally one-size-fits-all regulations which often do not permit flexibility or easy exit. If rigid, regulation can prevent actors from developing “more appropriate” regulations for their specific situation (and from quickly adapting to new circumstances). Strict one-size-fits-all regulations are not always the optimal solution to problems of effective coordination (Sunstein, 1997: 223). They are also not fair for all parties since they can impose undue burdens onto newcomers and smaller companies and privilege larger actors (§6.4.1). Flexible regulation, set against the requirements of relational equality, should be seen as preferred in terms of their effectiveness (and contribution to the WFE) in circumstances of globalized economies. Such regulations also leave wider room for individuals’ autonomy and exercise of their entrepreneurial liberties. In order to ensure a broadly level playing field, regulation of the economy should be more flexible, and not only enable effective market-entry, but also encourage (and make easier for) newcomers, and especially for the less advantaged, to engage in economic and entrepreneurial activities, start their own business and experiment with their resources, and not (unintentionally) unfairly disadvantage them in the name of justice through restrictive regulations. However, a flexible system of regulation must be complemented with a sophisticated system of social security and adequately balance the (more or less conflicting) interests of different economic actors, especially between employers and workers. One major theme of my work involves comparing ideal regimes with their relevant real-world counterparts, and taking into account both the good and the bad experiences. In this regard, the real-world counterpart which aims to balance the commitments to wider economic liberties, fairly liberalized markets and social equality is the Danish flexisecurity model.

The core idea of flexisecurity is that high levels of flexibility and employment security can be achieved simultaneously. The model arose out of the “deregulation vs. regulation” debate in Europe following the period of wider deregulation in 1980s which aimed to reform previous regulatory systems and deal with sluggish economic performance, lower levels of productivity, growth and labor market mobility. According to Muffels and Wilthage, the aim of flexisecurity was to ensure a degree of employment, income and combination security that (1) facilitates labor market careers of workers (which enables enduring and high-quality labor market participation and social inclusion) while also ensuring (2) a degree of functional and wage flexibility (as to enhance competitiveness and productivity). Flexisecurity includes various forms of flexibility and security. It includes external and internal flexibility (hiring and firing, working-time flexibility), internal functional flexibility and wage flexibility. It also includes job and employment, income security and combination security (to combine work and care, or generally work-life balance). The expectation is that employability of people can be secured in flexible labor markets through creation of more and better employments, achieved through improvements in matching people's skills to employments associated with career-long investments in employability (Muffels and Wilthagen, 2013: 111-112). The flexisecurity model was inspired by the Danish and Dutch practices. Danish flexisecurity model combines flexible labor markets with a comprehensive income security for the unemployed (generous welfare provisions in general) and an active labor market (including training policy for both the unemployed and employed) (Bekker and Mailand, 2018: 146). Employers are allowed to hire and fire employees relatively easy (within the limits of various collective agreements) according to trends in their business, which enables greater flexibility in reconfiguring the workforce as to adapt to changing market conditions. Workers are guaranteed substantive income security when unemployed. There are also various measures for both the unemployed and employed seeking better employment. Such an active labor

market policy aims at contributing to the well-functioning of the labor market with a specific focus on making it easier for the unemployed to regain employment. The emphasis is on protection of individuals, rather than employments. The specific focus is on making it easier for unemployed to regain employment or find better employment. The exact shape of the model is continually changing. Nevertheless, the model has retained its core goal to balance flexibility with comprehensive social security. Another important element is the emphasis placed on employee-management dialogue. Industry-wide agreements between employers and unions form the basis for negotiations on wages, working hours, etc. The model is built around “centralised decentralisation” (or structured decentralization) in which the employers and unions have the greatest say (Stephan, 2017; Andersen and Møllgaard, 2005: 23). The government legislates as little as possible, other than, for example, determining the minimal workplace, health and other standards. Similar to other Nordic countries, the government does not determine the minimum wage at the national level and generally intervenes when negotiations between employers and unions get stuck. Although apparently “loose”, such a decentralized system of collective bargaining evolved from decades of compromises on both sides. The balance of power between labor partners is crucial to the negotiation of mutually beneficial agreements. It is in the employers' interest to reach an agreement locally because the usually less favorable industry-wide agreements apply otherwise (Andersen and Møllgaard, 2005: 8). In general, the model is the result of mid-1990s reforms aimed to deal with high unemployment rate. The strategy resulted in higher employment rate and mobility between employments (including in and out of employment and unemployment) and inequalities are lower compared to most EU countries. Indeed, Denmark’s Gini index is among the lowest of all OECD countries. In addition to collective bargaining, the government has an active role in reducing income inequalities through taxes and transfer payments. Due to combination of flexibility and comprehensive social security, businesses are more ready to hire new

employees and offer better working conditions, while unions are more willing to support market flexibility due to generous social security and their important role in wage negotiations (Stephan, 2017). Combination of collective bargaining and state's active role in restraining excessive inequalities resulted in a relatively low inequality (with higher employment rate) and general public support, despite certain set-backs in recent years. The following proposal retains the three core pillars of the Danish model (flexible regulation, comprehensive social security and an active labor market policy). It complements the Danish model with the discussed asset-based scheme (as to ensure starting asset-ownership for all) and a tier-based system of regulation (as to ensure a broadly level playing field). That being said, the flexisecurity models have been heavily criticized, many from academics and trade unions. Critiques focused both on the norms constituting flexicurity and its inability to lead to balanced practices. The general objection is that the model places too much emphasis on flexibility and not nearly enough on social security (Bekker, 2018: 176-180).

#### ***7.4.3. Enhancing Individuals' Independence***

In general, due to the asymmetry of power between capital and labor, the demand for wider freedom of owners to manage their businesses is often in tension with the right of workers to negotiate fair compensation for their contributions, and may significantly diminish their bargaining power to negotiate better terms of cooperation for themselves. That said, determining ex-ante what would count as “fair compensation for contribution” is a complex issue, which is unlikely to be ever fully resolved due to the subjectivist nature of the problem. The quest for “just prices” has a long-standing tradition going back to ancient philosophy, however there are valid reasons to hold that trying to determine objectively “just price” for each and every employment is a lost cause due to various factors (including the WFE requirement) that would have to be taken into account. The market distribution of prices, thus wages too, is often perceived as arbitrary and unfair, however it's naïve to believe that



substituting market forces with greater political decision-making would not raise similar objections. A better approach is to focus on determining what conditions and measures are required to empower individuals to negotiate fully acceptable terms of their employment without undermining the independence in managing business ventures. First, if all citizens are guaranteed adequate starting asset-ownership and substantive opportunity, then the bargaining power of workers is likely to be significantly higher than in most existing societies. Namely, the guarantee of starting capital also enhances the right of exit by enabling its fair value while also increasing the bargaining power of workers (who would now be small capital owners as well). As such, citizens would not be forced by circumstances to accept any employment or terms of engagement, which in turn would force employers to offer better terms. Assume also that the procedure for starting a private business is significantly simplified as to incentivize individuals to seek opportunities for self-employment or start-up companies. Encouraging smaller scale entrepreneurship is not only desirable for would-be entrepreneurs but also for workers since they would have more opportunities for employment and in smaller venture their bargaining power is likely to be higher than in larger companies. Here the indirect argument from diversity of opportunity (§6.3.2) kicks in. If people are at mercy of a limited set of employers for subsistence, then they might have to accept any terms of employment without much complaint. However, the wider and more diverse employment opportunities are, the less dependent people are on specific employers. The less dependent they are, the greater their bargaining power to negotiate fully acceptable terms is. Bargaining power of workers (and their voice) can further be increased through practices of collective bargaining. If everyone is placed in sufficiently good conditions, securing the right of all to be fairly compensated for their contribution need not, as a general rule, require that the state intervenes in the formation of prices on the market, including the minimum wage. On a national level, Nordic countries have no politically determined minimum wage, and salaries and benefits are

negotiated through collective bargaining between employer organizations and labor unions (often including local governments) and vary across industries. Since the level of unionization in these countries remains relatively high, real minimum wages are high as well. Collective bargaining, if the state remains broadly non-interventionist, is certainly more market-friendly than state price-fixing, which tends to generate unintended negative consequences such as higher unemployment rate, or is simply perceived as unfair by the involved parties. In essence, there is no real difference between situations in which employees with some specific, especially valuable, talent use that leverage to pressure the employer for additional benefits (movie superstars are perfect examples) and the situation in which workers use collective bargaining as a leverage to achieve the same goal. Thus, if the former is not seen as being inconsistent with the owners' right to manage their own business, then neither should the latter. Assuming union membership is not mandatory (and individuals can personally negotiate terms) and that business owners have sufficient flexibility in management, practices of collective bargaining are not inconsistent with the proposed scheme of productive ownership rights. Balance of power between stakeholders, and building-up trust between employers and unions, is essential for the negotiation of fair collective agreements in a flexible regulatory environment. The level of required trust, of course, cannot be built over night. It took Nordic countries decades to achieve a higher level of unionization, trust and willingness for compromises on both sides. In countries with longer traditions of collective bargaining this is significantly more feasible than, i.e. in the USA which lacks such tradition.

### **Additional Supportive Measures**

Starting asset-ownership, even at the minimal targeted amount, would offer an increased degree of security (if combined with higher-quality education, traditional social security measures, and life-long asset-building) and enable an effective opportunity for acquisition of productive ownership (directly or via mutual investment funds). Collective

bargaining can effectively enable workers to negotiate better terms of employment, while an active labor market policy (with adequate unemployment benefits and training options) makes it easier for workers to regain and/or change employment and, thus, be less dependent on income from current employment. Social protection should provide incentives and support for job transitions and for access to new employment. The unemployed and those at social margins need to be provided with better economic opportunities by creating pathways to good employment and supportive measures for easier access to employment. Adequate unemployment benefits also need to be ensured. Unemployment provisions are one area in which a case can be made in favor of some means-testing since the core purpose of such a policy is to protect the economically vulnerable and as a matter of fact not all citizens are economically vulnerable to the same degree. Persons with disabilities and marginalized groups will require additional protection and stronger assistance in all these matters.

While asset-ownership can generate enhanced economic security and independence, the actual level of security for different individuals depends on how starting assets are used. People who “waste” these resources through poor choices may remain economically vulnerable. We may place restrictions on individuals’ freedoms, i.e. restrict how starting assets can be used as to “nudge” them towards “better” outcomes, or restrict their freedom to accept employments deemed exploitative, etc. As discussed (§6.2.2), there is a thin line between well-intended protective measures and paternalism. Extensive restrictions on individuals’ economic liberties can be seen as a form of disrespectful distrust in persons’ capacities for decision-making. The problem of lingering economic vulnerability cannot be resolved by transferring additional material resources to the less advantageous (since vulnerability is close-knitted with lack of know-how and experience in managing assets) or by restricting the scope of their economic decision-making (since that prevents them from learning by experience and may be seen as an insulting message about their competences). Additional concern for citizens’ well-being

should always be expressed in a non-controlling manner without resorting to paternalism or unwarranted restrictions. Creating an effective option for people to further develop valuable skills and get adequately informed about their rights and available employment and investment options would significantly reduce their vulnerability and empower them to make informed economic choices. This can be achieved by giving individuals an effective opportunity to seek impartial advice about their economic affairs, i.e. through publicly funded financial and legal counselling. Investment in human capital is essential for independence. Considering this, it can hardly be denied that education systems (which strongly affect one's capacity for autonomy and independence) in most countries do not adequately prepare individuals for the society in which they are expected to take responsibility for their own lives. For example, development of advanced skills, i.e. personal finance management or practical IT education, is often neglected in favor of theoretical knowledge although it is precisely such know-how the less advantageous are lacking. Another source of economic vulnerability arises from the fact that some individuals are often insufficiently aware of their rights and available opportunities, i.e. for better employment or self-employment. Thereby, individuals can be protected by giving them an effective opportunity to seek impartial advice about their economic affairs, i.e. through a voucher to choose a personal financial and investment adviser. Creating an effective option for individuals to develop valuable practical skills and get better informed about available options would significantly reduce their vulnerability and empower them to make informed economic choices. Such policies and higher quality public education are likely to contribute more to individuals' independence than additional social transfers or restrictions on the scope of their freedoms.

What if someone "loses" her starting capital through poor investment choices? Would the state be required to replenish that capital? If not, would not that person become dependent on others? That is a difficult question. Of course, the issue is specifically related to those less

advantaged since for them there is less chance to replenish lost capital through over time. Unfortunately, unlike Williamson who argued for ongoing recapitalization up to age 65 without considering whether there would be enough resources, I do not have that privilege. On the proposed account, there are limits to resources a society must guarantee. Everybody must be provided only with sufficiently good conditions and substantive opportunities (with wider opportunities being preferable). If someone fails in such conditions, he/she may not have a legitimate complaint that her interest were not taken into account. Even if some people lose their starting investment capital through poor investment choices or merely due to bad luck and unforeseeable events on the market, they would still have access to the back-up investment capital and other public services aimed at promoting their independence. The back-up fund is smaller at the beginning, however the resources would continue accumulating over time and with time they may become sufficient for another attempt. In addition, on the proposed scheme, people are not just ensured a degree of starting capital, but would also be provided with an effective access to publicly funded financial education and consultations, opportunities for engagement in mutual investment schemes (which would reduce the risk of failing) and additional options for further asset-building through matched contributions in their adulthood (through which their “lost” capital may be replenished for another attempt for entrepreneurship). In addition, there is an effort to reduce the risk of failing by ensuring that the economic environment is friendly to newcomers and smaller actors. The focus remains on funneling resources to ensure starting assets at the beginning of their adult life since then they are likely to have the greatest impact. If public budgets are not stretched too thin, I would argue for providing at least the most economically vulnerable with additional asset deposits at some points in their life or maybe limited public subsidy to assist them in their ongoing process of asset-building. Although the issue is not completely resolved, it may be mitigated through additional measures aimed at reducing the risk and providing the less advantaged

with substantive opportunities to acquire additional assets and hold them for reasons of economic security. Keep in mind that the proposed scheme is envisioned as a progressive ideal. Once stabilized, there would be a conscious effort to expand it, with the focus on expanding the back-up investment fund or to complement it with some basic income scheme (at least for the less advantaged). Either way, given that so much emphasis was placed on ensuring that everyone is placed in sufficiently good position to manage their affairs in conditions of relational equality, and to secure for them a reasonably fair chance for success, the hope is that at least those who lose out, again either due to their poor investment choices or bad luck, would recognize the efforts and could accept their loss without resentment to those who are better off. I concede that Williamson's scheme may appear more attractive and could better deal with the raised concern, however the issue remains that such a scheme is unfeasible on current budgets and is unlikely to be implemented in the near future. That does not mean that, with time and many incremental steps, we may not reach it.

#### ***7.4.4. Tiered-based Regulation***

The second part of the proposed regulatory scheme is to complement the flexisecurity model with a tier-based system of regulation both as to ensure a level-playing field between larger and smaller actors and to contribute to maintaining sufficiently dispersed capital ownership. Again, in terms of ensuring a broadly level playing field on the market and fairness in distribution of regulatory burdens, robust one-size-fit-all regulations can be unfair since they impose undue burdens onto newcomers and smaller companies and privilege larger actors. Imposing robust regulatory or tax burdens, which were designed with larger actors in mind, onto smaller businesses, and especially onto micro-businesses, can make these less likely to survive on the market (or even started in the first place). It may also make the right of productive ownership ineffective in practice for the less advantaged. Of course, this does not mean that smaller businesses should be unregulated, or that owners should avoid

regulation required to ensure relational equality on workplace. Rather, it should be taken into account that smaller business simply cannot comply with robust requirements designed for established and larger actors. It seems intuitively unfair if a person who rents a room in her home as to make some additional income and a large hotel would be subjected to the same degree of regulation and taxation. Yet, peer-to-peer renting (especially in tourist countries) tends to be burdened with high taxes (which defeats the purpose of renting a room to make additional income). It is not just that the worth of starting assets would be significantly diminished for some (since high regulatory costs may effectively prevent effective market entry), but also that robust regulation, although aimed at dispersing market concentration, could actually contribute to the economy remaining more concentrated. The issue of asymmetry of burdens imposed by standardized regulation and taxation is nothing new, and governments have tried to deal with it in various ways, i.e. subsidize smaller companies in some manner either directly through grants or tax cuts. Such patch solutions are not always effective when considered as an aftermath. Following Katz, the proposal is to implement a tier-based system of regulation in which the level of regulation would be connected to the actual volume of transactions so that higher taxes and stricter regulations would be imposed on high volume providers, while smaller providers would be subjected to more lenient regulations (Katz, 2015: 1108). Thresholds can be based on the standard understandings between small, medium and large companies and providers. Tier-based regulation corresponds to the ideal of level playing field and fairness in distribution of regulatory burdens and, thus, enables that all are placed in a sufficiently good position by not imposing undue burdens on smaller actors and disadvantaging them. It also corresponds to the idea that larger economic actors should have greater responsibilities and liabilities due to their size and impact on the workings of the system as a whole (and potential to destabilize it). Assume also that the economic environment is friendly to smaller actors and that the

procedure for starting a business was simplified as to incentivize individuals to seek self-employment, start-up companies or micro-entrepreneurial projects. Encouraging small-scale entrepreneurship through the regulatory system itself is not only desirable for would-be entrepreneurs, but also for workers since they would have access to more diverse employment opportunities.

A tier-based system of regulation can also be complemented with a requirement that makes additional acquisition of capital assets progressively more difficult (though not prohibited) for larger actors. Building on the idea that privatization entails some compensation for exclusion, we may add a requirement of progressive compensation – determined as a percentage of the market value of asset - above a certain threshold. The threshold is understood as the amount controlled assets (ranging from real estate property to intellectual patents) or market share. Acquisitions below the threshold would be “free” from additional cost, but then the first additional (or after another threshold) acquisition would require, i.e. additional 10% compensation, the next one 25%, and 50% for the highest tier. Given such progressive tax, after some threshold, additional accumulation of assets would become unprofitable even for the largest companies, while also creating a comparative advantage to smaller actors therein. The same idea could be applied to active patents, which would increase the number of IPs in the public domain. Revenue from this tax would be allocated into the asset scheme. Considering this, established actors and newcomers would face a choice: Remain on lower tiers, which offer more freedom and independence but less profit, or expand the enterprise as to increase profit at the cost of less freedom (given increased regulation at higher tiers). It can be argued that the state should start systematically breaking-up large corporations as to ensure that capital ownership is dispersed as widely as possible. While that may be required, there are limits to how much breaking-up can be done if we also want to preserve the benefits of economies of size and scale (and there are good reasons for that). On the proposed account,



the strategy of maintaining sufficiently dispersed ownership is through a combination of upper limits on business size and capital accumulation, dispersing ownership through the asset-scheme and tier-based regulation which favors smaller actors.

## VIII Conclusion

The main question of this project was whether Rawls's principles of justice, and the corresponding regime, are suitable to bridge the ongoing disagreements about justice. Specifically, 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? It was argued 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 POD would, all things considered, be chosen as the most reasonable options for actual societies. Even granting that POD may be well-functioning under sufficiently favorable conditions, the ideal of justice as fairness could, all things considered, be better approximated in less robust and more market-friendly Nordic-style regimes, which balance commitments to social equality and wider economic liberties. One reason for such a conclusion arises from the insight that establishment and well-functioning of POD may be too dependent on existence of appropriate individual motivations and favorable socio-political conditions. In absence of either, POD would likely run into serious problems. In particular, due to the relative neglect of economic liberties it may become motivationally unstable. 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. Both a negative stability-argument and positive autonomy-based arguments were offered to justify assigning more weight to individuals' economic liberties, specifically to productive ownership rights and entrepreneurial liberties. The overall argument was that assigning more weight to these economic liberties 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 crucial claim was that it is possible to assign more weight to wider, adequately qualified, productive ownership and entrepreneurial liberties

while maintaining the core of justice as fairness more or less intact. Thus, state action required to establish a Society of Equals would not be undermined (albeit it would be more restrained in certain aspects). As a whole, I believe the research was successful in its aims. It offered a richer understanding of the value of productive ownership rights and entrepreneurial liberties, their role in a well-functioning society and importance for individuals' autonomy. It elaborated on the assumed, but often not spelled out, relationship between entrepreneurial liberties, autonomy and independence found in various classical liberal accounts. It also demonstrated that these liberties were indeed unjustifiably neglected by many egalitarians. The preceding discussion also showed how wider productive ownership rights can be adequately accommodated into the Rawlsian conception of justice without prioritizing civil and political liberties and without undermining its core elements. Thesis also provided an alternative complex method how all citizens could be guaranteed starting asset ownership on limited public budgets without pushing tax rates to unsustainable levels. Finally, it demonstrated how many issues regarding the necessary qualifications of productive ownership rights are often neglected on classical liberal accounts. Thereby, the proposed approach, due to its hybrid nature, contributes both to liberal egalitarian and classical liberal literature. Considering this, it cannot be denied that the overall argument for wider economic liberties and flexible regulation depends on whether appropriate conditions of relational equality, adequate basic capital and social security can be secured on limited public budgets. Unless these conditions are reasonably secured, the argument could be undermined. The resulting more liberalized regime would then surely be perceived as unfair by some citizens. I remain committed to the claim that wider economic liberties can adequately be justified only in a Society of Equals. There are several lingering issues left ambiguous (or unanswered).

One of the questions (inherited from Tomasi's account) left ambiguous is whether productive ownership rights and entrepreneurial liberties should be considered as basic rights

and protected as such (with all of the implications). In the strict Rawlsian sense, they are not basic rights. Protecting them as core basic rights may also involve a great deal of risk in establishing the necessary conditions of relational equality and a Society of Equals. Nevertheless, all things considered, they still in certain aspects resemble basic rights and should be assigned appropriate normative weight and protection. In other words, seeing these rights as, in lack of a better term, pseudo-basic rights in certain precisely defined aspects would justify assigning some degree of conditional special protection without drastically blocking state action and regulation required to establish a Society of Equals. As such, a less controversial approach would be to assign more weight to these liberties through reasonable changes in Rawlsian second principle of justice, specifically by reducing the robustness of distributive requirements and by assigning these liberties greater weight in the index of primary goods and institutional design. This need not require strict constitutional protection in all of the relevant aspects. Above all, the reason for assigning more normative weight to these freedoms must come from the principles of justice themselves and not considered as an aftermath since that would leave them at the mercy of standard political decision-making.

The second lingering issue relates to the robustness of proposed requirements of justice and institutional guarantees. Considering that justice demands “only” that all individuals are guaranteed substantive opportunities and placed in a sufficiently good position to be autonomous, the proposed account can be seen as a version of the sufficiency doctrine. Under these conditions, citizens can be (more or less) unequal in wealth and actual opportunities, and yet still be equal in status and freedom in a way that enables all to relate as equals. Still, since the aim is also to retain the core elements of justice as fairness, including the requirement that all should benefit fairly from social cooperation, the requirements of justice are necessarily pushed from casual sufficientarianism towards more robust versions of advanced asset-based sufficientarianism. Therein, it can be described as an inequality-

diminishing, rather than equality-maximizing approach. Rawls himself, as noted by Fried, beginning with *The Idea of an Overlapping Consensus* (1987) suggested that the core moral intuition behind his difference principle was an (ambition-sensitive) sufficientarian version of egalitarianism that guaranteed “all citizens sufficient material means to make effective use of [their] basic rights” an objective he acknowledged could be achieved through a wide range of schemes (Fried, 2014: 445). I believe the proposed approach captures that intuition. While the proposed approach is not set against distributive egalitarianism, the priority is placed on establishing mechanisms by which each citizen would come to control meaningful assets and securing the social conditions of equal autonomy, relational equality and substantive, wider, opportunity for all. In this regard, it should be kept in mind that while there may not be a tension between an autonomy-based account aspiring to give more weight to economic freedoms and distributive equality, not all forms of distributive egalitarianism and institutional regimes are compatible with an autonomy-based account which aims to widen the scope of individuals’ economic liberties and opportunities. It makes a big difference whether we are concerned with distributive equality for intrinsic reasons or because we hold that greater equality in social distribution of opportunity and wealth will best secure the basis for personal autonomy. If the latter is the case, and we acknowledge that wider economic freedoms are required to fully enable (and meaningfully enhance) individuals’ autonomy, then commitments to autonomy and economic freedoms become a relevant restriction on the scope of redistribution and the robustness of regulation. There is still a lot more work that needs to be done to fine-tune the proposed institutional guarantees required to reasonably secure the core requirements of relational equality.

In conclusion, it cannot be denied that the proposed approach is limited compared to the comprehensive macro-restructuring of the society at which Rawls aimed. It is neither as extensive, nor as ambitious. Its limitations (or benefits), compared to the Rawlsian account,

arise from an enhanced autonomy-based appreciation of individuals' productive ownership rights and entrepreneurial liberties (and correcting for the relative neglect therein) and the stronger emphasis placed on the constraints of a realistically utopian theory (and aiming to develop an approach that could be implemented "here and now"). The "lack of ambition" objection need not be as damaging as it appears at first. While more ambitious accounts of justice may be seen as morally superior at the level of ideal theory, it still needs to be demonstrated, without depending on highly idealized assumptions, that such projects are fully workable and can achieve stability in actual societies. There are valid concerns that much of theorizing about perfect justice might be "overly utopian" and that many would-be realistic utopias may not be fully workable or capable of generating long-term political support in actual societies (let alone "stability for the right reasons" praised by Rawls). Regardless of their moral attractiveness, such comprehensive macro-restructuring projects remain in the development limbo and serve predominantly as a source of inspiration for academic discussions. While the proposed approach may appear significantly less ambitious than various more comprehensive, egalitarian, projects; its overarching aim is fundamentally different. It does not aim to develop an account of justice on the basis of a well-ordered society, inhabited by idealized model citizens who sufficiently agree on justice, and which is envisioned to be implemented and maintained under favorable conditions. Rather, the aim was to develop an account appropriate for pluralist open societies, inhabited by imperfect persons who reasonably disagree about justice. It takes seriously into account that justice has to be implemented under less than favorable conditions by imperfect persons whose interests coincide only up to a point and who disagree on many different issues, including on the very conception of justice they are implementing. The idea is not merely about decreasing the robustness of the egalitarian component of justice as fairness (as to make more room for autonomy-enhancing economic freedoms or make it more "realistic"), but also about shifting

the emphasis from an essentially top-bottom approach, which requires entrusting the state with extraordinary powers, to a bottom-up approach which limits government discretion and places significantly more weight on prior consensus building. In that sense, it is also a progressive account since it does not specify a definite limit to its robustness. Over time it may become closer to Rawls's own conception through intermediate steps. It does demand that all institutional proposals (egalitarian or otherwise) should be evaluated through the lenses of the proposed account of autonomy (which includes a wider scheme of economic liberties and opportunities) and the WFE requirement (seen as a higher-order consideration).

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