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## **Corporate institutions in a weakened welfare state. A Rawlsian perspective.**

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**Key words:** basic structure, corporate democracy, justice, Rawls, self-respect, welfare state.

**ABSTRACT:** This paper re-examines the import of Rawls' theory of justice for private sector institutions in the face of the decline of the welfare state. The argument is based on a Rawlsian conception of justice as the establishment of a basic structure of society that guarantees a fair distribution of primary goods. We propose that the decline of the welfare state witnessed in Western countries over the past 40 years prompts a reassessment of the boundaries of the basic structure in order to include additional corporate institutions. A discussion centred on the primary good of self-respect, but extensible to power and prerogatives as well as income and wealth, examines how the legislator should intervene in private sector institutions to counterbalance any unfairness that results from the decline of the welfare state.

## INTRODUCTION

This paper re-examines the import of Rawls' theory of justice for private sector institutions<sup>1</sup> in the face of the decline of the welfare state over the past 40 years or so. This question is important for two reasons, first, because the philosophical status of corporate institutions (CI) is still a matter of debate among political philosophers and business ethicists. Yet the stakes are high: corporate institutions deemed to belong to the basic structure of society cannot be left to voluntary agreement between consenting individuals unless they respect the principles of justice first enunciated by Rawls in his *Theory of Justice (TJ)*. Second, if the question of the inclusion or exclusion of an institution from the basic structure of society (BSS) partly depends on empirical considerations, as we shall argue below, then we must also take stock of the remarkable historical evolutions that separate our societies from the society from within which Rawls wrote *TJ*. In particular, we shall argue that the decline of the welfare state (WS) constitutes a major development that is so significant that it prompts a reassessment of the boundaries of the BSS and the status of a number of key private sector institutions, such as those that affect corporate democracy<sup>2</sup> and opportunities for meaningful work for the least favoured.

We organise our demonstration into five steps. First, we offer a brief historical overview of the contrasting evolutions of three welfare state models: social democratic, liberal and corporatist. While their trajectories may differ, overall our assessment points towards a clear decline that has a bearing on the abilities of the least well-off to access the primary goods necessary for their own life projects. Second, we offer a refresher of Rawls' theory of justice that highlights the concepts and ideas particularly central to our argument. Third, we discuss the recent contribution of political philosophy to normative literature on business and management. While we are glad to witness interesting debates regarding the philosophical

status of many corporate institutions, we also note that the question of the decline of the WS, and its potential implications, has not yet been taken into consideration. This is connected to the question of why Rawls seems to exclude CIs from the BSS and, more generally, whether recent transformations in the economic and political environments of corporations prompt a reassessment of the philosophical status of CIs. We further argue that setting the boundaries of the BSS and assessing the status of CIs cannot be entirely decided *a priori* but must also be informed by empirical considerations relative to each society's political, social and economic context. In this light, the decline of the WS constitutes a significant contextual transformation that affects the systemic distribution of basic goods and therefore prompts a reassessment of the BSS's boundaries.

The fourth section builds on the previous three and deepens our argument for one primary good: the social bases of self-respect. We indicate how the withdrawal of the WS jeopardises access to this good for the least favoured and how this can be addressed by liberal egalitarianism through changes to the philosophical status of some CIs and corresponding policies. The final section examines and responds to objections relating to alternatives between more democratic CIs and a restoration of the WS, to the applicability of our proposals in a globalised world, and to the extension of our reasoning to other primary goods.

## 1. THE DECLINE OF THE WELFARE STATE IN CONTEMPORARY HISTORY

### *1.1 What is the welfare state?*

Although the WS is not a predominant topic in contemporary business ethics literature, the interest of Rawls, among many other political philosophers, in the WS's normative justifications should not be surprising. At the time of Rawls' writings WSs were the dominant

political form in Western democracies. Indeed, Amy Gutmann could write in the eighties that ‘every modern industrial state is a welfare state’ (Gutmann, 1988: 3).

According to Esping-Andersen (1990: 18-9), the expression WS refers to states taking ‘responsibility for securing some basic modicum of welfare to [their] citizens’ in an attempt to mitigate the effects of natural and social contingencies on individuals’ life chances. Contemporary welfare states are the product of a long history. Since the eighteenth century, the development of the state and its welfare institutions has been closely connected with an expansion of the protection of individual rights and liberties (Rosanvallon, 1981; Stedman Jones, 2005). Welfare states experienced accelerated development in the nineteenth century as a response to the social side effects of industrialisation, while their expansion accelerated further during the 30 years or so following World War II, resulting in a ‘fantastic pace of growth during the 1960s and 1970s’ (Esping-Andersen, 1990: 1). For instance, in the US ‘federal spending on welfare increased from 8.2 to 18.7 per cent of the GNP between 1950 and 1980’ (Gutmann, 1988: 3).

Yet this common history features notable variations among countries: welfare states came in a variety of forms and shapes, reflecting different approaches regarding the extent of the benefits and the contingencies deemed to be morally acceptable. Esping-Andersen famously distinguishes between three WS regimes: social democratic, corporatist and liberal (Esping-Andersen, 1990: 26-27). At their height, Scandinavian social democratic welfare states were service intensive, comprehensive with regard to the services offered and universal in terms of coverage. They were also ‘massively redistributive’ as a result of their ‘universal coverage, high income replacement rates [...] and liberal qualifying conditions’ (Stephens, 1996). Overall, they have been characterised as ‘decommodifying’ since they made pure citizenship, rather than citizen insertion in the labour market, the basis for entitlements (Stephens, 1996: 36). One important consequence for our argument is that ‘individuals [would] suffer relatively

small losses of income from exiting paid work temporarily or permanently' (Stephens, 1996: 36). In our view, the Scandinavian WS model comes closest to securing the Rawlsian ideal of cooperation on an equal footing.

The continental (corporatist) model differs in notable ways from the social democratic model. Influenced by Imperial Germany and its original purpose of perpetuating a set social order rather than decommodifying labour, it is characterised by a social insurance system organised under the auspices of the state. In practical terms, corporatist social insurance derives entitlements from professional activity, with the consequence of mirroring existing statuses rather than redistributing resources and wealth. In Catholic southern European countries where state intervention was assumed to be subsidiary to family solidarity, the model emphasised generous cash transfers rather than public care services (Esping-Andersen, 1996c). However, some cautious universalism was introduced during the post-war era, as well as a shift towards calculating benefits from 'contribution- to earnings-based benefits' (Esping-Andersen, 1996c: 69).

Finally, the US, Canada and Australia are typical of the liberal WS, which differs from both the Scandinavian and corporatist models in that it is subordinate to markets as a purveyor of welfare. The liberal WS therefore tends to provide limited means-tested social benefits or modest universal transfers. As a result, it produces a stratified society with a relative 'equality of poverty among welfare recipients, [and] market-differentiated welfare among the majorities' (Esping-Andersen 1990: 26-7).

### *1.2 The welfare state's declining trajectories in Western countries*

Welfare states have been in a state of crisis and decline since the mid-1970s (Esping-Andersen, 1996a; Ferguson, Lavalette et al., 2002; Fleurbaey, 2006a; Rosanvallon, 1981). This crisis is attributable to both the (endogenous) questioning of the WS's legitimacy and

(exogenous) financial constraints. Welfare states have been blamed for impeding rather than fostering individuals' self-esteem (Gutmann, 1988) and for consequently undermining political participation (Walzer, 1988). Their bureaucratic procedures have been accused of hampering welfare recipients' self-determination (Habermas, 2005). In more practical terms, welfare policies have also been criticised for reducing incentives to work and save, as well as for out-dated programmes that address 'a past social order' characterised by a long-gone homogenous industrial working class (Esping-Andersen 1996b: 9).

In addition to these criticisms relative to their purposes and methods, welfare states are also facing increasing financial difficulties due to recent economic and social developments. Ageing populations burden health and retirement budgets while restricting public income. More critically, the economic conditions that happily combined growth and employment with egalitarian social policies during the post-war era no longer obtain: from the 1970s onwards the so-called 'Keynesian consensus' was replaced by a new trade-off between employment and egalitarianism (Esping-Andersen, 1996b: 2). In today's globalised economy nation states compete for investment and workforce, which in turn strictly limits the scope of possible tax policies and the amounts available for social transfers (Esping-Andersen, 1996a). Likewise, Rosanvallon (1981) has pointed to the contradictions inherent in a situation that combines increasing demand for welfare and redistribution with a globalised production system that increases constraints on states' abilities to raise taxes to meet these needs.

The various regimes of WSs adapted differently to changing economic conditions. The Scandinavian WS, the success of which relied on low unemployment and high labour force participation (Stephens, 1996: 38) by combining social equality with economic efficiency (Stephens, 1996: 32), was affected by the increased levels of unemployment prevalent from the 1970s onwards. In response, the Scandinavian strategy consisted 'in shifting welfare state resources from passive income maintenance to employment and family promotion' (Esping-

Andersen, 1996b: 25), thereby triggering an increase in inequalities. Even in Sweden, extra emphasis was put on contribution-based entitlements (rather than defined benefits) and workfare policies (Esping-Andersen, 1996b: 14). Although there were financial cuts, the most significant evolution of Scandinavian WSs was arguably their shift of purpose as the decommodification of labour gave way to workfare.

The European corporatist model, which assumed male full-time careers (Esping-Andersen, 1996c: 76), also reacted to higher unemployment in ways that would undermine the least advantaged in the long term. The policy responses in continental Europe entailed labour supply reduction through the ‘early retirement of male workers, discouragement of female participation, often combined with hours reduction’ (Esping-Andersen, 1996c: 77), rather than real attempts at scaling back or reforming social security. This triggered an increase in social expenditure at levels difficult to sustain in the long run. For citizens, being on benefits was moreover reinterpreted as a sign of exclusion from the labour market rather than as an exercise of personal choice.

The market-oriented liberal WS adapted to the post-OPEC era in another way. While markets succeeded in providing North American workers with ‘enviable levels of economic well-being during the “Golden Age” of post-war expansion’, in spite of modest social programmes (Myles, 1996) this situation also changed from the 1970s onwards. From then on, employment was sustained at the cost of widening wage differentials and expanding the ranks of the working poor. As highlighted by Myles, the low-wage/high-employment model challenged the liberal WS, as low-wage workers would both increase demands for social transfers and have a limited capacity to contribute through taxes. Some states, such as Australia and Canada, reacted to this challenge with a combination of service liberalisation and increased selectivity, as well as targeting, for benefits.



Overall, all three forms of WS moved towards ‘freezing’ or ‘eroding’ the number or amount of welfare benefits (Esping-Andersen 1996: 24) or changed the conditions for accessing benefits, linking them increasingly to some former contribution in, or some willingness to contribute to, the work sphere.

What are the philosophical implications, if any, of the WS’s decline and labour commodification for justice as fairness? The next section prepares the ground for this question by offering a refresher of Rawls’ main ideas and concepts and by examining the status of the WS in Rawls’ realistic utopias.

## 2. RAWLS’ THEORY OF JUSTICE: A REFRESHER

### *2.1 The fair distribution of primary goods*

Rawls (1971; 1993; 1999; 2001) considers the conditions for a fair distribution of basic liberties and socio-economic advantages in a society of free and equal people; these are the conditions that the *principles of justice* must express. According to Rawls, these principles are those that representatives of individuals in a situation of social cooperation would adopt if they were to deliberate behind a veil of ignorance – that is, without information as to their capacities, their conception of the good, their rational plan of life and their social position. Rawls then presents the two principles of justice that he believes would be adopted in the ‘original position’. The first principle requires the implementation of a fully adequate scheme of equal liberties that is compatible with the same scheme for all. The second principle sets out two sub-requirements for acceptable inequalities: i) social positions must be equally accessible to those endowed with similar talent and motivation (fair equality of opportunity), and ii) inequalities must be to the greatest benefit of the least advantaged members of society (difference principle) (Rawls, 2001: 42).

Rawls moves on to specify the nature of the *distribuendum*, the distribution of which must be evaluated using the above principles of justice. Neither well-being nor happiness are considered suitable *distribuenda*. Instead, Rawls suggests that social justice should consider the *expectations of primary social goods attached to social positions*. Primary goods are defined as goods that are useful independently of the individual's life plans and that any rational person should therefore desire. Rawls identifies five categories of primary social goods: i) basic rights and liberties; ii) freedom of movement and free choice of occupation; iii) powers and prerogatives; iv) income and wealth; and v) the social bases of self-respect (Rawls 2001: 58-59). To determine if a society is fair, one must assess whether the allocation of primary goods among social positions conforms to the aforementioned principles of justice. The first principle is used for the evaluation of the fairness of a given distribution of rights and freedoms. The second principle (equal opportunities and the difference principle) offers a criterion for assessing the fairness of the distribution of powers and prerogatives and income and wealth. The distribution of the social bases of self-respect is a topic of debate among Rawlsian scholars<sup>3</sup>. They agree, however, that for the social bases of self-respect, as for other primary goods, fairness is guaranteed by some combination of the two principles of justice, to which Moriarty (2009) adds the opportunity for meaningful work<sup>4</sup>.

## *2.2 The basic structure of society as the subject of justice*

As Child and Marcoux (1999) and Phillips and Margolis (1999) remind us, Rawls is clear that his principles of justice are not meant to constrain the form of every institution and organisation. Their domain of influence is restricted to the *basic structure of society* that associates primary goods with social positions. This basic structure is defined as the 'major social institutions [that] distribute fundamental rights and duties and determine the division of advantages from social cooperation' (Rawls 1971: 7).

The rationale for distinguishing the institutions of the basic structure of society from all other institutions can be understood in light of Rawls' overall project. The most important institutions of a society are those that a citizen cannot avoid unless s/he emigrates. A society's political constitution and its basic socio-economic structure are particularly salient examples. Citizens are autonomous vis-à-vis these institutions if the latter are structured according to principles stemming from 'reflective thought and reasoned judgement' (Rawls, 2005: 222), that is, principles that can be justified and appropriated through citizens' autonomous reasoning.

In the section of *TJ* dedicated to institutions Rawls specifies the nature and content of the basic structure: 'by major institutions, [he] understands the political constitution and the principal economic and social arrangements' (Rawls, 1971: 7). The basic structure therefore comprises *two distinct parts*, each dedicated to the realisation of one of the principles of justice. The first part consists of the political constitution, the purpose of which is to establish a fully adequate scheme of basic liberties for all. The second part is dealt with by the legislative body that defines and regulates the most important socio-economic institutions. On the one hand, these include the economic system of production and exchange of goods and its rules and regulations (for example, macroeconomic policies) and, on the other, the social system of taxation and redistribution that is regulated by the WS<sup>5</sup>.

Furthermore, since the legislative body should only intervene in the basic structure of society, it follows that the principles of justice offer quite some leeway for the actions of *individuals and groups of individuals*. They are not meant to guide the actions of individuals who remain free to act and undertake projects as they wish within the background institutions. Nor do they offer a criterion for a fair distribution of privileges within private voluntary organisations, such as firms. The rules that apply to transactions and agreements between individuals and associations are those of private law. Legislation concerning contracts is an

example of such laws that are ‘framed to leave individuals and associations free to act effectively in pursuit of their own ends and without excessive constraints’ (Rawls, 2005: 268).

Finally, Rawls’ stance on corporations is loose: he notoriously considers the ownership of the means of production as belonging to the BSS (Rawls, 1999: 6) and hints that corporate governance might also belong to it (Rawls, 2001: 178), yet he largely identifies corporations with private voluntary associations, just like universities (Rawls, 2001: 10; 164). It might be tempting to infer from this succinct presentation of Rawls’ political philosophy that CIs are mostly a matter for private law. However, we shall argue below that while such an inference is broadly correct in the context of a healthy WS, this is not the case in the context of a declining WS.

### *2.3 Rawls' realistic utopias: a strong WS and overlooked corporate institutions*

Once the principles of justice and their subject are specified Rawls considers which models of socio-economic organisation may accommodate them. These models are ideal types of fair societies as opposed to actual regimes. Two of them appear *prima facie* compatible with the principles of justice: market socialism (which combines market mechanisms of exchange with the public ownership of the means of production) and the model of a property-owning democracy (POD), for which Rawls signals a personal preference<sup>6</sup>. Let us note immediately that the expression POD is potentially misleading because of its libertarian tones. Yet Rawls is clear that a POD must involve a powerful WS and favour the dispersal of capital within a production system based on the private ownership of the means of production. Adding to the confusion, Rawls also distances the POD from the model he calls, perhaps misleadingly, *welfare state capitalism*. It is crucial for our argument to note that Rawls’ misgivings about WS capitalism are prompted by the fact the latter insufficiently involves the WS rather than excessively.

In a POD, policies of redistribution and limitations on the accumulation of capital ensure compliance with the second principle. Redistribution modifies the allocation of income that results from labour market mechanisms. Moreover, policies aimed at limiting the accumulation of capital – especially inheritance tax and progressive income tax – lead to a more egalitarian distribution of both capital and return on capital, which improves the situation of the least advantaged citizens. Thus, the two combined measures guarantee the difference principle. Moreover, the resulting smoothing out of inequalities secures the conditions for fair equality of opportunities. Indeed, Rawls remarks that the development and expression of natural talents are strongly correlated with the initial social and familial circumstances that people experience. The smoothing out of these social conditions, combined with a public system of education, moves closer to offering similar perspectives for equally talented and motivated individuals. Finally, the levelling down of inequalities also contributes to ensuring the fair value of equal political liberties, which requires that everyone has a fair opportunity to hold public office and influence the outcome of elections (Rawls, 2001).

Conversely, the distributive role of the state in ‘welfare state capitalism’ barely allows for the survival of the weakest. It does not conform to the demands of justice because it allows for the private accumulation of land and capital, which results in significant inequalities that undermine both the relevance of formal equal political liberties and the equality of opportunities expected from a well-ordered society. Welfare state capitalism also ignores the difference principle since returns on capital are highly unequal and redistribution is limited to those who would not otherwise be able to support themselves (Rawls, 2001: 139-140).

Overall, Rawls mainly focuses on questions relative to the WS while leaving aside questions relative to CIs. Corporate governance is at most mentioned as a topic for further enquiry (2001: 178). Moreover, Rawls does not examine the potential implications of the absence or decline of the former for the status of the latter. The next section takes stock of the

recent interest of political philosophers in CIs and addresses whether Rawls' reasons for ignoring CIs is a necessary ahistorical implication of the BSS's definition, or whether these reasons are related to Rawls' (historically contingent) assumption of a strong WS.

### 3. FROM BUSINESS ETHICS TO POLITICAL PHILOSOPHY: CORPORATE INSTITUTIONS AND THE DECLINE OF THE WELFARE STATE

#### *3.1 Political philosophers' surging interest in corporate institutions*

In an insightful paper, Heath, Moriarty and Norman (2010: 49) remark that 'with very few exceptions, the question of the design and justification of *private sector* institutions and regulations – and the implications for individuals within these institutions – has not attracted the attention of political philosophers (cf. McMahon, 1994)'. However, the authors temper this observation by pointing to exceptions in the domain of healthcare in the US. We agree with their assessment that until the end of the 1990s business had been the obvious omission from political philosophy, and that, even today, there is still much important work that needs to be done. We should add nuance to this claim, however, by remarking that the past decade or so has witnessed a (partial and incomplete) resurgence of interest from political philosophers in the world of business in general and CIs in particular.

As Heath, Moriarty and Norman correctly highlight, the main contributions from political philosophy for business ethics come from authors sympathetic to Rawls, such as J. Cohen (1989b), Freeman (2007), Hsieh (2004; 2005), Moriarty (2005; 2009) and O'Neill (2008; 2009), to whom we would add Hussain (2009; 2012) and European authors such as Fleurbaey (2006a; 2006b). Recent contributions from political philosophy also include papers written from a libertarian perspective (Boatright, 2004; 2006; 2010; Machan and Chesher, 2002), as

well as contributions from Marxist (Cohen, 2008) and even radical democratic perspectives (Edward and Willmott, 2008).

While both business ethics and political philosophy examine normative questions they do so from differing perspectives. Clearly, the distinction between both fields will vary slightly from one author to the next but, generally speaking, ethics is typically concerned with the (right) actions of individuals, whereas political philosophy is typically concerned with the formulation of (just) laws for society. This holds for Rawls' perspective on the difference between ethics and political philosophy: ethics is the study of criteria and practices constitutive of a good life, whereas political philosophy is the study of key institutions of society that allow each individual to lead a life that is good according to her own criteria (as long as these do not impede the projects of others). A crucial corollary is that the domain of political philosophy entails rules that can and must be enforced, the transgression of which must be punishable by the state. It follows that Rawlsian political philosophy has little to do with the supererogatory actions of individuals and the voluntary codes of conduct of associations. We are therefore in complete agreement with Heath, Moriarty and Norman's suggestion that Rawls' principles of justice are not meant to be applicable to each and every institution but only to those that form part of the BSS (Heath, Moriarty and Norman, 2010: 432). They also rightly remark that, as a result, Rawlsian contributions to business studies follow two strategies (2010: 431-3): either they decide to apply the principles of justice to all interactions (for example, Cohen, 2008) or they challenge the exclusion of corporations from the BSS.

The argument that we develop in this paper is closest to the second and addresses three questions. The first is the question as to why Rawls himself repeatedly suggested that private firms should not be included in the BSS (2001: 10). As we shall see, the reasons for Rawls' choice beg clarification on the (second) question as to which criterion a Rawlsian should use

to distinguish features that belong to the BSS from those that do not. The third question entails an examination of significant historical (and therefore empirical) evolutions that may determine whether certain CIs should be included in or excluded from the BSS. We attempt to respond to these three questions in the remainder of this section.

### *3.2 Corporate institutions in the works of Rawls: a voluntary omission?*

Two distinct factors may account for Rawls' general lack of consideration for the types of corporate codes, practices and decisions that should be regulated in a well-ordered society. First, Rawls' omission could be a matter of principle: CIs are not part of the BSS and therefore should be freed from justice requirements. Liberal egalitarianism explicitly takes the BSS as its primary subject. Basic institutions are organised to distribute primary goods fairly and then maximise the possibilities of private agreements in the economic sphere. Contractual freedom applies notably to CIs, the rules of which result from the minimal constraints necessary to secure private voluntary agreements between agents, be they shareholders, executives, employees, suppliers, customers or corporations as moral persons. This first hypothesis is congruent with the conceptualisation of the corporation as a nexus of contracts (Fama and Jensen, 1983) and of corporate law primarily as a set of voluntarily self-imposed rules (Maitland, 2001: 131) resulting from negotiations between the corporation and its shareholders or its employees, based on their preferences and their contribution to the value of the firm (Boatright, 2004)<sup>7</sup>.

Yet this hypothesis is not fully satisfactory. First, it may be internally inconsistent with the Rawlsian framework since Rawls himself suggests that the regulation of some CIs may be required if its absence were to bear some unwanted consequences for the fair equal value of political liberties. For instance, he hints that workplace democracy might impact the fair distribution of political liberties and thus might be considered a part of the basic structure



(Rawls, 2001: 178). Second, Rawls assumes that the ownership of productive assets is an element of the basic structure as he compares the fairness benefits of socialism to those of private-property regimes (Rawls, 1999: 6 and 242). Why should other CIs fall into a different category?

An alternative explanation is that CIs should not be excluded from the basic structure as a matter of principle and that Rawls' silence on the matter deserves further clarification. Is their absence from the BSS merely neglectful on Rawls' part? Or is it a thoughtful omission based on Rawls' empirical assumption that most CIs bear no significant effect on the distribution of primary goods and can therefore be safely ignored by political philosophers and lawmakers? We suggest that the latter is the case for Rawls in the context of a healthy WS: a fully fledged WS that guarantees effective policies of redistribution renders unnecessary the regulation of most CIs, and such a WS model was indeed conceivable considering the legal dispositions at play in Western countries in the early 1970s (see section 1 *supra*). One important corollary is, therefore, that the withdrawal of the WS prompts a reassessment of the status and role of CIs. Another equally important corollary is that the status of CIs is not a question that can be entirely answered *a priori*. It is, rather, a question which is partly empirical and the answer for which depends both on the *a priori* criteria for the inclusion of institutions in the BSS and contingent socio-historical states of affairs. Let us now consider the criterion for including an institution in the BSS.

### *3.3 In search of a systemic criterion for the basic structure's boundaries*

Identifying institutions that belong to the basic structure of a given society can be a tricky task. Despite its apparent simplicity, the Rawlsian dichotomy of the 'main elements of the economic and social system' on one hand and the 'rules and practices of private associations'

(1971: 8) on the other is confusing and prompts further clarification. Rawls acknowledges the problem and recognises that ‘the concept of the basic structure is somewhat vague’ (1971: 9).

The socio-economic structure is clearly subject to imperatives of justice as a whole, that is, as ‘one scheme’ of cooperation. However, the socio-economic system may be unpacked as being constituted by sub-systems, such as production and trade on the one hand and welfare institutions on the other. The domain of production and trade may itself be subdivided into more specialised components, such as macro-economic policies, market regulations, the legal structure of corporations, the laws and codes that define their rules of governance, and other internal codes and policies. We observe a continuum that goes from macro- to micro-structures. Where does the basic structure end and where does the space for secondary or private institutions begin? At this point it is useful, and perhaps necessary, to have a clear criterion that can distinguish the boundaries of the basic structure of society and thus allow the implementation of justice requirements through policy making.

Samuel Freeman offers a functional criterion for identifying elements of the basic structure: the latter should be ‘necessary for productive social cooperation, and hence for the continued existence of any society, particularly any relatively modern one’ (Freeman, 2007: 102). This criterion excludes, according to Freeman, universities and the mass media from the BSS. Similarly, Heath, Moriarty and Norman assess the relevance of institutions for the BSS by their ‘centrality in securing “social cooperation over time”’ (Heath, Moriarty and Norman, 2010: 432). This functional criterion is, however, prone to multiple interpretations. For example, Heath, Moriarty and Norman are willing to include ‘at very least, publicly traded corporations’, but it is unclear which other organisations are eligible and which are not. One may also want to argue against Freeman that universities are essential to economic cooperation as they provide firms with the educated workforce they need. More fundamentally, this criterion misses emerging structures and institutions, such as widespread

corporate practices or intra-industry self-regulations and other soft laws, which may develop to the point where they exert a notable effect on the overall distribution of primary goods while not being functionally essential to social cooperation. By contrast, Taylor considers social unions (eg. private corporations) to be part of the basic structure: ‘if the offices and positions associated with them require a major and usually dominant commitment of time and energy and act as the primary sources of livelihood for those who hold them’. This includes, ‘governments, private and public corporations, universities, NGOs and so forth’ (Taylor, 2004: 341), a list notably different from Heath, Moriarty and Norman’s. Finally, O’Neill (2009) wants to include corporations in the basic structure because they are legal conventions that have a profound effect on the distribution of primary goods, an angle yet again different from Freeman’s functional perspective but which similarly misses emerging informal structures with a profound effect on people’s lives. The issue with these various definitions of the basic structure is not just the inconsistencies among them. Rather, it is that the functional and legal approaches share a restrictive conception of the basic structure inconsistent with some of Rawls’ own purposes. While it is true that Rawls himself sometimes refers to the basic structure as a legal framework or functionally essential institutions, he also justifies the BSS as the subject of justice because its effects are profound and pervasive (Rawls 1971: 96).

These inconsistencies can be overcome, however, if we choose another criterion: an element (be it a set institution or an emerging one, a legal rule, a practice, a private organisation, and so on) must be included in the basic structure if and only if *it has a systemic<sup>8</sup> influence on the distribution of primary goods*. To say that an element has a systemic influence on the distribution of primary goods means that this element affects the expectations of primary goods associated with at least one relevant social position. A relevant social position is one that is not entered into voluntarily and the associated expectations of

primary goods of which are therefore inescapable<sup>9</sup>. This criterion prompts the inclusion of all (and only) the elements that affect:

- the expectations for any relevant social position (or ‘representative man’) of i) basic rights and liberties, or ii) freedom of movement and free choice of occupation and/or
- the expectations for the worst-off social position of iii) powers and prerogatives, iv) income and wealth, or v) the social bases of self-respect<sup>10</sup>.

This criterion applies to the established and well-known elements of a society’s basic structure. Freedom of speech provides one example of a well-identified element that inescapably affects all relevant social positions. Policies of redistribution that affect the worst-off social position within a territory offer another such example. It is, indeed, because both free expression and redistribution bear social systemic effects and shape the distribution of primary social goods that it is both legitimate and necessary to subject them to public reasoning and consider them elements of the basic structure of society and subject to the demands of justice.

Our proposed criterion encompasses *a fortiori* the situations covered by Freeman's functional criterion, as the absence of functionally necessary institutions would jeopardise the existence of society and with it the situation of all relevant social positions. It also discriminates between smaller corporations that typically bear little effect on relevant social positions and bigger corporations (or unions of small corporations) that may bear systemic effects. Moreover, our proposed systemic criterion takes into account institutions spanning the boundaries of individual corporations, such as trade unions or industry-level workers’ committees. Importantly, this criterion also allows some emerging institutions that may not have been previously identified in the law to be integrated into the basic structure.

We believe our proposed criterion accommodates the view of Hsieh (2005) and Moriarty (2005) that voluntariness (and conversely, exit costs) is a crucial aspect for consideration in shaping the BSS from a liberal egalitarian perspective. We would refine their voluntariness criterion, however, by distinguishing cases where exit costs affect the (reasonable) expectations of primary goods (such as power and prerogatives or income and wealth) over the complete life of the most disadvantaged members of society. While the dismissal procedures for top executives do not satisfy our systemic criterion, the dismissal procedures for low-wage workers may do so, especially within the context of weak welfare institutions.

To recap, an institution (corporate or otherwise) belongs to the BSS if and only if it has a systemic influence over the distribution of primary goods, that is, if it affects the expectations of primary goods for a relevant social position. We now examine the systemic effects born by some CIs.

### *3.4. Corporate institutions and the basic structure: the philosophical import of empirical elements*

Let us now consider more closely the case of corporate practices, regulations and codes. According to the above criteria, the practices and rules that have an influence on a relevant social position should be included in the basic structure. It takes empirical enquiry to determine whether and when CIs meet these criteria.

#### *3.4.1 When is a corporate institution part of the basic structure?*

More often than not, firms' business decisions, such as choices relating to the development of a product or the location of a factory, do not satisfy our proposed criterion of inclusion within the basic structure of society. Typically, the effects of these decisions do not contradict the principles of justice by violating the basic rights of all or the expectations of wealth and power for the worst off. They bear only a local and escapable effect on clients (whenever they

can switch suppliers or abstain from the product), employees (whenever they can switch employer or collect decent benefits), and so on. Moreover, no evidence exists to indicate that any of these decisions or processes considered as a whole produce any predictable systemic effect on the distribution of primary goods. A well-ordered society can therefore accept decision-making practices that are oriented towards instrumental rationality and bound to distinctive purposes or conceptions of the good. This is arguably what Rawls means when he suggests that the difference principle does not apply to the transactions or to the decisions of individuals and private associations (Rawls, 1971: 8).

However, as soon as some practices, codes or laws satisfy the systemic criterion, that is, produce some profound and inescapable effects on the expectations of primary goods associated with a relevant social position, they should be considered part of the basic structure of society, despite their private individual or corporate origin. We believe this line of thought is congruent with Rawls' remark that 'while churches can excommunicate heretics, they cannot burn them' (Rawls 2001: 11). Indeed, a person excommunicated by a church (in a religiously pluralist state) can still expect a fair share of basic goods from other social institutions, religious or otherwise. This is obviously not the case for a person burned alive.

It follows that the BSS does not only encompass institutions defined or identified *a priori* as key institutions. It also extends to some of the real socio-economic structures, the development of which is to a large extent spontaneous. The purpose of continuous adjustments to the basic structure that Rawls recommends is therefore twofold. On the one hand, these adjustments are meant to correct, from within, the frame of the existing structure (for example, the modification of income tax) or the imbalances that result from the multiplication of transactions that may be fair in themselves (Rawls 2005: 284). On the other hand, continuous adjustments also allow integration into the basic structure of those practices

or institutions that were previously insignificant but which now rise in importance up to the point that they have distributional effects on a relevant social position.

Consider, for instance, that an analysis were to indicate that regulating some corporate decision-making processes (for example, the composition, structure and internal workings of strategic boards or HR departments) bore an effect on the least advantaged position's share of primary goods, for instance, on the social bases of self-respect or income and wealth<sup>11</sup>. This would indicate that these practices are socially structuring even though they have not (yet) been formally recognised and regulated as elements of the basic structure. Such elements of corporate activity should consequently be treated, along with the property of productive assets, as part and parcel of the basic structure.

Our understanding of the basic structure may thus appear close to that of Cohen (2008), since we, like Cohen, wish to include informal structures in the BSS. Yet we draw a different conclusion: we propose that the unfair effects of informal structures must be addressed by the legislative body rather than by an *ethos* of justice informing individuals' personal choices. Furthermore, it must be noted that any new regulation aimed at regulating emerging practices should still respect the lexical priority of the first principle over the second: a practice detrimental to the worst-off might well be forbidden or simply regulated, yet within the bounds of fundamental liberties and fair equality of opportunity.

#### *3.4.2 Do corporate institutions bear a systemic effect on the distribution of primary goods?*

Whether corporate rules can actually affect the distributional justice of an organisation, an industry or a society overall has been a matter of scholarly debate among economists. In reaction to the progressive corporate law movement, Maitland argues that corporations' rules, such as job security, are distributionally neutral for their employees (Maitland, 2001: 131). He reasons at the level of one organisation and looks at corporate rules construed as negotiated

agreements. The gist of the argument is that stockholders will seek compensation for any new rule beneficial to workers and detrimental to themselves, either by lowering wages or by exiting the industry for better returns elsewhere. As a consequence, the introduction of worker-friendly corporate rules would not make employees better off in the long run. While agreeing with Maitland on the distributional neutrality of rules that affect a ‘small’ part of the economy, Beck responds that rules affecting a ‘large’ part of the economy may nonetheless bear distributional effects (Beck, 2005). In his discussion of both papers, Witztum focuses on a job-security rule. Departing from both Maitland and Beck, he argues that such a rule, both when mandated at the level of a small industry and when enforced across industries, may have wider social distributional effects. In the case of a small industry without any influence on labour markets, corporate rules beneficial to workers have a re-distributional effect, albeit at the industry level only and at the cost of reduced industry size. However, once the rule applies to a sufficiently large industry or, more significantly, across industries, it has a distributional effect at the level of society overall and operates transfers from stockholders to workers. The size of the sector only determines the ‘magnitude of the re-distribution’ (Witztum, 2008: 98). However, a downside is that the labour supply, and hence the total material output, may be reduced. Yet, Witztum argues, such allocation may be socially more desirable than the allocation that maximises global utility. In Rawlsian terms, the proposed corporate job-security rule is acceptable and indeed desirable if it improves the situation of the worst off, say poor workers, despite entailing possibly detrimental effects for overall utility.

### *3.4.3 Does the philosophical status of corporate institutions depend on historical factors?*

Our paper is consistent with Witztum’s argument. However, it seeks to refine it by appreciating the importance of major changes in the political and economic environment that affect assessments of the effect of CIs on the distribution of primary goods. We are therefore



broadly sympathetic to Heath, Moriarty and Norman's (2010: 430) call for interdisciplinary projects that inform the understanding of political philosophers. We also believe that political philosophers cannot ignore the empirical observations made by their colleagues in the social sciences. An important corollary of our paper's argument is that a statement made by political philosophy on, say, the justice of a set of institutions can be true during a certain epoch and false at a later date because the empirical circumstances surrounding that set of institutions has changed.

The last 30 years or so have arguably witnessed significant political and economic transformations. From among these, in section I we characterised the withdrawal of the WS as a broad historical event that affected several developed countries and followed different, though equally declining, trajectories. In Rawlsian terms, one might say that the developed countries we surveyed in this paper's first section, and which were once characterised by robust WSs, have moved closer to the ideal form of WS capitalism. If a lead is taken from our argument that the BSS is constituted by elements that bear a systemic effect on relevant social positions, then an assessment of the implications of the WS's historical decline for the systemic distribution of basic goods and the delineation of the BSS is prompted. Since a detailed analysis of the application of our argument for each basic good would be beyond this paper's scope, we dedicate the next section to illustrating our argument for a single basic good, namely the social bases of self-respect, and its import for democratic CIs. This choice is prompted by Rawls' consideration that the social bases of self-respect are 'perhaps the most important primary good' (Rawls, 1971: 440). We believe, however, that the gist of our argument for self-respect is equally relevant to other primary goods, such as powers and prerogatives or income and wealth, and to other CIs.

#### 4. ILLUSTRATION: OPPORTUNITIES FOR MEANINGFUL WORK AND WORKPLACE DEMOCRACY IN A WEAKENED WELFARE STATE

In this section we illustrate some of the implications of our argument on the import of the decline of the WS for the BSS's boundaries. We argue that the WS's decline prompts reforms for CIs on two distinct though related fronts: the organisation of opportunities for meaningful work (thereafter OMW) and participation in decision-making (participatory CIs). We now undertake three tasks: first, we examine whether and why OMW constitutes a condition for self-respect in a well-ordered society; second, we assess the impact of the decline of the WS on CIs conducive to OMW; and finally, we examine further implications of the WS's decline for participatory CIs.

##### *4.1 Opportunities for meaningful work and self-respect*

We first consider arguments in favour of an extension and refinement of the legally enforceable regulation of CIs in the name of one primary good: *the social bases of self-respect* (or self-esteem). Self-respect may be broadly defined as 'a matter of recognising and living appropriately in the light of standards one (...) regards as important' and is often connected to the idea of one's status or dignity as a person (Moriarty, 2009). Self-esteem, by contrast, is 'a matter of thinking positively of oneself' (Moriarty, 2009). Our argument holds both for self-respect and self-esteem, but we agree with Moriarty (2009) that although self-respect and self-esteem are different notions, Rawls fails to distinguish them in *TJ* when he defines interchangeably 'self-respect (or self-esteem)' as a sense of one's own value, the value of one's life plan and an associated confidence that this value can be actualised:

Self-respect (or self-esteem) (...) includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying

out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfil one's intentions. (Rawls, 1971: 440)

While the latter account has often been interpreted as an account of self-esteem, Rawls explicitly mentions the importance of self-respect in later writings:

[the social bases of self-respect] are features of the basic structure that may reasonably be expected to affect people's self-respect and self-esteem (these are not the same) in important ways. (1999b: 360)

Notably enough, justice aims to provide only the social bases for self-respect, namely its institutional conditions as opposed to directly shaping people's attitudes and feelings.

Our chosen approach is to advocate inclusion in the BSS of key aspects of CI – namely, workplace democracy – in the context of a declining WS, to guarantee the social bases of self-respect from the perspective adopted by Rawls in *Justice as Fairness (JAF)*. The latter considers that the social bases of self-respect are secured if citizens can see themselves as free and equal people able to pursue their conception of the good independently of its substantial content. How can we build a Rawlsian public policy on the formal idea that all activities have to be considered part of at least someone's conception of the good<sup>12</sup>?

In *JAF*, Rawls institutionalises the social bases of self-respect through the two principles of justice and the way they guarantee a fair distribution of the other primary goods, as well as the public recognition of those principles (Rawls, 2001: 60). But not much is said about corporations, except the mention of an opportunity for meaningful work in the preface to the 1996 paperback edition of *Political Liberalism (PLP)*, as has been astutely spotted by Moriarty (2009: 446). In Rawls' short statement, this opportunity should be secured by the state as employer of last resort. In the remainder of the section we examine alternative ways of securing OMW.

The question of self-respect and its implications for work and CIs has received much attention from Rawlsian scholars in recent decades<sup>13</sup>. We take our lead from Moriarty (2009), both because we share his overall review of previous accounts and because his rigorous reconstruction of Rawls' account of OMW offers a starting point for our argument concerning CIs. Moriarty examines the significance of the appearance of OMW, as a basis of self-respect, in PLP. Through a close analysis of Rawls' writings and some careful hypothesising, Moriarty characterises meaningful work as complex, varied and involving 'considerable decision-making power'. He also suggests that the OMW needs to be satisfied in the work sphere as opposed to non-work private associations; this is because, Moriarty hypothesises, 'people's participation in work associations is [...] mandatory and extensive'. Finally, he speculates that Rawls mentions the state as the purveyor of OMW in PLP because, 'while in *Theory* Rawls may have hoped that a society structured according to his two principles, including fair opportunity, would provide citizens with enough meaningful work, by PLP he seems to have accepted that it might not' (Moriarty, 2009).

We suggest that meaningful work should be understood in post-*Theory* works as work congruent with people's conception of the good rather than necessarily complex or refined work. Our analysis of the BSS in section 2 (cf. *supra*) also adds to Rawls' reconstructed account of OMW the idea that the role of the state and the philosophical status of CI for OMW also needs to be contextualised within the wider socio-political institutions of the considered society<sup>14</sup> and, in particular, its WS: we suggest that the stronger the WS, the stronger the probability that individuals have chosen the social position they occupy and therefore live and work by their conception of the good<sup>15</sup>. Since Rawls' realistic utopias seek to take account of the material constraints set on societies, we shall make our point by examining two plausible contingent scenarios: one of relative material abundance and limited inequalities and one of lesser material abundance and greater inequalities.

#### *4.2 The welfare state's significance for OMW: two realistic scenarios*

Let us first consider a well-ordered society in a situation of relative material abundance and limited inequalities. It can be argued that Rawls could safely avoid the issue of inappropriate (that is, not meaningful) forms of labour since unworthy professional activities and working environments are bound to disappear from a well-ordered society under propitious circumstances. The form of egalitarianism that would result from the application of the principle of difference would attenuate relations of power and domination on the labour market. A Painean system of redistribution, warranting a substantial unconditional basic income (Van Parijs, 1995), appears to be the most appropriate WS regime for this purpose. Such a system reverses the commodification of labour-power (Esping-Andersen, 1990) and allows the individual to choose freely between various forms of activity, paid or unpaid. Work contracts are therefore signed between equals on the basis of voluntary decisions. Individuals would no longer have to accept degrading activities and working conditions. Should they subsist, the authoritarian practices and internal hierarchies of organisations would not present a threat to self-respect. Submission to these hierarchies would constitute a real choice in the context of a rational plan of life, as is the case, for instance, when someone joins a religious community or the army. Moreover, two solutions would be available in the likely event that it would become difficult to recruit workers willing to perform the most unattractive tasks. One possibility is that the financial rewards associated with these tasks would increase sharply in a well-ordered job market. Another would consist in an equitable distribution of these tasks among all able members of society. Under these circumstances the WS secures OMW and, therefore, a fair distribution of the social bases of self-respect since people may indeed decide to live as they choose, by their conceptions of the good. Their equal status as moral agents is thereby honoured. Besides, their sense of their own value and the belief that their projects are

worth pursuing are likely to be comforted, as well as their confidence in their ability to achieve their projects.

Consider now societies that are remote from an equalisation of conditions and where the worst-off receive scant resources from redistribution. This might be due to citizens' lack of support for justice principles – what Rawls calls the 'subjective circumstances' of justice. Or it could be due to external constraints on societies' redistributive abilities – the 'objective circumstances' of justice (Rawls, 1971: 126-127) – such as those mentioned in section 1.2: global competition between countries to attract investment and firms; the breakdown of the Keynesian consensus at the nation-state level; and the resulting financial crisis of welfare states.

In this situation the conditions for the vanishing of unworthy tasks and authoritarian hierarchies are not met (see Fleurbaey 2006b for a study of such imperfect conditions). The priority granted to markets for the allocation of jobs will oblige many to accept roles in conditions of undue economic constraint. The result is that individuals will occupy roles that are not of their choosing and that a significant number of persons will accept tasks they find unworthy, uninteresting, underpaid, set in authoritarian working environments or simply difficult to reconcile with their private conception of the good. One may doubt that citizens will consider these activities to be constitutive of their life plan or that they will be able to find some association that can confirm and reinforce their social value or interest (Guillarme, 1999). Also, it becomes increasingly difficult, if not impossible, to make a (modest though decent) living by working part time on a meaningless job while dedicating one's free time to meaningful unpaid activities in such associations as chess clubs, softball teams or charities. In other words, work tasks that have not been chosen may not be subsumed under anyone's conception of the good. The distribution of the social bases of self-respect would be unacceptably unfair if one could think of another social system that might make the least

advantaged better off in terms of OMW. For, in such circumstances, the worst off seem to be considered as means rather than ends. Their sense of their own value as well as the sense of the value of their project is likely to be affected.

This might be the reason why Rawls suggests in PLP that the state should be the employer of last resort. It is worth noting that, as Rawls doubts that the WS may provide adequate OMW, he hesitates to draw any implications for corporations and still relies on the state in its employment capacity. Our analysis departs from Rawls on this point. For how would the state know better than the employees themselves, or their elected well-informed and accountable representatives, what exactly is meaningful to them? We would propose that democratic CIs may cater for OMW better than public employment in the context of a weak/ening WS and therefore be explicitly treated as an element of the BSS. A professional activity structured and enforced democratically will be more easily regarded as one of the dimensions of a rational life plan: indeed, either it allows workers to pursue as far as possible their conception of the good in their work activities, or it ensures that their interests for their particular conception of the good get represented in higher decision-making processes. Because an individual's *choice for* a particular activity cannot be considered with confidence as the outcome of their moral capacity for pursuing a conception of the good, some room needs to be made *within the* activity for exercising that capacity<sup>16</sup>. The WS's absence or weakness implies a greater number of people for whom OMW must be guaranteed through democratised CIs<sup>17</sup>. In this context, it becomes all the more pressing to mandate democratic CIs by law for the least favoured who can no longer resign from their firms without incurring unreasonable penalties. Otherwise, jobs that already lack meaningfulness tend to become even less meaningful wherever the degradation of labour conditions is able to improve the firm's profitability without incurring overwhelming legal penalties.

#### *4.3 Beyond OMW: the welfare state's significance for participatory CIs*

Some readers will probably note that our substantial conclusions may also be reached through other arguments, especially through the bare assumptions that participatory CIs are always necessary in industrial societies. Indeed, a number of other Rawlsian arguments amenable to workplace democracy have recently been developed (O'Neill, 2008; Hsieh, 2008a; Hussain 2009; 2012; see also Hsieh 2008b for a comprehensive survey). First, along with the liberty of conscience and freedom of association, the 'freedom to take part in economic decision-making' (O'Neill, 2008: 35) may be considered a fundamental freedom necessary to sustain citizens' two moral powers: their sense of justice and their capacity for developing a conception for the good. Democratic participation at work could foster the deliberation and reasoning abilities that citizens need when deliberating justice at the national level. Participation at work also trains workers' moral agency and sustains their capacity for developing a conception of the good (O'Neill, 2008: 35-36). Second, by fostering the moral powers that people need for playing their full role as citizens, workplace democracy supports a stable polity (O'Neill, 2008: 42-43). A related yet distinct argument suggests that a 'democratic corporatist regime' that would get employees to participate in regulating the part of the economy they are involved in would strengthen their commitment to justice as citizens come to realise the effects of their particular sector and its regulation on the overall fairness of society. Hence, 'democratic corporatism' would be necessary to guarantee the moral ideal of stability (Hussain, 2012: 34-35, see also Hussain, 2009)<sup>18</sup>.

Yet, as we noted earlier, such assumptions were missed by Rawls himself and might be debated by Rawlsians who believe that people can foster their sense of justice through other associations such as churches or activist groups (for critical assessments, see Schwartz, 1982: 636-7 and O'Neill, 2008: 41-2).



The argument that we have developed in this section, however, allows the reconciliation of both views by attending to the historical context that prompts the inclusion or exclusion of CIs into the BSS on the basis of their effects on self-respect and citizens' moral powers. For, while we do not review the validity of each of the arguments for participatory CIs, we would like to emphasise that those arguments against the imposition of democratic CIs assume the existence of a strong WS. In such a context, the possibility of developing one's moral agency, as well as one's ability to engage as a citizen in the political sphere, may be secured through engagement in purposefully chosen associations and work organisations. This is less likely to be the case when the WS is weakened. In other words, while it is beyond the scope of this paper to draw a conclusion on ahistorical assumptions about democratic CIs, we make instead the philosophically more modest yet important point that some contested arguments for democratic CIs cannot be a matter of debate anymore once we take into account the weakening WS in order to clearly identify CIs as an element of the BSS.

To recap this section's argument: the WS's decline dilutes the conditions for participation in an economic life compatible with people's life projects, thereby threatening the self-respect of the worst off. It also threatens people's moral powers. In turn, this prompts a restructuring of non-democratic work organisations. The institutional bases for a fair distribution of the social bases of people's self-respect and moral powers are transferred from the WS onto companies' CIs. It may be argued that such reforms are redundant in a fully-fledged WS that offers real alternative opportunities. But they become essential in the face of the WS's decline.

## 5. DISCUSSION: POTENTIAL OBJECTIONS AND EXTENSION OF OUR ARGUMENT TO OTHER PRIMARY GOODS

### *5.1 Should we advocate democratic CIs, or the restoration of the WS, or both?*

Our argument implies the rather trivial idea that societies that refuse both democratic CIs and a fully fledged, labour decommodifying WS are further from a well-ordered society than societies that include at least one of these provisions. Less trivially, our systemic criterion for including institutions in the BSS also indicates that a number of CIs that might have been left to private agreement in a fully fledged WS must be regulated in its absence so as to impede unfair effects on the distribution of basic goods.

Our argument does not allow, however, the adoption of a position as to whether democratic CIs offer a fairer or a more feasible solution than a fully fledged WS. Yet this open alternative does imply that those advocating fairness while feeling reluctant towards the WS for one reason or another should also consider the costs associated with more democratic CIs and vice versa. The costs of OMW and participatory CIs for corporations and their owners should not be compared with a scenario in which there are few taxes on corporations and wealthy individuals. Rather, the costs of OMW and participatory CIs should be assessed against an equally fair scenario in which heavily progressive taxes support a fully fledged WS. Conversely, if the costs of a fully fledged WS seem a heavy burden to shareholders and strategic managers, they should be reminded that for them the alternative implies a loss of control on CIs.

It may also be objected that a fully fledged WS is not sufficient on its own and that its hypothetical restoration would still prompt the inclusion of a wider range of CIs into the basic structure than is currently the case. Our own stance on this point is conventionally Rawlsian and we would maintain that in a fully fledged WS there would be room for authoritarian

corporations as long as they do not systematically affect the distribution of primary goods. It is an empirical question as to whether contemporary authoritarian organisations systematically affect the distribution of primary goods. It may well have been the case that at the time of Rawls' writing that non-democratic corporations had a deeper systemic impact than he believed. Our stance is not taken relative to the 1970s to 1990s period, but we do maintain that in the current context of weak WSs non-democratic corporations bear a negative systemic effect which prompts the integration of further CIs into the BSS.

### *5.2 Should democratic CIs be enforced through mandatory rules or through tax incentives?*

While our arguments are largely expressed in terms of compulsion and mandatory rules, we would not exclude the possibility of reaching similar (and in certain cases better) results by resorting to a policy of financial incentives and penalties. As indicated in section 2 (cf. *supra*), we view the domain of political philosophy as being concerned with rules that can be enforced and the transgression of which is punishable. Nevertheless, such rules can perfectly well encompass financial/tax penalties or competitive disadvantages for firms that decide to sacrifice their contribution to overall fairness for revenue. Moreover, whether mandatory regulation is more efficient or better accepted than tax incentives is largely an empirical matter that depends on each country's business culture and history, as well as the specificities of the concerned sectors of activity. Our overview of WS regimes above somewhat suggests that tax incentives are likely to be more easily accepted in the US, whereas mandatory regulation might be comparatively easier to implement in Europe's corporatist and social-democratic regimes.

### *5.3 Is our argument sustainable in a globalised economy?*

Some may object that our proposal is unrealistic within the context of a globalised economy. For instance, Boatright argues that the near absence of corporations owned or managed by

workers in free market economies reflects their inefficiencies, especially when monitoring workers and raising capital, as well as in relation to their transaction costs (Boatright, 2004: 6-9). Therefore, employee governance will not be adopted unless it is made mandatory. However, this may in turn raise competitiveness issues relative to countries without similar legislation (Beck, 2005; Boatright, 2004: 9; Witztum, 2008). Other corporate rules, such as Witztum's proposed job security, may also increase the marginal cost of products, unless workers increase their effort in return for the extra benefits. Classical economics suggests that the latter is unlikely, because the benefits are perceived to be unrelated to individual efforts. Therefore, corporate rules propitious to social welfare may also alter a country's competitiveness (Witztum, 2008: 107). If this proves true, the very reason behind the WS's decline (namely, globalisation) might also constrain the adoption of corporate rules beneficial to workers.

These are fair and important concerns that have received well-deserved attention. Yet the inefficiency of democratic CIs has been disputed. In a paper arguing for a stronger employee voice in CIs, McCall (2001: 201) reviews some evidential literature that suggests that participatory management practices have either a positive or neutral impact on productivity and profitability. As for the consequences of job security and other social welfare rules, Witztum envisages that individuals might not behave in accordance with classical economics expectations. He contemplates the possibility that employees might sustain a steady labour effort and hence maintain stockholder return out of 'gratitude' for the very benefits provided by job security and other social welfare rules, even though such benefits are unrelated to individual efforts. Offering a full and conclusive assessment of this controversial issue goes beyond the scope of this paper<sup>19</sup>.

For our analysis, it is sufficient to say that it is necessary to consider the regulation of CIs within the context of a declining WS. Without being conclusive as to whether global

constraints have a bearing in exactly in the same way on CIs and welfare-state policies, we would like to hypothesise that this might not necessarily be the case. The financial strain on the WS is, in great part, related to multinational corporations avoiding high corporate taxes through transfer pricing and other evasion instruments. Under such circumstances, more democratic CIs would complement welfare policies with regard to self-respect since multinationals may prove less reluctant to more democratic CIs than to taxes that slash their benefits without providing the advantages of a committed workforce. Furthermore, participatory CIs might indeed be preferred over welfare policies by citizens themselves in situations where citizens resist fair taxes and welfare transfers. Democratic CIs may then prove to be more stable than welfare benefits for the purpose of ensuring self-respect in the long run and, hence, a better choice. Finally, even if such reforms were difficult to implement at the level of smaller states, this might not be the case at a higher level, say the European Union or the US federal level, as it is unlikely that investors would flee such large markets (see McCall, 2001 for a similar argument centred on the US). To recap, our response to the globalisation argument is that the legal enforcement of our proposed CI reforms provides a viable alternative, one that preserves corporate competitiveness while respecting the Rawlsian principles of justice. Legislation on CIs could complement taxation fruitfully for the purposes of a fair distribution of self-respect.

#### *5.4 Can our argument be extended to other primary goods?*

So far, we have argued that an enhanced and legally enforceable representation of the most vulnerable employees in the governing and managerial institutions of corporations could counterbalance the negative influence of the withdrawal of the WS on the social bases of self-respect. Can this argument be extended to other primary goods the distribution of which is regulated by the second principle of justice?

As we indicate in the second section of our paper, the second principle of justice is meant to offer a criterion of fair distribution both for the social bases of self-respect and for other primary goods, such as powers and prerogatives or income and wealth (Rawls, 2001: 58-59). Our argument for self-respect can be extended fairly simply to powers and prerogatives: enforcing employee participation reinforces, by the same token, their powers and prerogatives beyond what they would obtain in the absence of a strong WS. Many of the powers and prerogatives usually reserved for the privileged group of management would be shared with the less favoured groups of line workers and office clerks.

Let us now examine the import of enforcing democratic CIs on income and wealth. In a fully fledged POD income and wealth include salaries, resources from the WS, as well as well-dispersed productive assets and their dividends. A high level of income transfers will position citizens on a near equal footing in the job market, especially in relation to the negotiation of their salary. It also limits the capacity for capital accumulation and therefore levels revenues from capital. In such a context the question of the governance of HR or personnel departments is marginal and can be left to private agreement. Here again, in light of the difference principle, the decline of the WS in contemporary societies prompts a re-examination of the suggested balance between welfare action and CIs.

A specific focus on the primary good of income and wealth directs our attention to the role and import of HR departments among other organisations of CIs. It is our hypothesis that democratic and transparent decision-making processes in HR departments should level pay gaps within corporations and, more generally, within society. In the current (undemocratic) situation, employees earning low salaries can always try to weigh on the HR or personnel director by threatening to vote with their feet: a very light threat in the context of a weak WS. However, if the position of HR director were open to election by employees, or if the latter

could weigh on the HR director's appraisal and remuneration, bargaining power within the corporation would be more balanced.

This suggestion raises a difficulty that we should mention without offering a fully satisfying answer in the context of the present paper. What about those affected by the decisions of a corporation without being employed by it? The democratisation of the corporation, understood as the inclusion of workers and their interests in the firm's decision-making processes, might well improve the situation of those in employment while weakening the situation of those whose interests are affected by the actions of the corporation but who have not been included in the debates that affect them. The unemployed constitute one such group since they are likely to be penalised by a policy of high salaries that would increase the price of commodities while maintaining a significantly high level of unemployment. This example is open to two possible interpretations that are not mutually exclusive. One possible implication is that corporate decision-making should include representatives of those groups most affected by the corporation's decisions. We can, however, anticipate some difficulties being raised by the initial implementation and continuous operation of such a system (Edward and Willmott, 2008). Alternatively, it might be argued that the difficulty of including external stakeholders reinforces the case for the preservation of a level of national solidarity and coordination in spite of the technical difficulties brought about by the current lack of political control over the globalisation of economies and societies. More specifically, this interpretation may imply that within the context of legally enforced worker participation a substantial portion of taxes should be spent for those who are excluded from participatory CIs.

## CONCLUSION

We propose that the decline of the WS prompts a revision of the boundaries of the BSS so as to include corporate institutions. Our Rawlsian approach attends to the requirements of the principles of justice that define the distribution of primary goods. For this purpose, we offer a criterion that disambiguates which institutions belong to a society's basic structure: an institution belongs to the BSS if and only if it bears an effect on the expectations of primary goods associated with a relevant (that is, non-voluntary) social position – what we designate as a systemic effect on the distribution of primary goods. We then propose, in agreement with Rawls' theory yet beyond his explicit statements, that a number of (currently missing) institutions of the private sector should be regulated by law for the purposes of justice because they bear a systemic effect on the least advantaged positions in society – especially in the current context of weakened WSs. In such a context, corporate institutions are elements of the basic structure of society and can neither be left to the good will of corporate members nor to a corporate law that would ignore justice principles. Instead, they are a topic for public reason and must be shaped with regard to justice rather than mere efficiency. They must be enforced by law rather than be considered options for self-regulation. In this paper we have particularly focused on the primary good of self-respect. However, we believe it can relatively easily be extended to other types of primary goods, such as income and wealth or powers and prerogatives.

In the context of a weak WS the specificities that distinguish economic organisations from states (Hsieh, 2005; Moriarty, 2009; O'Neill, 2008) do not hold anymore: the least favoured citizens are no longer free to choose whether or not they wish to join a corporation. They are indeed in a position to choose one corporation rather than another, yet they must chose one if they are to subsist. A significant number of citizens are obliged to live a professional life that negates their own rational life plan. This situation is unfair if we can either make legally



enforceable provisions at the level of the corporation to guarantee a fair redistribution of primary goods or if we can reinstate the WS. Our paper does not adopt a position as to which of these policies is the most realistic, yet justice as fairness does require us to achieve one of them or indeed a combination of both.

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<sup>1</sup> In this paper, we use the word institution in the broad sense of a relatively enduring social arrangement. This includes formal and informal ‘rules of the game and [...] the ways in which those rules are [...] played out’ (Djelic, 2010: 33). Notably enough, institutions are nested in one another. Hence, a private corporation is a corporate institution, but so are its HRM policies (‘inside’ the firm) and so are the various laws regulating business (‘outside’ the firm). This broad conception of institutions is compatible with Rawls’ definition: ‘Now, by an institution, I shall understand a public system of rules which defines offices and positions, with their rights and duties, power and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defences, and so on, when violations occur. As examples of institutions, or more generally, social practices, we may think of games and rituals, trials and parliaments, markets and systems of property. An institution may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realisation in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules’ (Rawls, 1971: 55).

<sup>2</sup> For the sake of our argument, we refer interchangeably to ‘participatory CIs’, ‘democratic CIs’, ‘corporate democracy’ or ‘workplace democracy’. Democratic CIs refers to the way employees have some power over their work, whether directly or indirectly. This encompasses employees’ direct participation in strategic and organisational decision-making,



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including task design. It also includes the representation of their interests on the board (corporate governance). Although the latter is considered a distinct practice and field of study, we believe that employee participation and corporate governance both refer to the same question of the allocation of power in work organisations.

<sup>3</sup> The distribution of the social bases of self-respect is somewhat complex, since it requires that individuals be able to value their life project in relation to oneself and others. Whether their distribution should follow the maximin rule or be equalised as basic rights and liberties has been widely debated. See G. Doppelt (1981), N. Eyal (2005), J. Moriarty (2009: 444-445), P. Van Parijs (2003: 211-212).

<sup>4</sup> Moriarty argues in his recent paper on Rawlsian self-respect that Rawls' post-*Theory* bases of self-respect require an institutionally secured opportunity for meaningful work (2009: 446) along with the fair distribution of other primary goods – equal liberties, a maximin distribution of resources. We address this discussion in section 4.

<sup>5</sup> Rawls suggests that we think of each of the two parts of the basic structure as dealt with at a different stage – at the conventional stage for the constitution and the legislative stage for the social and economic policies:

‘I imagine then a division of labour between stages in which each deals with different questions of social justice. This division roughly corresponds to the two parts of the basic structure. The first principle of equal liberty is the primary standard for the constitutional convention. Its main requirements are that the fundamental liberties of the person and liberty of conscience and freedom of thought be protected and that the political process as a whole be a just procedure. Thus the constitution establishes a secure common status of equal citizenship and realises political justice. The second principle comes into play at the stage of the legislature. It dictates that social and economic policies be aimed at maximising the long-term expectations of the least advantaged under conditions of fair equality of opportunity, subject to the equal liberties being maintained. At this point, the full range of general economic and social facts is brought to bear’ (Rawls, 1999: 174-175).

<sup>6</sup> This paper's argument assumes that contemporary liberal societies are closer to POD than to market socialism. We acknowledge that some refinement would be needed to address the case of market socialism.

<sup>7</sup> It is only from the 1970s onwards that various shades of institutional economics rediscovered the early insights of Coase (1937) and developed a conceptualisation of corporate contractual relations as institutions rather than mere market transactions (Williamson, 1975). One could therefore hypothesise that liberal egalitarian justice was largely deprived from an epistemological grip on CI also for that reason. We thank an anonymous reviewer for bringing this matter to our attention.

<sup>8</sup> We borrow the term from Susan Muller Okin and her discussion in *Justice, Gender, and the Family* of Rawls' unidentified gender system (Okin, 1989).

<sup>9</sup> For Rawls, a social position provides, therefore, ‘an appropriate standpoint for judging the social system’ (1999: 82).

<sup>10</sup> The distinct treatment of goods (i) and (ii) on the one hand and goods (iii), (iv) and (v) on the other is prompted by Rawls' distinction between fundamental freedoms and social and economic inequalities (Rawls, 1999: 53). Primary goods (i) and (ii) are those freedoms which must be made equally available to all positions: ‘important among these [basic liberties] are

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political liberty (...) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person (...). These liberties *are to be equal by the first principle*' (1999: 53, our emphasis). Goods (iii), (iv) and arguably (v) are those conducive to the socio-economic inequalities that must be regulated according to a maximin or leximin (Van Parijs, 2003) principle: 'the difference principle applies [...] to the distribution of income and wealth and to the design of organisations that make use of differences in authority and responsibility' (1999: 53). Their fair distribution depends on the share of the worst-off, as 'the difference principle selects one representative for [the] special role' of judging social and economic inequalities (1999: 83): the representative of 'the least fortunate group' (1999: 83). This holds for situations of so-called 'close-knitness' (1999: 72), where the expectations of the worst off are connected to those of the better off. We leave aside, as Rawls does (1999: 72), the complication of assessing situations where the latter assumption is not verified.

<sup>11</sup> For example, large-scale relocations typically affect the least advantaged members of society whose skills are deemed replaceable by those of other workers located in countries where labour is cheaper. It can reasonably be expected that the representation of unskilled employees in boards of directors and their contribution to the election of HR directors would limit the frequency and negative effects for unskilled workers of such relocations, especially in situations when the corporation is generating an overall profit.

<sup>12</sup> This idea is close to Van Parijs's criteria of 'undominated diversity' (Van Parijs, 1995).

<sup>13</sup> For useful reviews of prior works on Rawls and self-respect, see Hsieh (2008b) and Moriarty (2009: 441, note 2). Cited works include J. Cohen (1989a), S. J. Massey (1983), G. Doppelt (1981), S. L. Darwall (1977), H. Shue (1975), N. Eyal (2005), N. Hsieh (2005) and P. v. Parijs (2003).

<sup>14</sup> This is arguably compatible with Rawls' statement that:

'Eventually, in applying the difference principle, we wish to include in the prospects of the least advantaged the primary good of self-respect; and there are a variety of ways of taking account of this value consistent with the difference principle. How heavily this good and others related to it should count in the index is to be decided in view of the general features of the particular society [...] *as seen from the legislative stage*' (Rawls, 1999: 318, our emphasis).

<sup>15</sup> We are grateful to one of our reviewers for asking whether a very low unemployment rate would compensate for the decline of the WS? The problem is that countries with low unemployment rates are not immune to unsatisfying jobs and poverty at work: even if everyone were to get a job, it would not necessarily follow that those jobs would be up to the standards required for self-respect. Assuming otherwise presupposes a confidence in labour-market mechanisms that is at odds with the history of workers' rights. The latter were won through successive struggles rather than through the workings of the invisible hand. Unfortunately, deepening this discussion would take us far beyond the boundaries of the present paper.

<sup>16</sup> For instance, in a situation of high unemployment, an employee keen on promoting the defence of the environment might not be able to leave her employer upon hearing of a measure leading to an increase in pollution. The presence of democratic CIs would offer her, however, the possibility to voice her concerns and propose amendments to her firm's projects.

<sup>17</sup> Since the Hawthorne experiments in the 1930s, numerous empirical studies have established the links between workers' motivation and their ability to have a voice. See for

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instance McGregor (1960) and Mitchell (1973). We are grateful to an anonymous reviewer who remarks, however, that since self-respect and motivation are distinct, more empirical work is needed on the effects of democratic CIs on self-respect.

<sup>18</sup> A further argument justifies democratic CIs by reference to the difference principle. It contends that the redistributive interpretation of the difference principle, while ensuring a fair distribution of income and wealth, ignores two equally important primary goods: powers and prerogatives, as well as the social bases of self-respect. Further, Rawlsian arguments in favour of democratic corporate governance include W. Hussain (2009; 2012), Freeman (2007), G. Doppelt (1981), N. Hsieh (2005). On the importance of workplace democracy for a fairer distribution of powers, see Freeman (2007: 135). For a Rawlsian argument for a basic right to be protected from arbitrary interference at work, from the perspective of a ‘workplace republicanism’ that includes a right to contest rather than a right to govern, see N. Hsieh (2005; 2008a).

<sup>19</sup> Those readers who followed the development of the financial crisis over the 2007-12 period will have noticed that cooperative banks fared much better than their privately owned rivals.