

## SHADES OF COMMUNITARIANISM\*

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### ABSTRACT

In this paper, I analyse some implications of Rawls' notion of desert and legitimate expectations in order to show how some communitarian criticism of his individualism can be answered from a quasi-communitarian perspective which can be found in *A Theory of Justice*.

### KEYWORDS

Rawls, fairness, desert, individuals.

*A Theory of Justice* by John Rawls<sup>1</sup> is a work that has profoundly influenced the philosophical debate. As it is well known, Rawls revived the contractualist paradigm, inserting it in the strand of *liberal* thought. One of the criticisms that have been addressed to Rawlsian contractualism has concerned its individualistic conception,<sup>2</sup> often considered one of the central figures of his masterpiece together with a fasci-

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<sup>1</sup> J. Rawls, *A Theory of Justice*, Cambridge (Mass.), Harvard University Press, Revised Edition, 1999, from now cited as *TG*, followed by the number of the pages in the notes. The bibliography on Rawls is very vast and includes thousands of titles. For a useful approach to understand the first reception of his masterpiece, J.H. Wellbank, D. Snook, D.T. Mason, *John Rawls: An Annotated Bibliography*, New York, Garland, 1982. Collected reference texts remain N. Daniels (ed.), *Reading Rawls: Critical Studies on Rawls' A Theory of Justice*, New York, Basic Books, 1975 and S. Freeman, *The Cambridge Companion to Rawls*, Cambridge, Cambridge University Press, 2003.

<sup>2</sup> The first significant analyses of the concept of "individualism" are in A. deTocqueville, *De la démocratie en Amérique*, Paris, Flammarion, 2010, who considered it one of the negative aspects of American society, as recalled by A. Baier, *How Can Individualists Share Responsibility?*, in "Political Theory", 21 (1993), pp. 228-248, who believes that Rawls' individualism derives from Kant and does not allow to account for the reform of social prejudices, such as racism and sexism, which are usually directed towards forms of inclusiveness and not individualism.

nation for the theory of rational choice, since “The theory of justice is a part, perhaps the most significant part, of the theory of rational choice”.<sup>3</sup> It is a criticism advanced above all by communitarian thinkers, who consider the individualistic conception abstract and who instead see the ethical-political subject as the result of social relations and political traditions that constitute them, which in Rawls’ liberalism seem to be completely absent.<sup>4</sup> I will try to show how the conception of the individual in Rawls is not individualistic<sup>5</sup> and how there is no lack of good reasons for an anti-individualist interpretation of his philosophy. I will do this through an analysis of some passages of *A Theory of Justice*.

The founding intentions of Rawls’ *justice as fairness* are very clearly delineated, so much so that they involve his entire construction from the very enunciation of the two principles of justice, the principle of equal freedom and the principle of difference which concerns distributive justice. “First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”<sup>6</sup> These two principles are lexicographically ordered - the second principle must be subordinate to the first - and this is in accord both with Rawls’ idea that parties possess a sense of justice and with the idea that political power is constrained. This means that a restriction of freedom is compatible only with the preservation of freedom, but not with the extension of social welfare or with greater efficiency of institutions. Since the two principles shape all social institutions, the honours and burdens of cooperation must be judged from a foundational perspective, that is, from the perspective of perfect procedural justice<sup>7</sup>. Perfect procedural justice is the transcendental condition of our

<sup>3</sup> *TG*, p. 15. This idea, which in Rawls takes shape as an insurance theory consequent on the veil of ignorance is much more consistent with a general utilitarian framework, as J.C. Harsanyi, *Nonlinear Social Welfare Functions*, in “Theory and Decision,” 6 (1975), pp. 311-332, well understood.

<sup>4</sup> The reference texts are A. MacIntyre, *After Virtue*, University of Notre Dame Press, 2007; M. Sandel, *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press, 1998; C. Taylor, *Sources of the Self*, Cambridge (Mass.), Harvard University Press, 1989; C. Taylor, *A Secular Age*, Cambridge (Mass.), Harvard University Press, 2018. For a historical reconstruction see T. Reiner, *The Sources of Communitarianism on the American Left: Pluralism, Republicanism, and Participatory Democracy*, in *History of European Ideas*, 37 (2011), pp. 293-303.

<sup>5</sup> For A. MacIntyre, *After Virtue*, cit., pp. 53-89, there is a nexus between individualism, bureaucratization and proceduralism, which lies at the heart of modernity. Rawls by making virtues dependent on feelings also makes them irrelevant to procedural purposes (p. 137).

<sup>6</sup> *TG*, p. 53. M. Sandel, *Liberalism and the Limits of Justice*, cit., pp. 47-50 disputes the priority of the *right* over the *good*, because it makes the moral subject irrelevant; C.E. Baker, *Rawls, Equality, and Democracy*, in “Philosophy and Social Criticism”, 34 (2008), pp. 203-246, believes that Rawls’ is an epistocratic conception of democracy. The suggestion is interesting, but I think it is refuted by the very qualification of justice as fairness. On epistemic democracy see D. Estlund, *Democratic Authority*, Princeton, Princeton University Press, 2007.

<sup>7</sup> Of course, this is an ideal condition, as is explicitly stated in *TG*, p. 320, which is as much a teleology as an archaeology of justice, as is well understood by A. Juarrero, *Rawls: Teleology or Perfect Procedural Justice*, in “Journal of Social Philosophy”, 26 (1995), pp. 127-138. Procedural justice is

judgment of any institution and of any act having social relevance and is the condition of possibility of just institutions and acts in accordance with the two principles. “Thus to see our place in society from the perspective of this position is to see it sub specie aeternitatis: it is to regard the human situation not only from all social but also from all temporal points of view. The perspective of eternity is not a perspective from a certain place beyond the world, nor the point of view of a transcendent being; rather it is a certain form of thought and feeling that rational persons can adopt within the world. And having done so, they can, whatever their generation, bring together into one scheme all individual perspectives and arrive together at regulative principles that can be affirmed by everyone as he lives by them, each from his own standpoint. Purity of heart, if one could attain it, would be to see clearly and to act with grace and self-command from this point of view.”<sup>8</sup>

The appeal to *justice as fairness is nothing* more than an appeal to correction according to principle. Since fairness has this corrective dimension, it should be conducted according to something that the one claiming correction possesses. Common sense thinks that this title that legitimizes the claim consists in some quality of the subject expressing it and in some moral quality of them that has been violated. Indeed, “There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to the moral desert. Justice is happiness according to virtue. While it is recognized that this ideal can never be fully carried out, it is the appropriate conception of distributive justice, at least as a prima facie principle, and society should try to realize it as circumstances permit.”<sup>9</sup> Among the good things in life, there is no doubt that there is the fact of being treated fairly. It is a Kantian suggestion that he who acts justly possesses a title to hope that we may be made worthy of happiness. Justice should

the precondition of citizenship in a well-ordered society. M. Walzer, *Spheres of Justice*, cit., p. 61, considers instead that the *membership* granted to citizens cannot be subject only to formal conditions.

<sup>8</sup> *TG*, pp. 514. For this reason, too, I do not think that those conciliatory interpretations that trace affinities between Rawls and communitarian thinkers (MacIntyre, Sandel, Taylor, Walzer) through a supposed closeness to Hegel are convincing, as happens in S. Schwarzenbach, *Rawls, Hegel, and Communitarianism*, in “Political Theory”, 19 (1991), pp. 539-571. C. Taylor, *Sources of the Self*, cit., pp. 87-90, interprets this procedural condition as an expression of a prudential and individualistic conception of morality.

<sup>9</sup> *TG*, p. 273. Some have argued that the notion of merit is marginal in Rawls, such as S. Scheffler, *Boundaries and Allegiances*, New York, Oxford University Press, 2003, pp. 173-196, but I think they are wrong. The notion of merit is not marginal, rather it is not independent, and it is not independent because it is understandable from the perspective of *justice as fairness* only in the context of the institutional constructions that derive from the two principles of justice. The treatment of merit signals a tension between retributive and distributive justice according to E. Mills, *Scheffler on Rawls, Justice, and Desert*, in “Law and Philosophy”, 23 (2004), pp. 261-272; for J. Greenblum, *Distributive and Retributive Desert in Rawls*, in “Journal of Social Philosophy”, 41 (2010), pp. 169-184, instead, it is the notion of merit within the economy of Rawls’ theory of justice that pushes him to reject traditional retributive theory. For A. MacIntyre, *After Virtue*, cit., pp. 152-153, moral merit has meaning only within an ethical-political community that fosters its flourishing, which is certainly not the well-ordered society of which Rawls speaks.

imply happiness according to virtue.<sup>10</sup> At least *prima facie*, it seems that the structures that constrain social cooperation in a liberal society should attempt to realise it to the extent that circumstances permit and according to the two principles of justice.<sup>11</sup> Justice should represent, according to common sense, the realisation of some merit or should be sensitive to this. Goods should be distributed according to the Aristotelian principle of “to each his own”: this would seem to be the adequate conception of the realization of justice even in our imperfect world. Here is what Rawls thinks about it: “Now justice as fairness rejects this conception. Such a principle would not be chosen in the original position. There seems to be no way of defining the requisite criterion in that situation.”<sup>12</sup> Does Rawls mean to say that the application of the principle of giving “to each his own” is impossible? The answer to the question must be positive, since “Moreover, the notion of distribution according to virtue fails to distinguish between the moral desert and legitimate expectations. Thus it is true that as persons and groups take part in just arrangements, they acquire claims on one another defined by the publicly recognized rules.”<sup>13</sup> Indeed, we do not expect the justice of a decision whether political or judicial to be graded on the virtue of the subject relative to that decision. A procedure that did so would be wholly inadequate for a society designed around a situation of equality of initial conditions of opportunity (constrained by the original position and by insurance choice, which Rawls says it would be rational to make under those conditions). A distribution of justice according to virtue would therefore violate the conditions of *fairness*, while people and groups that are part of just arrangements acquire mutual claims determined by publicly recognized norms.<sup>14</sup>

<sup>10</sup> T. Pogge, *The Kantian Interpretation of Justice as Fairness*, in “Zeitschrift für philosophische Forschung”, 35 (1981), pp. 47-65, believes that this idea is part of a non-strictist interpretation of Kantian ethics, which would be Rawls’ contribution to the reform of deontology. For these Kantian presuppositions, M. Sandel, *Liberalism and the Limits of Justice*, cit., pp. 35-40.

<sup>11</sup> In this sense I think that A. Sen’s suggestion, *The Idea of Justice*, Harvard, Harvard University Press, 2009, pp. 3-27, that Rawls’ represents an “institutional transcendentalism” is correct. Against Sen’s interpretation, see A.S. Laden, *Ideals of Justice: Goals vs. Constraints*, “Critical Review of International Social and Political Philosophy,” 16 (2013), pp. 205-219.

<sup>12</sup> *TG*, p. 273. On this issue see the critique of W. Matson, *Justice: A Funeral Oration*, in *Social Philosophy and Policy*, 1 (1983), pp. 94-113, who finds the two principles of justice simply incompatible on the basis of a libertarian background theory. A. MacIntyre, *After Virtue*, cit., pp. 246-252, thinks instead that the two principles delineate a disembodied subject that is not reflected in the political community.

<sup>13</sup> *TG*, p. 273. For a defense of this idea see T. Logar, *Rawls’s Rejection of Preinstitutional Desert*, in “Acta Analytica”, 28 (2013), pp. 483-494. For a critique see M. Sandel, *Liberalism and the Limits of Justice*, cit., p. 94, who argues that this would have the consequence of making individual differences contingent and meaningless.

<sup>14</sup> V. Bufacchi, *Motivating Justice*, in *Contemporary Political Theory*, 4 (2005), 25-41, believes that Rawls’s theory misconciles us with the motivational shortcomings with respect to fairness and impartiality of real political arrangements. The critique is well-founded, but I think it fails to acknowledge the transcendental idea of justice that *TG* would like to ground.

Your legitimate expectations are grounded in fairness in the sense that “A just scheme, then, answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth.”<sup>15</sup> Your expectations are legitimate because you by your actions have met what is required by just social institutions. It is these that make the titles you can claim valid. “Surely a person’s moral worth does not vary according to how many offer similar skills, or happen to want what he can produce. No one supposes that when someone’s abilities are less in demand or have deteriorated (as in the case of singers) his moral deservingness undergoes a similar shift. All of this is perfectly obvious and has long been agreed to.”<sup>16</sup> These have no existence prior to the implementation of social structures that can recognize them. You are not at all the depository of claims before there are structures that speak of them and recognize them in their own terms. It is the just political society that grounds any merits just as it grounds what we call civil society.

It would be a misunderstanding to interpret this argument as some closeness between *justice as fairness* and Hobbes’ political philosophy. Hobbes did not distinguish between civil society and the state; rather, he identified them. At the beginning of *TG*, Rawls himself indicates that Hobbes’ philosophy is not among his sources of inspiration. “For all of its greatness, Hobbes’s *Leviathan* raises special problems.”<sup>17</sup> These sources are Locke, Rousseau, Kant, which *simply* allow “to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract.”<sup>18</sup> to a higher level of abstraction. Is this minimalism really credible? I think it is not, because what you are within the social contract revisited by Rawls is summed up in a set of negative conditions, which bind

<sup>15</sup> *TG*, p. 273. A. Zaitchik, *On Deserving to Deserve*, in “Philosophy and Public Affairs”, 6 (1977), pp. 370-388, believes that the correct perspective for this idea of the adherence of merit to just social arrangements is the Aristotelic one and not the Kantian one. M. Walzer, *Spheres of Justice*, cit., 259-262, believes that “the struggle for recognition” is an essential part of the construction of both personal identity and social movements. This struggle often makes use of the appeal to merit.

<sup>16</sup> *TG*, p. 274. This opens up numerous problems with respect to the legitimacy of taking advantage of one’s natural endowments, as is shown by D. Gauthier, *Justice and Natural Endowment: Towards a Critique of Rawls’ Ideological Framework*, in “Social Theory and Practice”, 3 (1974), pp. 3-26. Some bioethical implications of Rawls’ theories are sharply discussed by J.S. John, *Problems with Theory, Problems with Practice: Wide Reflective Equilibrium and Bioethics*, in “South African Journal of Philosophy”, 26 (2007), pp. 204-215.

<sup>17</sup> *TG*, p. 10. M. Secco, *Por que não Hobbes? A crítica de John Rawls à Teoria Moral de Hobbes*, in “Revista Opinião Filosófica”, 8 (2017), pp. 186-202, accurately reconstructs these reasons, but I think he confuses Rawls’ insurance strategies (veil of ignorance, maximin) with moral options. A. MacIntyre, *After Virtue*, cit., pp. 250-251, places Hobbes within the affair leading to modern individualism, of which Rawls is an exponent.

<sup>18</sup> *TG*, p. 10. For an entirely different use of Locke see R. Nozick, *Anarchy, State and Utopia*, New York, Basic Books, 1974. R. Oxenberg, *Locke and the Right to (Acquire) Property: A Lockean Argument for the Rawlsian Difference Principle*, in *Social Philosophy Today*, 26 (2010), pp. 55-66, argues instead for a proximity justified by the common idea of property acquisition within the constraints established by the social contract.

precise normative contents. These negative conditions are summarized by the fact that a selfish decision-maker, i.e., a *free rider*, is not contemplated among the decision-makers who can legitimately shape the cooperative complex, because in order to decide as a *free rider* you must know that you are different from others, you must have an autobiography that is not available for the definite description of anyone else but you, i.e., you must possess a proper name, since “neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names.”<sup>19</sup> Egoism is not, therefore, excluded from the initial conditions of choice as a generator of logical and practical paradoxes. Egoism is not irrational: instead, it is the possibility inherent in the proper name, which must be excluded from the initial conditions of choice, generating, at least *sub specie aeternitatis*, perfect procedural justice. Perfect procedural justice is not, however, a utopia. It would be a misunderstanding to understand it that way. It is the transcendental condition of our very possibility of constructing and experiencing what is just. It is as much a condition of possibility for just social arrangements as it is a criterion for judging our empirical social condition. For this reason, “The essential point is that the concept of moral worth does not provide a first principle of distributive justice. This is because it cannot be introduced until after the principles of justice and of natural duty and obligation have been acknowledged. Once these principles are in hand, the moral worth can be defined as having a sense of justice”.<sup>20</sup> So what can you legitimately claim just for you from the standpoint of justice as fairness? Nothing, because to do so you would still have to start by saying “I”, since it must be you who subscribes to your claim and not someone else. “The virtues can be characterized as desires or tendencies to act upon the corresponding principles. Thus the concept of moral worth is secondary to those of right and justice, and it plays no role in the substantive definition of distributive shares.”<sup>21</sup> They refer precisely to your autobiography and presuppose your proper name. The inclinations and desires are, in fact, part of who you are and what you have now become, and these are reasons to state that the concept of moral value plays no role in the substantive determination of distributive shares.<sup>22</sup> In short: right is superordinate to good, which

<sup>19</sup> TG, p. 56. G. Gutting, *Can Philosophical Beliefs Be Rationally Justified*, in *American Philosophical Quarterly*, 19 (1982), pp. 315-330, originally juxtaposes rigid designator theory and Rawlsian theory.

<sup>20</sup> TG, p. 275. G.B. Thomas, *On Choosing Morality*, in *Canadian Journal of Philosophy*, 5 (1975), pp. 357-374, points out an inconsistency between this exclusion of egoism and the idea that it is individuals who choose in the original position. I do not think the criticism is correct since Rawls speaks not simply of individuals, but of representative individuals.

<sup>21</sup> TG, p. 275. B. Puri, *Finding Reasons for Being Reasonable: Interrogating Rawls*, in “Sophia,” 54 (2015), pp. 117-141, extends this inclination to the same conditions of reasonableness as the two principles.

<sup>22</sup> This relegates the role of moral psychology to the background. For a partially different opinion, however, see I. Ottonello, *L’oggetto del desiderio conteso fra Darwall e Rawls*, in “Etica & Politica / Ethics & Politics,” 14 (2012), pp. 323-343.

remains an overly inclusive and essentially ambiguous concept. “The case is analogous to the relation between the substantive rules of property and the law of robbery and theft. These offences and the demerits they entail presuppose the institution of property which is established for prior and independent social ends.”<sup>23</sup> The institution of private property, in fact, is not made to punish thieves but derives from reasons that are independent of the possibility of punishment and punishment. The idea of perfect procedural justice is not designed to reward moral merit and virtue and is, on the contrary, the condition of impossibility of rewarding virtue and moral merit.

One might object that these are considerations that are diluted by others that appear in Rawls. Consider the apparent truism enunciated by Rawls: “In a well-ordered society individuals acquire claims to a share of the social product by doing certain things encouraged by the existing arrangements. The legitimate expectations that arise are the other side, so to speak, of the principle of fairness and the natural duty of justice.”<sup>24</sup> Nothing less unproblematic, it would seem. But even this flat phrase is not entirely innocent. Rawls is again arguing that if you deserve something it is because you are adequate to the form of the well-ordered society. Otherwise, if there were no well-ordered society your merit would have no *chance of* being recognized and would not even exist. What you can claim only makes sense within a scheme that is certainly not your product. On the contrary: it is you, as a citizen of a society conforming to the concept of a well-ordered society, who are a product of it. Indeed, if legitimate expectations are the other side of the principle of equity and the natural duty of justice “For in the way that one has a duty to uphold just arrangements, and an obligation to do one’s part when one has accepted a position in them, so a person who has complied with the scheme and done his share has a right to be treated accordingly by others. They are bound to meet his legitimate expectations. Thus when just economic arrangements exist, the claims of individuals are properly settled by reference to the rules and precepts (with their respective weights) which these practices take as relevant.”<sup>25</sup> Acceptance of a particular just arrangement is not so much a voluntary act as it is the product of your cooperative rationality and is your valid title to citizenship. But then is there any distinction between holding a valid title to something and deserving it? To explain this distinction, its “familiar

<sup>23</sup> *TG*, p. 275. For an interesting extension of these issues in the field of environmental ethics, E. Reitan, *Private Property Rights, Moral Extensionism and the Wise-Use Movement: A Rawlsian Analysis*, in “Environmental Values”, 13 (2004), pp. 329-347.

<sup>24</sup> *TG*, p. 275. How coherent the notion of a well-ordered society is investigated by H. Chung, *The Instability of John Rawls’s ‘Stability for the Right Reasons’*, in “Episteme”, 16 (2019), pp. 1-17, from the perspective of game and decision theory, which to me seems inadequate to the complexity of Rawls’s theory.

<sup>25</sup> On the idea of natural duty in Rawls see T. Belknap, *Examining a Natural Duty of Justice and Its Implications*, in “Dialogue”, 61 (2019), pp. 119-124.

although nonmoral sense”<sup>26</sup>, Rawls elaborates on an example. Let us imagine that we have witnessed a sports match between two teams. We think that the losing team nevertheless deserved to win.<sup>27</sup> The losing team exhibited the full repertoire of sporting practices required by the degree of excellence of that sport and if it lost it was because of unforeseeable contingencies, it remained deserving of winning. From the standpoint of valid title to claim the prize required by winning the race, it can claim nothing. Rawls’ example is illuminating in what it suggests. Similarly to the sporting example, even the best economic and legal arrangements will not always lead to optimal results. One understands well, then, the conclusion to which one wishes to arrive. You should perhaps have won. You had the qualifications and you had been recognised as having the ability to do so. However, you lost within the rules of the tournament in which you were participating and without violating anyone’s title. What can you really complain about? Bad luck, perhaps? But bad luck cannot of course be blamed on just social arrangements. These may provide correction and compensation mechanisms for just such cases, but the motivation for putting them in place is not the asymptotic approximation to fairness, but the stability of the social complex. So, you have no reason to complain in the very terms of the social agreement that, at least from a transcendental point of view, you would have signed. The only claim you could make would be in the terms of the social arrangement that recognizes you as a citizen of a just society. The moment you put forward an argument based on your moral merit you would place yourself outside the sphere of justice as fairness because you would introduce as a relevant element of considerations of justice that proper name which is completely irrelevant in the construction and design of just social arrangements<sup>28</sup>. Hence, “Its bearing here is that although we can indeed distinguish between the claims that existing arrangements require us to honor, given what individuals have done and how things have turned out, and the claims that would have resulted under more ideal circumstances, none of this implies that distributive shares should be in accordance with moral worth. Even when things happen in the best way, there is still no tendency for distribution and virtue to coincide.”<sup>29</sup> One might think that this is only about distributive justice, but, even leaving aside the problem of merit pay, Rawls suggests that this is not the case and that to say so would lead us towards a strongly limiting

<sup>26</sup> *TG*, p. 276. M. Matravers, *Legitimate Expectations in Theory, Practice, and Punishment, Moral Philosophy and Politics*, 4 (2017), pp. 307-323, extends the idea of legitimate expectations to the theory of punishment. This strategy would result in not having to resort to the equivocal idea of deterrence and would enhance the autonomy of moral subjects.

<sup>27</sup> This is precisely an intuitionist move, as noted by C. Taylor, *Sources of the Self*, cit., p. 76.

<sup>28</sup> D. Goya-Trochetto, M. Echols, J. Wright, *The Lottery of Life and Moral Desert: An Empirical Investigation*, in *Philosophical Psychology*, 29 (2016), pp. 1112-1127, present some important empirical evidence supporting this Rawlsian idea.

<sup>29</sup> *TG*, p. 276. This is not necessarily a denial of personal autonomy, as is well pointed out by T. Logar, *Rawls’s Rejection of Preinstitutional Desert*, in “*Acta Analytica*”, 28 (2013), pp. 483-494.

view of justice as fairness, so much so that “ In a well-ordered society there would be no need for the penal law except insofar as the assurance problem made it necessary. The question of criminal justice belongs for the most part to partial compliance theory, whereas the account of distributive shares belongs to strict compliance theory and so to the consideration of the ideal scheme. To think of distributive and retributive justice as converses of one another is completely misleading and suggests a different justification for distributive shares than the one they in fact have.”<sup>30</sup> So what can you sensibly claim from the perspective of perfect procedural justice? Actually, nothing, since there would be no wrongs to right and no social positions to compensate for, since the unequal social position is simply motivated by attracting talent to professional positions where they are most needed. Equity is already built into the original position from the beginning, and it is so from the very perspective of denying the importance of the proper name. It becomes, therefore, nonsense to make demands for corrections based on what a person really is, subsequent to the contractualist move, which was designed precisely to avoid them. So, the conclusion that, as I see it, must be drawn from this discussion is that Rawls does not make the distinction between persons seriously, which is precisely the critique he addressed to utilitarianism (“Utilitarianism does not take seriously the distinction between persons.”)<sup>31</sup>. This is certainly not because Rawls is an individualist, but precisely because he is not.

<sup>30</sup> *TG*, p. 277. This is the criticism of R.M. Hare, *Rawls' Theory of Justice*, in *Philosophical Quarterly*, 23 (1973), pp. 241-252. J. Lucas, *On Justice*, Oxford, Clarendon Press, 1980, believes that there is no reason why even under conditions of informational deprivation subjects should not make risky calculations and therefore sees no reason to adopt Rawls' insurance strategy.

<sup>31</sup> *TG*, p. 24. M. Zwolinski, *The Separateness of Persons and Liberal Theory*, in *Journal of Value Inquiry*, 42 (2008), pp. 147-165, notes that the need to presuppose the separation of persons is necessary in Nozick's libertarianism, but not in Rawls' liberalism.