

POLITICAL LIBERALISM AND PROPERTY- -OWNING DEMOCRACY IN CONTEMPORARY CAPITALISM

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Introduction

In the political conception of justice developed by John Rawls, the emphasis is on reaching a political consensus amongst heterogeneous moral views, a consensus where the more basic elements of a social contract are respected, within a liberal framework (Rawls, 1993). This political consensus cannot be a comprehensive view, as in a moral (as opposed to political) conception of justice. Quite the contrary, it must be sufficiently broad in order to accommodate different comprehensive moral views within a political consensus.

The political conception of justice has an attractive feature, namely the fact that it seems to point toward the possibility of a tolerant society, in which different comprehensive moral views are accepted. In order to achieve a political consensus amongst heterogeneous moral views, political liberalism presupposes a separation between a public sphere, where a consensus must exist concerning laws that must be applicable to everyone, and a private sphere where each one has discretion for adopting heterogeneous views. In the political conception of justice, justice addresses the public sphere, and its subject is the basic structure of society, constituted by the major social institutions that distribute fundamental rights and duties and determine the division of the advantages of social cooperation (Rawls, 1971, 6-7).

There are, however, great difficulties in accommodating the modern corporation of contemporary capitalism within the Rawlsian conception of justice. It is clear that corporations influence greatly the division

of the advantages of social cooperation, and hence meet the criterion for being a part of the basic structure of society (Martins, 2017). But it is not clear how modern corporations fit into the liberal distinction between public and private, presupposed in Rawls's idea of a political consensus (Singer, 2015). If the corporation is seen as a private association, rather than a public institution, it would not fit into the basic structure of society after all, despite its great influence on the division of the advantages of social cooperation.

This problem is greatly amplified by Rawls's emphasis on characterizing just institutions in a well-ordered society, understood as a society where a shared sense of justice exists, thus enabling the existence of a system of law that respects human rights and moral obligations connected to such a shared sense of justice. Such an emphasis leads to the neglect of what Rawls (1999) calls *burdened societies*, which are prevented from achieving a well-ordered regime due to historical, social and economic conditions. But since the same corporation can operate simultaneously on well-ordered societies and on *burdened societies*, it becomes difficult to maintain a focus on ideal conditions only. This is connected to what Amartya Sen (2009) sees as Rawls's *transcendental institutionalism*, that is, a focus on ideal institutions, rather than actually existing institutions.

Thus, the attractive features of a political conception of justice seem to vanish once the modern corporation is brought into the picture. The political conception of justice is attractive because it seems to provide a promising route for accommodating heterogeneous views, which would make it particularly suitable for addressing justice in a global world where many different comprehensive views exist. But the way in which those heterogeneous views are accommodated leads to the neglect of the specific problems raised by the modern corporation, including the fact that it does not fit well into the liberal distinction between public and private (Singer, 2015).

Furthermore, a purely political conception ultimately presupposes a contractarian approach, one in which power is widely distributed, within what Rawls calls a *property-owning democracy*. Such an approach leads to a view of the corporation in which the corporation is a nexus of contracts between property-owners. But as I shall argue,

modern corporations pose important problems to such a contractarian framework, due to the complex specification of rights and duties within the corporate world. I shall argue that such a complex configuration of rights and duties leads to the need of a moral conception that takes into account the social ontology of the corporation.

Justice and property-owning democracy

When formulating his theory of justice, Rawls emphasizes that the main subject he is addressing is what he calls the basic structure of society. As Rawls writes:

“For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men’s rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do.” (Rawls, 1971, 6-7)

Since the basic structure of society is the primary subject of Rawls’s theory of justice, discussions on how Rawls’s approach can be applied to business ethics have focused on whether the corporation can be seen as part of the basic structure of society (Norman, 2015; Singer, 2015; Martins, 2017). But the inclusion of corporations in the basic structure of society is not straightforward for various reasons, which ultimately spring from the contractarian nature of Rawls’s political liberalism.

Rawls’s political liberalism advocates the emergence of an overlapping consensus which can accommodate various comprehensive views. To do so, such an overlapping consensus cannot be a comprehensive view in itself. Rather, it must focus on some key principles, while leaving many issues unaddressed, so as to allow for heterogeneous views

within an overlapping consensus around those key principles. Those key principles are specified in Rawls's two principles of justice. Rawls's first principle of justice states that each person should have the most extensive liberty compatible with a similar liberty for others. Rawls's second principle states that social and economic inequalities are justified only when they are to the greatest benefit to the least-advantaged members of society, under conditions of fair equality of opportunity. The basic structure of society must include a set of major social institutions that allow for the fulfillment of those principles.

The concrete regime through which Rawls seems to believe that his principles of justice can be best realized is that of a *property-owning democracy*, a term he takes from James Meade (1964), while using it within a liberal framework (O'Neill, 2009; O'Neill and Williamson, 2009). In a property-owning democracy, capital would be dispersed amongst all individuals, and the intergenerational transmission of advantage would be blocked (O'Neill, 2009, 382), thus attenuating the problem of inequality. In fact, a property-owning democracy could deal more effectively with the problem of inequality than welfare-state capitalism. In welfare-state capitalism, redistribution is made *ex-post*, without changing the underlying social relations of power and status connected to the mode of production (O'Neill, 2009, 383). In a property-owning democracy, in contrast, it is not only income inequality, but all the dimensions of inequality connected to power and status that would be addressed through wide dispersal of capital and by blocking the intergenerational transmission of advantage (O'Neill, 2009, 382), thus providing a more complete realization of Rawls's idea of fair equality of opportunity.

While Rawls refers to the idea of a property-owning democracy as originating from Meade (1964), Meade seems to have appropriated the term from political opponents, namely British Conservatives who used it after its first usage by the British Conservative politician Noel Skelton (O'Neill, 2009, 393). In fact, the idea of a wide dispersal of capital can be found as far back as Hilaire Belloc's *The Servile State* (Belloc, 1912), who advocated what he called the system of "property", also termed "distributism", while defining "Conservatives or Traditionalists" (Belloc, 1912, 105-106) as those who advocate a wide distribution of

property that, according to Belloc, characterized the pre-Reformation Christian European life, and Britain in particular before the expropriation of land that followed the Reformation.

Regardless of whether a property-owning democracy is ultimately a conservative or liberal goal, going from contemporary capitalism towards a property-owning democracy is not straightforward. As Belloc (1912, 109-110) notes, it is much easier to say that no one shall own private property, as in collectivist socialism, than to say that all shall own private property. In the case of collectivism, there is no need of finding a criterion for the distribution of property. In the case of a property-owning democracy, the question of how to distribute property is raised immediately. Furthermore, in a world where property is already very concentrated and social relationships of power and status prevail it is not easy to establish a system where those social relations suddenly disappear.

Rawls's ideal theory, however, is concerned first with defining an already just society, rather than with how to achieve it. So we can start by looking at how it can function before addressing the problem of reaching it. In particular, it is important to assess whether a property-owning democracy can help addressing the problem of how corporations fit within Rawls's political liberalism.

Under a property-owning democracy, corporations could be assimilated into a liberal framework in which the shares of the corporation are widely distributed. This ties in well with the contractual view of the corporation, according to which the corporation, like any firm, is a nexus of contracts amongst individuals. Rawls mentions competitive markets and private property in the means of production as part of the basic structure of society. Corporations could be subsumed under these two major institutions within a contractual view in which the corporation is the result of contracts within a competitive market between property-owners.

The contractual view of the corporation, in turn, is certainly in line with the liberal dichotomy between public and private, while placing the corporation in the private sphere. This could ultimately mean that corporations are not part of the basic structure of society, as advocated by Abraham Singer (2015), as they are really private associations that

individuals can exit by simply taking a share of capital with them. Since in a property-owning democracy capital is widely shared, the share the individual takes would be rather small, so no great disturbance would follow for the life of the corporation.

A problem with this view, however, is that the liberal notion of property can hardly be applied to contemporary corporations, because it is not possible to specify absolute rights of use, fruition and disposal of the corporation in a liberal framework, as I shall now argue. This is indeed acknowledged by Ciepley (2013) and Singer (2015), who correctly conclude that the corporation does not fit easily into a liberal framework. I shall now address this problem, starting by explaining the meaning of property and freedom in liberalism, before showing why corporations cannot be properly understood within a purely liberal framework such as the one presupposed by the contractual view of the corporation.

Property-owning democracy and the liberal view

A property-owning democracy is an ideal system, considered by Rawls at the level of ideal theory, but does not correspond to anything observed in reality. Belloc (1912) argues that a system of distributed property, or an approximation to it at least, existed in Christian Europe before the Reformation. But Belloc (1912, 48) is using the term “property” in a different way than it is used today, for the notion of property that prevailed in medieval Christianity is very different from the contemporary notion. In the classical Roman period, there was an absolute right over property (*plena in re potestas*), expressed in the right of use, fruition and disposal (*ius utendi, ius fruendi, ius abutendi*). In medieval feudalism, in contrast, this absolute right is divided into the lord’s *dominium directum* and the serf’s *dominium utile*. The power of the lord is no longer an absolute power over the land, but only the power to demand various forms of rent and services from the serf, who has the right to cultivate the land, and cannot be evicted from it.

The 1789 French Revolution leads again to the institution of absolute property rights. The idea driving the French revolutionaries is, of

course, to provide a system of distributed property where those who work the land are no longer subject to various obligations toward the feudal lord. For this to be so, those who work the land must have absolute property rights, rather than being subject to various obligations to feudal lords. In this sense, the French revolution, and the liberal revolutions that followed it, are attempts to institute a property-owning democracy of sorts. But periods where an absolute right over property prevail, such as the Roman period, or the modern period following the French Revolution, seem to be periods where we find a tendency for a concentration of property and capital, thus preventing the implementation of a property-owning democracy where capital is widely dispersed.

The Roman and the modern periods stand in contrast to the medieval institutional framework, where the lord cannot demand more than a fixed amount of various rents and services, cannot evict the serf from the land, and cannot prevent the serf from working on common land and receive fully the fruits of this labor on common lands. Those restrictions seem to have been effective in preventing concentration of land, since land could not be freely exchanged and disposed of as absolute property. The medieval guilds were also examples of associations that prevented the concentration and centralization of capital in some individuals. Adam Smith's (1776) critique of guilds and corporations was aimed at the removal of the relations of status and power that characterized those associations, so as to lead to an absolute right of the worker to the produce of labor within a liberal framework (Martins, 2013, 424-426). But an absolute right not only of use and fruition, but also of arbitrary disposal over property, leads to the removal of the obstacles to the accumulation, concentration and centralization of capital by some individuals (Marx, 1867).

This raises some problems regarding the possibility of a sustainable property-owning democracy, that is, a system with a wide distribution of capital with absolute property rights, as property rights should presumably be in a liberal framework, while avoiding the tendency towards capitalism, understood as a system where some individuals accumulate capital while others remain dispossessed. Capitalist accumulation, in turn, poses structural problems that, according to Rawls,

cannot be overcome by supplementing capitalism with a welfare state. As O'Neill (2009, 379) explains, Rawls's (2001) later works show a greater hostility towards welfare-state capitalism. This is so because albeit welfare-state capitalism can rectify the inequalities of income and wealth through *ex post* transfer payments, it cannot rectify the inequalities of power and status that spring from the very productive structure under capitalism (O'Neill 2009, 383). So welfare-state capitalism ultimately allows for unequal social relations of power and status, which Rawls's seeks to overcome through a liberal framework of distributed property and contractual relations that would hopefully be less subject to power and status. In fact, this is the goal of liberal authors since Adam Smith (1776) at least, who believed that the best remedy against status and power in social relations is through a decentralized system where individuals engage freely in contracts.

There is, however, a fundamental problem with the contractarian approach presupposed in the various forms of political liberalism. The problem is that it is difficult to specify contractual relations where status and power play no role. As John Searle (2010) and Tony Lawson (2012, 2015) note, when explaining corporations from a social ontology perspective, human activity in general presupposes the existence of status, through which power relationships are established. This is because human activity presupposes the stability and persistence of collective practices so that social coordination arises. But the persistence of collective practices leads to the expectation that they be continued, and they start to be regarded as an *obligation* which others have the *right* to expect (Lawson, 2012, 362). This means that human activity is inherently *normative*, that is, it presupposes rights and obligations, not least in the very use of language, which only makes sense if we assume that the speaker has the obligation to tell the truth (Searle, 2010, 80).

This means that it is not possible to adopt a purely political conception of justice, which somehow eschews the necessity of a shared moral conception at some level. The more fruitful route is then to look at a social ontology that helps identifying shared notions of rights and duties at some level (Lawson, 2003; Martins, 2007), rather than trying to identify a purely contractual framework that minimizes moral commitments in the hope of accommodating as many comprehensive views

as possible. At best, one may try to achieve a fairer distribution of power and status, rather than abolishing power and status altogether. For even market relations presuppose trust in those who have a certain status as to trustworthiness, power for implementing laws, and so on, as Adam Smith saw clearly.

As Searle (2010, 134) notes, Rawls's theory is an update of social contract theory that takes institutions for granted in order to distinguish just institutions from unjust institutions, but without questioning the nature of the institutions being discussed. A central institution that must be further scrutinized is the modern corporation, which seems to transgress the liberal divide between public and private. Even if we follow the Rawlsian method of focusing on a basic structure of society while leaving aside private associations, an analysis of the social ontology underlying the modern corporation shows that the latter cannot simply be left out of the basic structure of society, due to its influence on the division of the advantages of social cooperation, which is a central concern for Rawls's conception of justice (Martins, 2017). I shall now address the case of corporations in more detail.

Corporations and political liberalism

Legal personality is a legal mechanism that can be given to natural persons or to organizational structures such as the corporation (Deakin, 2012, 354). Since the corporation has a separate legal personality, the shareholders are not the owners of the corporation. One could tend to think that by owning shares of the corporation, the shareholders own part of its assets. But since the corporation is a legal person, the corporation is allowed to own its assets, and so the assets belong to the corporation, rather than to the shareholders (Deakin, 2012, 355). And according to company law, even the directors of the corporation are the agents of the corporation itself, rather than of the shareholders, contrarily to what is presupposed in contractual principal-agent theory (Deakin, 2012, 360). For this reason, it becomes very difficult to specify property rights in a contractual view of the corporation (Deakin, 2012, 367), as it would be the case in a property-owning democracy.

It is for this reason that Singer (2015) argues that there is no Rawlsian theory of corporate governance. Singer (2015) argues that the corporation is an association aimed at particular ends, while the basic structure of society defines rules for a social contract under which it is left to each individual to find her or his own ends or aims. For Rawls, business firms have their own internal life and rules (Rawls, 2001, 164; Singer, 2015, 78-79; Blanc, 2016, 411), which are created within the possibilities allowed by the basic structure, but are not themselves part of the basic structure. Singer's line of argument then could suggest that albeit corporations certainly transgress the liberal divide between public and private, they are best seen as part of the private sphere. The public sphere is constituted by the major institutions that all individuals must accept, and are thus legally coercive, in the sense that individuals do not have the choice to exit its authority. In the liberal framework presupposed by Rawls, individuals are free to choose their particular ends or aims at the private level, as long as they remain legally committed to the key principles accepted in an overlapping consensus. Corporations, Singer (2015) argues, can be exited, and thus are not legally coercive. Thus, they are not connected to the basic structure of society, which comprises only the binding commitments that all individuals must accept in Rawls's political liberalism, as part of an overlapping consensus.

However, one can certainly question whether individuals can really exit a corporation so easily within modern capitalism. Within a liberal framework such as that presupposed by Rawls, one would tend to think that individuals have the legal option to exit a corporation. The legal right to exit the corporation is amongst the basic rules accepted by all individuals in an overlapping consensus. It is questionable, however, whether private contracts are not subject to legal coercion too, as Blanc (2016, 416) notes. Blanc (2016, 417) further argues that the activities of corporations are intrinsically connected to coercion not only over employees, but also over citizens in general, who cannot escape the various implications of "state-backed corporate governance".

In fact, another reason why the corporation cannot be seen as a mere nexus of contracts is because it is not possible to identify a clear legal framework in which several individuals agree to a series of contracts, as the contractual view of the corporation presupposes. Deakin (2012,

365) notes that the corporation is subject to many different legislations, such as the law of the corporation as a legal person, insolvency law, employment law, tort law, competition law or tax law, for example. There is no single legal vision of the firm and of the rights and duties of stakeholders. This is another reason why it becomes difficult to sustain a view where the corporation is merely a series of clear contracts between an agent and principal. And it also means that it may be difficult to define legal coercion in practice, given the multiple legislations that are at play in the social relations between the stakeholders.

Moreover, one could also question the very idea of defining an exit option only in terms of legal coercion. Doing so certainly ties in well with Rawls's liberal framework, which presupposes a commitment to basic principles to be accepted by all reasonable citizens within an overlapping consensus. But a definition of an exit option only in terms of legal coercion does not take into account that the possibilities offered to individuals depend upon the whole structure of society, rather than its basic structure only. This is especially so in a world where corporations and their hierarchies based on status (Lawson, 2015; Martins, 2017) play a key role.

Singer (2015, 68) draws upon Ciepley (2013), who argues that corporations share a common history with republics (Ciepley, 2013, 141-142), and are intrinsically linked to the state and government, through which corporations receive their charter or corporate constitution (Ciepley, 2013, 143). It is also through government that corporations receive their contractual individuality or "personhood", and thus their right to own property, to make contracts and to engage in juridical relations in general (Ciepley, 2013, 143). These rights are essential for separating the property of the corporation from the right of its individual members. This suggests that the corporation is not merely a private association of individuals, for it exists as a legal person with rights and obligations different from those of individuals (Searle, 2010; Lawson, 2015; Martins, 2017). But it is also not a public entity, since it is not managed by public officials, and the managers of the corporations are also not subordinated to public authorities.

The connection between the corporation and government would suggest that the corporation is part of the basic structure of society after

all. For it is intrinsically connected to a major institution which is certainly constitutive of the basic structure of society, namely the government. In fact, Blanc (2016) argues, when replying to Singer (2015), that we must distinguish between the “Corporate” form in general, which is granted by the government, from particular corporations, which are the object of Singer’s analysis.

Ciepley (2013) concludes that the corporation does not fit totally into the public sphere, and does not fit into the private sphere as well, so it is best seen as somewhere between public category and private category, within a category of its own, the *corporate* category. This could mean, of course, that Rawls’s theory of justice should simply be discarded from business ethics, since corporations do not easily fit into the liberal separation between private and public presupposed in the liberal framework, as Singer (2015) argues.

The political conception of justice is highlighted by Rawls’s especially in later writings (Rawls, 1993, 2001). In his earlier formulation of a theory of justice, in contrast, Rawls (1971) focused in more detail on the major institutions that would comprise the basic structure of society. I will now argue that if we focus on Rawls’s institutionalism, understood as an emphasis on the institutional context that structures the economy and society, while abstracting from the idea of a political conception of justice, we can find useful elements in Rawls’s theory of justice for understanding the place of the modern corporation in the contemporary world. However, Rawls’s analysis of institutions would have to be combined with the need of shared moral values, rather than assuming that consensus can emerge at a purely political level.

Furthermore, the analysis of the institutions that constitute the basic structure of society will have to focus also on actually existing institutions, rather than on ideal institutions only (Sen, 2009). Once these moral and historical elements are brought into the picture, Rawls’s idea that all individuals must engage in a public discussion of the overall structure of society in which they live, becomes a fruitful one. I shall start by considering the specific institutional frameworks envisaged by Rawls, in order to develop this aspect of Rawls’s (1971) original formulation of his theory of justice, which has received less attention.

Corporations and liberal socialism

A central question at this stage is whether the social and economic regimes that Rawls sees as consistent with his theory of justice could somehow be conceived of in a way that is not inconsistent with the modern corporation or, alternatively, whether the modern corporation can be transformed into something that is compatible with Rawls's framework, and provides a more just society according to Rawls's principles of justice. The fact that the contractual view of the corporation fails as a means of dealing with corporations through a liberal framework (while placing corporations outside of the basic structure of society, as mere associations between property owners in a competitive market) need not mean that there are no other (less obvious) ways of dealing with corporations drawing on Rawlsian insights. Here it is important to bear in mind that Rawls refers not only to a property-owning democracy, but also to Mill's socialism, as social and economic regimes through which Rawls's principles of justice can be realized.

An important difference between property-owning democracy and liberal socialism is that in a property-owning democracy, at least if interpreted in purely contractarian and liberal terms, individuals can still work for a firm that belongs to other individuals. A worker will own property, but such property need not be the capital of the company in which the individual works. And once property rights are absolute, there is nothing preventing the concentration, centralization and accumulation of capital, leading to a world where modern corporations play a key role in the coordination of economic activity. But as noted above, the modern corporation, being subject to multiple legislations (Deakin, 2012, 365), leads to a case where we cannot really identify absolute rights of use, fruition and disposal which are necessary in a liberal framework where the members of the corporation stand in merely contractual relations.

The emergence of modern corporations as the most successful institution in modern capitalism is often associated with their greater efficiency (Chandler, 1977). In fact, Karl Marx (1894) seemed to believe that the modern corporation would be the most successful capitalist organization, especially in his last years when writing volume III of *Capital*

(Martins, 2013, 414-416). Marx (1894) saw the separation of ownership and property as an opportunity to reshape production relations in a way through which workers could manage the corporation.

The idea that the corporation contains a complex set of social relationships that cannot be reduced to private contracts is central to Marx (1894) in his more mature writings. Marx argues that corporations presuppose a socialization of production, to the extent that the separation between owners and managers leads to a governance structure that cannot be fully understood in terms of private contracts. Marx (1894, 569) saw corporations as “private production unchecked by private ownership” (Martins, 2013, 415), since owners no longer play a role in production, not even in controlling directors, managers or workers. The next step, for Marx, would then be to socialize distribution in a capitalist world where production was already socialized.

The distinction between production and distribution is stressed even more strongly by Mill (1848), who argues that the key problem to address is distribution, rather than production. While Marx thought that worker management had to be achieved at the end of a process of capitalist concentration and centralization, and in different ways depending on whether political institutions in various countries would require revolutionary action or not, Mill thought that worker management could be readily initiated in cooperatives, which would have to be more competitive than capitalist firms.

Mill’s approach is a form of socialism because the members of an association own collectively the means of production, as an indivisible property, rather than through contractual and individual relations. The liberal element in Mill’s conception springs from the fact that the association is in competition with other associations in a market regulated through a liberal framework. While its liberal side is certainly connected to the contractual approach endorsed by Rawls’s, its socialist side would appear to be less consistent with Rawls’s political liberalism, were it not for Rawls’s (2001) explicit endorsement of it in later writings (Norman, 2015, 48-49).

Rawls’s does not discuss how Mill’s liberal socialism differs from a property-owning democracy. As Wayne Norman (2015, 51) notes, Rawls does not really distinguish between worker democracy (for

example, through worker councils), worker management, or worker oversight (for example, through co-determination governance structures in which both workers and owners have representatives who oversee their interests and worker ownership). But as Norman (2015, 51) explains, the key problem is precisely how do define property, and its rights of use, fruition and disposal, in a way that takes into account the challenges posed by the separation between ownership and control that characterizes modern corporations (Berle and Means, 1932; Chandler, 1977). By not fully distinguishing these various situations, and the implications they have for rights and obligations concerning use, fruition and disposal, it becomes easy for Rawls to see Mill's liberal socialism as akin to a property-owning democracy. But this also leaves us with more degrees of freedom for discussing the meaning of a property-owning democracy beyond a purely contractual view of the corporation.

The problems with the contractual view of the corporations outlined above could seem to suggest that amongst the regimes that Rawls sees as compatible with his principles of justice, it is Mill's liberal socialism, rather than a property-owning democracy seen in purely liberal terms, that can best accommodate the problems raised by the modern corporation, namely its incompatibility with a contractual view. In Mill's liberal socialism (as expressed in chapter 7 of book IV of his *Principles*), the members of an association take no capital with them when leaving it, and have only a right to use the indivisible property of the association, rather than a right of arbitrary disposal. This provides a view which is more in tune with the complex legal mechanisms surrounding the corporation and the rights and obligations of its various stakeholders, rather than a view in which the members of the association stand in merely contractual relationships through which owning a share of capital brings absolute rights of use, fruition and disposal. Of course, associations of workers such as cooperatives can hire workers with no right to a share of profits, who are mere wage-earners. But Mill sees this situation as the deterioration of the cooperative system, to be replaced again by private property.

Rawls (2001, 176) himself seems to believe that Mill's liberal socialism is fully compatible with a property-owning democracy, as Norman

(2015, 49) notes, the reason being that firms are not owned or controlled by the state. Rawls's reference to Mill's liberal socialism as a form of property-owning democracy seems to presuppose that Rawls allows for a notion of property where rights of use, fruition and disposal may be defined in a different way than in classical liberalism. It provides thus an important guidance when searching for the best compromise between Rawls's views and the actual world, without necessarily committing Rawls to Mill's specific views on socialism. For Rawls also seems to be unable to assess whether Mill's proposal is doomed to failure, and asks himself why did it fail, without providing any answer (Norman 2015, 49-50). Rawls's reference to Mill's liberal socialism merely means that he allows for a broader range of possibilities beyond a classical liberal view with absolute property rights.

The question of the specific social and economic regime to be reached through an overlapping consensus, of course, turns on whether the corporation can be managed efficiently through methods that allow for more internal democracy, such as those advocated by Mill. This is a topic that Rawls leaves unaddressed, as Norman (2015, 49-50) notes, and can certainly benefit from further analysis. In any case, anything resembling Mill's liberal socialism seems to point towards the need of a social ontology where rights and duties are much more complex than anything presupposed in merely contractual approaches. The status of member of a cooperative in Mill's conception comprises a set of rights and duties which shows with more transparency how normativity is already built into every form of social organization, as the social ontologies of Searle (2010) and Lawson (2012) also show.

Concluding remarks

Rawls is concerned with achieving a society where various individuals face a fair equality of opportunity. As O'Neill (2009, 382) notes, this means that capital must be widely dispersed, as in a property-owning democracy, rather than concentrated in a few hands as in the different varieties of capitalism. Furthermore, a wide diffusion of property would prevent social and economic inequality, thus reducing the

concentration of power, and checking the associated inequalities of social status (O'Neill, 2009, 383) that lead to “widespread attitudes of deference and servility on one side and a will to dominate and arrogance on the other” (Rawls, 2001, 131).

The abolition of deference, servility, domination and arrogance are all central goals of a liberal view of the world. Liberal authors who pursued similar goals in the past, like Smith and Mill, found the need of a moral conception (based in sympathy and other moral sentiments in the case of Smith, and in utility in the case of Mill's utilitarianism) when addressing ethical problems. Rawls follows a different perspective, for which he finds inspiration in Kant, of providing a purely political conception of justice. Rawls's political liberalism is concerned with the prevention of inequalities at the level of power and status (O'Neill, 2009, 383), while also allowing for the existence of heterogeneous moral conceptions within an overlapping consensus on key principles.

However, by neglecting status and the associated rights and duties, a political conception of justice tends to neglect the fact that human activity is inherently normative, as the social ontologies of Searle (2010) and Lawson (2012) show. Human coordination presupposes expectations as to what other human agents will do, and those expectations, a result of habit and custom, entail irreducibly normative conceptions as to what an individual *should* do, as Smith and Mill saw clearly. Modern corporations pose further problems to the extent that they presuppose hierarchical relations of status, which are radically at odds with a liberal view of society. In fact, corporations transgress the basic divides of a liberal framework, such as the distinction between market and government, state and society, privilege and equality, status and contract, and, more importantly, the public and the private (Ciepley, 2013, 140; Singer, 2015, 68).

There are various methods for addressing the corporation and its impact on power and status through a social ontology perspective. Searle (2010) uses a social ontology that is particularly adequate for studying Rawls's theory of justice, since it is also grounded on analytical philosophy (Martins, 2017). While Searle (2010) focuses on the basic building blocks of institutional reality, Rawls (1971) focuses on the institutions that are created in order to assess whether they are just or not

(Searle, 2010, 134). Like Rawls, Searle (2010) also distinguishes between basic liberties (central to Rawls's first principle) while focusing on social and economic inequality at a separate level.

But as noted above, it may be difficult to specify freedom regardless of the means for achieving it, as Sen (2009) argues. This has implications for the possibility of distinguishing Rawls's principles of justice. In such a case, one would need a social ontology more focused on human capabilities in general (Lawson, 2003, 2012; Martins, 2007, 2017), rather than on a separation between basic liberties and socio-economic inequality, which Rawls's undertakes in order to achieve a political conception of justice, while inevitably presupposing a shared moral conception concerning the value of democracy, decency, tolerance and the like. Thus, whatever route is followed, a moral conception must be presupposed at some level. The question is not so much whether we can achieve a political consensus amongst disparate moral views, but rather which are the basic elements for a shared moral conception (Lawson, 2003; Martins, 2007), within a social ontology that takes into account the distribution of positional powers, that is, of rights and duties associated with status (Searle, 2010; Lawson, 2012).

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