

Procedure-Based Substantive Equality

Pure Procedural Justice and Property-Owning Democracy

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Abstract

This paper examines two ideas of John Rawls that are rarely discussed in conjunction: pure procedural justice (PPJ) and property-owning democracy. Applied to matters of distribution, PPJ orders the establishment of fair procedures under which any private transaction can be considered just. It aims to secure equality without fixating on patterns of distribution. How such an approach is constituted and how it applies to different stages of theorisation are explored. Three components of PPJ and three guidelines for its institutionalisation are identified. As such, PPJ also provides a backbone to property-owning democracy. The understanding of property-owning democracy as an institution of PPJ helps us assess various interpretations and refinement of property-owning democracy.

Keywords: pure procedural justice, property-owning democracy, Rawls, deontic egalitarianism, distributive justice

This paper examines and connects two ideas of John Rawls that are rarely discussed in conjunction: pure procedural justice and property-owning democracy. The idea of pure procedural justice (PPJ) regards any outcome to be just if it came about through a fair procedure. While the idea is often employed in discussions about democracy that focus on its procedural aspect,¹ it also has important distributional implications. Applied to matters of distribution, PPJ orders the establishment of fair rules and fair background conditions under which any private transaction can be considered just.

¹ E. g. David Estlund, *Democratic Authority: A Philosophical Framework*, 2008; Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many*, 2013

This paper demonstrates that a Rawlsian conception of PPJ is a uniquely attractive approach to ensure the equality of citizens without fixating on particular pattern(s) of distribution.

I contend further that this approach characterises Rawls's vision of a just institutional arrangement, namely, property-owning democracy. Property-owning democracy has recently been endorsed, often with some tweaking of its contents, by theorists of a broad political spectrum ranging from Basic Income enthusiasts and republicans to classical liberals.² It might seem as if property-owning democracy is a mere decorative covering with which you can wrap your favoured set of policies. Against this suspicion, I argue that PPJ provides an important backbone to Rawls's property-owning democracy. Understanding property-owning democracy as an institution of PPJ makes clear what property-owning democracy is while also explaining some reasons why theorists may find property-owning democracy a useful model to work with.

The structure of this paper is as follows. The first three sections elaborate on different features of PPJ. Section 1 introduces the idea of PPJ and characterises it as a deontic theory with no pattern-fixation. Section 2 examines the function of PPJ by dissecting it into three constitutive components, namely, the *direct rules of transactions*, the *constraints of background justice*, and the *adjustive interventions* for preserving background justice. Section 3 discusses a somewhat different formulation of PPJ called quasi-pure procedural justice which is specific to concrete phases of theorisation about just institutional arrangements. Each section ends with a guideline for institutionalising PPJ: *no pattern-fixation*, *full-functionality*, and *inheritance* of the approach of PPJ and the relevant principles from higher-order procedure(s).

Section 4 explores the policy implications of PPJ at a practical and determinate level by connecting PPJ and property-owning democracy. The institutional guidelines identified in the preceding sections are used to test if property-owning democracy should be regarded as an institutionalisation of PPJ. Possible deviations from the model of property-owning democracy based on PPJ are briefly considered at the end.

1. Distributive Justice as Pure Procedural Justice (PPJ)

This section introduces the idea of PPJ and explains its basic theoretical feature as deontic approach with no fixation on patterns. This feature also explains some reasons why PPJ is attractive.

2 E. g. Satoshi Fukuma, Meaningful Work, Worthwhile Life, and Self-Respect: Reexamination of the Rawlsian Perspective on Basic Income in a Property-Owning Democracy, *Basic Income Studies*, 12:1 (2017), 1–10; Gavin Kerr, *The Property-Owning Democracy: Freedom and Capitalism in the Twenty-First Century*, 2017; Alan Thomas, *Republic of Equals: Predistribution and Property-Owning Democracy*, 2017.

To begin with, what is PPJ? It is a procedure of judgment where ‘what is just is specified by the outcome of the procedure, whatever it may be.’³ It is distinguished from similar ideas of perfect and imperfect procedural justice, which possess an independent standard of judging what is just. By contrast, in PPJ, as in a fair gamble, any outcome is just *ipso facto* if it is a result of a fair procedure.⁴ In PPJ ‘the fairness of the circumstances transfers to fairness of the principles acknowledged’ or, in more general terms, to the fairness of the outcomes.⁵ This transfer of fairness is the source of PPJ’s persuasiveness.

The argumentative force of such a transfer is perhaps most apparent in Rawls’s use of PPJ for selecting principles of justice. Rawls designs the original position so that any agreement reached in it can be considered as representing justice.⁶ Here, the persuasiveness of the original position procedure rests on the fact that it is designed as a fair circumstance for the parties understood as free and equal participant in social cooperation.⁷ However, the focus of the present paper is on the use of this idea in relation to how the principles of justice regulate the basic structure.

Let us briefly review Rawls’s two principles of justice.⁸ The first principle defines equal basic liberties for all. Every citizen has a claim to a fully adequate scheme of liberties compatible with everyone having the same scheme. The second principle regulates social and economic inequalities with two subordinate principles. One is the so-called principle of fair equality of opportunity. It requires that inequalities be attached to offices and positions that are open to all in a substantial sense. Thus, people from all sections of society must have an equal level of access to positions of privilege. The other is the difference principle. It requires that inequalities work to maximise the expectations of the least-advantaged members of society. Inequalities are considered just only when these two conditions are satisfied. Also, the principles are in the relation of lexical ordering where the first principle is prior to the second, and the principle of fair equality of opportunity is prior to the difference principle.

What may be less well-known is that the two principles of justice are said to function as a case of PPJ. Rawls explains this claim by way of contrasting it with principles based on allocative justice.⁹ Allocative justice is concerned with the question of how to distribute or allocate given resources based on the needs, desires, or preferences of individuals. Importantly, however, it does not consider how people cooperate as members of society.¹⁰ Utilitarianism is such a principle. By contrast, Rawls’s two principles address the different question of how to order the basic structure of society so that a

3 John Rawls, *Political Liberalism: Expanded Edition*, 2005, 73 (Henceforth referred to as PL)

4 John Rawls, *A Theory of Justice: Revised Edition*, 1999, 75 (Henceforth referred to as TJ)

5 PL, 259

6 TJ, 104; PL, 72

7 John Rawls, *Justice as Fairness: A Restatement*, ed. Ellen Kelly, 2001, 80 (Henceforth referred to as JFR)

8 JFR, 42–44

9 JFR, 170–171; TJ, 77

10 JFR, 50

fair system of social cooperation can be maintained for free and equal citizens.¹¹ For Rawls, the main concern is whether the major institutions and background conditions of society are fair; the question of who gets what is derivative.

Rawls makes it clear that his principles of justice, including the difference principle, apply to the basic structure. He says,

the two principles of justice as they work in tandem incorporate an important element of pure procedural justice in the actual determination of distributive shares. They apply to the basic structure and its system for acquiring entitlements; within appropriate limits, whatever distributive shares result are just. A fair distribution can be arrived at only by the actual working of a fair social process over time in the course of which, in accordance with publicly announced rules, entitlements are earned and honored. These features define pure procedural justice.¹²

So, Rawlsian distributive justice does not directly target specific individuals, transactions or distributive outcomes. Instead, its primary business is to set up and maintain fair procedures such that social cooperation and its outcomes can be considered fair if the procedures are correctly followed.¹³ In this way, the two principles regulate society in a purely procedural manner.

To employ a useful distinction, PPJ is a deontic approach toward distributive justice as opposed to a telic one. According to Derek Parfit, telic egalitarianism values the equality of distribution in itself, whereas deontic egalitarianism aims for the equality not because that is desirable as the outcome but for other moral reasons.¹⁴ Specific to a deontic theory is focusing not on a particular outcome 'but the way in which it was produced'.¹⁵ Rawlsian PPJ is a typical case of deontic egalitarianism as it focuses on the justice of procedures where citizens can regard and treat each other as free and equal participants in social cooperation.¹⁶

An important implication of taking the deontic approach is that PPJ does not fixate on particular distributive patterns. Here I wish to make a distinction between causing a pattern and fixating on it. PPJ may tend to cause certain outcomes, but it never aims for a particular outcome in itself. Causing a certain pattern of distributions remains either derivative or instrumental to the aim of making social procedures fair for free and equal citizens.

¹¹ TJ, 6, 12

¹² PL, 282

¹³ TJ, 76

¹⁴ Derek Parfit, Equality or Priority? in: *The Ideal of Equality*, eds. Matthew Clayton and Andrew Williams, 2002, 84

¹⁵ Ibid., 90

¹⁶ JFR, 39, 57; cf. Jonathan Quong, Left-Libertarianism: Rawlsian Not Luck Egalitarian, *Journal of Political Philosophy*, 19:1 (2011), 64–89.

This difference is subtle yet significant in three ways. Firstly, when we ascribe value to distributive patterns in themselves, our epistemic limitations aside, different patterns can be ordered in terms of their value, with some particular patterns being the most desirable (e.g. a pattern with the most equality or the highest total benefit). In contrast, when distributive patterns are merely derivative of some desired function (e.g. to prevent excessive concentration of wealth), it is likely, or at least possible, that many different patterns are compatible with the desired function. In this case, secondly, while there could be an inseparable connection between a desired function and particular pattern(s), it is neither necessary nor stable. If a desired function allows only a particular pattern to arise, the connection can be severed when there is a change in relevant variables other than distribution of goods. For example, in a rigid class society wherein the amount of family wealth largely determines one's life prospects, the distribution of wealth and income may need to be fully equalised for ensuring the fair equality of opportunity; a milder requirement may suffice in a less stratified society. Thirdly, deviation from a desirable distributive pattern always constitutes a moral loss when the pattern is valued in itself, thus generating a constant pressure to correct it. It is not so when a pattern is required instrumentally. For example, regarding the equal distribution of educational resources for the fair equality of opportunity, deviation may not be considered a moral loss from the viewpoint of PPJ when it is an isolated incident or contained in a specific period, say after the tertiary stage of education, leaving the fairness of procedures intact. In sum, PPJ does not fixate on patterns in the sense that it is likely to allow many patterns, whose compatibility with the desired function is variable. Furthermore, a deviation from desirable pattern(s) may not be morally problematic when it is isolated, temporary or otherwise contained.

These analyses suggest some attractive features of PPJ. One is an agreement with our intuitions about responsibility and autonomy. As hinted by the aforementioned fair gamble example, it is intuitive to say that as long as the procedure is fair, outcomes of autonomous endeavours are also fair. The second attractive property is simplicity, which makes the realisation of justice more secure.¹⁷ The task of realising justice is simplified if we can do so through designing just procedures. It sidesteps detailed investigations of individual actions or states of affairs.¹⁸ By contrast, such investigations may be necessary in telic theories such as utilitarianism and luck egalitarianism or deontic theories that focus on individual conduct. The third and related virtue is compatibility with individual liberty. The fact that PPJ does not go after particular actions or particular outcomes means that it leaves a relatively large space for individuals to exercise free-

¹⁷ TJ, 267–268; Rawls defends the virtue of simplicity in connection to publicity and stability of justice (PL, 162; JF, 54).

¹⁸ TJ, 285

dom.¹⁹ This makes PPJ consistent with strong protection of basic individual liberties, whose prime example is Rawls's first principle.

From the characterisation of PPJ as a deontic theory with no pattern-fixation, we can also identify a guideline for putting this idea into practice in institutions. Namely, what we are after is not a particular pattern of distribution. Rather, our aim is to establish and maintain procedures that are fair for citizens understood as free and equal participants in social cooperation. Although some patterns of distribution can be judged as essential for the sake of realising such a fair procedure, they should not be fixated upon in themselves. Call this the *no pattern-fixation requirement*.

2. Social Process View: Constraints and Adjustments to Procedure

To examine the role of PPJ in more detail, it is useful to divide it into three constitutive components. The first component of the PPJ is designing procedures that directly govern the transactions of individuals. Let us call this the *direct rules of transactions*. In regard to Rawls's theory, these rules take the form of laws concerning rights and entitlements that reflect the equality of basic liberties and the difference principle. Thus, the basic structure of society must possess the legal guarantee of a set of universal basic liberties as well as laws governing the structure of productive enterprises that maximise the prospects of the least advantaged.

However, establishing such procedures is not enough. The block quotation in the previous section mentions 'appropriate limits' on social processes. We can distinguish two different types of 'limits' on a procedure. One is what I call *constraints of background justice*. The fair value of the political liberties and fair equality of opportunity, among other things, are required as 'the background conditions required for free and fair agreements'.²⁰ For example, in addition to selection procedures for positions of power and responsibility being unbiased and open to talent, justice requires a condition where people from all sections of society have substantial access to opportunities for the development of their abilities. Certain institutional arrangements, such as quality public education and child care services, are required in the background for the fair market procedure.

On top of that, we need periodic adjustments against the tendency of social relations and background conditions of society to deviate from a fair state. Call this the *adjustive interventions*. Deviations from a fair condition are inevitable in the long term

¹⁹ JFR, 54; cf. Samuel Scheffler, *Equality and Tradition: Questions of Value in Moral and Political Theory*, 2012; Samuel Freeman, The Basic Structure of Society as the Primary Subject of Justice, in: *A Companion to Rawls*, eds. Jon Mandle and David A. Reidy, 2014, 88–111.

²⁰ JFR, 52, 53

as an unintended compound effect of outcomes of otherwise fair transactions.²¹ Thus, a just basic structure must have ‘the adjustments necessary to preserve background justice’ if it were to remain a fair system of social cooperation over generations.²² The idea is that the basic structure requires maintenance because it is not possible to devise fail-proof institutions that consistently maintain intended functioning. Such maintenance must comprise a part of the procedure in order to realise PPJ in social institutions that can endure. For this purpose, the two principles of justice specify ‘an ideal form for the basic structure’, ‘ideal form for background institutions’ or ‘a structural ideal’ as reference points to guide such adjustments.²³ Here, Rawls’s terminology is somewhat unusual, but they refer to the structure of major social institutions governed by the two principles.²⁴ I emphasise that the reference points for evaluating and guiding actual procedures are not ideal distributive patterns but ideally functioning institutions.

These two types of limits are still purely procedural as they do not require outcomes to conform to particular patterns. Rather, they are ‘functional’ requirements for public institutions.²⁵ That is, they only refer to how major social institutions function as procedure. For example, the two principles of justice require that the system of entitlements be so designed that emerging inequalities work to maximally improve the expectations of the least advantaged. Now, it is likely that this requirement makes certain outcomes (for example the extreme inequality of wealth in the U.S. today) nearly impossible to arise. Yet, the two principles of justice do not directly go after such outcomes to correct them. That is why Rawls says ‘[e]ven with these rules of background justice, distributive justice may still be understood as a case of pure procedural justice.’²⁶ Hence, the two types of constraints are constitutive of PPJ.

To summarise, PPJ as applied to institutions and policies is comprised of three components²⁷:

Direct rules of transactions: social institutions that function as devices of fair procedure directly governing individual transactions

21 PL, 265–266

22 PL, 284

23 PL, 284–285

24 cf. PL, 224.

25 PL, 283; cf. JFR, 68

26 JFR, 52

27 Thomas does not distinguish between constraints of fair background conditions and adjustive interventions and calls these combined functions as ‘adjusted procedural justice’ in distinction with pure procedural justice (Thomas (footnote 2), 89 ff.). The break-down into three components is meaningful as the adjustive interventions come into view by considering social institutions enduring in the long term while the other two components are relevant even in the short term. The distinction is particularly relevant in explaining the difference between different models of pure procedural justice as we see below. Although my claim here is not exegetical, the fact that Rawls says that to secure the just background conditions the basic structure needs to be ‘appropriately *regulated* and *adjusted*’ may lend some support to my interpretation (PL, 266, my italics).

Constraints of background justice: social institutions that function to realise background justice

Adjustive interventions: social institutions that function to adjust a social process against the gradual and unintended erosion of the background justice

Having all three components is characteristic of Rawls's favoured model of PPJ. He makes this explicit in *Justice as Fairness: Restatement* by using the term 'pure background procedural justice'. The word 'background' is added 'to indicate that certain rules must be included in the basic structure as a system of social cooperation so that this system remains fair over time'.²⁸

The example of the draft system in professional sports that Rawls uses to illustrate the idea may be helpful. In this system, teams are allowed to recruit new players in the reverse order of their performance rankings from the previous season. It functions to regularly adjust the tendencies of the winning team growing stronger and the losing team weaker. Furthermore, such changes play an integral role in the sport to keep it lively and attractive.²⁹ Thus, the point of the notion of 'pure background procedural justice' is to emphasise that constraints of background justice and adjustive interventions are essential components of PPJ.

But, why all three? Let us glance at how a model of PPJ without all three components works. Rawls calls it a 'historical process view' in comparison with his favoured model, a 'social process view'. According to Rawls, '[w]hile both views use the concept of pure procedural justice, they specify this concept in different ways'.³⁰ A historical process view is exemplified by Locke's and Nozick's theories that focus on the fairness of initial state and of individual agreements and transactions.³¹ In this view, constraints are employed to regulate individual transactions but not to secure fair background conditions. In other words, the historical process view mainly attends to the direct rules of transactions and places only minimal constraints of background justice such as restricting violence and extreme poverty.³² It pays virtually no attention to adjustive interventions and ignores changes in social conditions that may result from a long-term accumulation of numerous transactions. In contrast, a social process view, of which justice as fairness is an example, covers all three components. Constraints of background justice and adjustive interventions are necessary because '[u]nless the basic structure is regulated over time, earlier just distributions of assets of all kinds do not ensure the justice of later distributions, however free and fair particular transactions

²⁸ JFR, 51; The importance of background justice for pure procedural justice is also discussed elsewhere (TJ, 76, 198–199; PL, 266 ff.).

²⁹ JFR, 51

³⁰ JFR, 54

³¹ JFR, 52–53

³² TJ, 97; John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman, 2007, 146–7

between individuals and associations may look when viewed locally and apart from background institutions'³³

To highlight this contrast by using the analogy of the draft system again, a historical process view does not take issue with the ever-increasing power gap between high-ranking teams and low-ranking teams. It only aims to secure the fairness of the competitive situation at the inception of the league, the absence of obviously distorting factors such as violence and extreme poverty outside of the playing field, and the absence of cheating in games. However, even if such conditions are perfectly met, there are reasons to worry about a large and increasing power gap between the teams. For one, even when a lower-ranking team starts to improve, higher-ranking teams may be able to stifle it by headhunting some players from that team through massive offers, for example. For another, the bottom-ranking team may become increasingly desperate and consider it rational to attract audiences not by athletic performances but by players' good looks or by engaging in rough plays even at the cost of penalties. In short, such a tendency of increasing power disparity may fundamentally change the nature of the game. That is why a social process view requires that additional mechanisms be built within the system that maintain certain parity between teams as a condition for fair games.

The institutional guideline we can draw from these observations is the requirement of *full-functionality*. Institutions of PPJ must be equipped with all three components. It is the unique feature of Rawlsian PPJ that it includes the substantive elements of constraints of background justice and adjustive interventions. This approach may seem less purely procedural than the historical process view, and in a sense that is true. Having substantive constraints and adjustments is essential if a social institution is to remain purely-procedurally *just* rather than merely purely-procedural.

3. Quasi-Pure Procedural Justice: Procedure for Determinate Stages

The idea of pure procedural justice with appropriate limits is also conceptualised by Rawls as 'quasi-pure procedural justice' from a somewhat different angle.³⁴ PPJ takes the form of quasi-pure procedural justice when applied to determinate phases of the-orientation about justice. More specifically, quasi-pure procedural justice applies to procedures at the constitutional convention and the legislature where more concrete matters are decided in comparison to the original position procedure where the parties choose abstract principles of justice. As such, quasi-pure procedural justice is characterised by two features.

³³ JFR, 53; cf. PL, 286–287, 281.

³⁴ TJ, 176, 318

One feature is the indeterminacy of correct outcome. In the original position, which embodies truly pure procedural justice, it is assumed that the procedure unambiguously selects one particular option as the most just outcome. In contrast, procedures at more determinate stages cannot single out a particular option as the correct one due primarily to the complexity and ambiguity of relevant evidence.³⁵ Allowing such indeterminacies is a feature of quasi-pure procedural justice.

The other feature of quasi-pure procedural justice is hierarchical relations between procedures. A procedure at a more concrete level is constrained by procedure(s) at a higher and more abstract level. The principles of justice constrain the constitutional convention, and the just constitution constrains the legislature. Such constraints are required to deal with the indeterminacies mentioned above so that options selected at more concrete levels stay within the bounds of justice at more abstract level(s). This scheme 'sets out a series of points of view from which the different problems of justice are to be settled, each point inheriting the constraints adopted at the preceding stage.'³⁶ Thus, by setting an acceptable range in this way, quasi-pure procedural justice manages to ensure that any outcome can be regarded just even though there is no way to be certain that an outcome is the most just.

The feature of inheritance is noteworthy in two ways. First, there is a sequence of theorisations about requirements of justice, from the original position to execution of laws and policies (with a proposal of property-owning democracy that we see in the next section belonging mostly to the third stage). The approach of PPJ itself is inherited to later stages of theorisation, along with the principles adopted at earlier stages. Thus, PPJ characterises Rawls's theory through and through, slightly changing its form according to stages of theorisation. Second, the inheritance of the constraints from more abstract stages of theorisation provides a further ground, in addition to the analysis in the previous section, for regarding constraints of background justice and adjustive interventions as components of PPJ: namely, they reflect outcomes of pure procedural justice at more abstract level(s).

An institutional guideline derived from the idea of quasi-pure procedural justice is that social institutions have to follow the two principles of justice (or their equivalents) and a just constitution. Those higher principles should guide design of institutions at a concrete stage, and any deviation in laws and social practices should be checked and corrected in light of them. Call this the *inheritance requirement*.

Now we have three guidelines for institutionalising PPJ.³⁷ To review:

No pattern-fixation requirement: to employ a deontic approach to equality with no fixation on particular patterns

³⁵ TJ, 318

³⁶ TJ, 176

³⁷ The list is not intended to be exhaustive.

Full-functionality requirement: to possess all three components of pure procedural justice

Inheritance requirement: to follow the constraints of higher principles, namely, the two principles of justice (or their equivalents) and the just constitution

Note also that the three components of PPJ distinguished in section 2 (i. e., direct rules of transaction, constraints of background justice, and adjustive interventions) are sub-categories of the full-functionality requirement. The three components explain what it means to have full functions of PPJ.

4. Property-Owning Democracy as an Institutional Scheme of PPJ

This section connects observations of the preceding sections regarding PPJ to Rawls's institutional vision of property-owning democracy. In so doing, I aim to make clear an underappreciated feature of property-owning democracy, namely its institutionalisation of PPJ.³⁸ I will proceed by way of examining whether property-owning democracy satisfies the three institutional guidelines of PPJ identified above.

I will start with the inheritance requirement for the ease of explanation. I only make two passing remarks on this. First, there is reliable literature that shows how features of Rawls's property-owning democracy follow from the requirements of his two principles of justice (also making comparison with a just constitution redundant).³⁹ I have nothing to add here. Second, inheritance of the approach of PPJ can only be tested by seeing if property-owning democracy possesses the necessary features of PPJ. This overlaps with the full-functionality requirement and does not merit separate discussion.

Let us, accordingly, discuss the full-functionality requirement, which requires property-owning democracy to embody functions of PPJ. I believe this is never made clear by Rawls. He says that property-owning democracy is required for realising rules of PPJ regarding matters of distribution.⁴⁰ While this shows a connection between the two ideas, it does not show that property-owning democracy *is* a case of PPJ.

To see this, we need look into specific mechanisms of property-owning democracy. I will use the distinction of three components of PPJ as a guide. Beginning with the direct rules of transactions, property-owning democracy adopts constitutional democracy and a competitive market mechanism. While the decisions on law and policy are

³⁸ To be precise, PPJ here takes the form of quasi-pure procedural justice as is the case in all stages after the original position.

³⁹ E. g., Samuel Freeman, *Rawls*, 2007; Samuel Freeman, Property-Owning Democracy and the Difference Principle, *Analyse & Kritik*, 9 (2013), 9–36; Martin O'Neil, Free (and Fair) Markets without Capitalism, in: *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neil and Thad Williamson, 2012, 75–100.

⁴⁰ TJ, 243; JFR, 51, 140; cf. Richard Krouse and Michael McPherson, Capitalism, 'Property-Owning Democracy,' and the Welfare State, in: *Democracy and the Welfare State*, ed. Amy Gutmann, 1988, 79–105.

managed by democracy, it has to be a democracy with constitutional limits on the content of legislations. Constitutional guarantees of fundamental rights and liberties in line with the first principle of justice are required for democratic procedures to function fairly.⁴¹ Also, for regulations of productive activities, a reasonably competitive market is required for the sake of freedom of association and occupational choice as well as for efficiency.⁴² Here, in line with the lexical priority, freedom of association and occupational choice are prioritised over efficiency. Thus, a fair market scheme must possess mechanisms for ensuring substantial opportunities for participating in social cooperation.⁴³

The second component of PPJ, the constraints of background justice, call for the following institutional mechanisms. In relation to democracy, mechanisms for securing the fair value of political liberties are required. More specifically, measures such as regulations of campaign finance and political contributions are required to prevent conversion of social and economic powers into political influence.⁴⁴ In relation to the market, broad access to productive assets and human capital (education and training) need to be guaranteed as a background condition so that fair equality of opportunity can exist in the market.⁴⁵ Also required for the same purpose are health services accessible to all.⁴⁶

The third component of PPJ involves adjustive interventions to preserve background justice, which require some countervailing mechanisms against the tendencies wherein just background conditions are eroded over time. For example, taxation of income and inheritance is required for preventing excessive concentrations of wealth in a few hands such that fair equality of opportunity and the fair value of political liberties may be maintained.⁴⁷

Moving on to the final guideline, the no pattern-fixation requirement, notice that none of the mechanisms of property-owning democracy described above directly specify a pattern of distribution to be realised. Rather, these are requirements on the major institutions and the background conditions of society aimed for making fair social cooperation of citizens possible.⁴⁸ What state of affairs come about is still left to actual social processes. Even the mechanisms for prevention of excessive concentrations of wealth primarily focus on rules concerning 'how people acquire property' such as intergenerational transfers of wealth.⁴⁹ The amount of wealth particular individuals

41 JFR, 145–148

42 TJ, 242

43 TJ, 272; PL, lvii

44 JFR, 148–150

45 JFR, 176

46 JFR, 174

47 PL, 268

48 TJ, xv

49 JFR, 53

might earn is not the focus.⁵⁰ Thus, the mechanisms of property-owning democracy are consistent with Rawls's statement that 'the two principles of justice do not insist that the actual distribution conform at any given time (or over time) to any observable pattern, say equality, or that the degree of inequality computed from the distribution fall within a certain range, say of values of the Gini coefficient'.⁵¹

As such, property-owning democracy retains the attractiveness of PPJ. First, it is in line with our intuitions about autonomous choice. Rawls says the aim of property-owning democracy is 'to put all citizens in a position to manage their own affairs and to take part in social cooperation on a footing of mutual respect under appropriately equal conditions'.⁵² It is more in line with our intuitions about autonomy and responsibility to empower citizens to run their lives on equal footings than to keep them equal by managing every outcome of their endeavours. In such a spirit, just institutions encourage constructive efforts of individuals by respecting their legitimate expectations.⁵³ This also connects to the virtue of simplicity, because honouring legitimate expectations entails that just institutions make neither unpredictable interferences in private transactions nor continuous corrections to their outcomes.⁵⁴

On the other hand, it is the responsibility of society to prepare and preserve the requisite background conditions, for instance by supporting citizens' free development and exercise of abilities by providing education and training of sufficient quality and variety.⁵⁵ Also, essential services such as medical care need to be guaranteed to all to underwrite fair equality of opportunity. When appropriate institutions are installed and honoured, we can be assured that 'individuals and associations are then left free to advance their (permissible) ends within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the regulations necessary to preserve background justice are in force'.⁵⁶ In this way, pure-procedural mechanisms of property-owning democracy ensure citizens' free pursuit of their plans of life through the free development and exercise of their abilities. Individual liberty is protected through the provision of necessary support and adjustments as well as through not targeting end states.

⁵⁰ Although income taxation is also a part of the mechanism for preventing excessive concentrations of wealth, Rawls even envisions a possibility of replacing it by proportional expenditure tax if social conditions permit it (TJ, 246). This otherwise puzzling comment makes sense if we consider the centrality of PPJ in Rawlsian theory of justice as PPJ does not attend to end-state patterns unless doing so is necessary for maintaining fairness of procedures.

⁵¹ PL, 283; cf. JFR, 68.

⁵² TJ, xv

⁵³ PL, 283; TJ, 273

⁵⁴ PL, 283

⁵⁵ Cf. PL, 189.

⁵⁶ JFR, 54

In this connection, I would like to suggest that these attractive features of PPJ contribute to the endorsement of property-owning democracy by diverse advocates mentioned at the outset of this paper. Also, no pattern-fixation requirement may mean that diversity of interpretation and adaptation is inevitable. That is, no pattern-fixation is only a short step apart to no *policy*-fixation. Various policies may be compatible with PPJ depending on the conditions of society as long as they enable social institutions to function as fair procedures.

That said, this section has shown that property-owning democracy is an institutional scheme of PPJ. PPJ provides property-owning democracy with a backbone and a structure. The no pattern-fixation requirement excludes policies that aim at certain end states in themselves – for example some form of the Basic Income. Also, libertarian regimes with no concern for adjustive interventions cannot pass the full-functionality requirement. Finally, the inheritance requirement works to prevent a majoritarian democracy from abandoning the constitutional guarantees of equal basic liberties and the fair value of political liberty for example.

I would like to suggest, further, that a classical liberal interpretation of property-owning democracy by Gavin Kerr should be rejected as it is inconsistent with PPJ. Kerr denies privileged positions of equal basic liberties as well as fair equality of opportunity and the fair value of political liberty.⁵⁷ Instead, considerations of justice are reduced to the maximisation of the substantive opportunity to pursue conceptions of the good for the least advantaged. Notice that Kerr establishes an independent criterion of judging what is just, namely, the maximisation of the substantive opportunity. Hence, Kerr's revised property-owning democracy is a case of imperfect procedural justice. Whatever its merit may be, it embodies a different model of thinking about justice from Rawls's property-owning democracy.

Conclusion

To summarise, this paper first conducted conceptual and terminological investigations into the idea of pure procedural justice (PPJ), with a focus on its application to matters of distributive justice. The complex idea of PPJ was analysed in three ways. First, its theoretical character was identified as a deontic approach with no pattern-fixation. Second, the function of PPJ was thoroughly examined by dissecting it into three constitutive components. It was pointed out that having all three components is an important feature of the Rawlsian model of PPJ. Third, the meaning of quasi-pure procedural justice was identified in reference to different stages of theorisation in justice as fairness.

⁵⁷ Kerr (Footnote 2), 81, 144, 158, 164, 184

Second, it presented an understanding of Rawls's institutional vision of property-owning democracy, illustrated as an institution of PPJ. Property-owning democracy aims to function as a fair procedure for citizens regarded as free and equal participants in social cooperation. This view helps us understand more concretely what property-owning democracy is (and isn't).

At the end of section 4, I applied these insights to Kerr's classical liberal model of property-owning democracy and suggested that it was inconsistent with Rawls's property-owning democracy understood as an institution of PPJ. My examination was admittedly very brief. The point, though, is that the three institutional guidelines of PPJ provides criteria for assessing whether various interpretations and refinement of property-owning democracy are consistent with its essence.

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