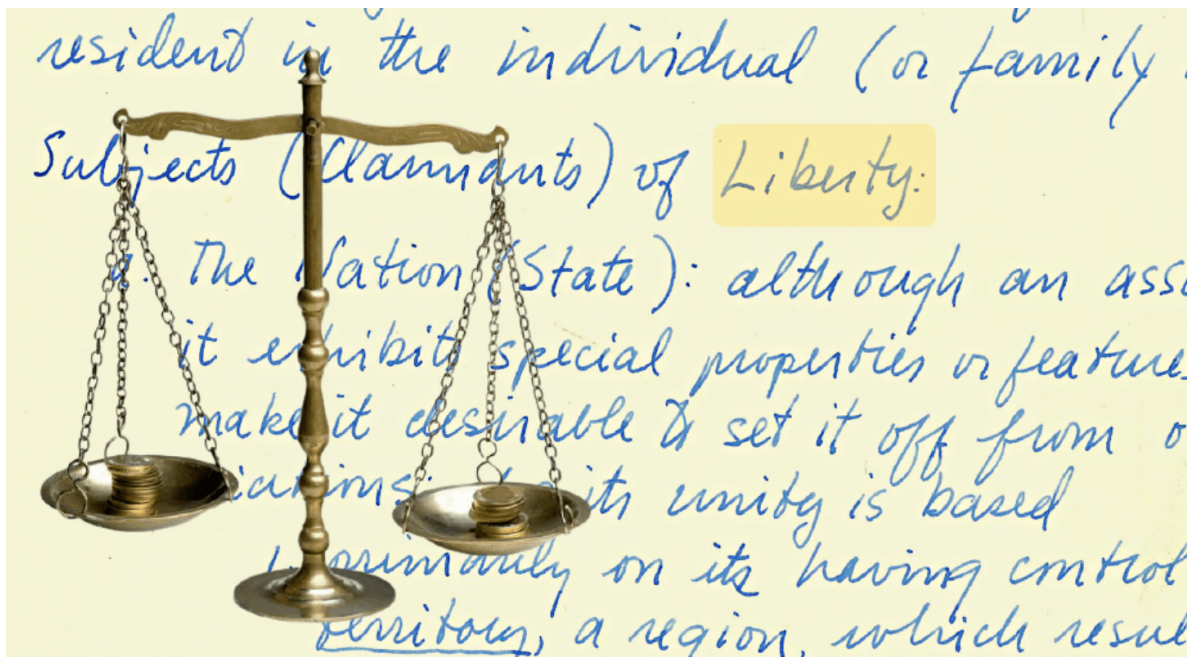


THE ORIGINAL POSITION AND PRINCIPLES OF JUSTICE

# Rawls and the Democratic Socialism

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Manuscript from the [John Rawls Papers](#) (Harvard University Archives). Graphic design: Maria Oliva Campabadal (CETC).

## The democratic rule of law

The first sentence of the first paragraph of the first article of the Spanish Constitution reads like this: 'Spain is hereby established as a social and democratic state...'. This statement is not unrelated to the immense influence of a book written by Elías Díaz [1] at the end of the Franco regime, which implicitly argued, without ever naming Spain —had it done so, it would have been censored—, that Spain was not a state subject to the rule of law. But the book also put forward a defence of the ideal of a state subject to democratic rule of law, seen as an improvement on the social state. Elías Díaz put it like this:

«The democratic rule of law appears in this perspective as a genuine improvement on the social rule of law. This is not to imply, however, that the latter necessarily leads to the former; on the contrary, in general, it seems to be more of an obstacle to it. Neo-capitalism does not 'naturally' evolve into socialism; social rule of

law does not ‘naturally’ evolve to become democratic rule of law. The superficial and apparent ‘socialisation’ that neo-capitalism produces is not socialism; nor is democracy achieved simply by implementing ‘democratisation’; from one level to another (and I must insist on this), there is a qualitative and real leap of the first order [note omitted].»

Díaz, E. (1966-1979) *Estado de Derecho y sociedad democrática*, 7ª ed. 1979. Madrid: Editorial Cuadernos para el Diálogo.

In this brief contribution to the celebration of John Rawls’ centenary and the fiftieth anniversary of his *capolavoro*, *A Theory of Justice* [2], I will try to prove that an idea very similar to this was defended by the great, already classic, Harvard philosopher.

After *A Theory of Justice*, Rawls’ two outstanding further contributions were, I believe, his argument that to guarantee stability, political systems must take *the fact of pluralism* [3] into account and, therefore, withdraw the most comprehensive aspects of justice as fairness to allow an overlapping consensus between reasonable doctrines and their attempt to build a reasonable utopia for *global justice* [4]. However, there is a third change to which less attention has been paid [5]: Rawls’ insistence that the Welfare State cannot conform to the two principles of *justice as fairness* [6]. And it is relevant because many authors have argued that Rawls’ doctrine is, in point of fact, the justification of the capitalist welfare state. Furthermore, he is occasionally regarded (for example, Leiter) as an apologist for bourgeois ideology and the capitalist model:

«While Rawls, [...], adopted intuitions that have consequences for the political and social economy of capitalist societies, his theory was never presented or understood as a threat to capitalist relations of production, a fact undoubtedly central to any explanation of how he could become so influential in capitalist democracies, or their universities, at least».

Leiter, B. (2015) *Why Marxism Still Does Not Need Normative Theory*. *Analyse & Kritik* 37 (1-2), 23-50.

Rawls insist that the Welfare State cannot conform to the two principles of justice as fairness

It is precisely this point of view, widely accepted by many, that I want to discuss in order to show, hand in hand with Rawls himself, that he fails to faithfully reproduce the consequences of *justice as fairness* for the economic model of a well-ordered society.

## *Adversus Pelagianos*

I'm going to start somewhat orthogonally, which I apologise for in advance (although I believe I will be able to demonstrate the relevance of doing so), with Rawls' recently published writings on religion.

In 2009, Thomas Nagel edited what had been, in 1942, the degree thesis of the young John Rawls at Princeton University; to it, he added an unpublished text written by Rawls in 1997, shortly before his death, 'On My Religion' [7]. In this text, Rawls explains how religion was enormously important to him at Princeton and that he was even considering entering a seminary to become an Episcopalian pastor. But then World War II broke out, and he was called up to fight for the US Army in its conflict with Japan in the Philippines. He goes on to explain that around 1945, he abandoned his religious beliefs as a consequence of his time in the army and describes three events that affected him deeply [8]. Firstly, the sermon of an Anglican pastor who told them that God aimed the Americans' bullets at the Japanese and protected them from theirs. Secondly, the death of one of his best friends who had volunteered with him for a double mission whereby one had to participate in a reconnaissance of the Japanese position, and the other had to give blood to a wounded man. By chance, Rawls' blood was compatible, and his friend died on the mission [9]. Thirdly and most significantly, according to Rawls, was the knowledge, of which he had previously been completely unaware, of the monstrosities suffered by the Jewish people at the hands of the Nazis in the Holocaust.

In his thesis, Rawls [10] strongly criticised Pelagius' position that we can only achieve salvation through merit. Pelagius was that monk from Roman Britain, who at the beginning of the fifth century of our era, came in for bitter criticism from Augustine of Hippo, who ultimately succeeded in having his ideas declared heretical by the Catholic Church. Pelagius had a somewhat optimistic conception of human rationality and action, believing that humans are fully responsible for their actions and that, to use his religious language, salvation is ours to obtain. Augustine of Hippo was more pessimistic: he saw excessive boasting in that position, believing instead that human nature is 'violated, wounded, torn, ruined...' [11].

And Rawls, in his youthful work, sided with Augustine [12] 'There is no merit before God [...]. The authentic community does not count the merits of its members. Merit is a concept rooted in sin... '. But there are other passages in which Rawls foreshadows what will be a fundamental aspect of his theory of justice, for example:

«The human person, once perceiving that the Revelation of the Word is a condemnation of the self, casts away all thoughts of his own merit [...] The more he examines his life, the more he looks

into himself with complete honesty, the more clearly he perceives that what he has is a gift. Suppose he was an upright man in the eyes of society, then he will now say to himself: 'So you were an educated man, yes, but who paid for your education; so you were a good man and upright, yes, but who taught you your good manners and so provided you with good fortune that you did not need to steal; so you were a man of a loving disposition and not like the hard-hearted, yes, but who raised you in a good family, who showed you care and affection when you were young so that you would grow up to appreciate kindness —must you not admit that what you have, you have received? Then be thankful and cease your boasting—.»

Rawls, J. (2009) *A Brief Inquiry into the Meaning of Sin and Faith*, with 'On my Religion'. Ed by T. Nagel. Cambridge, Mass.: Harvard University Press, 240.

As Joshua Cohen and Thomas Nagel say in the introduction to this Rawls book:

«This brings us to a particularly striking continuity between this thesis and Rawls' later views: the rejection of merit. One of the famous and controversial assumptions in *A Theory of Justice* is that a just social order should not seek to distribute benefits on the basis of merit. Rawls is not interested in rejecting the ideal of the moral value of merit entirely, but he rejects its adequacy as a basis for determining how goods, or any other of people's titles, are distributed in a well-ordered society.»

Cohen, J., Nagel, T. (2009) 'Introduction' to Rawls, J. (2009) *A Brief Inquiry into the Meaning of Sin and Faith*, with 'On my Religion'. Ed by T. Nagel. Cambridge, Mass.: Harvard University Press, 18.

Rawls believes that merit should not be the measure of justice or the distribution of goods because our talents and capacities are the result of the natural lottery, and for this reason, they must be understood as 'common assets' [13]. In Rawls' mature theory, this most painful aspect of human nature is no longer remedied by divine grace but by sharing a common project under the principles of justice, and it is in this context that we develop our

rationality and autonomy. Therefore, justice as fairness must provide everyone with access to primary goods, especially the primary good of self-respect.

Rawls believes that merit should not be the measure of justice or the distribution of goods because our talents and capacities are the result of the natural lottery, and for this reason, they must be understood as 'common assets'

Recently, Michael Sandel [14] has also strongly criticised the conception of society founded on merit and underlined the Pelagian origins of this idea of human nature. There are, however, [15] those who consider that the doctrine of political liberalism is more in line with Pelagius' conception and are, therefore, more liberal, and they think that Rawls, consciously, betrays this legacy. My sympathies are with Rawls and, I'm afraid, with Augustine of Hippo. But a detailed analysis of all this will have to wait for another occasion. Nonetheless, this slight *detour* serves as a background for my explanation of Rawls' critique of capitalism.

## Rawls' critique of capitalism

As we know, Rawlsian theory says that a social order's adequacy for justice depends on the degree of compliance with two principles that rational human beings would choose in exceptional and hypothetical circumstances, which involve an absence of information about the particular characteristics of the society for which they are choosing the principles and the place that they have to occupy in it -the veil of ignorance-, circumstances that are known in theory as the *original position*. The two principles, in their most recent formulation, are the following:

«(First principle): Each person has an equal and irrevocable claim to a fully adequate scheme of equal basic liberties, which is compatible with the same scheme of liberties for all.

(Second principle): Social and economic inequalities are to satisfy two conditions: first, they need to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).

Rawls, J. (2001) Justice as Fairness. A Restatement. E. Kelly ed. Cambridge, Mass: Harvard University Press, 42-43 [\[16\]](#).

The sequence of the institutional design of a just society is as follows: The first stage consists of the original position in which the two principles of justice are chosen, constituting an independent standard by which to judge the adequacy of the subsequent stages. The second stage stipulates the constitutional norms that guarantee the principle of equal liberties for all. The third stage aims to establish the legislative rules in accordance with the principles of justice —once the rights entrenched in the second stage are respected. The decisions must comply with the second principle—. The fourth stage is the application of the general rules to individual cases by the enforcement bodies. Each one of these stages presupposes a progressive lifting of the veil of ignorance, which, on the one hand, allows the articulation of appropriate norms for each specific society and, on the other, allows this to be done fairly since the principles of justice must be respected in all the stages.

The Rawlsian theory says that a social order's adequacy for justice depends on the degree of compliance with two principles that rational human beings would choose in exceptional and hypothetical circumstances, which involve an absence of information about the particular characteristics of the society and their place in it

Thus, the priority of the first principle of justice over the second is reflected in the priority of the constitutional stage over the legislative stage [17]. According to Rawls, the constitutional stage guarantees the first principle, the basic liberties of individuals, protects freedom of conscience and thought, and ensures that the political process as a whole is a fair procedure. The second principle comes into play at the legislative stage, ensuring that the social and economic policies succeed in maximising the long-term expectations of the least favoured under conditions of fair equality of opportunity.

Although a social minimum providing for the basic needs of all citizens is «also an essential element and must be constitutionally guaranteed, what I have called the 'difference principle' is more demanding and is not» [18].

In regard to the difference principle, as we have seen, Rawls thinks that its control should be left to legislative activity. However, it's important to clarify that contrary to what is sometimes argued, Rawls' position on this (outlined in *Political Liberalism*) does not mean the author abandoned his egalitarian ideal in *Political Liberalism*, just that he took it upon himself to challenge it, arguing that he maintains the same egalitarian conception and adding: «I make this comment since some have thought that my working out the ideas of political liberalism meant giving up the egalitarian conception of *TJ*. I am not aware of any revision that implies such a change and think the surmise has no basis» [19].

Furthermore, in his later publications, there is what we could call a deepening of his

egalitarianism and his critique of capitalism. In *Justice as Fairness*, he distinguishes five models of society: *laissez-faire* capitalism, state socialism (the planned economy), the welfare state, the property-owning democracy [20] and democratic socialism. According to Rawls, only the property-owning democracy and democratic socialism are compatible with justice as fairness. What's more, in the preface to the French edition of *A Theory of Justice* (here in its second edition) he clearly explains how the idea that vindicates the property-owning democracy differs from that of the welfare state. Although both models allow private ownership of the means of production, the property-owning democracy tends to disperse the ownership of wealth and capital and thus prevents a small part of society from controlling the economy and, ultimately, political life as well. The property-owning democracy stops that from happening, not by redistributing income to those who have the least at the end of each period, so to speak, but by guaranteeing it from the start.

Thus, «the intent is not simply to assist those who lose out through accident and misfortune (although this must also be done), but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality» [21]. Also, in the preface to the second edition: «to see the force of the difference principle, it should be taken in the context of a property-owning democracy (or of a liberal socialist regime) and a welfare state: it is a principle of reciprocity, or of mutuality, for a society seen as a fair system of cooperation between free and equal citizens from one generation to the next» [22].

In Rawls' later publications, there is what we could call a deepening of his egalitarianism and his critique

In short, Rawls thinks that capitalism, as we know it, is incapable of accounting for fair liberties and reciprocity and cannot maintain the stability necessary for a well-ordered society because it requires a massive redistribution of wealth that capitalism cannot provide [23]. In fact, there are reasons to think that, in the end, his property-owning democracy and democratic socialism are two models destined to converge [24].

## REFERENCES

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- 2 — Rawls, J. (1971/1999) *A Theory of Justice*, 2a ed. de 1999. Cambridge, Mass.: Harvard University Press.
- 3 — Rawls, J. (1993) *Political Liberalism*. New York: Columbia University Press.
- 4 — Rawls, J. (1999) *The Law of Peoples with 'The Idea of a Public Reason Revisited'*. Cambridge, Mass.: Harvard University Press.

5 — Although the argument I'm making here has been made before by William A. Edmundson:

- Edmundson, W. A. (2017). *John Rawls: Reticent Socialist*. Cambridge: Cambridge University Press, 2-3.

6 — Rawls, J. (2001) *Justice as Fairness. A Restatement*. E. Kelly ed. Cambridge, Mass: Harvard University Press.

7 — Rawls, J. (2009) *A Brief Inquiry into the Meaning of Sin and Faith, with 'On my Religion'*. Ed by T. Nagel. Cambridge, Mass.: Harvard University Press.

8 — Ibídem, 262-263.

9 — To this biographical point, I must also add the fact that as a child and adolescent, two of his brothers died from diseases they caught from John. It's not hard to imagine how that would have influenced the Rawlsian idea of the natural lottery, see :

- Pogge, T. (2007) *John Rawls. His Life and Theory of Justice*, translated by Michelle Kosch. Oxford: Oxford University Press, 5-6.

10 — Rawls, J. (2009) *A Brief Inquiry into the Meaning of Sin and Faith, with 'On my Religion'*. Ed by T. Nagel. Cambridge, Mass.: Harvard University Press, 170-174, 229-230.

11 — «Quid tantum de naturae possibilitate praesumitur? Vulnerata, sauciata, vexata, perdita est», Augustinus Hipponensis (413-417) *De natura et gratia*. S. Aurelii Augustini Opera Omnia: Patrologiae Latinae [[Available on line](#)].

12 — See, for instance:

- Rawls, J. (2009) *A Brief Inquiry into the Meaning of Sin and Faith, with 'On my Religion'*. Ed. by T. Nagel. Cambridge, Mass.: Harvard University Press, 241.

13 — See:

- Rawls, J. (1999) *A Theory of Justice*, 2a ed. Cambridge, Mass.: Harvard University Press, sec. 48.

- Rawls, J. (2001) *Justice as Fairness. A Restatement*. E. Kelly ed. Cambridge, Mass: Harvard University Press, 72-73.

14 — Sandel, M. (2020) *The Tyranny of Merit: What's Become of the Common Good?* New York: Farrar, Straus and Giroux.

15 — See, for instance:

- Nelson, E. (2019) *The Theology of Liberalism: Political Philosophy and the Justice of God*. Cambridge, Mass: Harvard University Press.

16 — See also:

- Rawls, J. (1971/1999) *A Theory of Justice*, 2a ed. de 1999. Cambridge, Mass.: Harvard University Press, 60-61, 53.

- Ibídem, 302, 266.

17 — Ibídem, 199, 175.



- 18 — Rawls, J. (1993) *Political Liberalism*. New York: Columbia University Press, 228-229.

On the *social minimum* see also:

- Rawls, J. (1971/1999) *A Theory of Justice*, 2a ed. de 1999. Cambridge, Mass.: Harvard University Press, 276-277, 285-286, 316-318, 244-245, 252-252, 278-280.
- 19 — Rawls, J. (1993) *Political Liberalism*. New York: Columbia University Press, 7 nota 6.
- 20 — The term, as Rawls advises us, comes from the economist J.E. Meade.
- 21 — Rawls, J. (2001) *Justice as Fairness. A Restatement*. E. Kelly ed. Cambridge, Mass: Harvard University Press, 139.
- 22 — It is possible that if Rawls had taken into account a well-known study on the three models of the welfare state —liberal, conservative corporatist, and social-democratic — (Esping-Andersen, G. (1990) *The Three Models of Welfare Capitalism*. Cambridge: Polity Press) he could have argued that his model of the welfare state is a liberal one and that, by contrast, the social-democratic model is closer to the property-owning democracy, a peculiar fusion (according to its taxonomist) of liberalism and socialism. On this idea, see

- O'Neill, M. (2012) Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy, A O'Neill, M., Williamson, T. (eds.) *Property-Owning Democracy. Rawls and Beyond*. Oxford: Willey-Blackwell, 91.

- Schemmel, C., (2015) How (not) to Criticise the Welfare State. *Journal of Applied Philosophy*.

More about the property-owning democracy can be found in:

- Freeman, S. (2013) Property-Owning Democracy and the Difference Principle. *Analyse und Kritik*, 35: 9-36.
- Queralt, J. (2013) The Place of the Market in a Rawlsian Economy. *Analyse& Kritik*, 35: 121-140.
- 23 — On taxation policy, Rawls is a supporter of significant inheritance and gift taxes but appears to prefer indirect taxes on spending over direct and proportional taxes on income. See:
  - Rawls, J. (2001) *Justice as Fairness. A Restatement*. Kelly, E. ed. Cambridge, Mass: Harvard University Press, 161.

24 — See:

- Edmundson, W. A. (2017) *John Rawls: Reticent Socialist*. Cambridge: Cambridge University Press.
- O'Neill, M. (2012) Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy, A O'Neill, M., Williamson, T. (eds.) *Property-Owning Democracy. Rawls and Beyond*. Oxford: Willey-Blackwell.



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