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# Rawls's justice theory and its relations to the concept of merit goods

*Ragip Ege and Herrade Igersheim*

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## 1. Introduction

In his theory, Rawls defines five primary goods: basic liberties; freedom of movement and free choice of occupation; powers and prerogatives of offices and positions of responsibility, income and wealth; and social bases of self-respect. This set of 'primary goods' is maintained in the same form, rigorously with the same items throughout the philosopher's work, in spite of the important evolution this work has experienced over time, from *A Theory of Justice (TJ)* (Rawls 1971) to *Political Liberalism (PL)* (Rawls 1993).<sup>1</sup> As one can see, in addition to the elements that correspond to rights, the set of primary goods includes economic elements too, such as 'income and wealth', for Rawls aims to devise a conception of justice based on the theories of the social contract (Locke, Rousseau, Kant) and he tries to describe an implementable theory capable of promoting real freedoms, not just formal ones. To do so, it is necessary for Rawls to cope with economic issues. Yet Rawls gives only a few details about the concrete content of the fourth primary good 'income and wealth'. In this paper, we claim that resorting to the concept of merit goods defined by Musgrave (1959, 1987) as a part of this fourth primary good would contribute to clarifying Rawls's theory. It would allow Rawls on the one hand to bring more substance to the fourth primary good 'income and wealth', and on the other hand to deal more efficiently with his aim to construct an implementable theory.

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1 This evolution is recalled in Section 3 of this paper.

All the more so as Musgrave himself declares that ‘the role of merit goods [...] bears some relation to the philosopher’s concept of “primary goods”’ (Musgrave 1987: 453).

However, in his works Rawls never mentions the concept of merit goods, but one can find here and there the notion of public goods. According to Musgrave (1987: 452), let us recall that public goods and private goods ‘rest on the premise of individual preference’, whereas merit goods interfere with consumer’s sovereignty.<sup>2</sup> We believe the fact that Rawls does not seem to know the concept of merit goods – and *a fortiori* the distinction between public and merit goods – implies that the status of public goods in all his theory remains rather vague and ambiguous. In other words, regarding economic issues, we point out a serious theoretical difficulty in the Rawlsian position due to his supposed ignorance of the concept of merit goods: on the one hand, Rawls’s theory of justice demands a concept that stems from *res publica*; but, on the other hand, the concept of public goods is not adequate to this end. Indeed, regarding *res publica* Rawls is mainly concerned by public education and health, whereas according to the modern theory of public good neither education nor health is public goods.<sup>3</sup>

Moreover, in our opinion, our claim (i.e. resorting to the concept of merit goods) is in accordance with the evolution of Rawls’s thought from *TJ* to *PL*. Indeed from *TJ* to *PL*, Rawls’s concerns change: from an ambitious project, the construction of a comprehensive general theory of justice, to a more modest, limited but precise and concrete interrogation on the conditions of the basic political structure of a society that ensures the pacific coexistence of several comprehensive but reasonable conceptions of the good in the city.<sup>4</sup> This limitation of the theoretical ambition of the project leads Rawls to favour in *PL* a set of concepts such as ‘reasonable’, ‘reasonable pluralism’, ‘public reason’, ‘political conception’, ‘democratic culture’, ‘constitutional-democratic regime’, ‘historical development’, ‘toleration’, and so on. Our paper thus attempts to show that this set of new concepts makes the integration of the notion of merit goods noticeably possible.

We believe in this new approach of the question that the most important concept is the concept of ‘public reason’. As we will see, on the basis of the Rawlsian analyses in *PL*, we define ‘public reason’ as the new concept corresponding to the one of ‘sense of justice’ that we find in *TJ*. But this new concept is conceived as emerged, shaped and constructed through an

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<sup>2</sup> The distinction between public and merit goods will be developed in Section 2.

<sup>3</sup> As we will see in Section 2.

<sup>4</sup> On this evolution, see, among others, Audard (1988, 2003), Munoz-Dardé (2003), Duhamel (2006), Ege and Igersheim (2008).

historical process. On the other hand, the determination of merit goods supposes a process of revision and reformulation of the consumer sovereignty and its immediate preferences. In this perspective, we can say that the emergence and construction of public reason and the determination of merit goods follow the same historical process. In this sense, merit goods could be seen as constituting a component of primary goods that are set up thanks to the deliberative resources of public reason through public discussion between reasonable citizens.

Our paper is organized as follows. Section 2 deals with Rawls's status of public goods in *TJ* and stresses that the concept of merit goods seems to cope better with his aims, even if Rawls never refers to it. Section 3 is dedicated to the evolution of Rawls's thought and points out that his position about what he calls 'public' goods becomes unclear. Section 4 explains how the new concepts developed in *PL* make it possible to integrate merit goods. Section 5 is devoted to the conclusion of our study.

## 2. Public goods versus merit goods in *A Theory of Justice*? An appraisal

In this section, the definition of public goods developed by the modern theory of public goods is compared with the one used by Rawls in *TJ*. Actually, we stress that the way Rawls defines public goods is more in accordance with the concept of merit goods, even if he does not mention it. Then, we examine the status of 'public' goods in *TJ* – as called by Rawls – with the primary goods' one.

The reflection on the concept of public goods is central in economic theory, for its founding fathers as well as for contemporary economists. With the emergence of the modern theory of public goods thanks to Samuelson (1954, 1955), the concept of public goods has been specified and clarified. Let us recall that public goods are opposed to private goods. Samuelson (1954: 387) assumes:

two categories of goods: ordinary *private consumption goods*  $X_1, X_2, \dots, X_n$  which can be parceled out among different individuals  $(1, 2, \dots, i, \dots, s)$  according to the relations  $X_j = \sum_1^s X_j^i$  and *collective consumption goods*  $(X_{n+1}, \dots, X_{n+m})$  simultaneously for each and every  $i$ th individual and each collective consumptive good.

This property of collective consumption goods or *public goods* is usually called 'non-rivalry in consumption' (Sandmo 1987: 1061), even if one can find too other terms such as 'perfect indivisibility' (Buchanan 1968: ch. 9).<sup>5</sup>

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5 Buchanan (1968: ch. 9) defines the 'purely private' goods and services as 'those that are perfectly divisible among separate persons (consumers). The total

Samuelson's original definition of public goods explicitly covered the characteristic of non-rivalry, but after him a second characteristic has been added to describe public goods: non-excludability. Conversely to the enjoyment of a private good from which a consumer can be excluded thanks to its price, the benefits of a public good are consumed in equal amount by all since they are indivisible. Concerning the provision of public goods, one can simply add that due to their specificities and contrary to private goods that 'are provided for adequately by the market', public goods 'must be satisfied through the [government's] budget if they are to be satisfied at all' (Musgrave 1959: 8–9).<sup>6</sup>

Let us examine now if and why Rawls evokes the notion of public goods into *TJ*. In Section 42 of *TJ*, a long passage is dedicated to this issue:

the distinction between public and private goods raises a number of intricate points, but the main idea is that a public good has two characteristic features, indivisibility and publicness. That is there are many individuals, a public so to speak, who want more or less of this good, but if they are to enjoy it at all must each enjoy the same amount. The quantity produced cannot be divided up as private goods can and purchased by individuals according to their preferences for more and less. There are various kinds of public goods depending upon their degree of indivisibility and the size of the relevant public. The polar case of a public good is full indivisibility over the whole society. A standard example is the defense of the nation against (unjustified) foreign attack. All citizens must be provided with this good in the same amount; they cannot be given varying protection depending on their wishes. The consequence of indivisibility and publicness in these cases is that the provision of public goods must be arranged for through the political process and not through the market. (Rawls 1971: 235–6)

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supply of such a good or service is represented by the summation of the supplies available to all persons. If  $X$  is the total quantity available to the group, and if  $X_1, X_2, \dots$ , are quantities available to individuals, then  $X = x_1 + x_2 + \dots + x_n$ . Further, he states that the goods and services that are 'purely public' are 'those that are perfectly indivisible as to benefits among the separate persons in the group. If  $X$  is the total quantity available to the group, this same quantity is also available to each and every individual in the group,  $X = x_1 = x_2 = \dots = x_n$ '. Here, it must be noticed that Buchanan used the exact same equations as Samuelson (1954) did to describe the difference between private and public goods. One can thus acknowledge that the terms 'non-rivalry' and 'perfect indivisibility' – even if the latter is less used – refer to the same characteristic of public goods.

<sup>6</sup> Since the main elements of the theory of public goods are standard, we will not detail further this issue here. For extensive surveys, see Atkinson and Stiglitz (1980: lectures 16–17) and Oakland and Laffont in Auerbach and Feldstein (1987).

It should be added that Rawls only refers to Buchanan (1968: ch. 9) when describing the two characteristics of public goods; that is, indivisibility and publicness. Indeed, according to this author, public goods have two independent characteristics: degree of indivisibility and extent or range of indivisibility (or publicness). Hence, in Buchanan's terms, a pure public good for a nation (or a group), as the national defence, is fully indivisible and fully public; that is, every member of the nation (or the group) is provided with the exact same amount of this good. We already stressed above that Buchanan's definition of indivisibility matches that of non-rivalry. Regarding publicness, it relates to the size of the group that is provided with a public good (a single consuming unit/a suburb/a city/a nation, etc.). As for indivisibility and non-rivalry, it must be conceded here that the sense Buchanan grants to the term 'publicness' seems to convey the same idea as the degree of excludability. Indeed, full excludability would correspond to the consumption of a good by one individual (an apple for instance), whereas non-excludability relates to the consumption of a whole nation (or a group).<sup>7</sup> In other words, Buchanan's (or Rawls's) definition of public good is similar to the standard one.

But Rawls does not focus on public goods only. On the contrary, his conception of public goods is rather large (and misapplied), as shown by the following quotation: 'there are public goods of many kinds, ranging from military equipment to health services' (Rawls 1971: 239). Besides, in addition to health services, he often mentions in *TJ* the necessity of a fair distribution of education (see, for instance, Rawls 1971: 86–7 or 92). Yet on the one hand education and health are not public goods since they are rival and excludable. But on the other hand they cannot be seen as ordinary

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7 To see it more clearly, let us read Buchanan (1968: ch. 9) on this issue: 'one major flaw in the scalar ranking of goods and services solely by the divisibility-indivisibility characteristic should be apparent. Goods and services will not hold the same rank in the scale as the size of the group changes. It is necessary to supplement the ranking by a second one that describes the range or limit over which the indivisibility characteristic, if it exists, holds. An example will clarify. It is probable that the benefits from mosquito spraying are almost wholly indivisible over the set of families living in one small suburb. It is equally clear that the benefits from mosquito spraying become fully divisible as among residents of suburbs in different outlying areas of the city. As in the case with the degree of divisibility, we may think of a whole scale or spectrum that defines the limits of the interaction. At the one extreme, again, we have the purely private, fully divisible good or service, where this interaction is defined as being limited to the single consuming unit, the person or the family. At the other extreme, we have the good or service that is fully indivisible as to benefits over a group, that is, conceptually, of infinite membership'.

private goods. There exists a particular concept introduced by Musgrave (1959, 1987), which allows one to cope with this kind of goods: the merit goods. In his discussion of the Allocation Branch, the author of *The Theory of Public Finance* defines the twin concepts of 'social wants' and 'merit wants'. Whereas social wants are related to the concept of public goods, the merit wants exhibit very different characteristics. Let us read Musgrave (1959: 13) on this subject:

the type of public wants dealt with under social wants are wants whose satisfaction should be subject to the principle of consumer sovereignty. The basic rule is that resources should be allocated in response to the effective demand of consumers, determined by individual preferences and the prevailing state of distribution. Indeed, social wants are quite similar in this fundamental respect to private wants. We now turn to our second category of public wants. Such wants are met by services subject of the exclusion principle and are satisfied by the market within the limits of effective demand. They become public wants if considered so meritorious that their satisfaction is provided for through the public budget, over and above what is provided for through the market and paid for by private buyers. This second type of public wants will be referred to as *merit wants*. Public services aimed at the satisfaction of merit wants include such items as publicly furnished school luncheons, subsidized low-cost housing, and free education.<sup>8</sup> Alternatively, certain wants may be stamped as undesirable and their satisfaction may be discouraged through penalty taxation, as in the case of liquor. The satisfaction of merit wants cannot be explained in the same terms as the satisfaction of social wants. While both are public wants in that they are provided for through the public budget, different principles apply. Social wants constitute a special problem because the same amount must be consumed by all, with all the difficulties to which this gives rise. Otherwise, the satisfaction of social wants falls within the realm of consumer sovereignty, as does the satisfaction of private wants. The satisfaction of merit wants, by its very nature, involves interference with consumer preferences.

This long quotation allows one to point out the exact nature of merit wants and, especially, why they must be distinguished from social wants. In other words, 'distorted preferences constitute the essence of the merit goods problem' (Head 1966). Many reasons explain why the consumer makes mistakes regarding her preferences: uncertainty, incomplete information, irrationality. Head (1966: 5) stresses that the benefits of education and preventive health services are often misjudged because of a lack of information. In a nutshell, Musgrave's definition of merit goods is fundamental since it allows to clarify an important set of goods, which before him were confused either with private or public goods. But it raises numerous problems as well, such as the definition by the society of the set

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8 In addition to this list of examples, Musgrave (1959: 13) also mentions health measures.

of merit goods since calling for consumer's sovereignty is not possible in this case.<sup>9</sup>

If we come back to *TJ* and to the passages in which Rawls mentions 'public' goods, but education and health services too – which are not public goods, as stressed above – we claim that the concept of merit goods as defined by Musgrave would be more appropriate for Rawls's purposes and aims than the notion of 'public' goods he has used. As stated in the Introduction, we will attempt in the rest of the paper to give arguments to support the following point of view: in our opinion, the standard definition of public goods is not consistent with Rawlsian aims, whatever in *TJ* or in his latest works. In particular, we believe that the fourth primary good (i.e. 'income and wealth') could have lost its abstract and vague character and regained a more concrete content thanks to Musgrave's notion to which Rawls never paid attention even if *The Theory of Public Finance* is quoted in *TJ* (Rawls 1971: 243 n. 14 and 247 n.17).<sup>10</sup> Hence, from now on and all through this paper, when quoting some passages of Rawls's papers or books we will understand the terms 'public goods' as 'merit goods'.<sup>11</sup> Now that this central point of our paper has been made, one can examine the following questions: how does Rawls include merit goods into *TJ*? In particular, are they related to a fundamental concept of his theory; that is to say, primary goods? The 'first' Rawls provides precise answers to all these interrogations.

Concerning these issues, let us first recall what are primary goods and the two principles of justice that govern their distribution among the members of the society. In justice as fairness, Rawls defines five primary goods: basic liberties (freedom of thought, liberty of conscience, political liberties and freedom of association, freedoms specified by the liberty and integrity of the person, rights and liberties covered by the rule of law); freedom of movement and free choice of occupation; powers and prerogatives of offices and positions of responsibility, income and wealth; and social bases of self-respect. They are allocated according to two principles of justice, which are determined during the deliberation in the original position (Rawls 1993: 291):

- a. each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.

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<sup>9</sup> We will come back on that issue in Section 4 of our paper.

<sup>10</sup> These two references to Musgrave's book concern other topics than the problematic of merit goods.

<sup>11</sup> But we do not pretend necessarily that the concept of merit goods entirely covers what Rawls understands by public goods. Our thesis is limited to the assertion that the concept of merit goods may bring more consistency and internal coherence to a specific sequence of the Rawlsian argumentation.

b. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.

Let us add that the first principle has priority over the second (equal basic rights and liberties) and that the first part of the second principle (fair equality of opportunity) has priority over the second part (difference principle). Thus, the first principle of justice is designed to allocate the basic liberties, the first part of the second principle of justice ensures the distribution of the free choice of occupation, while the difference principle has the responsibility of sharing income and wealth.

But do all these definitions leave enough room for the concept of merit goods? In other words, can merit goods be taken into account into Rawls's theory of justice and where? In a paper from 1975,<sup>12</sup> while Rawls is specifying the meaning of the fourth primary good – income and wealth – he indicates the possible space where the 'public' goods could take place. First, he states that 'wealth consists of (legal) command over exchangeable means for satisfying human needs and interests'; second, that 'people have control over wealth not only as individuals but also as members of associations and groups'; and finally, that '[wealth could include] citizen's control over social resources used as public goods in a democratic state' (Rawls 1975: 540–1). Hence, the definition of the fourth primary goods 'income and wealth' is rather large: according to these two quotations, one can see that 'income and wealth' can include either private, club, public or merit goods can be considered as an element. Consequently, merit goods can be considered an element of the fourth primary goods. Besides, according to Rawls:

an economic system regulates what things are produced and by what means, who receives them and in return for which contributions, and how large a fraction of social resources is devoted to saving and to the provision of public goods. Ideally all of these matters should be arranged in ways that satisfy the two principles of justice. (1971: 235)

And Rawls adds that the resources devoted to education – which can be seen as a merit good – could depend on the difference principle and be arranged thanks to it: 'the difference principle would allocate resources in

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12 This paper, 'Fairness to Goodness' (Rawls 1975), is considered as belonging to the theory developed by the 'first' Rawls since it is in the same line of reasoning as *TJ*. The demarcation between the 'first' Rawls (the one of *TJ*) and the 'second' Rawls (the one of *PL*) can be placed at the beginning of the 1980s, notably with the famous Dewey Lectures (Rawls 1980).

education, say, so as to improve the long-term expectation of the least favored' (Rawls 1971: 86–7).

Finally, since Rawls states that social resources – which can include merit goods – are a part of the fourth primary good (income and wealth), and since their distribution is done in accordance with the principles of justice – the difference principle in particular – it seems to us that primary goods and merit goods have close links, more precisely, that merit goods can be seen as belonging to the set of primary goods.

Yet the 'first' Rawls stresses very firmly that 'public' goods – that, in our opinion, correspond to merit goods – are not necessarily included in the set of primary goods. Indeed, according to Rawls, the determination of 'public' goods depends on the functioning of *a particular society*, whereas the definition of the primary goods takes place at the initial stage – the original position – and is valid for *any society*:

the particular list of public goods produced and the procedures taken to limit public harms depend upon the society in question. It is a question not of institutional logic but of political sociology, including under this heading the way in which institutions affect the balance of political advantages. (Rawls 1971: 239)

Furthermore, Rawls adds that he is interested in economic issues for 'questions of political economy are discussed simply to find out the practicable bearing of justice as fairness' (Rawls 1971: 234). Hence, one can argue that Rawls's attention to 'public' goods proceeds only from his desire to check if his theory is implementable.

To conclude this section, let us take in that the position of Rawls in *TJ* concerning the goods he calls 'public' is quite explicit and clear. In particular, he emphasized that they cannot belong to the set of primary goods. But the evolution of Rawls's thought challenges this assertion.

### 3. The 'second' Rawls and the merit goods: between exclusion and inclusion

This section is devoted to the evolution of Rawls's thought from *TJ* to *PL* and to its consequences for Rawls's conception of what he calls 'public' goods. First, we stress that the theory exposed in *TJ* has been much criticized both by economists and philosophers. Many criticisms stem from Rawls's numerous borrowings from economic theory. To answer these criticisms, Rawls develops a new theory: political liberalism. Second, we point out that political liberalism would allow one to include the concept of merit goods (or what Rawls calls 'public' goods) much better than *TJ*'s theory since *PL*'s objectives are more limited. Yet we observe that Rawls's

attitude towards this concept is rather ambiguous and vague, and we claim that it can be notably explained by Rawls's general wariness of economic theory due to the constant criticisms he was the butt of after *TJ*.

In *TJ*, Rawls's purpose is to design a conception of justice he calls justice as fairness. Its major originality is to propose the two principles of justice we recalled in Section 2. These two principles are supposed to govern the functioning of the most fundamental elements of the society (its basic structure, the allocation of primary goods, etc.). Hence, to be acceptable, these principles must be strongly justified: why would society choose them to govern its basic structure and not any others? Therefore, Rawls's main concern is to design a convincing process in order to determine these principles of justice. According to him, in 'a hypothetical situation of equal liberty' (Rawls 1971: 11) – the original position – a deliberation between free, equal and rational persons deprived of any information about their social position and other natural assets (veil of ignorance) leads to the determination of the two principles of justice he puts forward.<sup>13</sup> If the veil of ignorance is the main part of the original position, some other reasonable conditions are also required: Hume's circumstances of justice and some formal constraints of the concept of right.

One can notice that in *TJ* Rawls refers very often to economic concepts, particularly, in order to justify his principles of justice. He uses, for instance, the concept of rationality in the economist's sense:

the concept of rationality must be interpreted as far as possible in the narrow sense, standard in economic theory, of taking the most effective means to given ends [...]. One must try to avoid introducing into it any controversial ethical elements. (Rawls 1971: 12)

At the start of *TJ*, Rawls goes as far as to claim that 'the theory of justice is a part, perhaps the most significant part, of the theory of rational choice' (1971: 15). Further, one can find many other borrowings from economic theory (on this issue, see more particularly d'Aspremont 1984; Edgren 1995). But Rawls aims as well at proceeding from Kant's theory. As such, Rawls's conception of the original position and the relationship between the rational and the reasonable directly proceeds from his interpretation of Kant:

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<sup>13</sup> On this subject, see, among others, Kersting (2000). We follow him when he observes that Rawls aims to imagine genuine scenarios of justification concerning the determination of the principles of justice not by a process of 'top down' but by a process of 'bottom up', through discourses, covenants, different modes of creation of majority (*Merheitsbeschaffung*) (Kersting 2000: 68).

Kant's categorical imperative procedure subjects an agent's rational and sincere maxim (drawn up in the light of the agent's empirical practical reason) to the reasonable constraints contained in that procedure, and thus constrains the agent's conduct by the requirements of pure practical reason. Similarly, the reasonable conditions imposed on the parties in the original position constrain them in reaching a rational agreement on principles of justice as they try to advance the good of those they represent. In each case the reasonable has priority over the rational and subordinates it absolutely. This priority expresses the priority of right; and justice as fairness resembles Kant's view in having this feature. (Rawls 2001: 81–2)

According to Rawls, let us add that the pair reasonable/rational is thus similar to the Kantian distinction between categorical imperatives and hypothetical imperatives.

Finally, considering Rawls's assertions about the original position, can one agree with him when he claims that 'the original position [is] in important ways similar to the point of view from which noumenal selves see the world [...]. Thus men exhibit their freedom, their independence from the contingencies of nature and society, by acting in ways they would acknowledge in the original position' (Rawls 1971: 225) or that 'the principles of justice are also analogous to categorical imperatives' (Rawls 1971: 222)?

But the fact that Rawls has based justice as fairness on the theory of rational choice and, more generally, the fact he has referred very often to economic concepts give rise to a double series of criticisms; from philosophers on the one hand, from economists on the other hand. Hence, some philosophers such as Höffe (1988: 59) emphasize that regarding principles of justice as categorical imperatives is irrelevant for one can assert that Rawls attempts to deduce the principles of justice from a rational prudential choice whose rules are hypothetical and not categorical imperatives. Accordingly, considering principles of justice as categorical imperatives is inappropriate: they are only hypothetical imperatives.

On the other hand, some very famous economists such as Arrow (1973), Musgrave (1974) and Harsanyi (1975, 1982 [1977]) criticized very strongly justice as fairness – the principle of difference notably – because of the link Rawls has established between his theory and the theory of rational choice. One can argue that this passionate polemic between the philosopher and the economists contributed as well to entertain some ambiguities about the relationship between the reasonable and the rational in *TJ*.

In order to answer all these criticisms and to clarify this issue, which is essential for the consistency of his thought, Rawls was compelled to do his *mea culpa*: 'it was an error in *Theory* (and a very misleading one) to describe a theory of justice as part of the theory of rational choice' (Rawls 1985: 237, footnote 20).<sup>14</sup> Besides, since the Dewey Lectures in 1980, Rawls tried hard

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14 See also Rawls (1982; 1993: 81, footnote 1; 2001: 119, footnote 2).

to convince his detractors that the rational is subordinated to the reasonable. To do so, Rawls uses very powerful terms: the reasonable 'presupposes', 'governs' and even 'limits' the rational (Rawls 1980).

Then, according to Canivet (1984) and Audard (1988), thanks to Rawls's explanations concerning the status of the reasonable, the Rawlsian subject is no longer simply careful and interested, but moral. Therefore, the principles of justice can be regarded as categorical imperatives. Höffe (1988) adds on this point that the Rawlsian subject is universal as the Kantian one, since both are indifferent to any particular determination. Thus, until 'Justice as Fairness: Political, not Metaphysical' (Rawls 1985), the theory proposed by Rawls is deeply Kantian. Even if Rawls emphasizes that the principles of justice only apply to the basic structure of society, the possibility of extending his conception of justice beyond the political sphere is explicitly mentioned:

justice as fairness is not a complete contract theory. For it is clear that the contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles for all the virtues and not only for justice. Now for the most part I shall consider only principles of justice and others closely related to them; I make no attempt to discuss the virtues in a systematic way. Obviously, if justice as fairness succeeds reasonably well, the next step would be to study the more general view suggested by the name rightness as fairness. (Rawls 1971: 44)

Despite the uncertainty concerning the scope of his theory, the message of *TJ* is clear: according to Rawls, freedom cannot be established without considering the Kantian subject. The Kantian doctrine is a necessary condition of freedom. Is it sufficient, however?

Even in *TJ*, Rawls stresses his difference with Kant:

the parties know that they are subject to the conditions of human life [...]. Human freedom is to be regulated by principles chosen in the light of these natural restrictions. Thus justice as fairness is a theory of human justice and among its premises are the elementary facts about persons and their place in nature. The freedom of pure intelligences not subject to these constraints (God and the angels) are outside the range of the theory. Kant may have meant his doctrine to apply to all rational beings as such and therefore that men's social situation in the world is to have no role in determining the first principles of justice. If so, this is another difference between justice as fairness and Kant's theory. (Rawls 1971: 226)

Rawls's target is to devise a concrete and empirical theory, which enables the 'opening up to the world' and, according to Rawls, this is not Kant's objective. Rawls aims at dealing with different persons that may have different conceptions of the good, not with an ideal individual who respects

the moral law in any circumstances. But is this objective achieved in Rawls's early writings? Both Audard (1988) and Höffe (1988) emphasize that the condition of universality that is included in the veil of ignorance leads further than Rawls's purpose since it is the reason why prudential rational choices turn into moral or reasonable choices and thus conflicts with the principle of toleration – toleration towards citizens' different conceptions of the good: Rawls's justice as fairness is more Kantian than his author wanted it to be. Thus, resorting to only one doctrine – even Kantian – is inconsistent with Rawls's purpose:

a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power. If we think of political society as a community united in affirming one and the same comprehensive doctrine, then the oppressive use of state power is necessary for political community [...]. A society united on a reasonable form of utilitarianism, or on the reasonable liberalism of Kant or Mill, would likewise require the sanctions of state power to remain so. Call this the fact of oppression. (Rawls 1993: 37)

Therefore, in order to carry out his aim (i.e. to reconcile the rational and the reasonable), Rawls has no option but to narrow the scope of his theory: from a moral theory of justice to a political one. The conception of justice developed by the 'second' Rawls, from 1985 onwards, called political liberalism, thus avoids certain philosophical claims. Besides, it applies only to the basic structure of modern constitutional democracy and not any more to 'different kinds of societies existing under different historical and social conditions' (Rawls 1985: 22). Political liberalism is the only conception that allows the pacific coexistence of divergent comprehensive doctrines in a democratic society, since 'under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable – and what's more reasonable – comprehensive doctrines will come about' (Rawls 1993: 36).<sup>15</sup>

Hence, one can see that even if political liberalism is largely based on the main concepts of *TJ* (such as primary goods, principles of justice, basic structure, etc.), it has yet quite different objectives; in particular, the fact that it now applies to modern constitutional democracies only and not any more to every possible society. On the other hand, Rawls's will of defining a

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15 Here, the concept of 'reasonable' is opposed to the concept of 'irrational' in the sense that no comprehensive doctrine that can be dangerous for the society can result from 'the work of free practical reason within the framework of free institutions' (Rawls 1993: 37).

concrete and implementable theory is still present in political liberalism, even more than before. In *TJ*, let us recall that Rawls resorted to what he calls ‘public’ goods to cope with the practical attitude of his theory. Moreover, the goods he calls ‘public’ (and that we identified as merit) and the primary goods did not have the same status since the former were determined at the level of a specific society, while the latter were defined in the original position. Consequently, in view of both precedent objectives (application to modern democracies, possible implementation of the theory), one can easily conclude that granting to the concept of merit goods a more central place in political liberalism – through the fourth primary good, income and wealth – would be appropriate and would match in every respect Rawls’s new concerns. But the philosopher did not follow this line of reasoning. On the contrary, the position he adopts regarding what he calls ‘public’ goods – and economic concepts as a rule – is rather ambiguous.

On the one hand, particularly in *PL*, the ‘second’ Rawls firmly distances himself from economic concepts. In our opinion, this is a direct consequence of the double series of criticisms of which Rawls was the butt after *TJ* because of his numerous references to economic theory both from economists and philosophers.<sup>16</sup> Indeed, afterwards, Rawls’s borrowings from economic theory are much less frequent, not to say non-existent.<sup>17</sup> Of course, the same tendency applies to what Rawls calls ‘public’ goods. As a matter of fact, Rawls’s suspicion concerning economic theory (or, at least, a part of it) is rather visible in *PL*. In particular, he strongly criticizes:

the notions of goodness in the teleological moral doctrines of utilitarianism and perfectionism’ since they ‘are specified independently of a notion of right, for example, in utilitarianism (*and in much of welfare economics also*) as the satisfaction of the desires, or interests, or preferences of individuals. (Rawls 1993: 294 and footnote 10; emphasis added)

Here, one can acknowledge that Rawls seems to be wary of ‘much of welfare economics’ and its concepts: utility, interests, preferences, and so forth. And this movement is in every respect similar to Rawls’s attempt to limit the

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16 See for instance his *mea culpa* stated above in this section and footnote 12.

17 This observation does not mean that the ‘second’ Rawls rejects all economic elements out of the set of primary goods. ‘Income and wealth’ are always included in this set as fourth primary good. But Rawls refrains progressively from any explicit reference to economic theory, particularly to the concept of public goods. We try to explain the possible reasons of Rawls’ progressive suspicion regarding economics. That is precisely this suspicion that deprives the fourth primary good of a concrete content.

rational, to subordinate it to the reasonable. Indeed, one can maintain that, in some philosophers' view, most economic concepts and the rational are related to the good, whereas the primary goods and the reasonable are situated on the side of the right. Therefore, we claim that the fact that in *PL* Rawls does not mention any more the 'public' goods (or what he calls this way) stems from his strong suspicion about the rational and every economic concept as a rule, since all these elements can be misunderstood both by economists and philosophers, and thus threaten the status of the reasonable in his theory.

But, on the other hand, in 2001 Rawls seems nevertheless to abandon for a moment his suspicion regarding what he calls 'public' goods when he says that:

as citizens we are also the beneficiaries of the government's providing various personal goods and services to which we are entitled, as in the case of health care, or of its providing public goods (in the economist's sense), as in the case of measures ensuring public health (clean air and unpolluted water, and the like). All of these items can (if necessary) be included in the index of primary goods. (Rawls 2001: 172)

Let us specify right now that the primary goods included in this index are regulated by the second principle of justice. The function of the second principle is not only to share equitably free choice of occupation and income and wealth, but also to allow the first principle of justice to be effective; that is, to allow the basic liberties to be not merely formal, but real.<sup>18</sup>

To fully understand this point – and hence to fully understand the theoretical importance of Rawls's explicit inclusion of the concept of merit goods (such as healthcare) in the index of primary goods – one must examine closely the meaning of the first principle of justice and how it can be effective thanks to the second principle of justice. First, the priority of liberties and of the first principle means that a basic liberty can be limited only for the sake of another basic liberty, but by no other kind of considerations. Second, all basic liberties do not have the same status or same importance. Rawls stresses that the freedom of the ancients (political liberties) is a freedom of lesser importance than the freedom of the moderns (individual liberties): 'the role of the political liberties is perhaps largely instrumental in preserving the other liberties' (Rawls 1993: 299). Last but not least, giving a particular position to political liberties allows the basic liberties not to be merely formal. Indeed, if social and economic inequalities are too large, 'those with greater responsibility and wealth can control the course of legislation to their advantage' (Rawls 1993: 325).

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18 See also Daniels (1989 [1975]) and Rawls's answer (1982).

Therefore, Rawls distinguishes basic liberties and their worth or usefulness in order to avoid this drawback of justice as fairness. Thus, ignorance and poverty are not regarded as elements that limit individual freedom, but its worth. Rawls shifts the opposition formal freedom/effective or real freedom to the opposition freedom/worth of freedom. The effective freedom or the worth of liberty of an individual can be 'specified in terms of an index of the primary goods regulated by the second principle of justice' (Rawls 1993: 326). But the action of the second principle (fair equality of opportunity and difference principle) is not sufficient to prevent the expulsion of the poorest members of the society from the political sphere. Its effect must be strengthened by a 'fair value' of the political liberties for all:

this guarantee means that the worth of the political liberties to all citizens, whatever their social or economic positions, must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold public office and to influence the outcome of political decisions. (Rawls 1993: 327)

In association with the second principle of justice, this measure, included in the first principle, 'is one way in which justice as fairness tries to meet the objection that the basic liberties are merely formal' (Rawls 1993: 328).

In other words, the fact that Rawls stresses it is possible to include, among others, merit goods (such as healthcare) in the index of primary goods seems to be directly related to his concern about the concrete meaning of freedom, about the conditions of the exercise of a real liberty and, in the last instance, about the possible implementation of his theory. In 2001, Rawls attempts to discuss Sen's (1980, 1992) objection against the index of primary goods – 'namely, that is bound to be too inflexible to be fair' (Rawls 2001: 168) – and suggests to include, among others, merit goods in this index to answer Sen's criticism. He mentions as well that the main institutions of a society whose basic structure applies the two principles of justice should be as follows:

(a) Provisions for securing the fair value of the political liberties, although what these are in detail was not examined. (b) So far as practicable, provisions for realizing fair equality of opportunity in education and training of various kinds. (c) A basic level of health-care provided for all. (Rawls 2001: 176)<sup>19</sup>

Therefore, in 2001, it must be pointed out that Rawls explicitly states that education and health –which can be seen as merit goods – have a

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19 Note that a much less detailed passage of *PL* is meant to answer Arrow's (1973) and Sen's (1980, 1992) objections against justice as fairness (Rawls 1993: 181–6).

fundamental function in his theory, namely to allow the basic liberties to be real.

In a nutshell, from 1971 to 2001, Rawls's position remains ambiguous:

- First, in *TJ* he clearly reduces the importance of what he calls 'public' goods in comparison with primary goods.
- Second, in *PL*, in spite of the fact that the concept of merit goods could allow him to cope better with his new aims, he does not mention it and shows a strong suspicion regarding economic theory.
- Third, in 2001, to answer Sen's criticism (1980, 1992), he concedes that 'public' goods could be included – if necessary – into the index of primary goods in order to maximize the effects of the second principle of justice over the first one (i.e. to enable basic liberties to be real liberties, not just formal ones).

In our opinion, merit goods could be explicitly part of the primary goods that depend on the second principle of justice; in particular, income and wealth. Indeed, as described above, whereas Rawls has clearly granted a specific position to political liberties, he remained ambiguous concerning what he calls 'public' goods, which have exactly the same function as the fair value of political liberties: to guarantee the effectiveness of the individual liberties included in the first principle of justice.

In these circumstances, a further examination of Rawls's position is necessary. In the next section, we will attempt to show that the concept of merit goods matches in every respect the new concepts Rawls developed in *PL*, in particular 'public reason'. Throughout his intellectual evolution, Rawls shows himself more sensitive to the realistic and concrete character of his arguments. He seems much more concerned by the question of effectiveness than by his capacity or incapacity to build an abstract and coherent theory of justice. When we consider things from the point of view of this strong demand for the realism of the arguments, the concept of 'merit goods' would deserve much more attention on the part of Rawls. But that was not the case; we will try to explain this observation in our following section.

#### **4. Public reason and merit goods**

The major concept of *PL* is 'public reason'. As we will see below, this concept comprises a fundamental historical dimension that is absent from the problematic of *TJ*. In the new ethical problematic of *PL*, public reason is conceived as the result of a complex process along which the primary goods

are defined, adopted and warranted by and for the whole community of citizens. Considering the specific status of merit goods as presented above, we believe that the mentioned process prepares also the conditions that will allow citizens to choose which goods should be considered as meritorious. But paradoxically, in the texts of the 'second' Rawls, the references to economic concepts as a rule become increasingly scarce. As noticed in Section 3, it seems to us that the reason lies in the fact that, because of the criticisms of both economists and philosophers, the author became always more suspicious regarding economic concepts. In the present section we begin by giving an example of such a criticism that could have provoked Rawls's step back from economics. The second part of the section is devoted to the question of public reason and to the importance of this concept in the ethical theory of the 'second' Rawls. Finally, we try to link the concept of public reason to the concept of merit goods and to show that the latter deserves plainly to be integrated into the set of primary goods.

Concerning the afore-mentioned suspicion of the rational and of economic concepts that progressively characterizes the Rawlsian theoretical attitude, one can interpret it as a defence against eventual criticisms which could come from philosophers concerning the teleological character of his theory. But naturally Rawls did not entirely succeed in his effort. The highly significant controversy between our author and Habermas constitutes a perfect illustration of the nature of the conceptual constraint that a representative of a pure philosophical approach can exercise on a theoretical attitude that tries to include an economic dimension into the problem raised by the determination of the principles of justice.

Let us consider the criticism of Habermas (1999). The latter considers that Rawls makes a mistake and confusion when he resorts to the term of 'goods' (*Güter*) in order to define the principles of justice. According to Habermas, Rawls in any case cannot escape a serious contradiction when he insists on keeping the terms 'primary goods' in a theory of justice that supposes the fundamental priority of the just over the good. Such a principle of justice is profoundly inconsistent with the terms 'primary goods', because a 'good', by definition, refers to what we desire, to what we aspire to, and in the final analysis, to what is 'good' for us (*gut für uns*) (Habermas 1999: 71). In this sense, a 'good' is necessarily an object of distribution, hence a vulgar economic reality. It is evident that, says Habermas, an unconditional and universal obligation, as Kant conceives it, cannot be assimilated to a simple good. By definition, the concept of universality and autonomy excludes any perspective of teleological choice, whatever such a choice could be. Therefore, according to Habermas, closely considered, the Rawlsian theory of justice is proving to be a 'utilitarian or Aristotelian approach'; in other words, an 'ethics of the good'

(*Güterethik*). An authentic Kantian theory of justice that claims the priority of the just over the good must keep to the concept of right and renounce to the concept of 'good'. The right cannot simply be seen as a vulgar object of possession; one cannot enjoy but only 'practicing' it. Therefore, the concept of 'good' is profoundly inadequate to construct a non-utilitarian theory of justice (Habermas 1999: 71–2).

Unfortunately, such a 'philosophical' criticism of Rawls runs the risk of closing eyes on the major concern of the author: the realism. As we underlined it above, the Rawlsian ethical approach does not content itself with formal liberties or rights, but it cares also and expressly about the conditions of realization of mentioned liberties. Indeed, the primary goods include not only basic liberties or rights but also a set of 'goods' that constitute the material and concrete conditions of these liberties. The problematic of the freedom is not only related to the question of rights, but also to the question of the conditions of the concrete exercise of them. Hence, the originality of the Rawlsian conception of freedom lies in its effort to combine rights with goods; such an effort shows the attention the author pays to the realism of his theory. The terms 'worth of freedom' mentioned in the last section must be understood in this conceptual context. We notice that the Rawlsian concept of 'good' in the expression of primary goods includes both the classical concept of right and a particular concept of 'good' understood in the sense of the conditions of possibility of basic liberties. Freedom of thought, liberty of conscience, political liberties and freedom of association, freedoms specified by the liberty and integrity of the person, rights and liberties covered by the rule of law, freedom of movement and free choice of occupation: all of these elements represent rights in the sense of Habermas. But 'income and wealth', 'social bases of self-respect', even 'powers and prerogatives of offices and positions of responsibility' are stemming from the concept of 'good'. In other words, the author is stimulated by a resolute will to understand the primary goods not only as formal capacities but also as workable, effective possibilities.

We believe that the care Rawls takes always more to strengthen the realism of his theory<sup>20</sup> should have led him to integrate progressively in his thought a *specific economic and material dimension*. From this point of view, the concept of merit goods would have contributed highly to clarify his problematic. The fact that 'goods' in the sense of material realities of distribution and objects of possession could be included in the frame of primary goods never means that Rawls renounces to the fundamental principle of his theory; that is, the absolute priority and anteriority of the

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20 On this issue, see Pogge (2007: 156–60).

just or the reasonable over the good or the rational. On the contrary, 'goods' are associated with rights as the conditions of the latter, and as such rigorously subordinated to them. As we stressed above, the 'first' Rawls has been very strongly criticized because of his numerous references to economic concepts. That is why we believe that the 'second' Rawls seems to consider that all which concerns the domain of economics is necessarily limited to the borders of the rational; that is, the borders of subjective preferences, self-interest, utility, in brief hypothetical imperatives. One must recognize, however, that from a logical point of view, at the level of primary goods, elements that stem from material or economic domain (i.e. the conditions of the concrete freedom) are also the result of a *reasonable* process and not the outcome of a subjective rational choice mechanism. By willing to defend the non-economic character of his thought against the criticisms of philosophers, Rawls is progressively led to give up the logical involvements (i.e. the economic dimension) of his thought, whereas the evolution of Rawls's theory should have required on the contrary to pay more attention to this dimension. Let us develop this claim through the modification of Rawls's problematic from *TJ* to *PL*.

A closer examination of the conceptual construction of *PL* reveals that some hypotheses of *TJ*, such as the veil of ignorance, have practically disappeared and the problem of procedural justice is conceived differently. We know that the original position of *TJ* with its veil of ignorance 'is not, of course, thought of as an actual historical state of affairs [...]. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice' (Rawls 1971: 11). As stressed previously, the reason lies in the fact that free and equal persons who are supposed to deliberate in this position must 'abstract from and not be affected by the contingencies of the social world' (Rawls 1993: 23). In *TJ*, the actors of the original position are supposed to possess a sense of justice and as such they are supposed to be reasonable subjects. Only this faculty, the faculty of reason, can lead deliberations towards universal principles. And as Kant puts it with great rigour, all human beings, because they are human beings, are endowed with the faculty of reason. They do not exclusively belong to the 'sensible world' (*Sinnenwelt*); they are not only 'phenomenal beings' (*homo phaenomenon*); but they also belong to the 'cogitable (intelligible) world' (*Verstandeswelt*) and as such they are 'noumenal beings' (*homo noumenon*) (Kant 1797: 423). Rawls is absolutely right when he declares:

Hume and Kant are about as far as one can get from the view that only a few can have moral knowledge and that all or most people must be made to do what is right by means of [...] sanctions. (Rawls 1993: xxvii)

This idea is explicitly developed in the following remark:

the distinction between the reasonable and the rational was instructively discussed in a general way some time ago by W.M. Sibley [...]. My discussion accords with his basic distinction [...]: knowing that people are rational we do not know the ends they will pursue, only that they will pursue them intelligently. Knowing that people are reasonable where others are concerned, we know that they are willing to govern their conduct by a principle from which they and others can reason in common: and reasonable people take into account the consequences of their actions on others' well-being. The disposition to be reasonable is neither derived from nor opposed to the rational but it is incompatible with egoism, as it is related to the disposition to act morally. (Rawls 1993: 48–9 footnote 1)

In *TJ*, the sense of justice that governs and leads the deliberations between free and equal persons in the original position is founded on the principle of the priority of the right over the good. This statement means that a reasonable person is a moral subject who is concerned by the right of the other. This is conceptualized in a masterly way by the Kantian ethical theory: for a moral subject, the right of the other overcomes any other sacred value. If human beings have a desire of community or a desire of cooperation, the reason lies in the fact that they have a sense of justice. As we have stressed above, the conceptual apparatus which the theory of original position and of the veil of ignorance mobilizes in *TJ* presents, according to Rawls, a 'metaphysical' character. At the beginning of *PL*, Rawls stresses the strictly hypothetical character of *TJ* and recognizes that 'as a device of representation its abstractness invites misunderstanding [...]. In particular, the description of the parties may seem to presuppose a particular metaphysical conception of the person' (Rawls 1993: 27). We observe that in *PL* Rawls attempts to distance himself from the abstract and metaphysical character of *TJ* and to move towards a more realistic theory. That leads him to limit his project to the construction of a political theory; more precisely, to concentrate his interrogation on the conditions of possibilities of a political basic structure of society that could allow individuals to develop their reasonable though incompatible comprehensive conceptions of the good, a basic structure where an overlapping consensus of a plurality of comprehensive conceptions is realizable.

Concerning the question of the so-called 'political basic structure', the suggestive article of H.A. Bedau on the 'institutional' character of the Rawlsian ethical theory and the implications of this latter could provide us some useful elements of clarification of the evolution from *TJ* to *PL*. After having reminded that Rawls always insisted on the fact that 'any ethical theory recognizes the importance of the basic structure as a subject of justice', Bedau remarks that 'Rawls nowhere gives a list of all and only the

institutions that he regards as basic, nor does he give a criterion for a basic social institution' (Bedau 1999 [1978]: 100). Regarding this issue, one must take into account that Bedau's paper is dated 1978. As we reminded it above, after *TJ* Rawls gives up progressively to a comprehensive theory of justice in favour of the precise definition of the *political* conditions of the pacific coexistence of particular comprehensive conceptions of the good. And this transition constitutes a turning point in his intellectual trajectory. In the frame of the new theoretical problematic, the institutional infrastructure is not anymore understood as the set of institutions universally valid for a universal theory of justice but as the specific and limited institutions of a 'well-ordered constitutional society' (Rawls 1993: 448). As a matter of fact, the increasing interest that the 'second' Rawls grants to the Hegelian political philosophy and to the concept of *Sittlichkeit* is the sign of his awareness of the problem that Bedau raises concerning the question of institutions in Rawls's ethical theory (on this subject, see Ege and Igersheim 2008).

The limit of the scope of Rawls's enquiry concerns not only the ambition of the theoretical project, but also the temporal dimension. Dworkin is certainly right when he claims that in *PL* the historical pretension is improved and reinforced rather than the objective pretension of the theory – even if Rawls himself might refuse to agree with this. That is the reason why the theory can no longer claim to universality and its field of validity must expressly be limited to modern occidental societies (Dworkin 1988: 45–6). Indeed, *PL* presupposes a cultural democratic accumulation. In other words, through specific historical experience, individuals are supposed to have progressively integrated an ethic of deliberation. For example, the determining role the Reformation played in Europe regarding the problem of toleration must be recalled here (Rawls 1993: xxv and after). Through such historical events and their consequences in Europe, political reason and moral conscience found favourable conditions of development. Obviously, the problem of toleration is closely linked to the problem of fair cooperation between citizens. We are dealing here with a learning process but in a very particular sense. The afore-mentioned historical experience allows individuals, through a succession of several generations, to assimilate a 'political' or 'public reason'. But this assimilation is fundamentally different from the discovery of an external and unknown reality. What is at stake here is not an external knowledge that an appropriate educational programme is supposed to put at the disposal of individuals. Rather than a process of discovery of an external object, one must talk about a process of revelation, a process of actualization and reinforcement of a virtual faculty of the moral subject; namely, the sense of justice. Through the historical process that we

mention, individuals progressively learn how to become citizens of a democratic society. The virtual sense of justice is actualized and comes into effect in the identity of the citizen. And the citizen represents the moral reality that is the seat of public reason. In *PL* the public reason takes the place that the sense of justice has in *TJ*. More precisely, the concept of public reason in a political problematic of the construction of the basic structure of a democratic society in *PL* corresponds to the concept of sense of justice in a problematic of the elaboration of a theory of justice in *TJ*. Rawls considers that the first concept is much more concrete and free from metaphysical elements as far as it is the result of an historical process. But, as we tried to stress the paradoxical character of the concept of public reason, it is at the same time an historical and a non-historical concept. From the point of view of its formation and emergence, it includes an historical dimension and, as such, it allows the theoretician to renounce highly abstract hypotheses such as the veil of ignorance. But, when the concept is present and works, the fact that individuals who share it (i.e. citizens) change their social position or their specific conception of the good over time does not have any impact on its application:

citizens are free in that they conceive of themselves and of one another as having the moral power to have a conception of the good [...]. Given their moral power to form, revise, and rationally pursue a conception of the good, their public identity as free persons is not affected by changes over time in their determinate conception of it. (Rawls 1993: 30)

Public reason comes into effect in the field of a democratic society. In other words, citizens acquire and apply it when a specific culture and political institutions have taken root in the society. Rawls says:

in a democratic culture we expect, and indeed want, citizens to care about their basic liberties and opportunities in order to develop and exercise their moral powers and to pursue their conceptions of the good [...]. All this presupposes that the fundamental ideas of justice as fairness are present in the public culture, or at least implicit in the history of its main institutions and the tradition of their interpretation. (Rawls 1993: 77–8)

One can claim that the citizens who assimilate the historical accumulation of democratic culture and appropriate actively the political institutions of this accumulation have the same function – that is, to define the principles of justice – as the parties that deliberate under the veil of ignorance in *TJ*. But it must be stressed that this deliberation could also be conceived as an historical process. Progressively, through a long process of confrontation, exchange, dialogue, discussion, the democratic culture and its institutions emerge and develop. That means that individuals who are shaped through

generations by such a specific historical evolution progressively learn how to become reasonable subjects. The concept of reasonable is the most fundamental and the most controversial. The historical dimension of the concept of public reason – even if Rawls might have expressed reservations about this assertion – may bring some elements of precision to the concrete content of the category of reasonable. It implies that during the process of deliberation, individuals are supposed to be rational agents ignoring their own interests or their own social position. Each citizen learns and assimilates progressively that the basic political structure can never obstruct the realization of any particular conception of the good on the understanding that no citizen can take the liberty of pursuing a non-reasonable conception of the good. By this, we mean that no particular conception of the good in civil society can represent a danger to the democratic institutions of society. If a citizen observes an irreducible contradiction between the basic structure with its specific primary goods and her own conception of the good, she is supposed to be sufficiently reasonable to renounce the latter, thus avoiding the danger of destabilizing the coherence of the democratic institutions. Rawls says:

citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. (Rawls 1993: 446)

Here again, we find the intimate connection between reason and community.

Even if Rawls never mentions the topic of merit goods in connection with the concept of public reason in *PL*, we believe that the democratic development of reason through European history cannot be analysed independently of the development of public economy in modern societies. As we already underlined it, the major characteristic of merit goods is their non-observance of the principle of consumer's sovereignty; in other words, the fact that they involve 'interference with consumer preferences'. Such a characteristic is highly significant both on theoretical and practical levels. As economic phenomenon, merit goods are the result of a process that necessarily includes a revision of immediate or original preferences. The choice of a good as meritorious, the conviction that the quantity produced by the market is insufficient and the decision to increase its production by a political intervention suppose a complex procedure. As a matter of fact, some sequences or categories of the community are actually more informed, they are in

possession of ability and knowledge on the real needs of the population as far as matters as health, education, housing, and so forth, are concerned. Musgrave says:

while consumer sovereignty is the general rule, situations may arise, within the context of a democratic community, where an informed group is justified in imposing its decision upon others. Few will deny that there is a case for regulating the sale of drugs or for providing certain health facilities. The advantages of education are more evident to the informed than the uninformed, thus justifying compulsion in the allocation of resources to education; interference in the preference patterns of families may be directed at protecting the interest of minors; the freedom to belong may override the freedom to exclude, and so forth. (1959: 14)

But in a democratic society, no group or category – whatever its knowledge, ability, skill or information – can assume the right to impose, without further ado, its decision upon others. Democratic principle requests that an arrangement relating to the public interest be adopted with the consent of the community. The problem becomes then the following: what could be a non-dictatorial form of interference with consumer preferences? The following remark of Musgrave is likely to give some elements of answer to this question:

community values are thus taken to give rise to merit or demerit goods [. . .]. Without resorting to the notion of an ‘organic community’, common values may be taken to reflect the outcome of a historical process of interaction among individuals, leading to the formation of common values or preferences which are transmitted thereafter. (Musgrave, 1987: 452)

Considerations that are corroborated by Colm in a suggestive article on the topic of ‘national goals’:

Musgrave said that the theory does not regard all individuals as ‘selfish monsters’. Thus, [he] assume[s] that the individuals incorporate into their scale of preferences what they feel needs to be done for national defence, space exploration, social welfare, and so on. They assume that the individual reflects in his own scale of preference, not only benefit and sacrifices of his own but also those of neighbours, of other countries, and of posterity. (Colm 1965: 213)

These two quotations show that economists, dealing with public economy and particularly with merit goods, cease to consider the individual as exclusively a ‘rational’ being, but as a ‘reasonable being’ too. We would say by this remark that an individual is a reasonable being when she is able to revise her preferences, when she finds in herself the force to return on her immediate preferences and modify them according to the preferences of others, according to the interests of the community. The individual who is

able to integrate in her action the point of view of the other is a reasonable man. Brennan and Lomasky said:

preferences over preferences we have called 'reflective'; and we claim that, in at least some cases, individuals will exhibit  $m$ -preferences they would reflectively prefer not to possess. Goods which individuals reflectively prefer to consume in a larger amounts are 'merit goods'. (Brennan and Lomasky 1983: 206)

We note that the determination of merit goods is, in itself, a reasonable process. Saying it differently, economists also produced perceptive concepts as merit goods, which may contribute to analyse the reasonable dimension of human existence. Unfortunately the afore-mentioned suspicion regarding economics, prevented Rawls – especially the 'second' Rawls – from recognizing the analytical perceptiveness of such concepts.

This reflexivity – in other words, the formation of the public reason – is a result of a long process that can be called a 'learning process'. Musgrave says: 'These [matters concerning merit wants] are matters of learning and leadership which are an essential part of democracy reasonably defined and which justify the satisfaction or certain merit wants within normative model' (1959: 14). Public reason constitutes the condition of merit goods, the condition of the determination of merit goods. An individual becomes a reasonable being through the same process of deliberation, discussion, negotiation along which she learns to assimilate other points of view that allow her to take a distance towards her own ones. This learning process allows the individual to be informed by information, knowledge and abilities coming from the categories more and well informed than her. Therefore, a learning process means here the possibility given to the individual to examine, evaluate and criticise the arguments of experts. Actually, what is at stake here is the civic education, the *Bildung* of the individual. We understand in this sense the fact that the collective adoption of the points of view or choices of more informed personalities or groups is not carried out through a dictatorial process but by the consent of the community. The individual who is capable to return on her original preferences in order to modify them is an educated individual through the mentioned learning process.

Consequently, one can consider that a democratic society is characterized by the presence of a public discussion on the content and scope of merit goods considered as essential material conditions that are supposed to be part of the goods which ensure the totality of citizens, without exception, a social existence worthy of human beings. As we can remark it, the rules and the procedure which the discussion on merit goods must obey are identical to the conditions involved by the hypothesis of the veil of ignorance: each participant is invited to put herself in the position of the

community, she is invited to imagine the fundamental needs of the community and thus to take part in the deliberation in order to decide in cooperation with other citizens which goods must be considered as merit goods. In other words, the procedure of the choice of the merit goods implies, logically, individuals ignoring their social position and their specific conception of the good but sharing the same sense of justice (i.e. the same public reason). On the basis of and through their public reason, individuals should determine the minimal and essential material conditions that must be offered to the community so that no particular and reasonable conception of the good is sacrificed.

## **5. Concluding remarks**

In this paper, we have emphasized how the question of merit goods is connected with the question of public reason, how the procedure of determining the nature and the scope of merit goods provides a concrete basis to the abstract and hypothetical process of the original position deliberation under the veil of ignorance. As we have stressed above, the Rawlsian evolution from *TJ* to *PL* is motivated essentially by the will of bringing concreteness into the excessively abstract reasoning of *TJ*. That is the reason why the historical dimension is integrated into the theoretical framework of *PL*. In democratic societies, the community, at different levels of public deliberation, constantly re-examines and re-defines the content of merit goods. In other words, merit goods, just like public reason, are the result of the process through which European societies become democracies. It seems judicious to point out that as public reason develops through the specific evolution of European societies, the requirements of citizens concerning the content and extent of merit goods increase. All these characteristics of merit goods reveal that if Rawls had paid sufficient attention to the logic that governs them, he would probably have recognized the importance they represent in the evolution leading to the progressive emergence of public reason in Europe. This argument seems to us all the more obvious as Rawls's fundamental will in *PL* is to reinforce the realism of his theory; his ultimate aim is to analyse the conditions of the real exercise of formal liberties in society. A close examination of the development of the question of merit goods shows that they played a key role in the historical accumulation concerning both cultural and institutional fields. As public reason takes shape in democratic societies, the question of the material living conditions of the community's least advantaged members becomes crucial. The difference principle stipulates, as we know, that a well-ordered reasonable society can only accept an

increase in economic and material inequalities among citizens if they entail, at the same time, the improvement of the conditions of the community's least advantaged members. The observance of such a principle is particularly complex and difficult. Because of this difficulty, we believe that, in the Rawlsian theory, merit goods deserve to be explicitly included in the fourth primary goods, income and wealth.

Moreover, the explicit inclusion of merit goods in the set of primary goods would have been a stronger response to the criticisms of Arrow (1973) and Sen (1980, 1992) against Rawls's theory, as far as its workability is concerned. Arrow criticizes the theory for its blindness to the variations in people's needs, medical care, for example, and Sen draws Rawls's attention to the variations in the basic capabilities of individuals. Rawls retorts that his theory takes care to offer to citizens 'at least to the essential minimum degree, the moral, intellectual, and physical capacities that enable them to be fully cooperating members of society over a complete life' (Rawls 1993: 183). But if this minimum basic endowment, or primary goods, explicitly includes merit goods, inequalities could be made more tolerable in society, because in such a structure the least advantaged citizen can hope to obtain greater benefits when inequalities develop. We mean that merit goods contribute to trigger off a process through which, as society grows rich, the essential minimum degree of material existence is supposed to increase in accordance with the principles adopted in the original position. In Sen's terms, a basic political structure that integrates merit goods into the set of primary goods is supposed to ensure a better distribution of capabilities.

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### Abstract

The purpose of this paper is to analyse the status that the concept of merit goods (as first stated by Musgrave in *The Theory of Public Finance*) has/should have in Rawls's theory. We first examine Rawls's position regarding this issue in *A Theory of Justice*. Next, we claim that the attitude of the 'second' Rawls about it is rather ambiguous and vacillates between exclusion and inclusion. We attempt to prove that thanks to the concepts Rawls has developed from 1985 onwards (especially the concept of public reason), he could have resorted to the concept of merit goods to cope better with his new objectives.

### Keywords

Philosophical theories of justice, Rawls, public reason, merit goods, public goods