

# JOHN RAWLS AND THE SOCIAL MAXIMUM<sup>[1]</sup>

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The debate about predistribution is a highly pressing one. Based on the most important normative argument for predistribution - John Rawls' defense of property-owning democracies - political egalitarians are committed to the dispersion of wealth or productive assets as a necessary condition for any just society based on the private ownership of the means of production. Despite the soundness of the Rawlsian argument, in this paper I intend to show that, first, the argument is misleading regarding the egalitarian potential of welfare institutions and, second, that there are no conceptual obstacles within contractualist moral theories to make conventional welfare institutions as egalitarian as those of property-owning democracy. Two things must be ensured though: (1) a right-based theory of welfare institutions and (2) the idea of a social maximum - that is a bundle of institutions for checking unreasonable exclusion from capital control. In the last section of this paper some reasons for a reasonable notion of a social maximum for democratic societies are addressed.

**Key-Words:** Predistribution, John Rawls, Egalitarianism, Social Maximum

O debate a respeito da redistribuição é extremamente relevante para formas de igualitarismo orientadas politicamente. Seguindo o argumento normativo mais importante a favor da redistribuição - a defesa de democracias de cidadão-proprietários por John Rawls - o igualitarismo político assume que a dispersão de riqueza,

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1 An earlier version of this work was presented in the 2014 Symposium on *Property-owning Democracy: Rawls and beyond* at the University of Minho. I am very grateful to José de Sousa Brito, Raima Jaunonen, Roberto Merrill, Martin O'Neill, Brun Lain Escandell, Raissa Ventura and Stuart White for helpful discussions. António Baptista has made invaluable suggestions for the final version of this text. I am also pleased to acknowledge the *São Paulo Research Foundation*, USP's Political Science Department and the CEHUM-Minho for the institutional support provided.

ou recursos produtivos, é condição necessária para garantir a justiça de sociedades fundadas na apropriação privada dos meios de produção. A despeito da coerência do argumento rawlsiano, procurarei mostrar nesse artigo que, em primeiro lugar, o argumento é impreciso em relação ao potencial igualitário de instituições de bem-estar social e, em segundo, que não existem obstáculos conceituais relevantes, internos às teorias contratualistas, para tornar, em princípio, instituições de bem-estar social tão igualitárias quanto as instituições de uma democracia de cidadãos-proprietários. Duas coisas precisariam ser garantidas, no entanto: (a) uma teoria das instituições de bem-estar fundada no direito e (b) a ideia de um máximo social, isto é, um conjunto de instituições voltadas para contrabalançar exclusões não aceitáveis de controle sobre capital. A última seção do artigo apresenta alguns argumentos para a defesa de uma concepção razoável de máximo social para sociedades democráticas.

**Palavras-Chave:** Predistribuição, John Rawls, Igualitarismo, Máximo Social



## 0. Introduction

Much of the debate in political philosophy today is more devoted to tinkering at the edges of actual economic and political institutions or to design piecemeal public policies against a particular social problem rather than to consider feasible alternatives to our socioeconomic regimes. As a major figure of XX century political philosophy, John Rawls, though, has never hesitated to conceive or to argue for such alternatives. In fact, the pressing problem of exploring new limits for the political world was taken by Rawls as one of the main tasks of political philosophy itself.<sup>[2]</sup> His most original contribution to this debate was certainly his lifelong commitment to a property-owning democracy (POD) regime considered by Rawls as the only *capitalist* background, *i. e.* leaving aside democratic forms of socialism, capable of realizing “all the main political values expressed by the two principles of justice”.<sup>[3]</sup> In a POD regime every citizen would have reasonable access to productive or financial assets throughout his or her life by means of the systematic dispersion of wealth across successive generations. This could be granted, according to Rawls, by an array of distributive

2 See, particularly, his *Lectures in the History of Political Philosophy* in which Rawls describes the task as the “forth role of political philosophy” (2007; 5).

3 See, Rawls (2001; 135).

arrangements such as a highly progressive or confiscatory tax-system on inheritances and *inter vivo* bequests applied at the receiver's end, a national capital dividend based on natural resources exploitation, or a universal capital grant financed by financial transactions or corporate gains, all of them encouraging "a wide and far more equal dispersion of real property and productive assets" among the citizens.<sup>[4]</sup>

Notwithstanding such a strong claim made by one of the leading philosopher figures of our time, the Rawlsian concern for alternative economic systems has remained relatively unnoticed in the mainstream philosophical debate. Fortunately, this picture has been changing in the last years. Some authors have rescued the theoretical grounds for POD as a highly serviceable ideal for the egalitarian thought, under the label of predistribution.<sup>[5]</sup> Authors such as Martin O'Neill, Thad Williamson and Stuart White have taken the Rawlsian case for a POD seriously, turning it into a fruitful source for radical new ways of conceiving social inequality and establishing social justice in market societies. Although none of them actually endorses a full-blown replacement of our actual productive regime, all agree that structural economic reforms encouraging a direct distribution of economic power across society, that is, *pre tax-and-transfer* distribution, could make market-oriented institutions, and through them society as whole, more equal and just. Following the British economist James Meade, the goal of a predistributive politics is to build up a mixed citizenship based on both work and property ownership – a kind of citizenship more suitable for capital-labor mixed economies.<sup>[6]</sup>

In face of the shocking increase of socioeconomic inequality over the last three decades in rich countries, predistribution is certainly a desirable novelty for political theory.<sup>[7]</sup> Moreover, shedding light on productive justice - besides the conventional redistributive account - is a crucial step to be made by an important branch of contemporary egalitarian theories, a

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4 Rawls (2001; 139).

5 The term predistribution was first used by Hacker (2011). The most comprehensive theoretical efforts that have been made so far for clarifying the notion are found among the papers edited by O'Neill & Williamson (2012) in which many sides of POD and predistribution are addressed. See, also, Williamson & O'Neill (2012) e Williamson (2012) and (2013) for a concrete political proposal based on POD lines. See also White (2009) and Jackson (2012) for a broader historical picture of this ideal in the history of post-war British politics.

6 Cf. Meade (1948) apud. Jackson (1992; 43). See, also, Meade (2012).

7 Picketty & Saez (2014) for wealth concentration in Europe and US, Hacker & Pierson (2010) for the increase of the top 1% income in US, and Barros (2000) for the enduring levels of high inequality in Brazil.

branch that we can call *political egalitarianism*. Political egalitarians normally hold two distinctive claims. On one hand, political egalitarians hold that there are several different reasons for objecting distributive inequalities in a democratic society and, because of that, a single rationale for justifying distributive equality is philosophically and politically misleading.<sup>[8]</sup> Severe forms of material deprivation, structural social domination, stigmatizing relations and procedural unfairness are examples of different harmful unequal relations among individuals. It is impossible to find just one rationale to taken all of these reasons in account. Because of that, the very value of equality underpinning egalitarianism is best understood as a *political* ideal regarding how people should share a social world by means of institutional rules whose most fundamental concern is to respect them as equals in standing.<sup>[9]</sup> On the other hand, political egalitarians are egalitarians *all the way down*, that is, they hold that social relations based on the grounds of equality are a necessary requirement in a just society. In this sense, the value of equality is neither a contingent way to improve collective welfare nor an obscure proxy for sufficient standards of material comfort for all.

However, an essential part of holding these two claims together – equality as moral value and as a political ideal – depends on the permanent assessment of the variety of ways in which practices and institutional arrangements jeopardize citizen's equal standing. If predistribution theorists are right, then making the access to capital more equal will not only curb a set of unjust relations so far ignored by egalitarians but also to steer clear from structural limitations on traditional redistributive institutions.

In this paper I want to make a complementary, but as I see it, an important point regarding the Rawlsian claim that a POD regime is the only capitalist economic background available for a just society. I intend to address the issue from the political egalitarian perspective showing that there are some reasons for a second look at the objections against POD's most important rival regime, what Rawls has called Welfare-State Capitalism (WSC). Despite the soundness of the argument as it is presented in *Justice as Fairness* (JaF), I believe that there is a sense in which some of its premises are false. Moreover, there are no conceptual obstacles within the own contractualist framework to make a WSC regime as egalitarian as a POD regime could be. Two things must be granted though: (a) a right-based theory of welfare institutions and (b) the introduction of a social maximum against unrea-

8 For the varieties of objections against inequality, see, Scanlon (2002; 2013) and O'Neill (2008).

9 For a defense of equality as a complex political ideal, see, Anderson (1999; 313-314); Scheffler (2003; 21 - 22); and O'Neill (2008; 125).

sonable exclusion from capital control. Although a regime with (a) and (b) is quite different from the WSC's picture provided by Rawls, there are no reasons internal to the contractualist argument against this addition.

I finish this introduction with an important disclaimer. Rescuing welfare institutions from egalitarian evaluation is not the overall aim of this article. Nor is to deny the obvious fact that our actual welfare institutions fall short from the demands of a just society. Rather it is an attempt to use the compelling normative arguments supporting predistribution reforms to establish a more egalitarian account of *redistributive* institutions as well. There are many routes for a more equal society. It is part of political egalitarianism to keep as many of them opened.

## 1. Property-Owning Democracies

In general terms Rawls' conception of justice holds that to be fully just, a society must be designed in such a way that the main political and social institutions are to be compatible with (I) a strict egalitarian scheme of individual liberties and political rights (the First Principle of Justice) and (II) two strong conditions regarding the distribution of social resources, namely, a principle of fair equality of opportunities and a principle of reciprocity among the citizens, according to which all economic and power inequalities - after the prior application of the other criteria - must benefit maximally the least-advantaged members of social cooperation (the Difference Principle).<sup>[10]</sup> To put it differently, the two principles of justice demand that society's basic institutional framework must guarantee, to whomever happens to have his or her life shaped by them, that every citizen be on equal foot regarding the effective exercise of their status as equal and free persons.

Rawls' case for POD and, by consequence, his case against available alternatives to it, is established by way of a series of normative comparisons between distinctive ideal socioeconomic regimes, in which they are assessed according to how best each of them fully realizes the demands imposed by the Two Principles. By "ideal systems" Rawls has two things in mind. First, the regime's basic economic institutions, such as the kind of ownership system set up, and how much it allocates to provide essen-

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10 See, Rawls (1971; 302 – 303) and (1999; 42 – 43) for a more detailed exposition of the Two Principles of Justice. I will leave aside in this paper the equally crucial matter of *how* exactly each of these normative principles stated should be understood.

tial public goods.<sup>[11]</sup> Five possible candidates are presented: two of them based on public ownership – State Socialism (SS) and Liberal Socialism (LS)<sup>[12]</sup> – and three of them based on private ownership – Laissez-faire Capitalism (LFC), Welfare-State Capitalism (WSC) and, finally, Property-Owned Democracy (POD). Second, to each regime is assigned a specific aim, or goal, which its main economic institutions must achieve under ideal conditions. Take LFC for instance. Its aim is to foster efficient and sustained economic growth over time, restrained only by natural market failures and a minimalist social security system designed for humanitarian reasons.<sup>[13]</sup> By contrast, POD aims to disperse income and wealth ownership across society “pulling up” citizen’s economic starting points and life perspectives along their lives.<sup>[14]</sup>

The overall comparative argument between different regimes presented by Rawls takes the form of an “inference to the best explanation”, *i.e.* inferring from the fact that a certain hypothesis, among others, would fit the evidence, to the truth, or in this case the correctness, of that hypothesis.<sup>[15]</sup> The ideal economic systems are the set of given possibilities and the fulfillment of the principles of justice the right outcome. Inference of this kind entails two important features: (i) the argument is essentially comparative in nature, and (ii) its outcome is open-ended. The argument is essentially comparative in nature because the conception of justice itself does not settle the issue of the most adequate background institutions; *i.e.* there are no *a priori* preferences derived in a deductive way from its principles. Rawls is pretty clear that his theory of justice is underdetermined by basic economic institutions (“Which of these systems cannot, I think”, concludes Rawls, “be determined in advance”<sup>[16]</sup>) as well as by institutional ends.<sup>[17]</sup> In principle any economic system could work *provided that* it is capable of attending the two principles and it is empirically feasible under an ideal situation.

11 See Rawls’ remarks on political economy developed in TJ (§ 42).

12 It is important to note that there is a fundamental distinction, in Rawls’ conception of justice, between, on one side, personal property, to be fully protected under the heading of basic liberties and justified as one of the material requirements of personal independency, and, on the other, the ownership of the means of production and natural resources, to be decided according to the most adequate background justice. See TJ, 274 and JaF, 114.

13 Rawls (1999; 137 – 138).

14 Rawls (1999; 137 and 140).

15 Harman (1965).

16 TJ, 274; JaF, 138-139.

17 For instance, only auxiliary reasons (*e. g.* transitional costs and motivational restraints) empirically informed by local traditions and prevailed expectations could settle the balance among different ownership systems.



Now, the argument is also open-ended in regard to its outcome insofar as it allows inclusions of new regimes on the list (the inclusion of LFC and WSC on the list between *TJ* and *JaF* are two examples of this) or allows further rehabilitations of the set of given regimes under a new light. In this sense the inferential choice among just economic institutions converges with the basic contractualist claim according to which a right or just outcome is justified as the most reasonable alternative from the point of view of informed, non-coerced agreement between free and equal agents.<sup>[18] [19]</sup>

The argumentative core for selecting POD as the only capitalist economic system compatible with the Two Principles of justice is that:

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

While in a WSC regime, by contrast,

[the economic system] permits a small class [the owners of productive assets] to have a near monopoly of the means of production. [WSC] *aim* is that none [citizen] should fall below a decent minimum standard of life, one in which their basic needs are met, and all should receive certain protections against accident and misfortune [...] The redistribution of income serves this purpose when, at the end of each period, those who need assistance can be identified.<sup>[20]</sup>

There are at least three distinctive objections at stake in regarding the normative priority of POD over WSC regimes: (i) POD regimes equalize effective economic agency across society preventing economic disparities from undermining equality of social opportunities, (ii) mainly because of (i), it indirectly forecloses the possibility that an elite of owners seize representative institutions up insulating their interests from deliberative politics, and (iii), alongside their high rates of wealth inequality, WSC regimes tend to carry out social benefits based on peoples' direct needs which, in turn, endanger the equal standing of democratic citizenship democratic

18 See, *TJ* (§ 20 and 87) for the essentially comparative account in choosing different conceptions of justice and Scanlon (1982) for an overall account of contractualism as a moral theory.

19 Of course, all that have been said so far could justify a reexamination of other rejected alternatives as LFC, for instance. To my mind, John Tomasi's work is as an attempt to provide a more reasonable foundations for free market regimes in a slightly similar way (Tomasi, 2013). However, so little expectations about free-market institutions bringing up justice have I that I concede this possibility merely as a conceptual point.

20 *JaF*, 139 (emphasis added).

citizens?<sup>[21]</sup> For the sake of simplicity I will recast these objections into two distinctive clusters, a positive thesis based on POD's equalizing effects over power and economic concentration (reasons (i) and (ii) or capital concentration), and a negative one, based on WSC's stigmatizing effects on the self-respect of the economically worst-off (reason (iii) or stigmatization).

*Capital Concentration.* It seems unquestionable that capital can remain very concentrated in the hands of a few families, say the upper 1%, even when income redistribution and universal public services are being fully provided by means of tax-and-transfer mechanisms. In fact, capital ownership has always been extremely concentrated in industrial societies over the last two centuries even in societies that are relatively egalitarian regarding income. As economists Thomas Piketty and Emmanuel Saez have recently put, “the very *notion* of capital is fairly abstract for large segments – if not the majority – of the population [in contemporary democracies]”.<sup>[22]</sup> The most obvious consequence of holding capital is, of course, extracting income from it. However, disregarding direct benefits from profit and rent, holding a relative large amount of capital, such as real state and productive assets, provides other important resources such as financial security and social independence in the long-run and the exclusive right to have a say on important productive decisions.

First of all, from the point of view of the two principles of justice, the concentration of capital is an obstacle to a more substantive interpretation of the principle of equality of opportunities, radically altering the life prospects of non-owners or non-heirs. As Thomas Scanlon has defined it, a substantive principle of equality of opportunities, “requires not only unbiased selection” among competitors for social positions, “but also the provision to all of the resources necessary for talented individuals to become good candidates”.<sup>[23]</sup> Growing up among a minor social group who owns the greater part of national wealth is a privileged starting point indeed. Second, capital concentration is inclined to bring about two kinds of political domination: one in regard to representative politics and another in regard to the direct impact of control over economic decision.<sup>[24]</sup> The expensive cost

21 Here I follow O'Neill (2012; 77-78).

22 Piketty & Saez (2014; 839). In spite of being moderate egalitarian countries concerning incomes, countries such as France and Sweden can be extremely unequal concerning wealth, with more than 60% of the national wealth going to the top 1%. For highly unequal countries in general the range of appropriation is astronomic going up to 80% or more. See Piketty (2014; esp. part III) for an elucidative account of these comparative findings.

23 Scanlon (2013; Lecture 3); see, also, *JaF*, 43 – 44.

24 What Rawls calls “the fair value of political liberties”, *JaF*, 148-149.



of candidacies and lobbying in contemporary democratic elections makes stocks of money a highly valuable resource, not only because owners tend to have more income and time to expend in politics but also because policy-making is a long-term risky investment, unequally open for all.<sup>[25]</sup> It can also threaten the effective value of democratic rights when property-owners are able to impose indirect political restrictions on democratic decisions through economic sanctions or, unilaterally, instigate capital flight as a veto for non-desirable outcomes. As political scientist Adam Przeworski used to put it, concerning productive political decisions capital owners vote on every day.<sup>[26]</sup>

It is important to bear in mind that the Rawlsian argument cuts in both sides, that is, the benefits of owning capital holds equally against non-owners and public authorities as well. This point is part of the original Meade's account of POD societies: in regard conventional capitalist regimes, an owner can act independently from his or her employee ("snap his fingers at them" according to Meade) but also from those responsible for providing public goods, such as education, transportation, healthy neighborhoods and security.<sup>[27]</sup> A POD regime, by contrast, could "ensure the widespread ownership of productive assets and human capital [...] at the beginning of each period, all this against a backdrop of fair equality of opportunities".<sup>[28]</sup>

*Stigmatization.* Now, the second (negative) thesis holds that not only do WSC regimes lack efficient mechanisms to cope with large concentrations of capital but also that WSC's very *aim* is misleading regarding citizens' status as equal and free agents. Because social justice in WSC is carried out through the idea of a social minimum, *i.e.* a level of material resources beneath which no member of society is allowed to live without public assistance, it has harmful consequences for citizens' sense of self-respect as equal in standing and, therefore, for the stability of just institutional arrangements across time. As a matter of fact, no aspect of welfare

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25 The last Oxfam Annual report illustrates this well-known fact about democratic politics. In 2013, firms from the financial sector alone expend more than \$ 400 million on lobbying against taxation and market regulation and, during the 2012 campaigns, companies of this sector had expend almost \$ 600 million in electoral contributions, being "the largest (single) source of campaign contributions to federal candidates and parties" (Oxfam Report: Wealth: Having it all and Wanting more, 2015).

26 Cf. Przeworski (1985; 139): "Capitalists are thus in a unique position in a capitalist system: they represent future universal interests while interests of all other groups appear as particularistic and hence inimical of future development".

27 Meade (1964; 41).

28 *JaF*; 139.

politics has taken a more preeminent role in philosophical literature than the potential social stigma generated by poverty-relief programs.<sup>[29]</sup> Social stigmatization is brought about when public institutions should single out a class of persons - the “truly needy” - among the whole set of citizens, normally by means of intrusive bureaucracy, making the group the object of, using Rawls’ own words, “our charity and compassion” instead of our reciprocal respect as equals.<sup>[30]</sup>

The basic rationale behind stigmatization can be stated as follows. As soon as a need-based poverty-line is established, questions regarding who counts as beneficiary and what needs are to be fulfilled have to be debated and decisions must be publicly settled by all. Indeed, there are many different reasons for adopting social minimum policies, being humanitarian concern about the basic needs of a decent life the most common one. However, from an egalitarian point of view the justification of distributive mechanisms are to be understood as enabling free and autonomous moral agency for all. Nobody should live without the basic material components for an *autonomous* life – something more demanding than decency only. Now, because it is common knowledge that there is a set of citizens who lack the material bases for a fully autonomous agency, it turns out that they happen to *depend on* others’ will - in this case the political society as a whole - a kind of relation which fulfills the very definition of social domination. Citizens’ status as equal autonomous agents is a positional good by excellence. Trying to achieve it directly by absolute need-based provisions turns out to be a self-defeating political argument: the intended goal (autonomy) is undermined by its own side-effects (economic dependency).<sup>[31]</sup> It is important to keep in mind that stigmatization takes place regardless of the amount of distributed income envisaged. Even a robust welfare system can impair people’s inner sense of respect and outer social relations among equals.

## 2. Minima and Maxima<sup>[32]</sup>

In spite of Rawls’ convincing two arguments for POD regimes over conventional welfare arrangements, I believe that there are at least two important caveats to be made regarding the selection of economic systems.

29 See Rothstein (1998), for a good account of the literature.

30 JaF; 139.

31 Elster (1983; 91-92).

32 I thank Bru Lain Escandell for a clarifying discussion on the content of this section.

Contemporary welfare-states differ greatly both in size and nature. An accurate picture of the matter demands more than a normative theory could deliver. There is a wide range of distinctive models of welfare politics and their respective mechanisms are quite different from each other.<sup>[33]</sup> However, following other authors<sup>[34]</sup>, I would like to point out that the WSC ideal description provided by Rawls does not attend to a basic, but necessary, distinction regarding the scope of welfare institutions. Need-based social security systems must be distinguished from universal, right-based, provision of high quality public services for *all* citizens, including high-incomers.<sup>[35]</sup> While the former fits appropriately the aim ascribed by Rawls' argument, it is possible to state that the latter has a different moral logic underpinning its institutions and, because of that, the system as a whole presents a different institutional aim. While matters of aim address the question of systems' distributive goals and contents, matters of scope address the question of how inclusive their institutions are. In a right-based welfare system public high quality services are effectively open to all citizens, regardless of their respective socioeconomic background and particular conceptions of good. Its justificatory dimension is grounded on the principle that the aim of just social arrangements is to secure people's equal standing regarding both their life prospects and the resources for taking part, as autonomous agents, in the political life. Once everyone is to live under the same institutional arrangement, and *this fact* is part of citizens' common knowledge about social institutions, problems of stigmatization and paternalism are expected to decrease substantially. As was put by Bo Rothstein, in a universal welfare system the crucial question is not what to do about *they*, the poor or the truly needy, but what *we*, as free and equal citizens, should do about our common institutional problems.<sup>[36]</sup>

It is important to note that begging the question of the *scope* of social institutions is a problem not only for WSC institutions but also for POD's as well. In fact, this is a distinction to be made for any system of background institutions. In a weak version of POD, the wealth dispersion is designed by public policies focused not on *every* citizen but mainly on those already slightly wealthier than the worst-offs, a property middle-class for instance, by means of subsidized real estate buying, compulsory household saving or through conventional shareholding politics among blue-collar workers. It's

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33 See Esping-Andersen (1990) for one well-established classification among political scientists.

34 O'Neill (2012) and Jackson (2012).

35 I took the distinction from Bo Rothstein (2002).

36 Rothstein (2002; 160).

quite easy to show how a weak version of the predistributive ideal is going to fall short of egalitarian standards of justice: the fair equality of opportunity of the non-owners would remain the same (or get even worse if direct access to capital were envisaged to replace, rather than complement, conventional welfare institutions).<sup>[37]</sup> Conditionalizing capital subsidies to household criteria or because they would be attached to conventional paid work would work to enforce two of the most unjust barriers imposed by selective welfare institutions in our actual societies.<sup>[38]</sup> It follows that a strong POD regime is the only normative option available, a regime in which every citizen would hold some amount of property. Not to mention that even if universal capital grants are secured, a strong POD regime would have to rely also on *redistributive* institutions as long as human capital formation is to be achieved fairly and, as we see, rights-based welfare institutions are the only non-stigmatizing way to do it.<sup>[39]</sup>

For now, I will leave aside the negative thesis on WSC's to carry out a different argument. Besides eventual mischaracterizations on WSC's scope and aim it is clear that welfare intuitions have problems to make capital concentration fairer. Although this analysis seems correct for actual versions of welfare states I believe that nothing prevents us from conceiving a more equalizing distributive arrangement for welfare institutions. If this is the case, then the contractualist comparison among economic regimes would have to admit a new regime to the list. By lack of a better name, I will call the set of redistributive institutions I have in mind as a *social maximum* regime. A regime in which the right to distributive fairness every citizen holds is carried out also by the recognition of a line of affluence (or a social maximum) above which no private economic concentration goes unchecked. Social maximum is the idea that there is a level of control over economic resources above which no private decisions can remain unaccountable.

This idea calls for further clarification. But as a starting point it is important to note that the concern about economic domination and legitimate ceilings over wealth concentration are important components of the contractualist and republican traditions. The most emblematic example is Rousseau when he says that: "as regards wealth, [...] no citizen should be rich enough to be able to buy another and none so poor that he has to sell

37 See White (2002) and Jackson (2012) for an account of how center-right parties in UK have endorsed POD policies in UK.

38 See, Williamson (2014; 226) for strong and weak versions of POD.

39 Rawls adds that "*human* as well as real capital" is crucial for POD. *JaF*, 140.

himself”.<sup>[40]</sup> Rawls himself has endorsed a similar view concerning concentration of wealth: “the purpose of these [taxing] regulations is not to raise revenue (release resources to government) but gradually and continually to correct the distribution of wealth and to prevent the concentration of power”.<sup>[41]</sup> Politics of social maximum illustrate an important contractualist/republican insight that distributive justice cuts both ways and, from an institutional point of view, securing citizen’s autonomy implies supporting public provisions as well as imposing institutional checks against economic domination.

As it happens to the analogous idea of social minimum, the idea of a social maximum can be conceived in quite different ways not all being equally morally legitimate or economically desirable. The basic idea behind it, though, is compelling for our current discussion: in a capitalist society, *i.e.* one in which the control over productive assets and natural resources is established by the legal framework of private ownership, and, in a WSC, the access to it is highly selective, the concentration of capital must be checked by a set of procedural democratic institutions under the risk of the very idea of democratic standing falling prey to the privileges extracted from this monopoly. The two most important features of a social maximum regime are located in tax structure and sharing-authority mechanism.

First of all, a highly progressive taxation on *total* income, that is, from labor and wealth incomes, is justified due to its obvious redistributive consequences supporting public inclusive institutions for all. However, tax progression is justified also due to its consequences for capital transparency and intergenerational fairness. The first reason why it is so difficult to cope with increasing capital concentration is caused by its “opaqueness” in regard to public debate. To get a minimally accurate picture of total income distribution is a hard collective enterprise and even symbolic tax rates on top marginal total incomes can help to get a clearer picture of it. Furthermore, progressive tax rates upon receiver’s end can be a poor way to improve revenues but it certainly is a powerful tool for creating the right sort of incentives against undesirable wealth concentration.<sup>[42]</sup>

40 Rousseau (1993;87). See, also, Neuhouser (2013) for an illuminating account of the Rousseau’s critique of economic inequality. According to Neuhouser it is possible to find out two sorts of criticism in Rousseau’s theory, one related with equal freedom and another with communitarian well-being. As I intend to show below only the former is compatible with a Rawlsian account of the social maximum.

41 TJ; 277. See, also, Rawls remarks on Rousseau’s idea of equal citizenship in JaF; 132.

42 Piketty (2014; 640 ft. 51): “progressive tax plays two very distinctive roles [...]: confiscatory rates on the order of 80-90 percent on the top 0.5 or 1 percent of distribution) would end inde-

Secondly, widening the opportunities to have a say regarding the means of production is a necessary feature of a social maximum politics. It is argued that the accumulation of capital itself can be a necessary condition for capitalist economic production.<sup>[43]</sup> It is also argued that it is far from clear if after a wide dispersion of capital across society the amount of investment left would be enough to keep important capital-intensive sectors of the economy working smoothly.<sup>[44]</sup> Alternatively, maybe there is simply no way to legislate over ownership distribution in ordinary representative politics without a serious threat of institutional disruption. Problems as these ones deal much more with the *ownership* of capital rather than its *control*. Owning something is not the only way to exercise control over it. The right to control or having a say on important economic decisions is a quite different matter. Two kinds of participation in the means of production and natural resources would be essential for making capital concentration more compatible with democracy. Sharing economic authority with relevant agents, such as workers, local communities, technical associations, and civil societies' spokespersons can be a direct restraint on unilateral resolutions. It is quite probable that not every single citizen would happen to fulfill this role, and new kinds of distinctions and segregations would emerge from these power structures as well. This fact justifies indirect forms of participation alongside direct ones. Besides fiscal transparency and financial regulation, another powerful indirect instrument would be citizen's funds raised up from environmental taxes and royalties from natural resources' exploration.

Still, there are several reasonable objections to the idea of social maximum. Three sets of objections against it seem to be crucial for the idea success: (i) objections based on matters of economic efficiency, (ii) objections based on matters of political legitimacy, and, finally, (iii) objections based on justice.<sup>[45]</sup> Providing a conclusive answer to all of them is far beyond

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cent and useless compensation, while high but nonconfiscatory rates (of 50-60 percent on the top 5 or 10 percent) would raise revenues to finance the social state above the revenues coming from the bottom 90 percent of the distribution”.

43 Przeworski (1986).

44 I thank Rolf Kuntz for drawing my attention to this fact.

45 The common conservative complaint against the institution of taxation *itself*, as a kind of “governmental theft”, shall not to be considered here. This kind of complaint tends to reject the very idea behind tax-systems and because of that they tend to reject also any kind collective distribution- including need-based distribution. Because all the egalitarian views under question here take need-based distribution for granted, the theft objection is not a *reasonable* objection against the social maximum. Being said that, (iii), the unfair-objection, can be read as a soft version of the theft-objection.



the scope of the paper - and the abilities of the author. In spite of that, I will attempt to present some guidelines for answering them based on how I think these three objections could be overcome.

*Efficiency-objection.* Objections against heavy tax progressivity and rights to participation in capital's decisions based on economic efficiency count as the most direct and easily found ones in political debate. All the same, they usually are the least compelling objections. The first thing to note in this case is that as the objection tends to be put forward in conventional debates, it takes for granted unrestrained economic growth as the genuine *meaning* of efficiency. It is far from clear that it is so from the moral point of view, since its premises hold upon the economic induction of low-paid workers with the prospect of unemployment and loss of standard of living. That being said, worries about the overall efficiency of redistributive schemes must be acknowledged in a democratic society especially to the extent that they collide against other equally legitimate concerns such as stability in the long run and overall welfare.

The first problem with progressive taxation is that it is bound to adversely affect individual economic decisions such as the incentive to work and save and, maybe most important, the decision to take risks. However, if on one hand the rewards paid by strenuous efforts and acclaimed novelties tend to be low, it is also true that, on the other hand, in a universal welfare system risk-taking decisions are much less harshly punished than in a free-market society. In addition, the range of social innovations is more diverse as well: efforts and social improvements in non-marketable activities, such as pure science, environment and care-taking can be in principle more rather than less stimulated (maybe this fact helps to explain why some actual non-selective welfare states have higher work productivity *per capita*).

Part of the difficulties in regarding a heavy-burdening tax system can be overcome shifting from income taxation to *total* income taxation. The social maximum is better understood when both kinds of economic resources, income and wealth, are taken into account with their respective particularities. Each dimension of the total amount of economic resource owned by an individual holds specific incentives and disincentives. For instance, the very meritocratic argument against raising taxes upon productive high-incomers can be used against high concentration of wealth from inheritance and donations (people are supposed to *earn* their rewards throughout life) and, when applied on the receiver's end, certainly would discourage unproductive rent-seeking behavior among the non-working

rich.<sup>[46]</sup> It is difficult to fit the bill regarding claims of inefficiency – in part because it is hard to figure out what would count as a good answer to begin with. Economic efficiency is, from an egalitarian point of view, a permanent or on-going challenge rather than an all-or-nothing objection to any distributive system.

*Legitimacy-objection.* The idea of social maximum must not be conceived as a sort of punishment against high-incomers. Nor as an arbitrary persecution against one particular style of life – let’s say, the “filthy rich”. In a liberal society public coercion cannot be used to persecute or oppress reasonable ways of life based solely on their intrinsic moral value. Would the reasons behind a social maximum go against the liberal requirement of legitimacy? A reasonable notion of social maximum must accept that there is nothing intrinsically wrong with aspirations of being *richer than* others. The point is a matter of justifying expectations under the prospects of just institutions: if one wants to exercise unusual economic power over others, one must be willing to carry out also the fair burdens of one’s choice. Running away from them (as some top-incomers do when promoting capital flight or running to international tax havens) must be understood as an illegitimate plan of life.

By contrast, I believe that the legitimacy objection would be right if the reasons for justifying a social maximum regime were based on communitarian values. It is widely accepted that unequal economic societies present some undesirable consequences on collective well-being. For instance, segregation and social strife between owners and non-owners are more likely to happen in unequal societies than on egalitarian ones.<sup>[47]</sup> According to this line of thought, collective harms caused by inequality can be tracked down to the permanent feeling of economic insecurity or cross-class envy and resentment caused by the desire to be an “economic winner”. Based on such considerations it can be plausible to advance forms of egalitarian arguments in which the very desire of being filthy-rich would be a threat to social cohesion. What is aimed in this case is not exactly a more equal society but a more homogenous one regarding citizens’ economic expectations. And, because of that, the potential values attached into a life-style of wealth should be discouraged by an official virtue of economic humbleness or the symbolic exhortations of the average citizen.<sup>[48]</sup>

46 This argument has been put forward, among others, by Stiglitz (2012) and Piketty (2014; cap. 11).

47 See Pickett & Wilkinson (2010) for some cross-national comparisons.

48 In general terms, this seems to be an important part of the Rousseauian objection against economic inequality. See, Neuhauser (2013). In this kind of arguments it seems that the

None of this happens with a legitimate social maximum though. If economic institutions cannot foreclose what people want, in a society in which a social maximum holds being a filthy-rich would be a more difficult business. The desire to carry a life of luxury and economic privileges is neither an unreasonable choice nor something to be blame for by public institutions. However, enjoying the benefits of this decision must be fairly weighed against the demands of equal citizenship and, particularly, against the prevailing structure of inequality. Because a social maximum is designed in a procedural way the more just a society is the less common a filthy-rich ethos is expected to occur in the long run. <sup>[49]</sup>

*Justice-objection.* Even if social maximum is an efficient and a politically legitimate social institution, it remains an open question whether it is a fair one. Progressive taxation on total-income and shared control over capital imposes heavier burdens on the top of distribution and, considering the promises of free-market societies, this could be seen as unfair. Conservative contractualists, such as James Buchanan and Jan Narveson, have developed strong moral objections against tax progression – not to mention legitimate confiscatory marginal top tax rates. <sup>[50]</sup> One way to understand such objections is the following: because high-incomers, normally assumed also to be naturally higher-productivity individuals (something very questionable concerning intergenerational income transmissions), would be strongly penalized under social maximum institutions. In fact, the very principle of reciprocity secured by the Rawlsian second principle of justice would not hold since high-incomers would have never chosen, and are not ready to commit themselves with, such terms of social cooperation.

Does social maximum foreclose social reciprocity between high and low incomers? Concerning the overall contractualist justificatory framework the argument is true. Principles of justice should be justified from the perspective of all and, in this respect, the interests of the well-off are as important as anyone else's. <sup>[51]</sup> The very aim of the Difference Principle can be conceived as a way to justify the lowest acceptable economic position for all. What would be the minimal economic conditions *you* would be ready to live without endangering your self-respect as an equal? <sup>[52]</sup> If high-

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operative reason is equality as social homogeneity than equality as fair terms of social cooperation.

49 I thank António Baptista for helping me to clarify this point.

50 Buchanan (1984; 108-110); Naverson (2002; 15-16).

51 TJ, 102-104.

52 See, Cohen (1986;740-741).

incomers can be understood as the more talented or skilled citizens (again, something that I will assume just for the sake of the argument) and, if upper economic positions are to be fulfilled according to the principle of equality of opportunities, it seems unfair to rule out such positions arbitrarily. Note also that the mere fact that high-incomers would earn merely more is not a convincing counter-argument because the point here is that they want to earn relatively to their productivity potential, not only relatively more.

The first thing to be said against this objection is that absolute ceilings on individual wealth seem unreasonable indeed. The affluence line required by the idea of social maximum cannot, in contrast to conventional social minimum thresholds, be established by absolute standards - let's say, the amount of income beyond which consumption is "excessive". The aim of social maximum is not to punish excessive capital concentration just for the sake of equality. A fair affluence line must be settled based not on how much people have *per se*, but on how much they have given the society they live in. Because the case against capital concentration relies on a positional conception of political freedom and social opportunities, it is to be expected that the normative threshold for a social maximum has a relative nature as well. Two ways of setting relative limits are (i) by fractioning incomes in percentiles (*e. g.* the upper 1% or 0.1%) or, maybe even more adequate, considering that these percentiles can be somewhat arbitrary, or (ii) by establishing a line that specifies the accumulated economic resources necessary for the eradication of poverty.<sup>[53]</sup> No absolute limits of economic resources established and no fixed economic positions are ruled out. The important fact here is that because, on one hand, unequal income structure is unavoidable in a capitalist society and, on the other, it is necessary to take into account the deep impact that economic stratification has over peoples' life prospect, the overall income structure must work to impose heavier tax burdens and participatory obligations upon the upper shares. What a relative social maximum does is to make economic positions more costly along the income structure: the more unequal a society is the more economic and political responsibility top economic positions will have. Following the reciprocity criteria proposed by Rawls, this requirement "seems to be a fair basis on which those better endowed [...] could expect others to collaborate with them"<sup>[54]</sup>.

53 See, for instance, the efforts made by Marcelo Medeiros to construct affluence lines in relation to given poverty lines (2006). As Medeiros argues, in this sense, a relative affluence line is also an "anti-poverty" line.

54 TJ; 103.

In spite of its undeniable conceptual oddness and the dire technological challenges it imposes on social institutions, the idea of social maximum is the natural extension of rights-based welfare institutions, at least from a political egalitarian point of view. An institutional, relative, and total-income-based social maximum would work to protect citizen's basic claims as equal participants in social cooperation without challenging the basic tenets of a capitalist economy. If this claim holds, then social maximum regimes will have a second stance against PODs.

### 3. Conclusion

It remains an open question whether actual welfare systems would be able to cope with the demands of a just society or not. The most we can safely say by now is that without making private control over economic resources fairer between individuals and more accountable to democratic politics - either by predistributive mechanisms or by social maximum politics (or probably both) - it seems that they will not. Having said that, however, I can see no reason why a strong form of POD would be an intrinsically better solution than right-based welfare institutions and social maximum thresholds for achieving social justice. From a political egalitarian point of view, as I tried to show, this is a matter of scope, rather than essence, and opportunity, rather than necessity.

It may appear that, at the end of the day, the arguments provided so far brought us to a somewhat disappointing conclusion. After all, it is widely accepted that the Difference Principle defended by Rawls requires considerable restraints on a person's income and wealth. Nevertheless, the politics of redistribution, on one hand, and arguments for a legitimate social maximum, on the other, represent two distinctive ways to provide a feasible institutional interpretation of the most important claim made by political egalitarians: that being economically worse off in a capitalist society is as potentially dangerous for the effective exercise of our democratic rights as being absolutely poor. Both relations can entail forms of social domination and procedural unfairness. Being free and carrying a dignified life is always a relative problem concerning citizen's equal status rather than the mere lack of something. If political egalitarians have reasons based on rights for establishing welfare institutions, they will accept the idea of social maximum institutions as a consequent one.

However, as it happens with mechanisms against minimum floors as well, it is always hard (and potentially wrong) to decide on pure philosophi-

cal grounds which social maximum parameters are the most suitable for each society. Particular historical processes, on one hand, and specific socio-economic conditions, on the other, have a role to play in our final decision and there is little room here for philosophical arguments outside deliberative politics. It is reasonable to assume, nevertheless, that democratic checks on private wealth and a more balanced dispersion of incomes along the social structure stand out as valuable social institutions against distributive inequality as much as POD mechanisms. In my view, the proper justification of social maximum institutions has the benefit of guiding egalitarian thought safely through one of its most dangerous pitfalls: watering down the right to distributive fairness, a powerful theory of social transformation, into a humanitarian but non-political claim about people's needs.

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[Submetido em 13 de Agosto de 2015, re-submetido em 30 de Agosto de 2015 e aceite para publicação em 4 de Setembro de 2015]