

Developing a Sense of Justice. Aristotle and John Rawls on Reasoned Respect for the Law and Stable Political Systems

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Abstract

In this paper I offer a conceptual characterization of the idea of a “sense of justice” as a suitable motivational basis for respect for the principles of justice in force in a given society, and argue that a similar concern can be found not only in John Rawls, who expressly talks about that notion, but also in Aristotle. My main contention is that both thinkers invite readers to conceive of the sense of justice as an attitude admitting of various degrees, ranging from a fear-inspired respect for the law up to an unconditional appreciation of the established constitutional principles and the laws stemming from such principles. In the first part of this paper, I will address Aristotle’s view of a natural capacity of human beings for sociability, political participation and functional interdependence within the city culminating in a virtue-based political friendship. In the second part I will contend that, in Rawls’ view, the individual sense of justice is at work not only after the establishment of a public conception of justice (contrary to what a *prima facie* reading of *A Theory of Justice* might suggest), but also in a phase *ante legem*.

Keywords: Sense of justice, Aristotle, John Rawls, Constitutional principles

Resumen

En este artículo se presenta una caracterización conceptual de la idea de un “sentido de la justicia” como base motivacional adecuada para el respeto de los principios de justicia vigentes en una sociedad determinada. Además, se sostiene que una preocupación similar se puede encontrar no solo en John Rawls, quien expresamente habla de esa noción, sino también en Aristóteles. El argumento principal es que ambos pensadores invitan a los lectores a concebir el sentido de la justicia como una actitud que admite varios grados, que van desde el respeto a la ley inspirado por el miedo hasta la apreciación incondicional de los principios constitucionales establecidos y las leyes que de ellos emanan. En la primera parte de este artículo, se aborda la visión aristotélica de la actitud natural de los seres humanos hacia la sociabilidad, la participación política y la interdependencia funcional dentro de la ciudad, algo que culmina en una amistad política basada en la virtud. En la segunda parte, se argumenta que, a entender de Rawls, el sentido individual de la justicia se activa no solo después del establecimiento de una concepción pública de esa justicia (contrariamente a lo que podría sugerir una primera lectura de *A Theory of Justice*), sino también en una fase *ante legem*.

Palabras clave: Sentido de la justicia, Aristóteles, John Rawls, Principios constitucionales

1. *Introduction*

It is perhaps a platitude to say that respect for the laws provides an essential condition for a stable and well-functioning political asset. Less clear, however, is the way in which the members of a given political community (either citizens or non-citizens) might be encouraged to cultivate and actively display that type of respect. It might be supposed that, besides the role played by an efficient penalty system and law-safeguarding authorities in enforcing the ruling power of the laws, a significant help in this direction is supplied by a publicly expressed concern for education to a cooperative behaviour consonant to the established rules of justice.

In this paper I shall frame the individual moral capacity and the desire to comply by the laws in force in terms of a distinctive “sense of justice” of citizens. This, as I will propose, can be conceptualized as a moral capacity for active political participation and interaction according to the established laws, which is to say, one that admits of different attitudes and degrees. To this purpose, I will discuss in a comparative perspective some relevant passages of Aristotle’s ethical and political works and John Rawls’ *Theory of Justice*. My main thesis is that both Aristotle and Rawls invite the reader to think of the sense of justice as a suitable motivation for respecting the laws. The development of the sense of justice can be placed along a continuum, ranging from respect of laws from fear of punishment to an emotionally laden, friendly concern for one’s fellow citizens. As I contend, Aristotle and Rawls would agree on the idea that a maximum level of sense of justice finds its highest expression in a form of political friendship which, although grounded in the search for personal utility, incorporates a genuine appreciation of the constitutional principles in force, a respectful regard for one’s fellow-citizens, and the expectation of a reciprocal, equal treatment between rational and cooperative moral agents.

In the first part of this paper, I will address Aristotle’s view of a natural capacity of human beings to sociability, political participation, and functional interdependence within the city. A conceptual characterization of a supposedly Aristotelian “sense of justice” arguably incorporates both the intention to engage in critical confrontation with one’s community-fellows and a performance of civic functions consonant to the established principles in force. Different underlying motives for respect may encourage forms of civic friendship that, by strengthening ties and a sense of reciprocal obligation between the members of a given political community, prompt respectively different degrees of political stability in the community itself.

In the second part of this paper, I shall take issue with the notion of “sense of justice” and the role it supposedly plays in John Rawls’ conception of justice in well-

ordered (liberal and democratic) societies. I will contend that, in Rawls' view, the individual sense of justice is at work not only after the establishment of a public conception of justice (contrary to what a *prima facie* reading of Rawls might suggest), but also in a phase *ante legem*.

2. *Participation in the life of the polis*

A tentative reconstruction of the idea of a “sense of justice” in Aristotle's philosophy can be pursued in relation to his treatment of the dynamics of development of the distinctive human potentialities within pre-political and political communities. It is in the *polis* that human beings find the possibility of achieving their full-fledged rational and communitarian nature. In a well-known passage of the *Politics* Aristotle claims that

[t]he city belongs among the things that exist by nature, and that man is by nature a political animal¹. He who is without a city through nature rather than chance is either a mean sort or superior to man; he is “without clan, without law, without hearth,” like the person reproved by Homer; for the one who is such by nature has by this fact a desire for war, as if he were an isolated piece in a game of backgammon (*Pol.* I 2, 1253a 1)².

ὁ ἄνθρωπος φύσει πολιτικὸν ζῷον, καὶ ὁ ἄπολις διὰ φύσιν καὶ οὐ διὰ τύχην ἦτοι φαῦλός ἐστιν, ἢ κρείττων ἢ ἄνθρωπος: ὡσπερ καὶ ὁ ὑφ' Ὀμήρου λοιδορηθεὶς “ἀφρήτωρ ἀθέμιστος ἀνέστιος” (Hom. *Il.* IX 63) ἅμα γὰρ φύσει τοιοῦτος καὶ πολέμου ἐπιθυμητής, ἅτε περ ἄζυξ ὢν ὡσπερ ἐν πεττοῖς.

The capability³ of sharing in the feelings, motivations and dynamics that can be expressed in a certain community (especially the political one), as well as the capacity to be “with laws” represents a distinctive prerogative of human beings. Possession of that capability, at least at this initial stage of discussion, seems to mark a minimum level of human moral decency, which is to say, one without which a person can legitimately be qualified as “mean”. The sense of justice, then, might be qualified as a negation of its conceptual opposite, namely the condition of the *apolis*. In fact, the passage contains the idea that there might be human subjects who, contrary to those who are generally and “by nature” fit to a political sphere, are without *polis* “by

¹ Cf. *NE* 7, 1097b 11; IX 9, 1169b 18.

² Transl. Lord, from which all the passages will be taken, unless differently specified.

³ As SAUNDERS (2002), 69 explains, «[T]he translation of *politikon*, 'fit for a state', does not imply that a man is born already endowed with the appropriate virtues, but only that he is born with the capacity or faculty (*dunamis*, *EN* 11 i) for developing them by education».

nature” (i.e. without the capacity and the impulse of living in a *polis*⁴). This idea might imply that some persons have physiological defects that possibly affect psychology⁵, and also that the absence of political ties and laws, just like a desire for war, is a natural consequence of an isolated life⁶. These aspects might induce the reader to hypothesize that the *apolis* is not simply a mean human subject, but rather a *non-human* being (as Aristotle will make it clear at *Pol. I 2*, 1253a 28, where he declares that whoever is unable to share in a community (μη δυνάμενος κοινωνεῖν) is either a beast or a god). The capability of acting in a goal-directed cooperative dimension (as the *koinonia politikē*)⁷, in that case, would appear as a threshold below which a human being loses his or her distinctively human features⁸.

In the following lines of his argument Aristotle explains that human beings are not the only political animals that can be found in nature. In fact, “political” is a property which does not exclusively indicate the human capacity to exert one’s full-fledged potential in the city. To the contrary, it seems that the idea of living in a city, although potentially implied in the adjective “political”, may coexist within the meanings of “community”, “friendship”, convergence of aims - all aspects which also some living, non-human beings usually experience⁹. The higher degree of “politicalness” displayed by human beings over other gregarious animals does not seem to reside straightforwardly in their inhabiting a city (which undoubtedly exhibits a high degree of sophistication in terms of organization of functions and cooperative strategies). Rather, it appears to be rooted in their capacity to live the dimension of the

⁴ See SAUNDERS (2002), 69.

⁵ See SAUNDERS (2002) 69.

⁶ See BESSO and CURNIS (2011), 215-216. As the authors point out, Aristotle forces the interpretation of verse 64 of *Iliad IX*, which imply that isolation is an effect of inclination to war, and not vice versa.

⁷ Aristotle regards the political community as the sort of partnership that embraces all the others. While each partnership aims at some good, the political one aims at the best and the most complete, i.e. the human good (*Pol. I 1*, 1252a 1-6). While the phrase ἡ πολιτικὴ in the first lines of the *Politics* appears to address the community of members (cf. SCHÜTRUMPF, 1991, I, p. 173), in the following books it appears to be related to citizens only (on this point see BESSO and CURNIS, 2011, 197). A distinctive trait of every *κοινωνία* (not simply the political one) is the fact that for each member there should be something in common and the same for all partners (*Pol. VII 8*, 1328a 25-28).

⁸ Cf. BESSO and CURNIS (2011), 219, who claim that without the *polis* human beings would lower their nature to the one of beasts.

⁹ See SIMPSON (1998), 22, especially footnote 20. Simpson agrees with MILLER (1995), 30-31 and KULLMANN (1991), who assume that the idea of “*polis*” at the basis of the adjective “political” ranges from primitive levels of associations to a distinctively human life in organized cities. A different view is held by MULGAN (1974), 439, who claims that the adjective “political”, being referred to both animals and human beings, cannot by any means apply to the case of a life in the city, and would rather bring out the activity of cooperating or working together to some common enterprise.

community thanks to the inclination to rationally and dialogically express their personal views on the useful and the harmful, the just and the unjust. This capacity is not to be understood as an element of rupture with the biological dimension of human politicalness¹⁰. Indeed, man is described as a “ζῷον”. As such, he shares with some animals the property of sociability and, with a specific subset of the sociable (or gregarious) animals, a distinctively political nature¹¹. Provided that only political beings act by having some common object in view¹², it becomes clear that human beings express a particular way of understanding gregariousness, i.e. one in which sociability does not amount to sheer living in groups without coordination.

At any rate, many are the passages of Aristotle’s works in which the political nature of human beings is described as transcending a purely biological (or zoological) dimension¹³. For example, in his ethical discussions, political animals are treated as beings able to take part in governing activity (*EE* VII 10, 1242a 22-24; *NE* VIII 12, 1162a 16-19). Thus, they display a more sophisticated agential capacity than the one required for successful household management. What is more, in other passages he speaks of political agency within the city (*NE* I 7, 1097b 8-11; IX 9, 1169b 16-22; *Pol.* III 6, 1278b 15-30)¹⁴. The overcoming of a purely biological dimension appears also in *Pol.* I 2, 1253a 10-14, where we read that possession of reasoned speech (*logos*) is an exclusive prerogative of the human being (λόγον δὲ μόνον ἄνθρωπος ἔχει τῶν ζῴων). While the voice (φωνή), being present in other animals, indicates the painful or pleasant and helps animals to signal these feelings to each other (σημαίνειν ἀλλήλοις), the human *logos* has been devised by nature to express individual perceptions (αἰσθήσεις) of the just and the unjust. It is easy to understand that, in the

¹⁰ The biological rootedness of the human being has been stressed by MACINTYRE (1999).

¹¹ As we read in the *Historia Animalium*, probably the earliest among Aristotle’s zoological works, some beings are gregarious (ἀγελαῖοι), some are solitary (μοναδικόι), and some partake of both characters. Human beings seem to belong to the realm of those who can live in both ways (ἐπαμφοτερίζειν; I 1, 487b 32-488a 2). It is interesting that, in the passage at issue, human beings are presented as a particular subset of gregarious animals (ἀγελαῖα), namely the “political” (πολιτικά), as distinguished by those gregarious animals who live scattered (σποραδικά). Scattered beings, although social, are those with possibly with no inclination for cooperation based on differentiation of functions or convergence of goals. These seem to happen in particular to those who live in groups more dispersed than herds, packs, flocks, schools, or cities. For a carefully thought discussion of the taxonomy proposed in *Historia Animalium* I, 1 see DEPEW (1995).

¹² As Aristotle makes it clear at *Historia Animalium* I 1, 488a 7-10, unlike those animals who simply live in association, the political stand out for their capacity and tendency to functionally cooperate towards a common goal.

¹³ See BESSO and CURNIS (2011), 217.

¹⁴ A distinctive sense of understanding the political nature of human beings is the one related to governing activity as distinguished from pure householding activity (cf. DEPEW, 1995, 156).

present context of discussion, αἰσθήσεις are not to be regarded as sense perceptions¹⁵, as those experienced by lower animals and communicated by means of voice¹⁶, nor they consist in pure alterations suffered by human beings and caused by external objects¹⁷. Perceptions of utility, harm, justice and injustice are rather to be understood as rationally informed views, the specific content of which supposedly depends on a subjective and active capacity to re-elaborate and communicate experiences within the domain of human interactions. These perceptions are not necessarily to be understood as forms of intuitive reasonings; to the contrary, it is plausible to suppose that they can be progressively shaped and modified by dialogic experiences between human fellows.

Although reciprocal communication of such perceptions is not explicitly mentioned by Aristotle (differently from the case of voice for animals) as a functionality of the *logos*, it is pretty evident that the perceptions at stake can be rationally articulated and publicly exhibited, and its holders can advance justifications in support of the plausibility of their content. In my opinion, this view might be derived from what Aristotle says at *Pol.* I 2, 1253a 14-18:

But (reasoned) speech serves to reveal the advantageous and the harmful, and hence also the just and the unjust. For it is peculiar to man as compared to the other animals that he alone has a perception of good and bad and just and unjust and the other things of this sort; and community in these things is what makes a household and a city.

It is remarkable that the last lines of the passage above focus on the possibility of sharing αἰσθήσεις Aristotle does not pronounce on the possible ways in which a convergence of private views can be turned into a single, shared rational perception¹⁸. The most plausible solution, however, is that that a shared perception of the values

¹⁵ A detailed treatment of aisthesis as a faculty of aisthesis as sense perception is found in Books II (sections 5, 6, 7, 11, 12) and III (sections 1, 2, 3, 12, 13) of *De Anima*.

¹⁶ On the functional distinction between voice and speech cf. Aquinas' commentary to the *Politics* (tr. REGAN, 2007, 6, of I 21): «Therefore, expressions of sadness and pleasure are signs and so also belong to other animals. For the nature of other animals is such as to have sense experiences of sadness and pleasure and to signify these experiences to one another. But speech indicates what is useful or harmful, and so also what is just or unjust. For, strictly speaking, it belongs to human beings alone, in contrast with other animals, to perceive good and evil, just and unjust, and the like. And communicating these perceptions produces households and political communities».

¹⁷ See *DA* II 3, 416b 32-35, where Aristotle explains that sensation consists in being moved (κινεῖσθαι) and in suffering (πάσχειν) an action, in that it seems to be some sort of change of quality.

¹⁸ A possible reason for this lack of concern on Aristotle's part might reside in the idea that Aristotle understands political deliberation directly as a community-act (differently from the approach adopted by contemporary political theorists, who are inclined to treat deliberation as a way for each person to regard himself or herself responsible for political actions. On this point see B. GARSTEN, 2013, 328).

and related feelings is the outcome of joint deliberation and an exchange of individual reasons in the context of a communicative experience characterized by reciprocal, constructive criticism, and a forward-looking attitude. We might suppose that, even when deliberative processes of political kind involve the participation of a few rational moral agents, their forward-looking views on the ideas of justice, utility, and their contraries, if expressed by way of convincing rational arguments, may be well-received by the other members of the community. By transcending individual and shortsighted and self-oriented rational perceptions, a shared, public view will become the basis for a life characterized by human interdependence along dimensions ranging from a purely domestic to a broadly political level.

Viewed in this light, the distinctive human capacity for civic life that makes use of *logos* can be conceived of as a qualitative and quantitative intensification of a biological cooperative capacity that characterizes other animals¹⁹. The natural predisposition of human beings to interdependence finds an opportunity for expression not only in the exchange of ideas and perceptions on justice, but also in the exercise of specific functions within political cooperative systems characterized by specific criteria of assignment of tasks and offices. Within a distinctively teleological framework, the city reveals itself not only as the end, but also as the nature of the communities subordinated to its power of coordination. As such, it represents the dimension in which human beings achieve their full-fledged rational and emotional potential²⁰. The idea that the city is by nature prior to the family and to each person is explained by Aristotle through a metaphorical picture drawing on the imagery of organic wholes. According to that image, persons are represented as parts of a whole:

[T]he city is thus prior by nature to the household and to each of us. For the whole must of necessity be prior to the part (τὸ γὰρ ὅλον πρότερον ἀναγκαῖον εἶναι τοῦ μέρους); for if the whole body is destroyed there will not be a foot or a hand, unless in the sense that the term is similar (as when one speaks of a hand made of stone), but the thing itself will be defective. Everything is defined by its function (πάντα δὲ τῷ ἔργῳ ὥρισται) and its capacity, and if it is no longer the same in these respects it should not be spoken of in the same way, but only as something similarly termed (*Pol.* I 2, 1253a 19-29).

As it seems, the image above is not employed by Aristotle to convey the idea of instrumental human beings²¹. It is rather more plausible to suppose that human parts within the political whole are individuals functionally active in a cooperative game.

¹⁹ See KULLMANN (1991); COOPER (1990).

²⁰ Cf. SCHÜTRUMPF (1991), I, 216.

²¹ Cf. YACK (1993), 30.

Indeed, the identity and the quality of persons can be structured and enriched by participation in the political life. As Aristotle claims at *Pol. I 2*, 1253a 29-33:

For just as man is the best of the animals when completed, when separated from law and adjudication he is the worst of all.

ὥσπερ γὰρ καὶ τελεωθὲν βέλτιστον τῶν ζώων ὁ ἄνθρωπός ἐστιν, οὕτω καὶ χωρισθεὶς νόμου καὶ δίκης χείριστον πάντων.

It ought to be noticed, though, that the sheer existence of a set of laws (however good these might be) is not sufficient to promote human development. As Aristotle explains in a passage at Book IV of the *Politics* (IV 8, 1294a 3-b 9) with reference to good laws (which may be either the best laws attainable in imperfect conditions or the best in absolute), no good governance can occur when nobody respects them.

Aristotle is well-aware that a gap may exist between the law and its effectiveness. This emerges in a passage of the *Nicomachean Ethics* in which the incontinent person, i.e. the man who, although in possession of good practical rationality, acts by listening to impulses not aligned to correct reason, is compared to a city:

[S]o the incontinent person is like a city that passes all the right decrees and has good laws, but makes no use of them, as in Anaxandrides' joke: 'The city willed it, which cares nothing for laws.' The wicked person, however, is like a city that implements its laws, but implements wicked ones (*NE VII 11*, 1152a 20-24)²².

καὶ ἔοικε δὴ ὁ ἄκρατὴς πόλει ἢ ψηφίζεται μὲν ἅπαντα τὰ δέοντα καὶ νόμους ἔχει σπουδαίους, χρήται δὲ οὐδέν, ὥσπερ Ἀναξανδρίδης ἔσκωψεν "ἡ πόλις ἐβούλεθ', ἢ νόμων οὐδέν μέλει· ὁ δὲ πονηρὸς χρωμένη μὲν τοῖς νόμοις, πονηροῖς δὲ χρωμένη.

The law by itself, however good, is not a guarantee of either good individual behaviour or a stable political order, for obedience is also required. By "obedience" I do not simply mean the tendency not to transgress the laws, but also the performance of tasks and offices whose specific aims and strategies are directed to the promotion of the constitutional principles established in the city. Assuming that, in Aristotle's view, we may speak of a sense of justice precisely in relation to abidance by constitutional principles and legislative settings, it would be appropriate to say that the idea of "sense of justice" itself might contribute to a conceptual characterization of the notion of citizenship. Aristotle discusses that notion in Book III of the *Politics*, precisely within the framework of an investigation into the nature and the characters

²² Tr. CRISP (2000).

of each constitution. The constitution (*politeia*) is defined as a certain “ordering”, or form of organization²³ of persons living in the *polis* (ἡ δὲ πολιτεία τῶν τὴν πόλιν οἰκούντων ἐστὶ τάξις τις; *Pol.* III 1, 1274b 38), one guaranteed by the existence of a variety of offices performed by the members of the *polis* (this aspect will emerge more clearly at *Pol.* III 6, 1278b 8-12, where the *politeia* is described as the ordering of the offices of the *polis* - especially of its supreme office - not as an order of persons²⁴). Within a similar picture, the idea of a cooperative interaction between fellow citizens appears related to a certain distribution of functions and a participation aimed at the preservation of the order established by the constitutional principles in force in a certain *polis*. The *polis* itself, which in the first pages of the *Politics* is compared to a composed thing (σύνθετον; *Pol.* I 1, 1152a 19), in Book III is presented as a plurality of citizens (πλῆθος; *Pol.* III 1, 1274b 41) and also as particular type of composite entity (ἡ πόλις τῶν συγκειμένων, *Pol.* III 1, 1274b 39). It is evident that the multitude of citizens to which Aristotle refers is not an undefined aggregate of human beings, but a functionally organized entity²⁵. The nature of citizenship is initially framed in relation to concrete participation in the functions of judge and offices (πολίτης δ’ ἀπλῶς οὐδενὶ τῶν ἄλλων ὀρίζεται μᾶλλον ἢ τῷ μετέχειν κρίσεως καὶ ἀρχῆς). Under the category of “offices” Aristotle includes even activities which are not strictly regular professions, like those of judges and assembly members²⁶ (*Pol.* III 1, 1275a 30). With a similar choice, Aristotle seems to invite his readers to think of the nature of citizens as ultimately related to a general capacity for deliberative rationality, and not to the featuring traits of the magistracies active in a certain polis. Rationality will be displayed in various contexts, compatibly with the constitutional principles in force and the laws framed in accordance with those principles. An interest for human deliberative capacity might have brought Aristotle to ameliorate his initial definition of citizens by addressing the issue in terms different

²³ See ROSS’ translation (1957).

²⁴ See NEWMAN (1902), 130.

²⁵ As Aristotle makes it clear in *Metaph.* Z 17, 1041b 11 ff., not every compound is a whole. There aggregates like a heap (mechanical) and others who resemble syllable (organic or formal). In the latter there are not only constituent elements, but a compound in which the relation between parts is more and something else than their sum (cf. NEWMAN, 1902, 131).

²⁶ See NEWMAN 102: 136, who explains that even Plato in the *Laws* (767a; 768c) holds that a dicast is not properly a magistrate, although he is a magistrate on the specific day on which he decides a lawsuit. Similarly, Aristotle in *Pol.* IV 14, 1297b 41-1298a 3 claims that ἀρχαί and τὸ δικαστικόν are to be kept distinct (with the exception of oligarchical constitutions, in which the judge is really a magistrate (*Pol.* V 6, 1306b 8 ff.)). Similarly, a member of the assembly. Cf. *Pol.* III 11, 1282a 34, where it is explained that dicasts and members of the *Boule* are not magistrates, but parts of a magistracy.

from effective participation²⁷. By so doing, Aristotle corrects a definition which, if based on effective participation in a variety of political contexts (even those which do not presuppose specific, long-term professions), would qualify as “citizens” only those persons who play a concrete role (even a short-term one) at a certain time (thus ceasing to be a citizen when one stops playing that role). What is more, that definition but would mainly apply to democratic regimes, where a plurality of citizens is allowed to participate in assemblies and judicial courts.

By offering a very generic definition of citizenship, Aristotle seems to invite reflection on the possibility of a functional interdependency which, far from appearing rigid, would enable citizens to assume different roles and ascending to higher ruling offices. The idea that some political roles can be exchanged and that citizens might bring their deliberative capacity to perfection (and consequently deserve participation in specific roles) is a distinctive feature of the *polis*, not of pre-political organizations that appear founded on a rigid complementarity of roles (such as the family, made by women, children, masters and slaves)²⁸. The *polis*, then, invokes the idea of possible rulers, not only actual ones, and in this respect it seems to enforce the image of the city as a community of free people (ἡ δὲ πόλις κοινωνία τῶν ἐλευθέρων ἐστίν; *Pol.* III 6, 1279a 21)²⁹.

Although being aware that the inclination and the active contribution to the safety of the community ought to concern even non-citizens, Aristotle seems to show a particular interest for the role performed by citizens in ensuring the goals of the city. While addressing the issue of citizenship in Book III of the *Politics*, he explains that

[N]ow just as a sailor is one of a number of sharers, so, we assert, is the citizen. Although sailors are dissimilar in their capacities (one is a rower, another a pilot, another a lookout, and others have similar sorts of designations), it is clear that the most precise account of their virtue will be that peculiar to each sort individually, but that a common account will in a similar way fit all (*Pol.* III 4, 1276b 21-27).

As Aristotle states in the following lines of the passage, the preservation of the *κοινωνία* is the work (ἔργον) of all citizens regardless of their specific functions:

[F]or the safety of the ship in its voyage is the task of all of them, and each of the sailors strives for this. Similarly, although citizens are dissimilar, preservation of the community is their task, and the regime is this community; hence the virtue of the citizen must necessarily be with a view to the regime (*Pol.* III 4, 1276b 26-28).

²⁷ This aspect is stressed by GARSTEN (2013), 336-337.

²⁸ On this point see ACCATTINO (1986), 19.

²⁹ On this point see NEWMAN (1902), 131.

ἡ γὰρ σωτηρία τῆς ναυτιλίας ἔργον ἐστὶν αὐτῶν πάντων: τούτου γὰρ ἕκαστος ὀρέγεται τῶν πλωτήρων. ὁμοίως τοῖσιν καὶ τῶν πολιτῶν, καίπερ ἀνομοίων ὄντων, ἡ σωτηρία τῆς κοινωνίας ἔργον ἐστὶ, κοινωνία δ' ἐστὶν ἡ πολιτεία.

The virtue of a good citizen is generically identified with a form of abidance by the constitutional principles in force that requires only a “true opinion” (δόξα ἀληθής; *Pol.* III 4, 1277b 29) on the things deliberated by lawgivers. More authoritative political offices, instead, require a display of respectively more sophisticated forms of deliberative action. This is the reason why φρόνησις, which in the *Nicomachean Ethics* is presented as the intellectual excellence possessed by a perfectly virtuous moral agent³⁰, is introduced in the *Politics* as the distinctive virtue of a good ruler (*Pol.* III 4, 1277a 15-16). Undoubtedly, that virtue can be displayed at its best as an autonomous and good-oriented deliberative agency in the ideal city, where ethical excellence is upheld as a value to be cultivated by the rulers and the ruled. Furthermore, the same virtue can be adopted as a valuable criterion for the assignment of political power. However, even when the legislative activity stemming from phronetic deliberation is performed in a virtue-based city, the existence of virtuous constitutional principles represents a normative bond to be respected. The strength of that bond emerges in a clearer light in those cities governed by less perfect constitutions, where respect for constitutional principles which do not enjoin virtue as a pivotal value must somehow be reconciled with a morally virtuous, creative, and forward-looking capacity of the wise lawgiver to elaborate solutions for the legislative organization of the *polis*³¹. The sense of justice of rulers, in that respect, will not find expression in the initiative to intensify the character of the constitution, but rather in deliberative activity aiming at the preservation of the stability of the constitution. As Aristotle clarifies at *Pol.* V 10, 1310a 13-18, such stability is ensured through an appropriate education to respect of the laws:

[B]ut the greatest of all the things that have been mentioned with a view to making regimes lasting—though it is now slighted by all—is education relative to the regimes. For there is no benefit in the most beneficial laws, even when these have been approved by all those engaging in politics, if they are not going to be habituated and educated in the regime—if the laws are popular, in a popular spirit, if oligarchic, in an oligarchic spirit. If lack of self-control exists in the case of an individual, it exists also in the case of a city. But to be educated relative to the regime is not to do the things that oligarchs

³⁰ Cf. *Pol.* III 4, 1276b 33-34, where the good man is described as a man so called in virtue of a single, absolute excellence (τὸν δ' ἀγαθὸν ἄνδρα φημὲν κατὰ μίαν ἀρετὴν εἶναι τὴν τελείαν).

³¹ Cf. *Pol.* V 9, 1309a 34-37, where Aristotle explains that not only loyalty to the established regime, but also an excellent administrative capacity and virtue and justice (in the form that suits the specific quality of the constitution in force).

or those who want democracy enjoy, but rather the things by which the former will be able to run an oligarchy and the latter to have a regime that is run democratically.

Understandably, different constitutional principles convey respectively different educational messages on the human good. Whatever the content of the enacted laws, obedience to the laws in force ought nevertheless to be understood as respect of a given order, given that, as Aristotle himself declares in *Politics* VII 4, 1326a 30-31 «law is some sort of order» (ὁ τε γὰρ νόμος τάξις τίς ἐστι), even though only a good legal system is of necessity of a good one (καὶ τὴν εὐνομίαν ἀναγκαῖον εὐταξίαν εἶναι).

3. *The sense of justice as “obedience to the laws”. Its connection to political friendship*

Complying with a legislative system involves not only an interiorization of the prescriptive and inhibitory contents of the laws, but also the development of a bond of obligation towards the order itself. As Aristotle explains in *NEX* 10, 1180a 20-21 the law has a coercive power (ὁ δὲ νόμος ἔχει ἀναγκαστικὴν δύναμιν), one which other forms of prescriptions - like the fatherly ones - cannot by nature possess. A purely private education, however appropriate from an ethical point of view, might not be effective in a context in which each person lives privately and according to his personal wishes³². In fact, the most virtuous actions are made by way of good laws, which is to say, when virtue becomes a common objective and is cultivated on a public level (cf. *NEX* 10, 1180a 33-35).

Notably, Aristotle declares that the aim of virtuous lawgivers is to make citizens good and obedient to the laws (*NE* I 13, 1102a 9-10). In support of this view, he proposes the case of Cretan and the Spartan lawgivers (*NE* I 13, 1102a 10-11)³³ - people who, in some passages of the *Politics*, are presented as examples of an incomplete concern for virtue³⁴, and not as the champions of a model of perfect excellence, understood in the Aristotelian sense. The Spartans, for instance, seem to devote a primary (if not exclusive) concern for the military courage (at the expenses of other virtues like moderation), whereas the Cretans seem to pay attention to the value of richness (cf. *Pol.* II 11, 1273a 21-15). As I believe, the apparent lack of congruence between the two pictures of Spartan and Cretan lawgiving activity might

³² See for instance *NEX* 10, 1180a 27-29, where Aristotle says that in most cities the issue of public education has been neglected, and each person live as he or she wishes, laying down laws for children and wife like Cyclops (κυκλωπικῶς; cf. Hom. *Od.* XIII 112). Cyclops notably live anarchically.

³³ See also *NEX* 9, 1180a 25, where the Spartans are presented as an example of carefulness about people's upbringing and pursuits.

³⁴ On this point (and the relevant passages in *Politics* VII 14) see ROSLER (2005), 237-238.

be explained by resort to the following idea: concern for virtue is an attitude that ranges along a continuum of degrees and finds its peak in active commitment to perfect virtue.

The idea of virtue as an attitude ranging along a continuum might also shed insight on Aristotle's account of justice as "conformity to the law" provided in Book V of the *Nicomachean Ethics*. Understood in its highest and most complete sense³⁵, justice can be viewed as a set of virtuous dispositional attitudes (e.g. courage, temperance, generosity, mildness and so on) that can be exerted in a variety of contexts of human interaction and involves concern for other persons (see *NE V 10*, 1134b 5, where justice is described as an ἀλλότριον ἀγαθόν, which is to say, an other-regarding good). By accounting for justice in terms of respect for the laws, Aristotle explains that these tend to a variety of possible goods:

[T]he laws have something to say about everything, their aim being the common interest either of all the citizens, or of the best, or of those in power, or of some other such group. So, in one sense, we call anything just that tends to produce or to preserve happiness and its constituents for the community of a city (*NE V 3*, 1129b 14-17).

As the passage shows, the laws appear to have a comprehensive scope³⁶ and they can arguably be said to aim at non-arbitrary goods, like effective common utility and virtue. It seems that he ultimately aims to lay emphasis on the capacity of the laws, conceived in their most perfect form, to produce authentic virtue of character and just other-regarding behaviour.

If understood in its most mature form,

[L]aw requires us to do the acts of a courageous person – not, for example, to desert our post, run away or throw down our weapons – as well as those of a temperate person – such as not to commit adultery or wanton violence – and those of an even-tempered person – not to hit or slander anyone, for instance. And similarly it demands actions in accordance with the other virtues, and forbids those in accordance with the vices, correctly if it is correctly established, less well if it is carelessly produced (*NE V 3*, 1129b 19-25).

As it is plausible to assume, a similar view of the aims of the laws does not necessarily imply that conformity to the laws - especially those that enjoin virtuous

³⁵ In a second, partial sense, justice is an attitude consisting in treating people fairly in what regards external goods (in contrast with the attitudes implied in complete justice, which concern temperance, courage, and the rest of ethical virtues). On this point see ZINGANO (2019) 123-124.

³⁶ This point is a highly debated one. As Natali explains, many commentators think that Aristotle is referring to laws of both right and deviant constitutions, and he disagrees with them (NATALI, 2018, 488, footnote 413). For a similar view see COLLINS (2006), 82, and CRISP (2000).

behaviour - ought always to express a mature, critically informed capacity to understand their meaning, inherent worth and practical import³⁷. As a matter of fact, a legislative system must be able to speak to a wide variety of human types. Accordingly, the undeniably coercive power of the laws will give rise to a plurality of reactions, ranging from painful efforts to meet the requirements of the laws up to an authentic appreciation of their content. Notably, some persons have not developed either the habit of obedience to the laws or the necessary virtue to appreciate their contents in case the laws are fair and able to contribute to the common good. These persons (whom Aristotle identifies as “the many”), respect the laws simply out of fear of punishment, not in virtue of a real understanding of the overall benefits of respect for the laws³⁸. Only authentically virtuous people (in the way in which Aristotle conceives of them) will act “because of the fine”. The value of *to kalon* is an extremely complex one, and this is not the place to pursue an investigation of that notion. For the aims of the present work, suffice it to say that the fine, which in a teleological framework appears as the mark of what has achieved its perfect end³⁹, might find a corresponding practical motivation for inherent desirability. As Aristotle says in the *Rhetoric* (I 9, 1366a 33-35), the fine is that which is desirable for its own sake and worthy of praise⁴⁰.

In this respect, we might assume that virtuous people, although recognizing the coercive power of the laws, would not perceive its inherent practical necessity as the cause of pain or resistance. In this respect, they can legitimately be qualified as “lovers of the noble” (φιλόκαλοι)⁴¹. Among the lovers of beauty, we might also find people

³⁷ A different position is held by CRISP (2000), who claims that in that passage Aristotle shows an excessive concern for the possibility of laws inculcating perfect virtue in its citizens.

³⁸ See *NEV* 10, 1180a 4-5: «... the masses heed necessity rather than argument, punishments rather than what is noble» (οἱ γὰρ πολλοὶ ἀνάγκη μᾶλλον ἢ λόγῳ πειθαρχοῦσι καὶ ζημίαις ἢ τῷ καλῷ).

³⁹ Many are the passages in which Aristotle establishes a relation between the notion of “end” and that of “beauty” and “perfection”. Just to mention to examples, at *Metaph.* Δ 16, 1021b 23-24 he claims that “perfect” (τέλειον) is defined as whatever has achieved its appropriate end. See also the *Parts of Animals*, where he says that not chance, but conduciveness to an end is to be found in the works of nature at the highest degree, and that the end for which those works are produced occupies «the region of the fine» (τὴν τοῦ καλοῦ χώραν; *PAI* 5, 645a 23-26).

⁴⁰ On the idea of the fine as the mark of what is intrinsically desirable see REEVE (2014), 204. Reeve quotes as relevant passages *EEV* III 3, 1248b 18-20 and *NEI* 13, 1103a 9-10. Moreover, he claims: «it is because ethically *kalon* actions are intrinsically choiceworthy ends that a good person can do virtuous actions because of themselves (*NE* II 4, 1105a 32) and for the sake of what is *kalon*» (III 7, 1115b 12-13).

⁴¹ See *NEI* 9, 1099a 12-14, where Aristotle points out that those things pleasant objectively (or, better said, pleasant by nature), such as actions in conformity with excellence, are pleasant to the φιλόκαλοι.

who, albeit not completely virtuous, might still be ahead in their path to the acquisition of virtuous habits. In that case, their motivation would not be informed by sound practical rationality, and it might rather be rooted in a desire to act in view of approbation by one's fellows (or external observers)⁴².

Independently of the motives that shape a distinctive sense of justice, it is a matter of fact that justice, as an other-regarding excellence, can be exercised within the context of purely impersonal relations. It ought to be noticed, however, that the kind of justice to which Aristotle pays special attention is the one that gets shaped in community dimensions disciplined by reciprocal commitments and benevolence⁴³. An appeal to the Aristotelian idea of friendship may shed light on the existence of a different, stronger sense of justice than one exhibited in an uncritical (or even solipsistic) respect for the laws with no concern for one's fellows. Indeed, justice towards friends may situate the natural search for personal advantage within a dimension of shared benefits between persons inspired and bound by fellow-feelings. The prospect of an ethically empowered sense of justice is suggested since the beginning of Aristotle's investigation of friendship in Book VIII of the *Nicomachean Ethics*. By presenting a widely shared, common-sensical view which he appears to accept and critically address in his analysis of the phenomenon of friendship and its relationship with justice and politics, Aristotle says:

[F]riendship seems also to hold cities together, and lawgivers to care more about it than about justice; for concord seems to be something like friendship, and this is what they aim at most of all, while taking special pains to eliminate civil conflict as something hostile. And when people are friends, they have no need of justice, while when they are just, they need friendship as well; and the highest form of justice seems to be a matter of friendship (*NE* VIII 1, 1155a 22-26).

ἔοικε δὲ καὶ τὰς πόλεις συνέχειν ἢ φιλία, καὶ οἱ νομοθέται μᾶλλον περὶ αὐτὴν σπουδάζειν ἢ τὴν δικαιοσύνην: ἡ γὰρ ὁμόνοια ὁμοίων τι τῇ φιλίᾳ ἔοικεν εἶναι, ταύτης δὲ μάλιστα ἐφίενται καὶ τὴν στάσιν ἔχθραν οὔσαν μάλιστα ἐξελεύουσιν:

⁴² See for instance *NE* IV 10, 1125b 11-12, where Aristotle claims that on some occasions we praise an ambitious man (i.e. a lover of honour; φιλότιμον) as manly and a lover of the fine (φιλόκαλον).

⁴³ As Aristotle (at least indirectly) suggests in some passages of his ethical works, not every form of justice is directed towards a community member. This is noticed by SCHOFIELD (1999), 72-74, who quotes passages of the seventh Book of the *Eudemian Ethics*. In the first place, while interrogating himself on how a friend ought to be treated, Aristotle explains that asking that question amounts to delving into the nature of a particular form of justice (*EE* VII 10, 1242a 19-22), which implies that not every form of justice is directed towards a community member. Cf. *EE* VII 1, 1234b 19-22, where Aristotle allegedly sets out to inquire into "the nature of the just which is found in friendship" (τί τὸ δίκαιον τὸ φιλικόν; my translation), which might imply that there is a form of τὸ δίκαιον that can be found elsewhere. I agree with FINLEY (1970), 8, who considers "the just" as "fairness in mutual relation" rather than considering it as a synonym of the personal attitude of justice (δικαιοσύνη).

καὶ φίλων μὲν ὄντων οὐδὲν δεῖ δικαιοσύνης, δίκαιοι δ' ὄντες προσδέονται φιλίας,
καὶ τῶν δικαίων τὸ μάλιστα φιλικὸν εἶναι δοκεῖ.

As specified in the last lines of the above passage, sheer justice does not by itself entail the existence of friendship, whereas the friendship which lawgivers try to promote in view of the elimination of destabilizing conflict invites the members of a *polis* to think of justice in less impersonal terms. This does not mean that political friendship presupposes the kind of reciprocal, thoughtful concern which is generally experienced by intimate friends in private relationships. Reference to concord (ὁμόνοια) in the above passage proves that the kind of friendship Aristotle has in mind is rather a form of agreement over the things that significantly affect the lives of people⁴⁴ as a community, as specified at *NEIX* 6, 1167a 26-28:

[but] a city is said to be in concord when people agree about what is beneficial, rationally choose the same things, and carry out common resolutions.

[ἀλλὰ] τὰς πόλεις ὁμοιοεῖν φασίν, ὅταν περὶ τῶν συμφερόντων ὁμογνωμονῶσι καὶ ταῦτ' ἀποφασίζονται καὶ πράττωσι τὰ κοινῇ δόξαντα.

Although being considered as something φιλικόν, i.e. “friendly”, or “characteristic of friendships”⁴⁵, concord is a condition of like-mindedness which cannot be fully identified with a friendship arising between people who spend life together, know each other intimately and develop tight bonds of affection for each other. In fact, ὁμόνοια is a condition presupposing the collective deliberation and the shared goals of some sort of community, and it is not by chance that Aristotle initially characterizes like-mindedness as a feature of the *polis*, which is to say, a collective entity⁴⁶.

As a relational experience involving benevolence, reciprocity of concern and a shared awareness of the existing bond, friendship calls the involved subjects to an ethically higher commitment than the one required for sheer respect for the laws. What is more, the idea that friendship should never be hidden to the involved persons⁴⁷. If applied to a political context, it may point to the need for a clear statement of the goals and the ethical and legal principles specifying the terms of a cooperation required to minimize the risk of conflict and recriminations. Absence of recrimination is especially valid in the case of friendship between persons similar in

⁴⁴ Cf. *NEIX* 6, 1167b 2-3.

⁴⁵ See LOCKWOOD (2020), 5, who says that the idea of ὁμόνοια, as something φιλικόν, presupposes some level of familiarity between those who experience it (unlike εὐνοια, i.e. sheer benevolence).

⁴⁶ See LOCKWOOD (2020), 12.

⁴⁷ See *NEVIII* 2, 1155b 34.

virtue, i.e. persons who care for the good of the friend and not only for their own⁴⁸. This is in all probability the reason why people generally say that friends do not need justice.

This is not to say, however, that political friends ought to obey different rules from those established in the city. If civic friendship were to be understood as a virtue-based relation (possibly in a community the laws of which aim at the common advantage), obedience by the existing laws would not rely on their coercive power, but rather on a spontaneous, virtuous choice. No ambitious ideal of friendship, however achievable, can replace the need for justice structural to the good functioning of a political community. It is not a case that in *EE* VII 10, 1242a 7 he describes political friendship as a type of friendship *mainly* (although not exclusively⁴⁹) by utility (ἡ δὲ πολιτικὴ συνέστηκε μὲν κατὰ τὸ χρήσιμον καὶ μάλιστα), and also that at *EE* VII 10, 1242b 31-32 he classifies that sort of friendship as a specific type of utility friendship, namely “legal (νομικὴ) friendship”, i.e. a friendship which, being properly “political”, looks to the equal and to the object (see line 33: εἰς τὸ ἴσον καὶ εἰς τὸ πρᾶγμα) as sellers do, and proceeds by a definite agreement (καθ’ ὁμολογίαν; lines 35-36)⁵⁰. Just like an economic transaction, in which the terms of exchange are specified, it is a relation free from recrimination. This would explain why, in Aristotle’s view, to inquire into the proper way of associating with a friend amounts to seeking for a form of the just (τὸ δὴ ζητεῖν πῶς δεῖ τῷ φίλῳ ὁμιλεῖν, τὸ ζητεῖν δίκαιόν τι ἐστίν; *EE* VII 10, 1242a 19-20), and also why he identifies the just belonging to political friendship by utility, i.e. the political just, as the just in the highest degree (μάλιστα δὲ δίκαιον τὸ ἐν τῇ τῶν χρησίμων φιλίᾳ, διὰ τὸ τοῦτ’ εἶναι τὸ πολιτικὸν δίκαιον; *EE* VII 10, 1242a 11-12). The idea that the highest form of the just seems to be a matter of friendship (spelled out in the already mentioned *NE* VIII 1, 1155a 22-26), however, seems to direct the reader to the idea that friendship, as concord, is something more than a sheer alliance (or a short-term partnership that gets dissolved once the utility fades away, as Aristotle instead suggests at *EE* VII 10, 1242b 24-27). Indeed, in the *Politics* he declares that a *polis* cannot be a sheer alliance, for friendship between communities

⁴⁸ See for instance *EE* VII 10, 1243a 3-6.

⁴⁹ As Aristotle explains in the following two lines of the passage, although men seem to have come together because of lack of self-sufficiency, they would nevertheless have come together for the sake of living in company.

⁵⁰ The second kind of utility friendship singled out by Aristotle in this section of *Pol.* VII is “ethical (ἠθικὴ) friendship”. Recrimination is very frequent in this type of friendship because friends based on utility try to act according to excellence and do not require explicit terms of cooperation.

is not friendship within the community, nor can lawgivers, whose interest is the promotion of concord, dispense with virtue:

Whoever takes thought for good governance, however, gives careful attention to political virtue and vice. It is thus evident that virtue must be a care for every city, or at least every one to which the term applies truly and not merely in a manner of speaking. For otherwise the community becomes an alliance which differs from others - from alliances of remote allies - only by location, and law becomes a compact and, as the sophist Lycophron said, a guarantor among one another of the just things, but not the sort of thing to make the citizens good and just (*Pol.* III 9, 1280b 6 ff.).

As the passage suggests, the law should not only make people disciplined and obedient, but also good and able to live together according to shared rules. We might wonder, then, whether there is a possibility of saving Aristotle from the charge of offering contradictory pictures of political friendship. In my opinion, a plausible solution is that the virtue of the citizens is the ultimate, most perfect goal to which a political community aims, even though its well-functioning is based on the search for the most suitable conditions to promote common advantage. This virtue might coincide with the same sense of justice of those persons who respect constitutional principles and the deriving laws out of an authentic appreciation of their content. This is not to say, however, that a utility-friendship inspired by genuinely virtuous motives ought to be the only type of political friendship available. The idea of a political friendship in which (just like an economic transaction) fair terms of cooperation are staked out without necessarily implying a display of reciprocal benevolent attitudes might represent a minimum condition of political decency and friendship.

Only in the case of a political friendship ambitiously striving after virtue friendship would turn into a different, ethically empowered way of implementing a legally framed right conduct towards others (the others at stake being concrete, not impersonal, abstract selves, but concrete others sharing aims and strategies in the political life). It would therefore be in this respect that the just related to friendship, and not sheer justice, ought to be regarded as a priority in the agenda of lawgivers.

4. *John Rawls and the sense of justice in a fair society*

In his highly acclaimed *A Theory of Justice* (published in 1971), John Rawls works out a normative characterization of justice that, as he believes, might best serve the interests of well-functioning liberal societies. By “society” Rawls understands a sphere

of human coexistence and cooperative interaction⁵¹ in which individual rational powers can be freely expressed, compatibly with respect for the same powers recognized in each of the members of that system. As he says, society is «a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them»⁵². What is more, just like the Aristotelian community, a society is for Rawls a «cooperative venture for mutual advantage», and also a «social union made of social unions»⁵³ - which implies the idea of a political society as an all-encompassing entity with coordination powers with respect to limited-scope associations. Unlike Aristotelian communities (understood in general terms), Rawlsian societies uphold the priority of liberty. More specifically, Rawls' theory, which he labels *justice* as *fairness*, offers a sociological⁵⁴ defense of the structural features of a conception of justice that is implicit in the social contract tradition⁵⁵ and appears to be worked up from certain fundamental ideas interiorized in the public political culture of a democratic society⁵⁶. By so doing, Rawls aims to disclose the conceptual and methodological underpinnings of a scheme of cooperation for reciprocal advantage regulated by principles which rational, advantage seeking, equal and impartial persons would choose in an initial situation that is fair. The two principles at stake (as they are presented in their first formulation in chapter 11 of the book) are the following:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all⁵⁷.

⁵¹ See J. RAWLS (1999), preface for the revised edition: XV), who describes society as a «fair system of cooperation over time among citizens as free and equal persons».

⁵² RAWLS (1999), 4.

⁵³ See RAWLS (1999), IX.

⁵⁴ As KLOSKO notices (1994) 1882, at different stages of his career Rawls attempts to frame the issue of the principle of justice from a variety of methodological approaches. For instance, in his article «Justice as Fairness», published in 1958, he offers a social-contract based argument, whereas in a *Theory of Justice* he seems to have moved towards a sociological account of his principles, which are represented as the ground of a distinctively “political” conception of justice.

⁵⁵ See RAWLS (1999), VIII.

⁵⁶ See RAWLS (1999), 13.

⁵⁷ See RAWLS (1999), 53.

I will not engage here in a critical discussion of the two principles of justice. For the purposes of the present paper, suffice it to say that such principles reveal that a just society is understood as one in which liberty and equality are accorded pride of place. In that society, liberty can be violated only for the sake of liberty, the individual tendency to partiality is suitably constrained and the inequalities must be justified before the worst-off members of society⁵⁸.

Justice, which Rawls considers to be “the first virtue of social institutions⁵⁹, as truth is of systems of thought”⁶⁰, becomes the object of a theory framed by the author in compliance with the aims, strategies and regulative principles that a well-ordered society ought to adopt. This, as Rawls contends, can be thought of a society «designed to advance the good of its members and effectively regulated by a shared conception of Justice»⁶¹, which implies that in such a society not only are the adopted principles of justice for institutions just and able to promote the utility which each and every rational person looks for⁶², but also that this fact is publicly understood and recognized⁶³ by its members. As Rawls explains in his book,

[T]hus it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles⁶⁴.

The fact that a just society, being regulated by a public conception of justice, successfully promotes the well-being of each of its members, normally prompts each of them to act according to the established rules⁶⁵. In fact, as Rawls explains, this attitude is inspired by a “strong and normally effective desire to act as the principles of justice require”⁶⁶, even more so because the expected individual advantages (and those for the persons which individuals love and care for) can be secured by a well-ordered society in a stable manner, and not simply temporarily⁶⁷. As a suitable motivation for respect of the ruling prescriptions of a just society, such a desire

⁵⁸ See KUKATHAS (2003), 121.

⁵⁹ Institutions are understood as those publicly recognized systems of rules which are generally acted upon and which, by defining offices and positions, rights, and duties, give political and social activity its form and structure.

⁶⁰ See RAWLS (1999), 3.

⁶¹ See RAWLS (1999), 4; cfr. p. 397.

⁶² See RAWLS (1999), 294.

⁶³ See RAWLS (1999), 274 and 49.

⁶⁴ See RAWLS (1999), 397 (cf. p. 4).

⁶⁵ See RAWLS (1999), 398.

⁶⁶ See RAWLS (1999), 398.

⁶⁷ See RAWLS (1999), 398.

contributes to shaping one of the two moral powers which Rawls attributes to human beings *qua* beings and citizens, namely the “sense of justice” (the other power being the individual capacity to articulate one’s own conception of the good)⁶⁸. Arguably, many are the functions which the sense of justice appears to perform - not only *after* reaching a public agreement on the principles of justice to be adopted in a just society, but also *before* reaching such an agreement (although it ought to be said that Rawls seems to be primarily concerned with the role that an exercise of the capacity for a sense of justice might play after the establishment of the fundamental principles). This is precisely the phase in which the principles of justice, once agreed and turned into the ethical and constitutional pillars of the political organization, are to be applied to the basic structure of society - a structure which Rawls describes as «the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation». As Rawls explains in the following lines of the passage «[B]y major institutions I understand the political constitution and the principal economic and social arrangements⁶⁹». The examples of major institutions he gives are «the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family». The basic structure of society, being composed of a scheme of such institutions, not only becomes a source of definition of men’s reciprocal rights and duties, but also affects their life prospects, expectations and hopes.

It is easily understandable, then, that the basic structure of society is in more than one occasion identified as “the primary subject of justice”⁷⁰. Rawls motivates his declaration by pointing out that the effects of a given basic structure are “so profound and present from the start”. What is more, this structure, on a purely intuitive level, can be perceived as containing various social positions which, in their turn, end up determining respectively different expectations of life. The principles regulating the choice of a political constitution and the main elements of the economic and social systems will distribute fundamental rights and duties on the various sectors of society⁷¹.

More surprising is perhaps the fact that even the sense of justice - which each citizen ought to possess as an individual attitude - is presented as “the main object described by a theory of justice”. Besides the idea of justice as the first virtue of social institutions,

⁶⁸ See RAWLS (1999), preface to the revised edition, XII. Cf. RAWLS (1993), 40.

⁶⁹ RAWLS (1999), 6.

⁷⁰ See for instance RAWLS (1999), 3, 6, 7, 9, 47, 73, 82.

⁷¹ See RAWLS (1999), 7.

what emerges is the prospect of a justice understandable as a personal virtue of the members of a good society (just as in Aristotle).

Evidence of the pivotal role accorded to the sense of justice in Rawls' *Theory of Justice* is his claim that both moral theory itself and a (political) theory of justice might be thought of as attempts to describe the sense at stake⁷². This sense involves not only an emotional component, namely a desire to abide by the agreed principles and make them effective in the basic structure of society, but also a rational capacity to elaborate judgments on the good life for oneself and one's fellow citizens, and make intuitive, everyday judgments compatible with the established principles of justice by way of justificatory reasons⁷³. It is reasonable to assume that justice, in Rawls' view, takes shape and develops not only in the dimension of structural social and economic arrangements, but also in individual attitudes and patterns of conduct, especially those which may stabilize the arrangements themselves. With regard for the need for stability, Rawls says:

[O]nce principles are acknowledged the parties can depend on one another to conform to them. In reaching an agreement, then, they know that their undertaking is not in vain: their capacity for a sense of justice insures that the principles chosen will be respected⁷⁴.

Respect for the established principles of justice will cause individuals to enact laws, establish institutions, distribute political offices according to talents and other specific requirements and develop the respective obligations. The same sense of justice, as we might evince from Rawls' book *Political Liberalism* (published in 1993), will enable citizens to abide by the institutions set up in accordance with the fundamental principles:

[I]ts citizens have a normally effective sense of justice and so they generally comply with society's basic institutions, which they regard as just. In such a society the publicly recognized conception of justice establishes a shared point of view from which citizen's claims on society can be adjudicated⁷⁵.

⁷² See RAWLS (1999), 41.

⁷³ See RAWLS (1999), 41.

⁷⁴ See RAWLS (1999), 125.

⁷⁵ RAWLS (1993), 35. For an in-depth discussion of the role of the concept of coherence, rationality and reasonableness in determining "public reasons", i.e. reasons underlying and justifying a public and shared conception of justice, see TESTINO (2012).

Notably, the good quality of the chosen principles in (a well-ordered) society, rather than the sheer existence of any principle of justice, will activate the needed motivation for respect. As Rawls explains, a just system must generate its own support:

This [i.e. to generate its own support] means that it must be arranged so as to bring about in its members the corresponding sense of justice, an effective desire to act in accordance with its rules for reasons of justice⁷⁶.

From a motivational point of view, respect for the principles of justice and the basic structure of society (including the legislative endeavours that make the principles operationally active across different dimensions) appears to be primarily rooted in desire for stability, which is to say, for an enduring condition of well-being guaranteed by just institutions. As Rawls will point out in *Political Liberalism*, the problem of stability cannot be exhausted by sheer reference to a sense of justice developed by people who grow up under just institutions in a well-ordered society. In fact, the liberal conception of justice as fairness always abstracts from the knowledge of the citizens' specific conceptions of the good⁷⁷. Persons, however, endorse determinate and often different conceptions of what is valuable in human life, a (religious, philosophical, and moral) scheme of particular ends and attachments (what Rawls calls a "comprehensive view"), and Rawls seems to imply that such views, if compatible with the established principles of justice, contribute to strengthening one's abidance by such principles in a different way from the role played by a generic, reciprocal desire to cooperate on fair terms⁷⁸.

The condition generated by a match of individual views on goodness with a rational understanding and appreciation of the established principles of justice is called "overlapping consensus". In that condition, the members of a society realize that the established, publicly accepted principles of justice might be justified and get interiorized not simply on abstract and widely accepted terms, but also on the basis of private, comprehensive views (religious, philosophical, and/or moral doctrines) that would prescribe the same attitudes, although by way of reasons that would never by themselves be publicly accepted. In an overlapping consensus, a certain political

⁷⁶ RAWLS (1993), 230.

⁷⁷ See KLOSKO (1994, especially 1883-1884), who explains that stability is generally understood by Rawls as an attribute of political systems, not only as one of moral principles endorsed by the citizens.

⁷⁸ This is the well-known idea of overlapping consensus developed in *Political Liberalism* (Lecture IV). As FREEMAN (2002), introduction 45-46, points out, Rawls' idea of "overlapping consensus", as well as those of a "political conception of justice" and the one of "public reason", is introduced and developed to show that and how a just and stable society is not simply utopical, but realistically possible.

society does not appear united by affirming one and the same comprehensive doctrine. To the contrary, a public, unanimously shared conception of justice is accepted and is seen as compatible with a plurality of reasonable comprehensive doctrines. As *reasonable*, those doctrines endorse principles that might be justified also and especially on public terms, and not simply by those who subscribe to specific view of goodness.

In a state of overlapping consensus, each citizen singularly becomes aware that the same mechanisms of interiorization of the principles of justice apply of necessity also to the other citizens. That awareness, being reciprocated, will develop a joint awareness of the political society as a unit of association in which the same principles might be (and are) endorsed on different viewpoints and comprehensive conceptions of the just. The same awareness, as we have seen in Aristotle, might be understood as the basis for civic friendship within a political association in which distinct principles of justice have already been set up. In the first place, friendship reduces the risk of conflict to a minimum, and so does an overlapping consensus, although unable to radically eliminate a plurality of views (different and hardly reconcilable in their premises).

In the second place, reasonableness is a cooperative trait of those moral and political agents who, by advancing views compatible with others rooted in different conceptual and normative premises, set the basis for a shared public and political conduct, one nourished and justified by public reasons⁷⁹. Reasonableness, then, prompts moral agents to make their private, comprehensive views compatible with a scheme of cooperation which, in its generality, shows compatibility with other views. In this light, then, the sense of justice might be understood not simply as willingness to comply with the agreed principles of justice, but also as inclination to enforce belief in those principles by means of one's private, reasonable comprehensive views. Although Rawls speaks properly of a sense of justice only in relation to the phase following the elaboration of public principles of justice, it is plausible to assume that this sense is active also at a purely procedural state of political deliberation. A joint discussion aimed at establishing public principles of justice requires a shared willingness to cooperate on fair terms.

⁷⁹ See LADEN (2014) 63, who proposes a constructivist reading of Rawls' theory of justification of a public conception of justice. On that reconstruction, the reasonableness of the principles proceeds from what all parties to the discussion hold in common, but it is premised on the possibility of a clash of views between persons. A theory, then, seeks to convince us and others of the reasonableness of the chosen principles. From the point of view of personal attitudes, reasonableness has to do with treating others justly, which involves being able to face them openly.

Rawls imagines those moral agents involved in this sort of deliberation as acting in what he labels as “the original position”. In that position, those agents treat themselves and one another as equal, impartial and rational beings, making efforts to imagine themselves as fully unaware of their effective position in society and of the advantages (or disadvantages) which those positions provide in existing societies⁸⁰. In the original position, persons who have not yet developed a mature public sense of justice possess a private sense of justice. That sense might be subject to gradual, progressive critical scrutiny and confrontation with other views. What at an embryonic stage of human reflection might be regarded as intuitive views on justice become “considered judgments”. Those judgments are ready to enter a condition named “reflective equilibrium”. This is a state of affairs in which individual principles and judgments eventually come to joint solutions and private senses of justice are made coherent. That sort of equilibrium is called “reflective” because it presupposes knowledge of what principles our judgments conform to and also the premises of their derivation⁸¹. This, however, is not by itself a guarantee of stability⁸², not even in the procedural phase. A willingness «to propose fair terms of cooperation and to abide by them provided that others do the same» is needed.

5. A psychological construction

Although a normative characterization of the fundamental principles of justice that ought to regulate a well-ordered society constitutes the bulk of Rawls’ theory of justice as fairness, that theory could never be made effective without a previous identification of the moral requirements that specify the citizen’s institutional ties or, better said, what citizens owe to their state. As Rawls explains,

[H]owever attractive a conception of justice might be on other grounds, it is seriously defective if the principles of moral psychology are such that it fails to engender in human beings the requisite desire to act upon it⁸³.

⁸⁰ With regard to this device, in the original position Rawls speaks of a “veil of ignorance” (RAWLS, 1999, especially 118-122). See also MANDLE (2014), 133: «A veil of ignorance, of course, would ensure impartiality and generate consensus far more effectively than either repression and satisfaction or the prospect of social mobility and change».

⁸¹ See RAWLS (1999), 18.

⁸² See RAWLS (1999), 18: «At the moment everything is in order. But this equilibrium is not necessarily stable. It is liable to be upset by further examination of the conditions which should be imposed on the contractual situation and by particular cases which may lead us to revise our judgments».

⁸³ RAWLS (1999), 398.

Rawls draws a conceptual distinction between two kinds of moral requirements: obligations and natural duties. Obligations are patterns of individual conduct the content of which is always specified by existing institutions. Persons holding specific positions and offices (like political, judicial, or administrative ones) within a given society must know both what their task is and the binding nature. As such, obligations are the result of voluntary acts (either expressed or tacit), such as promises and agreements; what is more, these are identified as specific things owed to definite individuals within an already settled scheme of cooperation, i.e. in the context of cooperative games the rules of which are clear to each of the persons involved. It is not a case that, in Rawls' view, obligations find their normative justification in a principle called "principle of fair play", which compels those who join a game to play by the established rules. According to that principle, citizens are not allowed to get benefits from a cooperative scheme without doing their fair share. The principle presupposes two conditions:

first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests.

Each citizen within a certain cooperative scheme is ready to discharge institutional tasks and responsibilities with the expectation that each of the other persons involved in that scheme will perform their respective tasks too. Were that expectation not met, there would be no reason to stick to one's individual obligation.

Natural duties, instead, are requirements that do not arise out of voluntary acts, nor are they to be understood as obligations towards distinct roles and persons⁸⁴. What is more, they have no necessary relation to specific social arrangements, in that their content is not defined by the rules that represent the contents of these arrangements⁸⁵. Examples of such duties - which seem to be very generic in character - are the duty of helping another when in need or jeopardy (provided that one can do so without

⁸⁴ As GREENAWALT (1985), especially 5-7, says, obedience to the laws can rest on different normative foundations. The notion of "natural duties" offers one of many possible underlying justifications for such the duty of obedience, alongside and rule-utilitarian accounts, the principle of fair play in cooperative games, which leads participants to accept their rules as binding, and contract theories in which persons make promises to obey the laws and express an explicit consent.

⁸⁵ Cf. RAWLS (1999), 98.

excessive risk or loss to oneself)⁸⁶, the duty not to harm or injure another, and the duty not to cause unnecessary suffering⁸⁷.

In Rawls' theory of justice as fairness, a special place is held by the so-called natural "duty of justice", which amounts to the requirement to support and comply with existing just institutions, to further just arrangements that have not yet been established and those that need amelioration (at least when this is done without an exceeding cost to ourselves)⁸⁸. As Rawls explains, although the principles of natural duty can be derived from a contractarian point of view, they do not presuppose any voluntary act. Indeed, they would be acknowledged already in the original position, when no formal contract has yet been established⁸⁹. This means that, on the one hand, it would be possible to act according to natural duties before the basic structure of society has been set up. On the other hand, it is uncontroversial that Rawls regards this duty as deeply related to the sphere of political obligations. In the first place, Rawls believes that natural duties can be specified by a well-articulated and publicly agreed conception of justice - which implies that natural duties so specified are premised on existing social forms. In the second place, it is evident that citizens in a well-ordered society cannot perform institutional functions regulated by (good) laws and principles of justice unless they support at the same time the institutions set up according to those laws and principles⁹⁰. The deep connection between natural duty of justice and political obligations makes it difficult for us (at least *prima facie*) to accept that, in Rawls' view, the natural duty of justice is not to be accounted for by the principle of fairness (as it occurs instead in the case of political obligations). I believe that a reasonable justification for Rawls' choice resides in thinking that the natural duty of justice - and the respect for institutions which such a duty implies - are conceptually and normatively independent from expectations of reciprocally fair attitudes. The awareness of interdependence between fellows is certainly a powerful incentive for respecting the laws in force (especially if the laws are derived from fundamental principles of justice capable of promoting the interests of each member of a given society). Nevertheless, the natural duty of justice seems to focus on what each person can do for society independently of the possibility that others exhibit an

⁸⁶ The formulation of this last duty (as well as the natural duty of solidarity) has been criticized by SANGIOVANNI (2015), especially 343 and 346-349, who wonders whether a natural duty to establish just institutions where none exists has a binding value only when this can be done at little cost to ourselves.

⁸⁷ Cf. RAWLS (1999), 99.

⁸⁸ Cf. note 35 above.

⁸⁹ Cf. RAWLS (1999), 99.

⁹⁰ See RAWLS (1999), 93.

equal commitment to the laws and their functions within the political society. A focus on individual tasks and responsibilities towards society is perceived as a necessary, although not as a sufficient condition for a society able to make its principles effective. Consciousness of the risk that some of the others might benefit from a cooperative scheme without undergoing burdens might not necessarily prompt good-willed citizens to give up their tasks. To the contrary, this might encourage persons to take on this risk, with the expectation that each citizen will agree that the only possibility of creating a stable, well functioning society is to undertake fair cooperative strategies. These would be paths of joint action in which burdens and benefits are distributed among citizens in ways that recognize each of them as endowed with equal moral worth, even when distributive shares are not equal (and that citizens themselves might accept as reasonably justified). The sense of what one ought to give (rather than simply of what one ought to receive) appears to be tightly related to an understanding that being just and desiring to live justly involves complying with restrictions. The desire at stake is embedded in both voluntary incurred obligations and natural duties, as is implied in the passage that follows:

Clearly the two principles of justice and the principles of obligation and natural duty require us to consider the rights and claims of others. And the sense of justice is a normally effective desire to comply with these restrictions⁹¹.

The idea of “giving” is expressly stated in a passage of *A Theory of justice* (167). Here, by discussing the difference between the ideas of “love of mankind” and “sense of justice”, Rawls explains that, although the former exhibits greater intensity and pervasiveness, “both include *a desire to give justice*”⁹². Capacity for a sense of justice (alongside capacity to feel desire to give justice) will ensure individual respect for established fundamental principles and laws⁹³ in a *post-legem* phase of civic interaction. In a well-ordered society, in which institutions are just and this fact is publicly recognized, «its members also have a strong sense of justice, an effective desire to comply with the existing rules and to give one another that to which they are entitled»⁹⁴. It is interesting, though, that in the following lines Rawls seems to hint at

⁹¹ RAWLS (1999), 128. The idea of “giving” is also expressed at p. 167, where Rawls says that both the love of mankind and the sense of justice include a desire to give justice (although love of mankind is characterized by a greater intensity).

⁹² My italic.

⁹³ See RAWLS (1999), 125: «In reaching an agreement, then, they know that their undertaking is not in vain: their capacity for a sense of justice insures that the principles chosen will be respected».

⁹⁴ RAWLS (1999), 274.

a possible role of the sense of justice in an *ante-legem* stage of political activity⁹⁵. Indeed, the principles of justice are those that would be chosen in the original position, and desire to act in accordance with those principles would be only the (long-term) effect of a process started before the attainment of a public agreement⁹⁶.

The sense of justice, then, might also be directly involved and employed at a procedural state of public deliberation, in the same way in which the natural duty of respect is. With regard for the duty of respect, Rawls explains that moral agents in the original position (and hypothetically free from legislative constraints) are called to engage in public deliberation by treating each other equally and impartially, showing a willingness to see the situation of others from their point of view⁹⁷ and to explain the grounds of their actions, especially when the claims of others are overruled⁹⁸. As I believe, the requirement of respect encapsulates some degree of awareness that, in a sphere of people endowed with (and recognized as having) equal moral worth, each person is entitled to equal consideration. That awareness prompts people to treat others justly and to submit themselves to institutions designed to protect equal rights (a goal which demands restrictions in individual desires and ambitions). Most crucially, as Rawls explains in a well-known paper entitled *The Sense of Justice* (published in 1963), the concept of equality applies to the original position itself, not to a *post-legem* stage of political interaction. This gives rise to the following question:

what qualifies a person as holding an original position so that in one's dealings with him one is required to conduct oneself in accordance with principles that could be acknowledged by everyone from an initial position of equality?

The answer to this question, as Rawls declares,

is that it is necessary and sufficient that he be capable, to a certain minimum degree, of a sense of justice⁹⁹.

⁹⁵ This point is stated by FREEMAN (2002), 284.

⁹⁶ See RAWLS (1999), 275.

⁹⁷ See RAWLS (1999), 297: «There are, of course, other natural duties. A number of these were mentioned earlier (§19). Instead of taking up all of these, it may be more instructive to examine a few cases, beginning with the duty of mutual respect, not previously referred to. This is the duty to show a person the respect which is due to him as a moral being, that is, as a being with a sense of justice and a conception of the good. (In some instances these features may be potentialities only, but I leave this complication aside here; see §77.) Mutual respect is shown in several ways: in our willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected».

⁹⁸ See RAWLS (1999), 156.

⁹⁹ RAWLS (1963), 284.

As the passage suggests, the sense of justice seems to guide the choice of the most appropriate attitude for a constructive and respectful interaction between fellow citizens committed to a joint deliberative activity. The “procedural” principles under discussion are the same that would be acknowledged from an initial position of equality. It is interesting that, by referring to “a certain minimum degree”, Rawls indicates the possibility that the sense of justice admits of various levels and forms of expression. This would be confirmed from a passage of a *Theory of Justice* in which Rawls, reflecting on the stability of certain conception of justice, speaks of a sense of justice whose strength varies depending on the contents prescribed by institutions:

[O]ne conception of justice is more stable than another if the sense of justice that it tends to generate is stronger and more likely to override disruptive inclinations and if the institutions it allows foster weaker impulses and temptations to act unjustly¹⁰⁰.

Although Aristotle distinguishes the principle of fair play from the one of natural duty, it is evident that even a duty of justice, however natural, finds expression in an institutional context in which each citizen is called to perform his or her own task, besides abiding by the (fair) laws in force. The relationships between the principle of fair play and the natural duty of justice appear more clearly in the discussion offered by Rawls in the already mentioned article *The Sense of Justice*. In that article Rawls frames the sense of justice within an attempt to explain how justice as fairness generates its own support. Rawls does not seem to distinguish political obligations from natural duties, and he addresses the issue of “obligations of justice” with special reference to the principles of justice achieved through a public agreement. The capacity to enter cooperative games in which roles and functions are fairly distributed is central in the educational process. More specifically, Rawls aims to show that once the principles of justice have been established, education ensures that persons feel bound to act in compliance with principles recognized in the original position. The sense of justice, on the one hand, does not arise out of principles, but out of our primitive natural attitudes¹⁰¹. On the other hand, we ought not to forget that Rawls’ account of the moral psychology of the person aims to strengthen and bring to completion a political conception of justice as fairness, as he expresses in *Political Liberalism*:

I stress that it is a moral psychology drawn from the political conception of justice as fairness. It is not a psychology originating in the science of human nature but rather a

¹⁰⁰ See RAWLS (1999), 398.

¹⁰¹ See RAWLS (1999), 285.

scheme of concepts and principles for expressing a certain political conception of the person and an ideal of citizenship¹⁰².

These aspects might justify the fact that the capacity for a sense of justice, being rooted in human nature, could and ought to be already present (although in a way not specified by public principles of justice) in the original position. The path towards the acquisition of a sense of justice to employ in the civic life is illustrated by means of a psychological construction which gets progressively structured through three phases (and corresponding psychological laws). In the first phase, which concerns the family sphere, children are seen to interiorize the love and trust that parents show them. That love is reciprocated, but not in an instinctive way. The love children experience becomes a model of conduct which children themselves accept as reliable. Being utterly dependent from their parents and with no developed standards of moral criticism, children learn how to treat parents and their injunctions as sources of correct behaviour. Indeed, being aware of their lack of self-sufficiency, they start to see obedience to them as the only alternative available to them for survival. To contravene parental rules generates in children a sense of guilt - labelled by Rawls as "authority guilt" - which might be regarded as the basis for the development of an embryonic sense of moral conduct¹⁰³.

The second kind of morality (and corresponding psychological law) concerns participation in joint activities within associations and cooperative schemes regulated by rules. By regarding one another as associates, the participants in cooperative games develop ties of friendship and mutual trust just by way of an active, fair, joint participation¹⁰⁴. Such ties presuppose seeing one another as showing evident intention to live up to one's own duties and obligations. Finding a confirmation of the good will and commitment of each member of a given community is the basis for developing friendly feelings towards them, alongside feelings of trust and confidence¹⁰⁵. Friendship within small associations presuppose familiarity between their members,

¹⁰² RAWLS (1993), 86-87. For a treatment of the role of moral psychology in Rawls' political philosophy see BALDWIN (2008).

¹⁰³ See RAWLS (1963), 286-288.

¹⁰⁴ See RAWLS (1963), 289: «I suppose that these feelings have been generated in any given person by his participating in the activity itself».

¹⁰⁵ A similar point can be found in RAWLS (1999), 411: «We may suppose that these feelings and attitudes have been generated by participation in the association. Thus once a person's capacity for fellow feeling has been realized by his acquiring attachments in accordance with the first psychological law, then as his associates with evident intention live up to their duties and obligations, he develops friendly feelings toward them, together with feelings of trust and confidence. And this principle is a second psychological law».

and attachments are acquired once each member has correctly assessed the nature and the extent of the commitment of each to the goals and the rules of the cooperative scheme underlying the association¹⁰⁶.

When the requirements for participation are not successfully met, feelings of guilt arise. Rawls calls that form of guilt “association guilt”. Interestingly enough, friendship towards fellow-citizens who fail to stick to the rules of a given cooperative game may mitigate anger against them. All the same, the friendship arising between fellows prompts each of the participants in the cooperative game to act in such a way to satisfy the expectations of their fellows (in a way which impersonal others would not be able to stimulate). Shame, then, seems to be the prevailing motive in relational dynamics based on cooperative associations. Equally remarkable is the fact that this psychological law seems to apply also to the case of more complex associations, like the political ones. Rawls does not draw a stark distinction between the morality of association and the so-called “morality of principles”, namely the one pertaining to activity in a political society. To the contrary, a political society is portrayed as a cooperative game of a more complex level than the one characterizing small associations oriented to a (pre-political or non-political) goal. To put the issue another way, the ideal of equal citizenship expresses a more complex form of the morality of association¹⁰⁷. The continuity between the morality of association and the morality of principles is explicitly stated by Rawls in the following sentence of *A Theory of Justice*:

the morality of association quite naturally leads up to a knowledge of the standards of justice¹⁰⁸.

As he points out, in order to get a full-fledged sense of justice, one must have previously learnt how to develop an attachment to particular individuals and communities. He or she will have previously acquired a disposition to follow the moral standards required that apply to him or her in specific positions, the same standards establishing justified approval and/or disapproval in relation to performance of those positions¹⁰⁹. The morality of principles does not necessarily apply to people who entertain friendly, affectionate and intimate feelings. Nevertheless, the experience of intimate friendship within a community, as well as the one of love and trust ripened

¹⁰⁶ See RAWLS (1999): «Thus if those engaged in a system of social cooperation regularly act with evident intention to uphold its just (or fair) rules, bonds of friendship and mutual trust tend to develop among them, thereby holding them ever more securely to the scheme».

¹⁰⁷ See RAWLS (1999), 414.

¹⁰⁸ RAWLS (1999), 414.

¹⁰⁹ See RAWLS (1999), 414.

within a family, contributes to the recognition that fellow-citizens are called to share a highly articulated form of cooperation, one the stability of which cannot be reached without reciprocal trust and an individual responsible commitment to a good performance of individual functions. Experience in developing trust, in showing benevolent attitudes towards one's fellows and in engaging in a cooperation within an association fosters the awareness of lack of self-sufficiency and of the importance of establishing profitable conditions for a stable, well-functioning interdependence between citizens. In a well-ordered society, citizens must take an interest in political affairs and offices (e.g. legislative, judicial, and other similar ones). This requires not only a (more or less critical) commitment to specific interpretations and adaptations of the fundamental principles of justice to the functions performed, but also the ability (and possibly the habit) of taking up the point of view of others with a view to reaching a balance between competing claims¹¹⁰.

Rawls does not exclude that friendly and intimate feelings can arise or be preserved in political agency, nor does he deny that love and care for one's beloved do not engender a desire to respect fair principles of justice in the community for their well-being. From the point of view of the psychological motives that might underly a civic sense of justice, one cannot exclude that people are sensitive to social approval just like it happens in less complex forms of association, in which people know each other well and develop friendly feelings. Rawls, however, makes it clear that the distinctive motive at the basis of a sound sense of justice in the civic dimension is a deep concern and commitment to the relational dynamics that get structured within a well-conducted political society. As he claims,

[I]n due course we come to appreciate the ideal of just human cooperation¹¹¹.

The passage suggests that an appreciation of human cooperation is the outcome of a long process of experiences and stages of human education. While in other forms of association people comply with the established principles mainly out of ties of personal friendship and fellow feelings for others (and also by desire of getting approval from one's friends), desire to become a just person offers the opportunity to be open to an intellectual and emotional acceptance of rules of fair cooperation, also stimulating a willingness to work for (or at least not to oppose, in the case of a minimum sense of justice) the setting up of just institutions, or for the reform of

¹¹⁰ See RAWLS (1999), 414.

¹¹¹ RAWLS (1999), 415.

existing ones where justice requires it. Transgression of the principles of justice will give rise to feelings of guilt that are related to an awareness that the instantiation of (good) public principles of justice has been put at risk by unlawful behaviour, not (or not necessarily) to a sense of having betrayed intimate friends.

Civic friendship, rather than arising out of an intimate familiarity between fellow-citizens, seems to be generated precisely by a sense of justice, which is to say, and by a shared conformity of each citizen to the principles of justice nurtured by an appreciation of such principles. What causes people to consider each other as civic friends is “common allegiance to justice”, which “provides a unified perspective from which they can adjudicate their differences” even if it is impossible that each citizen is a friend to all¹¹².

Rawls is well-aware of the motivational import of personal friendship in promoting correct behaviour and reciprocal trust. As he points out, a possible transgression of rules within a context of cooperation between friends will appear justifiably more serious than one addressed towards impersonal subjects. This is not to say, however, that a civic friendship is a friendship in name only, which is to say, an impersonal relation where the people involved lack the psychological strength to appreciate and behave according to the laws. To the contrary, even people who see each other as civic friends in a context of impersonal cooperation might develop friendly ties. This is because the principles have the power to engage the affections of citizens simply by being appreciated for their content and for the capacity to promote a stable cooperation in view of the individual and the general wellbeing. Whatever the source of friendship, this raises moral feelings and creates attachments, “*even at the stage of the morality of principles*”, as Rawls claims with special reference to feelings of guilt and indignation¹¹³.

The possibility to view each fellow in a cooperative game of political nature as equipped with a minimum degree of a sense of justice will foster the expectation of decent behaviour and commitment to the established rules. Of course, citizens might legitimately lack trust towards people who they never met (or people with whom they do not have intimate ties). This legitimate mistrust, however, might be compensated by coercive measures capable of either preventing or punishing possible transgressions of the laws¹¹⁴, and contribute to an appreciation of those principles out of which friendship arises.

¹¹² RAWLS (1999), 415.

¹¹³ See RAWLS (1999), 416.

¹¹⁴ See RAWLS (1999), 211.

Conclusions

In this essay I have tried to explore two different ways of understanding motives, civic functions and cooperative relations underlying respect for the laws in force, namely those proposed respectively by Aristotle and John Rawls. More specifically, I have tried to supply a reconstruction of their approach to respect for the laws aiming primarily at establishing points of convergence between the two formulations. In the first place, I have tried to argue that Aristotle offers a glimpse into the possibility that the idea of a sense of justice is already at play in his ethical and political works. This idea encompasses a wide range of forms of respect, understood not only in terms of obedience to the laws, but also as participation in civic functions within the political community (like performance of judicial and deliberative offices). A sense of justice emerges not only in desire to comply with established principles of justice and the laws deriving from those principles, but also in the inclination to take part in a scheme of cooperation based on an interdependence of functions. It is possible to frame the sense of justice in terms of a variety of types and levels of friendship in which a motivational basis like search for individual and collective utility can reach the level of a community in which human interactions are conducted not only on a footing of equality, but also along respectful attitudes that mirror the contents expressed by virtuous constitutional principles. A political friendship, then, will include levels that range from a pure alliance to a proper friendship between people who feel reciprocally and stably connected by way of a shared appreciation of the virtuous principles in force.

Although Aristotle's ideal of a community governed by virtuous citizens is far from one governed under a democratic constitution, the mechanisms of participation and interaction characterizing strong bonds of political friendship seem to share the similar features of equality and appreciation of the principles of justice in a democratic liberal society proposed by Rawls in his *A Theory of Justice*. As we have seen, Rawls conceives of the sense of justice as an indispensable basis for a critically informed political deliberative activity both in the original position and in the phase subsequent to the establishment of the principles of justice. As an individual inclination, the sense of justice implies a desire to comply to principles able to secure a fair distribution of goods and opportunities. The stronger the sense of justice, the more stable a liberal society will be. Rawls does not include political friendship in his view of "a minimum sense of justice". Nevertheless, he seems to establish a line of continuity between a minimum level of cooperative behaviour according to the laws and a level of political friendship in which the search for personal advantage is supported by a rational and attitudinal appreciation of fair and efficient principles of justice. Just like the highest

form of Aristotelian political friendship, Rawlsian civic friendship expresses a fully informed desire to contribute to correct dynamics of cooperation.

The Rawlsian ideal of a liberal society, as a society open to a plurality of reasonable and reciprocally respectful views of goodness, may appear different from the commonly held view of the Aristotelian community, which is characterized by a substantial agreement on the good life. Contrary to this view, I have tried to show that even an Aristotelian community includes conflicting views on the political principles to adopt, as well as a shared desire to reach an agreement on the governing principles of the *polis* and elaboration of strategies of political action respectful of laws and individuals.

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