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CITIZEN WITHOUT QUALITIES: FALSE FREEDOM IN RAWLS' LIBERALISM

CIDADÃO SEM QUALIDADES: FALSA LIBERDADE NO LIBERALISMO DE RAWLS

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Resumo:
The objective of this article is to propose a reinterpretation of the conception of citizenship present in Rawls' theory of justice. We will carry out this study, mobilizing the analytical categories of the critical theory of society, with which we will identify, on the one hand, the strength of Rawls' theory of justice and, on the other, its fragility in the face of the administrative State. Through the dialectical method, we will show that the categorical parameters of Rawls' Theory of Justice oscillate between the idea of popular sovereignty and the abstract concept of citizen. As a result of this investigation, we concluded that the Rawlsian citizen is easily subjected and neutralized by the authoritarian tendency of the administrative State, to the detriment of the constitutional State. Therefore, social liberalism cannot support a strong concept of freedom, which is consistent with the collective exercise of public freedoms and with the idea of popular sovereignty, since this is incompatible with the individualist or atomist conception of citizenship.

Palavras-chave: Political philosophy, Theorie of justice, Rawls, Citizenship, Criticism.

Abstract:
Resumo: O objetivo deste artigo é propor uma releitura da concepção de cidadania presente na teoria da justiça de Rawls. Faremos esse estudo, mobilizando as categorias de análise da teoria crítica da sociedade, com as quais identificaremos, por um lado, a força da teoria da justiça de Rawls e, por outro, sua fragilidade diante do Estado administrativo. Por meio do método dialético, mostraremos que os parâmetros categóricos da Teoria da Justiça de Rawls oscilam entre a ideia de soberania popular e o conceito abstrato de cidadão. Como resultado dessa investigação, concluímos que o cidadão rawlsiano é facilmente submetido e neutralizado pela tendência autoritária do Estado administrativo, em detrimento do Estado constitucional. Por conseguinte, o social liberalismo não consegue sustentar um conceito forte de liberdade, que se coadune com o exercício coletivo das liberdades públicas e com a ideia de soberania popular, a qual é incompatível com a concepção individualista ou atomista de cidadania.

Palavras-chave: Filosofia Política, Teoria da justiça, Rawls, Cidadania, Crítica.

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Introduction

In this essay, after recognizing that Rawls repositioned the idea of justice to respond to the challenges arising from an environment of democratic diversity and plurality, his restricted conception of the good seems to exclude *in limine* the most disadvantaged citizens from the political-administrative association, being his restricted conception of the good no more than a restricted conception of citizenship, or, in other words, a bureaucratic conception about the power to direct the public affairs.

The Rawlsian citizen

Rawls gives the most effective answer to the problem raised by Tocqueville (1992), which can be reformulated as follows: how is it possible that democracy is the regime of passivity, indifference and selfishness? Better yet: how can we defend ourselves against the decline of democracy, which at the same time risks degenerating into the opposite? Or: why is the truth of modern democracy reduced to bondage and blind obedience? All in all, why is democracy not democratic? Answer: because the current model of democracy is entirely rooted in the figure of the Prince, the *Führer,* the authority and the Chief. Because the ancestor of our state model is the monarchy, the shadow that continues to govern the court structures of state apparatuses.

Despite their rhetoric and promises, modern democracies are made up of an autocratic body. Excluded from the exercise of power in this corporate society, adrift of the constitutional state, the citizen is stripped of his sovereignty to become an automaton, an official, an executor of commands of chiefs, who arbitrarily occupy the positions of the administrative state. This despotism can no longer continue as an exception in democracy, for it is the practical reason that enacts the law, not the other way around, as Rawls (1955: 27) noted:

> «A more or less general rule of a practice must be a rule which according to the structure of the practice applies to more or fewer of the kinds of cases arising under it; or it must be a rule which is more or less basic to the understanding of the practice. Again, a particular case cannot be an exception to a rule of a practice. An exception is rather a qualification or a further specification of the rule».

In short, there is no exception to reason. That is why Rawls conceived his theory of justice as a practical system, unlike a law or a set of rules laid down by contingencies. As a device of practical reason, the *Theory of Justice* specifies and qualifies actions. Therefore, with this specification and qualification of actions, it is fairness — or, if one wishes, the sharpness of reason — that governs the effective.

Unlike this Tocquevilian citizen (I mean, the type of individual criticized by Tocqueville), the Rawlsian citizen, convinced of his power, demands that the administrative state apply in its operating structure the principle of equality in the exercise of the power to think and deliberate, that is, in the exercise of freedom itself. From there, the great challenge of Rawls' theory of justice is to transform freedom into positivity, into objective activity of the mind, which Hegel called *Entfremdung* and Fichte *Spontanität*.

Therefore, the practical reason remains stuck within its own limits: authority, tradition, the market, the state and politics. That is why, to get out of this

repressive circle, in which his interlocutors have fallen, Rawls had no alternative but to scientifically construct an abstract model of theory of justice, as Ronald Dworkin specified:

> «The main instrument of this discovery is a moral faculty possessed by at least some men, which produces concrete intuitions of political morality in particular situations (…). Those intuitions are clues to the nature and existence of more abstract and fundamental moral principles, as physical observations are clues to the existence and nature of fundamental physical laws (Dworkin, 1989: 27-28)».

By drawing up a synthesis between an ontology of purposes (goals) and an ontology of duties (duty), Rawls, through what Dworkin (1989: 40) calls right-based theory, wants to guard both from the freedom of the ancients (Roman authority and tradition) as from the freedom of moderns (the market, the state and politics). I prefer to think that Rawls does as much the rescue of the normative political philosophies of goal-based theory as those of duty-based theory, when he proceduralizes the Kantian golden rule to demonstrate that justice as fairness is the theory that best satisfies the interests of individuals in a society based on cooperation.

However, this type of procedural utopia is a powerful practical mechanism for individual control of the legitimacy of institutions in principles of justice and fundamental rights and guarantees, but it is inoperative in the sphere of the administrative state. As a constitutionalization of the technology of checks and balances, the challenge of the Rawls system is to recover the citizen's strength, forgotten by the dominant political culture, which refuses to share power, either in the social division of labor or in the structures of the political and administrative state. Encouraged *ex ante* by the procedure that leads him to the initial agreement, the citizen plunges without procedural support into the situation to heroically lead the transition from the despotic state to the constitutional state. Simmons (2010: 22) calls this passage the transitional justice, i.e., a theory of transitional justice:

> «A good policy in nonideal theory is good only as transitionally just — that is, only as a morally permissible part of a feasible overall program to achieve perfect justice, as a policy that puts us in an improved position to reach that ultimate goal. And good policies are good not relative to the elimination of any particular, targeted injustices, but only relative to the integrated goal of eliminating all injustice».

At this point, Rawls' theory is inconsistent because it lacks a transition theory. As Simmons points out, a theory of transitional justice is not a theory of negotiation of the principles of justice. It is simply the application of the ideal theory to the non-ideal situation. As an ideal judge of a fair society, the citizen is, therefore, politically obliged to transform the non-ideal position of non-cooperation into an ideal position, in which democracy gains the status of a proceduralized system, according to the maximization of freedom and equality of all in the occupation of the positions of the administrative state, as a state well-ordered by the principles of justice. To embody this conception of democracy in Rawls's abstract theory of justice would be a good way to safeguard his critical sense, rather than to make him play a conservative role in justifying the reason for state. The aim here is to put in place an interpretation that proposes to update Rawls' timid theory of citizenship with the ardent idea of popular sovereignty, understood as thoughtful sovereignty.

Nevertheless, the pure proceduralization suggested by Rawls would be the updating of the famous Hegelian idea of the state as the embodiment of freedom. Only the public sharing of power can solve Hobbes' problem, namely, that of eliminating the fear in the state of nature, given that the administrative state — unbeknownst to Hobbes — has not exploited fear for the benefit of all, but to the benefit commands of the political and economic elites. As Catherine Audard (2009: 728) noted: «(...) when individuals are freed from the chains of servitude, from submission to religious or political authority, they cease to be 'a wolf for man' and can cooperate peacefully (my translation)»[2].

Of course, Rawls is not explicit about this possible corollary of his theory of justice, or even about the sharing of power in a cooperative society. In this respect, Rainer Forst's criticism is correct: contractual or neo-contractual theories exclude the citizen from the exercise of decision-making power, to consider him only as a client of distributive policies:

> «(…) the question of how the goods to be distributed come into existence is neglected in a purely goods-focused view, hence issues of production and its just organization are largely ignored (…) it would mean that justice would no longer be understood as a political accomplishment of the subjects themselves but would turn them into passive recipients of goods — but not of justice (Forst, 2014: 18)».

But if, on the one hand, it is possible to infer, from the basis of Rawls' theory of justice, that democracy must be based on transparent procedures, the results of which are fair, on the other hand democracy requires that the mechanisms that organize the proceedings be republican. More clearly: in cooperative society, every citizen has the original or prior right to procedures that allow him to exercise power, moreover: he has the inalienable and irreconcilable right — with a thoughtful balance — to implement principles of justice, overlapping consensus, conscientious objection and strict or partial obedience.

Let's take stock. The administrative structure of the state is the molecular exercise of political power par excellence. However, it is far from embodying equal opportunities in the occupation of its posts, as the influence of the party system is so important. On the other hand, the constitutional state is founded by citizens. As we realize that the administrative state is not a cooperative society guided by principles of justice, its officials, as citizens, must control its injunctions, guided by the principles of justice and by the fundamental rights and guarantees.

Indeed, once the administrative state is far from the ideal model of society advocated by Rawls, it is therefore quite possible to use against it the constitutional right, understood as the most effective non-ideal theory of justice, in contemporary states and already recognized by peoples. Thus, the affinity between the construction of Rawls' theory of justice and modern constitutional culture gives it the status of an abstraction filled with historical content, so that the first and second light up each other and form a practical system open to the interpretation of citizens. According to Rawls (1997: 429), the Court of Appeal, ultimately, is not the Supreme Court, the executive, nor the legislature, but the electorate as a whole.

[2] «(…) lorsque les individus sont libérés des chaines de la servitude, de la soumission à l'autorité religieuse ou politique, ils cessent d'être 'un loup pour l'homme' et peuvent coopérer pacifiquement (Audard, 2009: 728)».

Theory of justice as a regulatory idea towards the cooperative society

All in all, Rawls' theory of justice can function as a regulatory idea to lead the transition from the negative moment of citizenship to its positive moment, overcoming the administrative state, which must move from the condition of a corporate corporation to that of a cooperative society. However, the political agent responsible for making this transition is only the citizen. It does not seem intuitive that the idea of justice is merely the result of administrative or political activity; similarly, it is not reasonable to think that the idea of freedom is a mere *potentia.*

Participation in the political activity is one with the very idea of justice and freedom, since a just society is not only one that distributes goods equitably, but also one whose individuals, in all respects equal, exercise permanently and shared the power to discuss, weight, deliberate, evaluate and criticize, in short, the power to think and appear in the public sphere, either in civil society or in state institutions. That is why Rawls' theory is based on trust in citizens, whose inalienable sense of justice is the last resort of sovereignty freed from the reason of state. According to Rawls (1963: 304) himself:

> «(...) the sense of justice is a necessary part of the dignity of the person, and that it this dignity which puts a value upon the person distinct from and logically prior to his capacity for enjoyment and his ability to contribute to the enjoyment of others through the development of his talents. It is because of this dignity that the conception of justice as fairness is correct in viewing each person as an individual sovereign».

The citizen, as a civil servant, retains his sovereignty. Nevertheless, when he simply agrees — without putting himself in a state of reflection — to hierarchical injunctions, in the non-ideal situation of the administrative state, he is not free; on the other hand, he becomes free as soon as he acquires the full possibility — guaranteed by democratic procedures — to cooperate in order to participate in the realization of the principles of justice. Within cooperation procedures, cooperation is done even when we justifiably disagree with the decisions taken.

Co-operating, therefore, can also mean disobeying injunctions that threaten the idea of a fair society, either singularly, at the particular level or at the universal level of political obligation. In this way, the deeds, contracts, structure, functioning and social policies of the public administration would be controlled — *a priori, pari passu* and *a posteriori* — by each rational deliberator. To be free or just in a fair society is, ultimately, to be able to avoid evil. This is the main issue of Rawls' hypothetical consensus, namely, that of linking freedom and politics through the will. In the words of Cynthia Stark (2000: 334):

> «Just as hypothetical consent can establish that agents have reason to follow certain moral principles of their own volition, it can establish that agents have reason to follow certain political principles of their own volition. In this respect, it can tell us which principles should structure and guide political institutions».

This is not political or philosophical anarchism, once the former denies the very idea of power, while the latter places too much trust in the idea of altruism. The cooperative society advocated by Rawls must be based on the idea of mutual benefits, whose personal interests are taken into account for the benefit of all. However, the only ideal choice of principle of justice and the creation *ex machina* of the basic structures of a fair society are hardly enough to prevent envy and

resentment. That is why the idea of a cooperative society must be interpreted as that of a republican society. In contrast to anarchism, in this society, we must share things, but we also have the power to undertake creative action. In this sense, cooperative society would be, at the same time, a democracy of owners and a society of common power. The closer it gets to a cooperative society, the more the administrative state must be governed by citizens, in a direct, creative and reflective way, to the detriment of the nihilistic energies of envy and resentment.

It may also be that this return of power to citizens makes its true meaning to obedience, namely an act of freedom, responsible, facilitating the transition from reflection to situation, from theory to practice. Moreover, this fundamental empowerment of the citizen in the affairs of the cooperative society changes the very idea of discipline. If, as Foucault taught us in the seminaries of the 1975/1976 at the *Collège de France* (1997), in the old administrative order, discipline was a corollary of the military order that founded the structure of the European state, or at least the French state, it would be the corollary of the idea of autonomy in the cooperative society. In this society, individuals are able to reason and act in accordance with the meaning of justice, so that without the exercise of these faculties, Rawls' theory of justice would lose its constructive nature. In Rawls' words (1963: 300):

> «The capacity for a sense of justice includes (…): to understand (…) the meaning and content of the principles of justice and their application to particular institutions; to understand (…) the derivation of these principles as indicated in the analytic construction; and to have the capacities of feeling, attitude, and conduct».

From there, the more citizens become political agents, the more the idea of coercion — such as elimination, retribution, harassment, punishment and revenge — loses its meaning. If in the authoritarian state, coercion is always carried out by leaders, or even by a clientele chosen by the party system or by higher authorities in the hierarchy, in the democratic state it is defined and executed by the citizens, according to the principles and rules established by a regime of fairness. To simplify, in the cooperative society, coercion loses its repressive nature to gain constructive character. In short, coercion becomes an obstacle to any force that tends to suppress or mitigate principles of justice, as well as fundamental rights and guarantees, in order to harm the *other* or the community.

The citizen's freedom space in the administrative state cannot be restricted because of resentment, contempt, antipathy, hatred or anger of the chiefs. This is why Rawls' theory of justice presupposes all the advantages of the constitutional theory of civil and criminal proceedings, which, in the non-ideal situation of an inquisitive administrative state, must guide the agents of cooperation in the overhaul of disciplinary power, moreover, the main obstacle to the development of a democratic and republican society. For Rawls (1997: 275), a system of laws must provide for regulations to ensure the proper conduct of trials and hearings. That is why the rule of law requires a well-ordered trial, that is, a process which, reasonably and in accordance with the other purposes of the legal system, leads to the establishment of the truth, saying when and under what circumstances a violation of the law took place. Therefore, trials must be fair and public.

In any event, the inconvenience caused by the drift of the project of a fair society must bring a pedagogical force, the purpose of which would be to learn with mistakes, with the intention of perfecting the project of building a

well-ordered society, as well as democratic procedures for preventing it. In a fair society, a constructive project, in the sense of Dworkin (1989), is a project in which every citizen is invited to pose as a sculptor of democracy, either in the original position, *ante festum,* or in the situation, *post festum.* This constructive project can only be implemented through a broader, impartial and critical judgment, in a context of plurality of conceptions of the good. The society well-ordained by the principles of justice, as a privileged and educational place of power-sharing, requires that the stakeholders in the deliberation be protected by fair procedures at the crucial moment of the discussion — which sets the instructions for administrative action — and also be defended against disobedience to injunctions that deviate from the final purpose established by the constitutional state.

On the one hand, political procedures for the protection of speech; on the other, legal procedures for protecting the action. The administrative state is devoid of these two kinds of procedures. The hierarchical system prevents the former; disciplinary power, prevents the second. Indeed, in the administrative order, the chiefs concentrate at the same time hierarchical power and disciplinary power, whose inquisitive nature reveals the despotic nature of human relations in the heart of the executive. Executive that ranks the reliability of the speech of its agents, as well as its performance force according to its position in the hierarchy; so that the administrative state is still under strain, either against constitutional law or against the general principles of the trial.

The administrative state is under pressure against constitutional law, because citizens are excluded from the exercise of power; it is energized against the general principles of the trial, because these same individuals are dominated by the fear of being pursued by hierarchical power. Shifted from the adversarial model, this disciplinary power, placed on the structure of the contemporary state, proves to be formidable in producing and reproducing automaton officials, whose ability to judge has crumbled, over the years of submission. As a result of this fear of the *father*, updated in fear of the chief, the civil servants are therefore reduced to the condition of *children*. Thus, in this non-ideal situation, morality of principle gives way to a morality of authority, as well as to a morality of the group.

As a result, the authoritarian and inquisitive structure of the administrative state blocks the practice of thoughtful balance and overlapping consensus among public officials. This is followed by this observation that to think of the possibility of a fair society from this culture of the exercise of power is simply wrong. For this reason, nor can we expect the Aristotelian conception of politics to be a good method of questioning this model of state, given its propensity to assert it, to the detriment of the deontic and pedagogical force of the idea of justice. It appears that if the idea of Aristotle's political constitution were applied to it, without subjecting it to hermeneutic updating work, the result would be catastrophic: the justification of the administrative state, to the detriment of normative force and prescriptive of the constitutional state.

Indeed, to cite an example, for the neo-Aristotelian D. Wiggins, echoing the words of Aristotle (Pol, I, 1253b): «(...) a constitution is not a blueprint, a prescription, a mere diagram. Still less is it a *Bauplan* for the creation of just persons. Rather, the constitution of a *polis* is the manner in which the *polis* lives already (Wiggins, 2004: 509)». In a nutshell: the constitution, for this conception, would be the administrative right, which is moreover — to consider its authoritarian structure — the right that organizes the despotic power, controlled by the system of coalition of private interests, against the constitutional state.

All in all, Rawls seems aware that beyond good intentions, justice today is less a philosophical problem than a question of political sociology. Instead of *what,* Rawls questions *how,* whose answer is only a counterfactual proposal for the use of individuals who are outside or inside state apparatuses. In this sense, instead of invoking the need for an adjustment between the original position and the situation — opening, perhaps on a possible weakening of the normative force of the principles of justice, in the face of political and economic pressures — the construction of Rawls refuses any kind of transaction that is not for the benefit of the less fortunate, all things being equal, in the ideal procedure, the decision reached is not a compromise, i.e., a bargain between opposing partners trying to promote their own interests (Rawls, 1997: 398). It goes without saying that here Rawls refuses to align city justice with citizen justice, while advocating a public conception of justice, beyond the non-reflexive obedience of the citizen and the authoritarianism of the political city.

This is the strength of Rawls's theory of justice: it is a meta-normative construction, mieux, a kind of update of metaphysics — whose idea of transcendence has come out of immanence — especially since its promises are already given through the struggle of peoples, and even the culture of human rights and modern constitutional culture. As a concrete abstraction (realistic utopia), this practical mechanism for rebuilding democracy presupposes the adherence of individuals, from confidence in their sense of justice or, to give it a more Kantian turn, *sensus communis*. As a result, the criticism of Habermas (1997), focused on the argumentative or communicative flaw of the *Theory of Justice*, is not entirely convincing, because the practical system proposed by Rawls can function as insurance to a non-derogation from the terms of the original agreement by communicative reason. According to Rawls (2008: 200), in a procedural democracy, there is no constitutional limit to legislation, and everything that a majority (or plurality) decides has the force of law, to the extent that the procedures are appropriate, and to the extent that all the rules that identify a law, are respected.

Better yet, the practical package proposed by Rawls can be understood, in its foundations, such as the rescue — rather than abandonment — of the idea of sovereignty, as long as it is subject to the constant critical scrutiny of the citizens themselves. In this sense, like Habermas, Rawls can also be considered a radical democrat, in the sense of Joshua Cohen (1999: 387), according to which:

> «Radically understood, democracy is not simply a matter of selecting among competing elites (through regular elections), nor simply a matter of ensuring, through such selection, a protected framework of private liberties, founded on antecedent liberal commitments. Instead, democracy is a form of self-rule, and requires that the legitimate exercise of political power trace to the free communication of citizens, expressed through law».

Notwithstanding, it is unlikely that the principles of justice will arise in the situation if power-sharing is lacking in the basic structures. This republican flaw in the *Theory of Justice* ignores the problem already pointed out by Tocqueville regarding the boredom of the officials of democracies, whose spirit of submission manifests itself as a refusal of the work of judging, without which, as H. Arendt warned us, we are unable to avoid evil. This ability to avoid evil must be the primary purpose of a theory of justice. In this sense, the weakness of the abstraction of Rawls' theory is not of the judicial or procedural order, but of the

psychological and political order. The Euclidean citizen of Rawls, as subject to a concrete relationship of power, is simply annihilated by the community (*Gemeinschaft*) of the chiefs, who have all the tools necessary to easily prevent the slightest attempt of thoughtful balance or overlapping consensus in the administrative apparatus.

Since Rawls has not provided for power-sharing in his system of principles, his citizen remains vulnerable to boredom, indifference, envy and resentment. So, in practice, the Euclidian citizen is weak, and we can only expect heroism, in the face of the workings of the inquisitive system of the administrative state. Rawls cannot properly get rid of Hegel's Prussian directive that it is the state, not the citizen, that represents the embodiment of freedom. In order to update Hegel — and suggest the *ersatz* of the reason of the state by the reason of the citizen — freedom must be objectified in the situation, if it is not to become its opposite, or even that it turns into fear.

According to Arendt (2000: 17), the spirit *is* to the extent that it shows itself, manifests itself in its actions and works. Freedom is more in the ability to begin an action (Arendt, 1972: 216), to accomplish it or to interrupt it than in the anticipatory standards of the work to be finalized. And yet, the *Theory of Justice* seems rather to be constructed as the announcement of a work to come, so that the fair society as well as the participation of the citizen remains postponed, which is why the citizen and the fair society are announced, but they are not driven by the idea of justice. Thus, it seems to me that the *Theory of Justice* is a theory without action, paralyzed perhaps by fear, which has blackened the promises of happiness of the 30s/40s of the twentieth century.

In a nutshell, the *Theory of Justice* presents itself as a vulnerable theory, aimed at citizens weakened by their status as servants, doomed to unconditional obedience to those who hold administrative power. Just as Christianity has forgotten the life of Christ, to focus only on the restrictive periods of his birth and resurrection, the *Theory of Justice* has forgotten the world of the citizen's life, where all the mysteries of the idea of freedom are played out. Rawls did not see that the transition from a moral authority or group to a morality of principles did not go without the effective sharing of power within the administrative state, so that the impulses of death are sublimated creatively in the staging of the idea, rather regulatory than anticipatory, of a cooperative society. So, it is reasonable to think that the idea of a republic is the way for subjective freedom (of the first principle) to be sublimated into objective freedom. Similarly, this Republican *Entfremdung* (alienation) of freedom, within the administrative state, proves to be the possibility that inequalities (of the second principle) do not become confirmation of the subjugation.

It is at this point, when I am questioning the conditions of possibility of the *Theory of Justice,* that I would like to raise a problem that concerns the very structure of that theory. It is erected counterfactually by the original positioning of an agreement carried out under ideal conditions, a deontic source of the rules of organization of the state. Yet one is forced to ask whether this device is able to make the political nature of this state work, as an ontic object of the *Theory of Justice.* Is the deontic force of this theory sufficient to deny the fact to which it opposes? Since the citizen who is hypostasied in the original position, under the veil of ignorance, is a subjective idealistic construct, even a counterfactual construct, why would he deny his abstract power, when confronted with the situation? It is not clear that, under ideal conditions, someone can establish the annihilation of their ability to be part of human trade.

It may be that Habermas (1997) is right when he sees in the *Theory of Justice* the construction of a professor of political philosophy, for it seems that at the imaginary table of the original position, the citizen of the lived world was not invited. So, who was there? Perhaps managers, technocrats, authorities, politicians, and finally the agents who operate the structures of political and economic power, chosen by the weak mechanisms of representative democracy and by an arbitrary system of appointment. Anyway, it seems that the guests at Rawls' imaginary banquet cheated at the table, since they did not take the recommended dosage of the potion of ignorance, enough to forget their real position. In fact, they did not balance the possibility of sharing power among the agents of the cooperation society, either in the original position or in the situation.

Without this sharing, the *Theory of Justice* becomes a lie. If political philosophy, in a context of plurality, is to be excluded from the idea of truth, it does not mean, on the other hand, that it must categorize the lie. In truth, after choosing the principles of justice, Rawls does not say a word about empowerment of the citizen in the basic structures of society. However, what about the purity of the procedures of the *Theory of Justice*? Rawls's distrust of the citizen shows his bias towards an elitist exit from the crisis of the social state, whose mobilization of the concepts of freedom, equality and solidarity — in a post-Keynesian context — does not seem able to avoid his slippage towards aristocratic liberalism. In any case, although the Rawlsean legal form announces the fair society, it remains in trouble to keep its promises, because of its lack of expression of contingencies that prevents this undertaking.

The oblivion of these contingencies descends to the original position and remains stuck there like a gaping hole, a kind of veil of ignorance of the theory itself, or a veil of ignorance in the second degree. The situation of passivity and subjugation of individuals and groups, reduced to the condition of charity and distributive justice of the Keynesian state, also controlled by an authoritarian and paternalistic bureaucracy, is the only one to proclaim the first and last words of the rules for budgetary contribution, management of public resources, distribution and internal control. Rawls's fix does not include — except in its intentions, *ad hoc* to the theory itself — the participation of citizens in the crucial affairs of the political community, provided by democratic procedures.

We have the impression that the *Theory of Justice* is intended to ensure the well-being and a good quality of life for individuals (including their personal projects), beneficiaries of equitable social policies, in exchange for their cooperation through work. In short, the *Theory of Justice* is built to achieve fair distributional results assigned to citizens. In this sense, it is merely the corrective imitation (mimesis) of the social state itself, an imaginary space where the philosopher theoretically reproduces what he considers to be the ideal social state. To conclude, the construction of Rawls, strongly impacted by the conditioning of the social being, even without his knowledge, calls into question his idea of purity. Moreover, the categorical exclusion of the citizen from the exercise of effective power — in an ideal position or in the situation — weakens his freedom, reducing it to the alienation of power by suffrage, or by the exercise of the negative power of the objection of conscience, strict obedience and partial obedience, as well as civil disobedience, this under limited conditions of injustice, outside which the citizen of Rawls cannot disobey an unjust law. As Rawls (1997: 391) added, when the basic structure of a society is sufficiently just, within the limits of the prevailing context,

we must recognize as mandatory unjust laws, provided they do not exceed a certain degree of injustice.

Of course, one could spot in the *Theory of Justice,* as far as possible, a heroic citizen, controller of the principles of justice, but this idea, which is not categorized, is a totally external asset to the theory. This is the same heroism expected of the citizen of the constitutional state. It is the same heroism and the same problem, because popular sovereignty, ensured by the constitutions, is usurped by the administrative state, which is also a despotic corporation controlled by the immediate interests of political and economic groups, themselves governed by the greed of some to obtain individual benefits. In any event, the democratic flaw of the *Theory of Justice* is one with that of constitutional theory, too attached to this model of political theory that distrusts the idea of sovereignty, in favor of that of the reason of state. As L. Foisneau (2009 :177) well pointed out: «It would not be a surprise (...) if, until its more recent developments, liberal thought has not ceased to want to reduce the principle of sovereignty to its simplest expression, or, if one wishes, to lay the political principle of the state away from the citizens (my translation)»[3].

As the *Theory of Justice* hardly can ensure the exercise of common power by citizens, they continue to be dominated by the repressive workings of the reason of state, or even by an effective technique of distribution of sanctions, as well as by the power of management of servitude updated by a hierarchical caste that reproduces itself in the apparatuses of public administration. In the face of this system, both the *Theory of Justice* and the Constitutional Theory appeal to the conscience of citizens, as if the corruption that engulfs the public interest — and prevents the society from cooperation — was unfounded and organized by groups housed in the state structure, in order to serve the commands of the major economic and political forces.

However, abandoned by this theoretical *trompe-l'oeil*, he remains an abstract, geometric citizen, a kind of solitary gladiator, so to speak, the Sisyphus of democracy, which, when he falls into the shackles of disciplinary power, can only count on the sense of justice of the Herculean judge of Dworkin. Thus, *a priori* devoid of power and reduced to a passive co-operator function, this Euclidean bet for citizenship proves to be a reissue of the old liberal guidelines in favor of formal freedom and equality, whose only benefactors and beneficiaries are those who already have the ownership, the ability to decide and the strength to maintain their positions.

The *Theory of Justice* could also be interpreted as a tool for transforming the power structure of the administrative state. But that would turn Rawls against himself, because he did not consider the exercise of power in the administrative state as a problem. Rawls deals only with the basic institutions of distributive justice (Rawls, 1997, p. 315), to subsume them to the parameters of his theory. Clearly, the *Theory of Justice* is not a theory of the transfer of power to citizens, not being able to lead in its own words the transformation of public space in the era of advanced capitalism. Better yet, *Theory of Justice*'s categories are not the right ones to force the opening of the corporate state's black box, whose administrative law is subject to the political system of parties and by the idea of governance, the economic *ersatz* of the idea of sovereignty. In the age of advanced capitalism, the idea of justice is still confronted with the idea of government efficiency, which is

[3] «Il ne serait pas une surprise (...) que, jusqu'en ses développements plus récents, la pensée libérale n'ait pas cessée de vouloir réduire le principe de souveraineté à sa plus simple expression, ou, si l'on veut, de poser le principe politique de l'État à l'écart des citoyens (Foisneau, 2009: 177)».

the new designation of reason of state. Governed by the maximization of the interests of individuals and groups, to the extent that this type of rationality is subsumed by the idea of corporate governance, it distances itself from the idea of freedom.

Final considerations

In summary, it appears that Rawls' practical set cannot keep its promises, because it is trapped in a big theoretical flaw. Indeed, the *Theory of Justice* is devoid of critical content at the moment of the exposure of its object, or even of the non-cooperative society. Without the exposure of the tensions that run through the object, the practical moment of theory loses all its expression. Indeed, Rawls does not expose the state, on the contrary, he presupposes it as a coherent institution, on which the practical form of the *Theory of Justice* must intervene. We see, on the one hand, the presupposition of a harmonious object and on the other, the construction of a flawless subjective form, without breach, like a play of mirrors. Therefore, given its lack of expression, the utopian content of this normative form falls into a vacuum, or even loses the ability to keep its promises, since its very counterfactuality does not communicate with the need to overcome the level of suffering in the lifeworld (*Lebenswelt*), caused by unfair arrangements, according to a network of determinations and conditions given in the situation. In short, the *Theory of Justice* — as a Platonic exercise in political philosophy — suffers from a taboo that prevents it from looking at and questioning the human face of its object, because it does not support contradiction in the empirical world.

From there, how can justice be announced without looking to injustice? To stay within the limits of the questions posed by this essay, Rawls does not realize that the large economic corporations, the party system and the administrative state structure form an articulated set of forces that control production of administrative acts and contracts, as well as the distribution of functions in its devices. Rawls did not perceive around the administrative state the organization of the entire network of companies dedicated to the use of public resources for private purposes, that is, systemic corruption. Rawls also seems to despise the authoritarian structure of this institutional ensemble, as if the social division of labor within the state was not the subject of the *Theory of Justice.* Indeed, Rawls does not see the situation of injustice in the fact that citizens are forced to leave sovereignty in the household, so that the leaders find themselves alone in control of the destiny of the political community.

In the face of this hierarchical structure, the formulation of freedom as equal opportunities restricts citizenship to a function and the sense of justice to obedience. On the other hand, there is nothing less certain that this corporate system of private interests advocates, at the international level, the annihilation of the constitutional state and the culture of fundamental rights and guarantees. This is the collapse of the emancipatory content of the law itself, in which case the most advanced legal *form* is subject to a kind of *Entkunstung* (Adorno, 1995: 36), that is, to a loss of form and expression.

Neutralized by *homo hierarchicus,* the formation of the democratic mind (*Bildung*), or, more precisely, the formation of judgment is interrupted *ab ovo.* In the age of advanced capitalism, this colonization of theoretic-practical rationality through politics is reinforced by *Kulturindustrie.* Moreover, there is a whole scholarly utilitarian ideology that advocates a model of an individual whose

happiness depends on the result of calculating benefits. However, this type of *homo economicus* is also a psychological type that enters the social division of administrative work at the level of pre-conventional morality, to use a category of Kohlberg (1971). Infantilized and confined to the world of work, there remains only a very limited space for the citizen to exercise his freedom; namely, the space of repressive obedience and hedonism.

At different levels of the state, young civil servants, alienated by um system that strips them of their ability to start or interrupt an administrative act, are stripped of their citizenship, in favor of their membership in the large family of command, what is more, the psychological *ersatz* of the father. Gradually subjected by values such as loyalty, trust, honor, cohesion and unconditional servitude, these young people, who nevertheless manage to rise to the level of high state functions, become over the years unfit to perceive injustice, corruption and state crimes. This is where the distribution of opportunity ends that the problem of freedom begins. It is for this reason that, in the *Theory of Justice,* the idea of freedom as well as that of equal opportunities remains very vague and insufficient. Indeed, this distributive conception of freedom reduces it to a good, to a product, to a goal, to a point of arrival, to the detriment of freedom as a thoughtful action.

In fact, Rawls confuses the idea of freedom with that of equal opportunities and, as a result, dismisses the idea of freedom from the exercise of power by the citizen; therefore, this space, emptied by a restrictive conception of freedom, is entirely occupied by the political system, whose idea of justice presupposes the alienation of power, rather than its exercise by the large number. Indeed, according to Rawls (1997: 264), in a well-governed state, it may be that only a small fraction of the population spends part of their time on politics. The *Theory of Justice* has forgotten the fact that where the equitable distribution of opportunity ends, the world of work begins; that where the world of work begins, the political problem of justice and freedom begins.

Besides, to consider, perhaps, that the exercise of political power is a matter already settled by the right of vote, Rawls proposed a theory of economic justice rather than a theory of political justice. In short, the *Theory of Justice* shows itself as the mimesis of the idea of economic circulation. This is a theory that arises before and after the social division of labor. Better yet, before and after the place where happiness and suffering occur and recur. Therefore, behind the purity of Rawls' construction, we observe a theoretical form that tries to evade the place where people meet to produce the usage value and the exchange value of things, as well as to create the political city.

In this respect, Rawls' liberalism is limited by bias and the announcement of an impossibility: an idea of justice measured by the idea of equivalence, without questioning what prevents it. It may be that the principle of difference is the result of this aporia, a logical monster in the original position — a kind of universalization of contingency — that attributes an axiological status to inequalities. This is why this liberalism is marked by the prohibition of seeing the face of violence (*facies hippocratica*) — a kind of mimetic taboo, as Adorno would say (1995: 70-74) —, either by considering the weakness of individuals as a sociological problem, or by questioning the political game itself.

To remain in our point, the *Theory of Justice* forgets to question the human relationship in the structure of the administrative state. It is neither a republican theory nor a theory of freedom, if one conceives the idea of freedom as inseparable from the idea of starting or interrupting an action, oriented by the common sense of justice and by the critical judgment practiced — autonomously — in a context of

plurality. As H. Arendt (1972: 198) pointed out, the manifestation of principles occurs only through action. The appearance of freedom as the manifestation of principles coincides with the act that is carried out. Away from praxis, the idea of freedom at Rawls leaves without subject as much the thoughtful balance as the cooperation itself, in which case, these formal categories of the *Theory of Justice* fall into fetishism.

Bibliography

ADORNO, T. W. *Théorie esthétique* (1970), Paris, Klincksieck, 1995.
ARENDT, H., *La crise de la culture*, Paris, Gallimard, 1972.
_____., *A vida do espírito*, Rio de Janeiro, Relume Dumará, 2000.
ARISTOTE, *La politique*, Paris, J. Vrin, 1970.
AUDARD, C., *Qu'est-ce que libéralisme: Éthique, politique, société*, Paris, Gallimard, 2009.
COHEN, J., «Reflections on Habermas on Democracy», *Ratio Juris*, vol. 12. nº 4, 1999, p. 385-416.
DWORKIN, R., «The Original Position», in N. Daniels (dir.), *Reading Rawls*, Stanford, Stanford University Press, 1989, p. 16-53.
FOISNEAU, L., *Governo e Soberania: o pensamento político moderno de Maquiavel a Rousseau*, Porto Alegre, Linus, 2009.
FOUCAULT, M., *Il faut défendre la société*, Paris, Gallimard, 1997.
FORST, R., *Justification and Critique*, Cambridge, Polity Press, 2014.
HABERMAS, J.; RAWLS, J., *Débat sur la justice politique*, Paris, Les Éditions du Cerf, 1997.
HEGEL, F., *Préface et Introduction de la Phénoménologie de l'esprit* (1807), Édition bilingue, Paris, J. Vrin, 1997.
_____., *Principes de la philosophie du droit* (1820), Paris, Gallimard, 1989.
_____., *La raison dans l'Histoire* (1822, 1828, 1830), Paris, 10/18, 2000.
KOHLBERG, L., «From is to ought», in T. Mischel (dir.), *Cognitive development and epistemology*, New York: Academic Press, 1971, p. 151-236.
RAWLS, J., *Théorie de la justice*, Paris, Ed. du Seuil, 1997.
_____., *La justice comme équité*, Paris, La découverte, 2008.
_____., «The Sense of Justice», *The Philosophical Review*, vol. 72, nº 3, 1963, p. 281-305.
_____., «Two Concepts of rules», *Philosophical Review*, vol. 64, nº 1, 1955, p. 3-32.
SIMMONS, A. John, «Ideal and Nonideal Theory», Philosophy & Public Affairs, vol. 38, nº 1, 2010, p. 5-36.
STARK, C. A., «Hypothetical Consent and Justification», *The Journal of Philosophy*, vol. 97, n° 6, 2000, p. 313-334.
TOCQUEVILLE, A., *De la démocratie en Amérique* [1835, 1840], Oeuvres complètes, vol. II, Paris, Gallimard, 1992.
WIGGINS, D., «Neo-Aristotelian Reflections on Justice», *Mind, New Series*, vol. 113, nº 451, 2004, p. 477-512.

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