Rawls’s idea of political liberalism and the ‘animal question’

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Several decades have elapsed since the ‘animal question’ came to be at the centre of the interests of moral and political philosophy. In order to discuss this issue, in this essay I tackle the problem of political personality in terms of the Rawls’s idea of public reason.

Keywords: Rawls, animals, public reason, political liberalism.

Introduction

Several decades have elapsed since the ‘animal question’ came to be at the centre of the interests of moral and political philosophy. Today many different animalist theories are sustained and, although they all confer some moral and/or political relevance to non-human animals, they can be distinguished under many aspects, i.e. about the accepted metaethical theory, or about which individuals should be considered as holders of legitimate moral and/or political claims. On the other hand, there are also many theories that oppose the attribution of any moral and/or political relevance to any individual different from man, and, in some cases, to any individuals different from a man being in possession of all his main cognitive faculties.

In my short paper I would like to suggest another possible approach to the ‘animal question’, and in particular an approach based upon the idea of political liberalism proposed by the American philosopher John Rawls. Specifically, the purpose of my essay is to discuss, in terms of the Rawls’s idea of public reason, the problem of political personality, namely to try to determine who should be considered individuals to whom justice is due. The text is divided into three paragraphs: in the first I will attempt

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to briefly outline the main aspects of the rawlsian political conception; in the second one I will try to propose an argument, expressing it in terms of public reason, in favour of a particular principle of political personality; finally, in the third paragraph I will try to defend that principle against some possible objections.

In my view, if the theses that I will advance will be well argued, the conclusions that we could reach will stand on solid ground much better than the ones proposed and inferred by the animalist and non-animalist theories available today. In fact, I am persuaded that the Rawls’s political philosophy enjoys an important advantage over the main alternative political philosophies, which consists in presenting itself as freestanding, that is independent in respect to any comprehensive idea of good.

In the course of this essay, however, I will not analytically argue the strength of this thesis, nor will I, except marginally, analytically argue the strength of the other theses which are at the basis of the political conception developed by the American philosopher. My study will proceed within the rawlsian paradigm, in the sense that it shares its fundamental ideas and principles: in the course of my essay I am assuming the validity of many of those ideas and many of those principles2.

1.1. The problem of the foundation and of the justification of a political conception

First of all, a theory of the political justice deals with the way the basic structure of a society should be organized, namely the criteria through which the fundamental institutions must distribute basic rights and duties: the moral values that are realized through these institutions can be called political3. We all have different ideas about which political values should be promoted, and consequently we support different distributive principles. According to Rawls, this disagreement depends on our doctrines, that is on all our philosophical, scientific, religious and moral beliefs. In particular, he defines that a doctrine is general if it includes beliefs on each topic; that it is comprehensive if it organizes the set of all our political values (our political conception) and the rest of the values to which we give importance in life into a single coherent system; that it is partially comprehensive if it relates only to some of those values in a disarticulated way4.

2 For a comprehensive exposition of Rawls’s thought, I refer the interested readers to the following text (and to its bibliography): S. Freeman, Rawls, Routledge, London 2007.


4 In Political Liberalism Rawls uses the terms «doctrine» and «conception» to refer indifferently to a set of beliefs: political, moral and of any other forms. On the other
However, whatever our beliefs are, everybody (or almost everybody) agrees that it is very important to have one or more criteria that determine what is due and to whom. In Rawls’s words, there is a broad consensus about the need to have a concept of justice, but there are profound divergences about which specific conception of justice should be approved. Through which criteria should we choose a conception rather than another one?

To answer to this question it is necessary to tackle two problems. The first one, that we can call the problem of the foundation, is to try to identify some indisputable political values that can serve as a solid basis for our conception: since political values are also moral values, at least in a certain sense, this problem is equivalent to the problem of finding objective and indisputably true moral values (values whose existence and whose validity are independent of the fact of considering them as such or of the fact of having some reasons that allow us to consider them as such). Instead, the second problem, that we can call the problem of the justification, consists in trying to identify the reasons able to link two or more moral or political principles: a conception is fully justified when there are sufficient reasons to join all its principles in a coherent set.

Let us proceed in order and let us try to understand how the American philosopher tackles the problem of the foundation.

According to Rawls, in the current state of our knowledge, we are not entitled to consider any moral doctrine as objectively and irrefutably true. In fact, within the society there are numerous and incompatible doctrines, and there are also many and divergent points of view about the meaning of the expression «moral truth». He believes that this disagreement is due not always to lack of intelligence or to bad faith; on the contrary, he thinks that it often depends on factors that have their origin in the free exercise of human reason, namely on what he calls burdens of judgment in *Political Liberalism*. For Rawls, individuals exercising their power of reasoning can honestly get to disagreement:

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6  About the concept of justification in Rawls see for example: *A Theory of Justice*, pp. 17-22, 577-587.

7  J. Rawls, *Political Liberalism*, Columbia University Press, New York 1996 (first ed. 1993), pp. 47-88. As it will be seen in the following pages, the limits set by the burdens of judgment cover not only the problem of founding a political conception, but also its justification.
we cannot expect them to always reach the same conclusion. Therefore, in his view we should recognize that, at least currently, the limits set by the burdens of judgment do not allow us to justify our moral doctrines conclusively\(^8\). It should be noted that holding that thesis does not mean holding a skeptical position regarding the existence of objective moral truths or the human ability to know them: Rawls does not deny the possible truth of a religion, nor does he deny the possible truth of some form of naturalism or emotivism or of skepticism itself\(^9\). He simply thinks that moral philosophy is not currently able to provide us with an indisputable criterion «to mark the difference, in ways acceptable to a reasonable public, between comprehensive beliefs as such and true comprehensive beliefs»\(^10\).

At this point, we face a serious problem: without having a foundation for our moral and political beliefs, how can we find a solid basis on which we can build a political conception? We must recognize that, when in support of our political proposals we put principles that other people do not share, we are not giving them any reason to accept our argument. For those who do not share the premises from which they have been inferred, our political arguments have no special validity. However, if our goal is to build a conception of justice, it seems that one point is clear: we cannot let its principles to be identified through the use of a de facto power, since we set this goal precisely to avoid having recourse to it\(^11\). More precisely, we claim that we cannot allow that the construction of a conception depend on «pure power of action»\(^12\), i.e. on the possession or exercise of a power for which there is still not either any foundation or sharing of reasons that should make it legitimate: in fact, using such a power would be nothing more than a mere manifestation of the ability of an individual or group of individuals to pursue everything they perceive as good, even facing some opposition (to say it in other words: whatever is his interest)\(^13\). We commit ourselves to think about justice because we want

\(^8\) It is difficult to determine which relationship Rawls establishes between the burdens of judgment and our moral knowledge, and I am aware that the reconstruction I am proposing here is only one of the possible ones. About the problematic relationship between burdens of judgment and moral knowledge in Rawls see for example: B. Barry, *John Rawls and the search for stability*, «Ethics», 105, 1995, pp. 874-915; B. Barry, *Justice as impartiality*, Oxford University Press, Oxford 1995.


\(^10\) *Political Liberalism*, p. 61.


\(^12\) The expression does not belong to the vocabulary of Rawls, but its introduction may be useful to clarify the political theory of the American philosopher.

\(^13\) Therefore, in this text I will use the term ‘interest’ as follows: everyone has an
to know *a priori* how to manage the political power, namely according to which principles we can organize the principal institutions of the society we live in, but the use of means such as force or violence is not an answer to our problem, because *a posteriori* those means ‘justify’ each institution which took place in actual fact. Now, if we are not prepared to accept that justice depends on the possession or on the exercise of pure power of action by an individual (or group of individuals), one option available to us is to declare legitimate a political conception justified beginning from convictions that each individual, who engaged in the same refusal of ours, could freely accept. In his works, Rawls tries precisely to develop a conception of this kind. Specifically he believes that if we recognize the limitations imposed by the burdens of judgment, and if at the same time we aim to build a conception of justice regardless of the pure power of action available to us\(^{14}\), we can then, first think over our and over others’ considered political convictions, spanning from those referring to particular cases to those expressing general theories, and then we can look for coherence (in the words of Rawls: a wide reflective equilibrium) between all those convictions that, after this careful consideration, we feel unable to do without\(^{15}\). The American philosopher highlights that, since we recognize that we do not have any moral doctrine conclusively justified, in this research we cannot attribute a foundational role to any conviction. If we face with other people we will find some shared convic-

\(^{14}\) This is the formulation («… regardless of the pure power of action…») that in the course of the essay I will use to reaffirm always the same rawlsian idea: if we recognize that we do not have any moral doctrine conclusively justified, one possibility we have is to avoid that the possession or the capacity to use pure power of action are considered as valid reasons (or, less problematically, as discriminating elements) to attribute a different consideration to the interests of someone in respect to the consideration attributed to the interests of someone else. Also the expressions «… in function of pure power of action…» and «… depends on pure power of action…» must be interpreted in the same way I have just indicated. Obviously, what I said does not mean that our conception cannot foresee and legitimate the use of any other form of power.

\(^{15}\) The convictions are considered if they are made under circumstances that are suitable to the exercise of our moral sense: for example, when we are not frightened, angry, drunk, and so on. About the issue of reflective equilibrium, obviously besides the texts of Rawls (in particular: *Reply to Habermas*, pp. 138-142), see the following classic titles: N. Daniels, *Wide Reflective Equilibrium and Theory Acceptance in Ethics*, «Journal of Philosophy», 76 (5), 1979, pp. 256-82; N. Daniels, *Reflective Equilibrium and Archimedean Points*, «Canadian Journal of Philosophy», 10 (1), 1980; *Reflective equilibrium and justice as political*, in N. Daniels, *Justice and justification*, Cambridge University Press, New York 1996.
tions, then – and this is the rawlsian proposal – we use these convictions as a basis beginning from which we can build our political conception\textsuperscript{16}.

\section*{1.2. The liberal principle of legitimacy}

As we have seen above, the aim of Rawls is to justify a political conception beginning from considered convictions that every person could accept, willing to recognize the limits set by the burdens of judgment and disposed to identify the principles of justice regardless of the pure power of action available. The liberal principle of legitimacy is nothing but the formulation of this thesis. It asserts that:

\[\ldots\] our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational\textsuperscript{17}.

Rawls calls reasonable a conception that follows the liberal principle of legitimacy, so much so as he defines reasonable the political values that are realized in it\textsuperscript{18}. But what must we understand with ‘reasonable and rational persons’?

According to Rawls\textsuperscript{19}, a person is reasonable first of all if he recognizes the limits set by the burdens of judgment, and secondly if he is prepared to propose fair terms of cooperation to the others: this proposal is fair if it is advanced excluding the use of force, coercion, deception or the exploitation of any kind of bargaining advantage. Now, these actions have in common the fact that they can be described as relations of power between individuals. The point is that at this stage of reflection we still do not have a legitimate political conception that indicate us which relations of power are permitted but, as I have just noted, the use of power, without reference to a founded or shared doctrine which previously established the legitimacy of that power, is nothing but the use of pure power of action. Thus, our philosopher is arguing that fair terms of cooperation are the ones that could be accepted by people who want to find them regardless of such a \textit{de facto} power.

\textsuperscript{16} After finding some shared convictions, we could also assume that we have identified an evidence of the existence of objective moral truths: Rawls points out that, however, in order to confirm this conclusion, we need further arguments, since all such possible convictions could be false (\textit{Political Liberalism}, pp. 125-129).

\textsuperscript{17} \textit{Political Liberalism}, p. 217.

\textsuperscript{18} \textit{Reply to Habermas}, pp. 132-135; Rawls, \textit{The idea of public reason revisited}, pp. 765-777.

\textsuperscript{19} About the characterization of these aspects see in particular: \textit{Political Liberalism}, pp. 47-88.
Regarding rationality, in Rawls’s view it consists in the ability to organize our purpose according to an order of preference and in the ability to choose the most appropriate means to satisfy them. If in our sincere intention we want to find a political conception regardless of the use of pure power of action, then we should not have problems in accepting that people in charge of finding it are actually able to pursue this task.

What are the constitutional essentials, *i.e.* the main considered political convictions, that reasonable and rational people would accept? Our author’s thesis is that these persons would agree on three key ideas: the one of society as a fair system of cooperation that reproduces itself over time, the one of citizens as free and equal and the one of a well-ordered society. He believes that these ideas are implicit in the public political culture of a democratic society, namely in those public and traditional interpretations of the political institutions of a constitutional regime. In the next section we will try to understand the reasons of the convergence of rational and reasonable people on these three ideas.

1.3. *The three key ideas*

Through the principles of justice, the political power determines how the basic structure of a society is organized: in other words, it establishes a model of social cooperation. According to Rawls, we can come to the idea of society as a fair system of cooperation imagining a basic structure organized by a political power regulated by the liberal principle of legitimacy. Fairness is ensured to the extent that the organization of this structure is accepted by any reasonable and rational person.

We get the second basic idea of a society considering which characteristics the individuals should have to be able to participate in this type of cooperation. According to Rawls, fully cooperating members of a society have to possess not only appropriate physical and intellectual qualities, but they must also be moral persons. In particular, in order to have moral personality an individual must be in possession of two moral powers. The first consists in the ability to form, revise and pursue a doctrine of the good, *i.e.* a system of ultimate ends: the person, who does not have a doctrine of the good, is not interested in how the rights and the duties are distributed in society, therefore he has no reason to join it. The second moral power, instead, concerns the capacity to respect

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21 Political Liberalism, pp. 15-22.
the rules set by the principles of justice: in the words of Rawls, the ability to have a sense of justice. Who does not have this capacity, does not participate in the cooperation because he is not able to comply with its fair terms. The possession of these powers makes people free and equal. For the purposes of this essay, it is important to note that, according to Rawls, «the minimal requirements defining moral personality refer to a capacity and not to the realization of it» 23. Consequently, variations that people display in the development of the two moral powers do not represent special issues in our author’s judgement: children, as well as those who lost these characteristics for some reason, should be treated as moral people.

Finally, Rawls introduces the idea of a well-ordered society to pursue over time the stability of a fair social cooperation 24. It is fundamental to show that the reasonable political conception proposed can be stable because, if it is not stable, trying to realize it would be unreasonable and useless. Rawls argues that a society is well-ordered when «the citizens’ sense of justice, considered their character and interests as formed by living under a just basic structure, is strong enough to resist against the normal tendencies to injustice» 25. In particular, he argues that a society is well-ordered when its citizens have a fully developed sense of justice, when they publicly accept the idea of reasonable political conception and when its basic institutions realize this conception in a generally recognized way. These three conditions imply that the stability of a reasonable conception should be obtained for good reasons, and not as a consequence of what our author calls a modus vivendi, that is a strategic balance between the pure powers of action that are de facto present in the society 26.

According to Rawls, the three key ideas I have just examined are the basis upon which we can build a reasonable, and therefore legitimate, conception of justice: through their continuing specification we must come to identify some reasonable principles of justice by which we can organize the basic structure of our society in a more concrete way. However, he believes that due to the burdens of judgment these three ideas can be specified differently, and therefore there may be more reasonable conceptions of justice. Our author points out that in any case there are minimum criteria that these conceptions must fulfill: specifically, they must guarantee some

23 A Theory of Justice, p. 509.
24 Political Liberalism, pp. 35-43.
26 Examples taken by Rawls about it regard the relationship between Catholics and Protestants in the sixteenth century and the relations between States (Political Liberalism, pp. 147-150; Justice as Fairness, p. 192).
basic rights («such as those familiar from constitutional regimes»), to these a priority «with respect to the claims of the general good and perfectionist values»\textsuperscript{27} must be assigned and, finally, they must ensure to the people adequate means for all purposes, so that they can effectively enjoy their fundamental rights. According to Rawls, the conceptions that realize these conditions belong to the family of political liberalism: with the adjective «political» he intends to emphasize its autonomy as regards any currently available solution to the problem of the foundation of a moral vision. That is, while a comprehensive liberalism (as John Stuart Mill or Immanuel Kant propose) is based on a particular doctrine, a political liberalism «can be presented independently from comprehensive doctrines of any kind»\textsuperscript{28}. As we will soon see, justice as fairness is the name of that particular form of political liberalism proposed by Rawls. But first we need to discuss the idea of public reason and the problem of the stability.

1.4. The idea of public reason

At the beginning of this paragraph, we asked ourselves which are the reasons that we can legitimately provide to other citizens in support of our political proposals. Rawls believes that, if we agree to support political liberalism, the only reasons we can consider legitimate are those expressed through the reasonable political values that constitute this same view: the argumentations that proceed through these reasons belong to what he calls the idea of public reason\textsuperscript{29}. Of course, in order that our arguments may be applied, we also need «guidelines of inquiry that specify ways of reasoning and criteria for the kinds of information relevant to political questions»: thus, part of this idea are also the beliefs and the forms of reasoning generally considered valid by the citizens, as well as the scientific noncontroversial methods and conclusions\textsuperscript{30}.

For Rawls, the idea of public reason must apply primarily to political issues related to constitutional essentials and matters of basic justice, \textit{i.e.}

\textsuperscript{27} The idea of public reason revisited, p. 774.

\textsuperscript{28} The idea of public reason revisited, p. 776.

\textsuperscript{29} Although the idea of public reason is explicitly addressed by Rawls only after the publication of \textit{Theory}, that is a topic already implicitly presented also in that text. With regard to this, see the interesting comments of Rawls in his \textit{Lectures on the history of political philosophy}, Harvard University Press, Cambridge 2007. On the same issue, see also: C. Larmore, \textit{Public reason}, in \textit{The Cambridge companion to Rawls}, ed. by S. Freeman, Cambridge University Press, Cambridge 2003, pp. 368-393.

\textsuperscript{30} \textit{Political Liberalism}, pp. 223-224. As it is evident, this is a fairly delicate issue. I cannot face this question here, and I only suggest that a solution could be to consider that the scientific methods and conclusions which can be accepted by reasonable and rational persons are valid.
to the choices affecting the principles that determine the form of government and the fundamental rights of the individuals. To make sense, this idea must result to be complete, namely capable of providing at least one answer to these important issues; otherwise, it would not carry out the task for which it was designed: to help us to identify the principles of justice of a reasonable conception\(^{31}\). Only after checking its actual ability to solve the most important problems of justice, can we try to extend its use to all other political decisions. It is not sure that this attempt shall always be successful: should it fail, Rawls believes it possible to base our arguments upon unreasonable political values\(^{32}\).

Besides that, the American philosopher believes that the idea of public reason must apply not to all discourses concerning the political sphere, but only to those argumentations conducted within the ‘public political forum’, \textit{i.e.} in the set of the contexts in which we must ultimately reach a decision that involves the use of political power; therefore, a decision that is binding for anyone who lives in the territory where such power rules. The political forum includes the discourse conducted by the judges while taking their decisions, the discourse used by the government officials in carrying out their offices and, finally, the one adopted by candidates to public office in their political statements\(^{33}\).

The ‘background culture’ of the civil society stands separate from the public political forum. Rawls’s thesis is that within that sphere it is legitimate to express ourselves, not exceeding the limits imposed by the rights and duties established by the referential reasonable conception, through non-public reasons. All those discourses that in their proceeding recall political values different from the reasonable ones belong to the category of non-public reason. Often, those are the reasons used by various scientific and religious associations: since their decisions can be freely accepted or rejected by anyone, it is not necessary either that their arguments rest on reasonable political values, or that they are logically corrected or supported by reliable scientific evidence\(^{34}\).

\(^{32}\) \textit{Political Liberalism}, p. 227-230. Contrary to what I have just said, some authors attribute to Rawls, and they uphold themselves, the thesis according to which the idea of public reason should apply only to political issues related to the constitutional essentials and the matters of basic justice (on this issue see, \textit{e.g.}: T. Scanlon, \textit{Rawls on Justification}, in \textit{The Cambridge companion to Rawls}). However, the solution to this problem is not relevant to the treatment of the theme of this essay: therefore I will not explain the reasons of my different thesis (for the position similar to the one I am inclined to hold, see: J. Quong, \textit{The scope of public reason}, «Political Studies», 52, 2004, pp. 233-250).  
\(^{34}\) \textit{Political Liberalism}, pp. 220-222. According to Rawls, as we will see in the next section, a doctrine is incompatible with the idea of public reason not when it is false or
It is important to underline that, according to Rawls, the non-public reasons may even include the secular reasons. By the latter expression, he refers to any rational and pondered argumentation that may be maintained regardless of the hypothesis of the existence of God. In this sense, the secular reasons are often similar to the religious ones: both may refer to values that do not fall into a reasonable conception of justice.

1.5. The stability of political liberalism

It is now necessary to step back and return to the idea of a well-ordered society, i.e. one of the three key ideas on which, according to Rawls, reasonable and rational people would agree. As we have seen, for the American philosopher a reasonable political conception, in order to be acceptable, must possess the capacity be stable for the right reasons: namely, its ability to maintain itself over time should not reside in a balance arising from the pure power of action available to the supporters of the several doctrines who are present in our society.

However, after exposing the idea of public reason, we must in the first place ask ourselves whether political liberalism has any hope of being stable. The absence of such a hope would be a serious problem, because it would definitely sentence us to live according to the law of the strongest: therefore, the construction of a particular reasonable conception through the idea of public reason would be meaningless, because that conception (as well as any reasonable conception) could never be practicable. Let us see how Rawls deals with this thorny theme.

In his view, the problem of stability involves essentially two issues. The first is whether it is possible, taken for granted to grow within a society governed according to the liberal principle of legitimacy, to become motivated to sustain its institutions; the second is whether such motivations, should they be liable to be acquired, can win the reasons springing from the moral doctrine of any individual. Answering to the first question only is not enough: in fact, if our sense of justice does not provide us with sufficient reasons to honor it, even when, in doing so, we should go against our particular vision of the good, the stability of political liberalism would in no way be guaranteed.

incoherent, but when it proves to be unable to sustain a reasonable conception of justice (Political Liberalism, pp. 241-244; Justice as Fairness, pp. 182-184).

As per the first point, Rawls tries to show that for people who grow up in a fair society it is possible to acquire a sense of justice corresponding to it, taking up the studies by Lawrence Kohlberg and Jean Piaget on the psychology of development. On the basis of their works, Rawls comes to trace the evolution of moral development as it could proceed in a well-ordered society\(^{36}\). He points out three main stages of this development (morality of authority, morality of association and morality of principles), after which he believes we can rightly speak of a psychology typical of the reasonable citizen; the most important postulates of such a psychology are the following:

1) [...] Citizens have capacity for a conception of the good and capacity to acquire conceptions of justice and to act as these conceptions require [...] .
2) When they believe that institutions or social practices are just, or fair [...], citizens are ready and willing to do their part in those arrangements provided they have sufficient assurance that others will also do theirs. [...] 
3) When others with evident intention do their part in just or fair institutions, citizens tend to develop trust and confidence in them. [...] 
4) The trust and confidence (noted in (3)) grow stronger and more complete as the success of shared cooperative arrangements is sustained over a longer time\(^{37}\).

Let us go now to the second question concerning the problem of stability. In order to try to show that the sense of justice belonging to individuals grown up in a fair society can provide them with reasons that can prevail on motivations originated from the respective visions of the good, Rawls introduces the idea of reasonable overlapping consensus. Since in an individual the two moral powers (the capacity to develop, revise and pursue a doctrine of the good and the capacity to act according to justice) developed together, Rawls believes that there are good chances that the doctrine of an individual grown up within a fair system of cooperation is able to contain within itself a justification of the idea of reasonable political conception. Rawls argues that it is not necessary that every individual justifies this idea through the same arguments, but it is important that everyone finds his own good reasons for doing so: if this is the case, political liberalism will be stable as sustained by the consensus of all reasonable doctrines of society\(^{38}\). Thus, the American philosopher

\(^{36}\) Rawls resumes the studies of these authors in the third part of *Theory*, and the theses expressed there remain essentially unchanged even in his following works (*A Theory of Justice*, pp. 453-504).

\(^{37}\) *Justice as Fairness*, p. 196.

\(^{38}\) Obviously, the overlapping consensus does not require full agreement on all the laws promulgated by a society: it is unreasonable to expect to have always a unanimity
suggests that we can think about political liberalism as a module inside a general doctrine. Within this module the aim is to achieve an acceptable level of consistency between our political principles through the rules of the idea of public reason, but it is through his referential doctrine that, ultimately, everyone can justify such rules and principles. It is of crucial importance to note that for Rawls the stability of political liberalism must not be sought through a mediation between the values held by different doctrines that are more or less widely widespread in the historical reality of our society; on the contrary, it must be originated from a reasonable overlapping consensus between all those doctrines that can spread and survive in the background of the culture of a legitimate society.

1.6. The original position

Now we are ready to discuss briefly the theory of justice that, according to Rawls, best specifies the general idea of reasonable political conception and the three key ideas related to it. The thesis of our author is: to simplify the research of the reasonable principles of justice, we can use a mental experiment and think about them as those on which reasonable and rational people would agree as citizens’ representatives who conceive one another as free and equal. In particular Rawls, taking again and reworking the contractualist tradition, puts these people in a contractual situation that he calls original position: his fundamental idea is to use this device «to model […] restrictions on reasons in such a way that it becomes perfectly evident which agreement would be made by the parties as citizens’ representatives».

As we will see in the next section, Rawls represents the reasonableness and the rationality of the parties in the original position imagining them under a veil of ignorance that deprives them of important information about the life of their represented. However, we should mention of points of view. It is important that there is agreement on the constitutional structure (The idea of public reason revisited, pp. 797-798).

39 On this issue, see: Daniels, Reflective equilibrium and justice as political.

40 In his early works, Rawls’s answer given to the second problem of the stability was based not on the idea of overlapping consensus, but on the so-called «congruence argument» (with this respect, see: S. Freeman, Congruence and the good of justice, in The Cambridge companion to Rawls, pp. 277-315).

41 Political Liberalism, p. 26. According to Rawls, this device of representation is the best one to help us to develop a reasonable conception of justice: however, «others will think that different ways to identify these principles are more reasonable» (The idea of public reason revisited, p. 773). Hence, objections to the original position are necessarily neither objections to the idea of reasonable conception nor objections to the principles of justice proposed by Rawls.
straightaway that Rawls assumes that the parties are aware that in the society, whose regulatory principles they have to seek, there are circumstances of justice, namely «conditions under which human cooperation is both possible and necessary»42. More specifically, drawing on Hume’s argumentation, he distinguishes these circumstances in objective and subjective.

In order that circumstances are objective, firstly there must be individuals living together in a given territory. Secondly, no one of them, alone or joining a group, should be able to dominate others. Finally, the resources available for distribution should be moderately scarce: the goods must be neither so abundant nor so rare to render respectively superfluous or useless the social cooperation. As per the subjective circumstances, individuals must not have infallible knowledge, but they must be subject (as indeed they are) to the burdens of judgment. In addition to this, they must have irreconcilable claims about how to distribute resources. The latter subjective circumstance requires that they are mutually disinterested to each other.

1.7. The constraints set by the veil of ignorance

Now let us try to understand how the reasonableness of the people is represented by Rawls in original position43.

As we have seen, rational and reasonable people recognize that they cannot conclusively justify their moral beliefs; they are willing to offer terms of cooperation regardless of the pure power of action; finally, they are able to identify the best way to detect such fair terms. The American philosopher represents these features in his original position imagining that the parties are placed under a veil of ignorance that deprived them of important information about the life of the individuals they represent, and that, in this situation, they have the task and capacity to maximize their interests. In particular, the parties do not know the state of society in which they live, their natural assets and abilities, their social status, their specific interests and their specific doctrine. The only information available to them is that, as we have seen in the previous section, in the society there are circumstances of justice. It is important to underline that the pure power of action affects both the freedom to express interests and the autonomy to conceive them. Interests influenced by unfair institutions will also be unfair, in a certain sense: they will give rise to unreasonable demands that will be too low or too onerous according

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42 A Theory of Justice, p. 126.
to the circumstances of life. For Rawls, since at this stage of reflection we still do not have a criterion to determine when a basic structure is in accordance with a reasonable political conception, we cannot risk that such adaptive preferences distort the agreement between the parties in the original position and replicate any eventual past injustices: for this reason, we must think that the veil of ignorance deprives the parties not only of the knowledge of interests and doctrines embraced by their represented but, more in general, it deprives them of any possible and particular set of interests and doctrines to which they can refer and on which they must try to reach an agreement.

1.8. The primary goods

In order to represent the reasonableness of people in the original position, Rawls places parties under a veil of ignorance that prevents them from knowing natural assets, social status and particular vision of the good of the citizens represented. But here lies the problem: if the parties do not know the interests of the citizens, how can they protect them?

As we have seen, for our philosopher individuals participate in social cooperation to try to pursue their particular doctrine of the good (1.3). According to Rawls, if the parties must defend the interests of these individuals, but they are not aware of what those interests are, they may nevertheless rationally ascribe to them a higher-order interest related to the development and to the exercise of the two moral powers: in fact, the possession of these powers is essential to participate in cooperation and that way to try to achieve one’s own particular doctrine of the good, whatever it is.

However, in order to formulate principles of justice, we also need to decide which goods have to be distributed. That is, we need an interpersonal, public and workable criterion to enable ourselves to assess the legitimate expectations of each individual. This is why Rawls introduces the idea of primary goods: they are social conditions and means which, in general, are necessary so that people can adequately develop their two moral powers and fully exert them. Even if all citizens do not have the same set of ultimate ends, there are goods that can be considered all-purpose means for the exertion of the capacity to form, revise and pursue a conception of the good and for the development of the capacity to act according to justice. The list of primary goods brought forth by our author should not be interpreted as an average of all the goods needed by the supporters of the different doctrines present in a society to meet their particular life plan: on the contrary, this list consists of what free and equal citizens who fairly cooperate one another may reasonably want.
The basic list of primary goods suggested by the American philosopher includes: basic rights and liberties, freedom of movement and free choice of occupation, powers and prerogatives of offices and positions of responsibility in the political and economic institutions, income, wealth, the social bases of self-respect and free time. The introduction of this list, along with the assumption that all the fully cooperating members of society have similar capacities, allows Rawls to solve the difficult problem of interpersonal comparisons between the interests of citizens: rationally, they want to get more primary goods rather than fewer. When we hold this thesis, we do not mean to give them selfish motives: if they are selfish, it depends on their ultimate ends, for example on the fact that among these there is an overriding interest in their social position.

1.9. The two principles of justice

The contrivance of the original position represents a model of fair agreement. According to Rawls, the parties under the veil of ignorance would agree unanimously on the general idea that the primary goods should be distributed equally among all citizens, unless their unequal distribution favours the least advantaged, namely unless it benefits those who have the lesser expectation to obtain primary goods all their life long. In particular, the parties would agree on two principles of justice:

First principle: each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, a scheme which is compatible with the same one for all; and in this scheme the equal political liberties, and only those ones, must be guaranteed in their fair value.

Second principle: social and economic inequalities must satisfy two conditions: first, they must be related to positions and offices open to all under the conditions of fair equality of opportunity; and second, they must be to the greatest benefit for the least advantaged members of the society.

Those two principles are sorted according to a lexicographical order: namely, the realization of the second principle is subordinate to the realization of the first one, as the realization of the difference principle is subordinate to the realization of the principle of fair equality of opportunity.

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44 A Theory of Justice, pp. 90-95; Political liberalism, pp. 178-211; Justice as Fairness, pp. 57-61.
46 Political Liberalism, pp. 5-6.
Considering the aim of this essay, it is not necessary that I dwell further upon the exposition of Rawls’s thought. What I have written until now is enough to try to discuss, in terms of public reason, the problem of political personality. Before doing this, let us see how Rawls addresses this issue.

2.1. Rawls and the problem of moral personality

Rawls has never treated the theme of moral personality in a systematic way. As we have seen, he argues that individuals who have the capacity to develop a vision for their own good and the capacity to act justly are moral persons (1.3). However, he does not explain which political status we should give to all those beings who, like humans with severe diseases, or animals, do not possess such capacities. Although in some passages he asserts that the possession of the two moral powers is only a sufficient condition to be considered moral persons, thus leaving the possibility open that a wider set of characteristics is necessary, these considerations have never been adequately developed. As for the case of humans with severe disabilities, Rawls keeps the question open about their status, only stating that «those more or less permanently deprived of moral personality may present a difficulty»⁴⁹. He even discusses about embryos and human foetuses, by his own admission, in a fragmented and incomplete way, without any close argumentations⁵⁰. Finally, about the issue concerning the status of the natural world and our proper relationship to it, he negates, without further explanation, that they are constitutional essentials or even basic issues of justice. For example, in *Political Liberalism*, he says that this is «a matter in regard to which citizens can vote their non political values and try to convince other citizens accordingly. [A matter to which] the limits of public reason do not apply»⁵¹.

I think that one of the main weak points in Rawls’s theory is that he has left open the important problems related to the issue of moral

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⁴⁸ *A Theory of Justice*, pp. 505-506: «The capacity for moral personality is a sufficient condition for being entitled to equal justice. Nothing beyond the essential minimum is required. Whether moral personality is also a necessary condition I shall leave aside».

⁴⁹ *A Theory of Justice*, p. 510. The discourse does not become clearer in one of his later works, where Rawls writes: «I take it as obvious, and accepted by common sense, that we have a duty towards all human beings, however severely handicapped». But «it is premature to considerer these matters here» (*Justice as Fairness*, p. 176).


⁵¹ *Political Liberalism*, p. 246.
personality. In the following pages I will try: a) to explain the reason of my position, and b) to give my contribution in the attempt to exceed that limit.

2.2 Principles of moral personality and principles of political personality

In the remaining sections of this second paragraph I will attempt to set an argumentation, expressed in terms of rawlsian public reason, to establish who the subjects to whom justice is due are. To begin, let us consider what I wrote in the first pages of this essay.

A political conception of justice must be able to specify criteria that help us to determine to whom is due what (1.1). So, a first problem consists in establishing the class of individuals to whom justice is due, while a second problem consists in determining which goods must be distributed and the criterion (or criteria) by which this distribution must be made. Let us briefly summarize the argumentation through which Rawls attempts to solve those two problems.

The starting point of his reflection is the idea that, once we recognize the constraints set by the burdens of judgment to our theoretical and practical knowledge, we cannot, at least temporarily, legitimately consider that we have in hand a moral doctrine conclusively justified. However, we can recognize that the search for principles of justice cannot depend on pure power of action available to individuals (1.1). The liberal principle of legitimacy, the norm which he lays at the basis of the idea of reasonable conception, is nothing but the formulation of this dual recognition: it establishes that the exercise of political power is legitimate only when it is in accord with a constitution which could be accepted by reasonable and rational citizens (1.2). Reasoning upon this principle, Rawls comes to identify three key ideas: a society as a fair system of cooperation; citizens as free and equal; a well-ordered society. His thesis is that all political conceptions derived from a specification of these three ideas are legitimate and belong to the family of political liberalism (1.3).

The point is that Rawls uses this argumentation only to establish, through the identification of the two principles of justice as fairness, how to distribute the goods available to the society: instead, it is not clear through which arguments he arrives to claim that only those with the two moral powers should receive a part of these goods (2.1). Now, my thesis consists in the idea according to which the liberal principle of legitimacy (or, as we will shortly see, a particular reformulation of this) can be considered not only a valid answer to the problem of how to distribute the goods available to the society, but also a valid answer to the problem related to the identity of individuals to whom we owe justice.
In order to explain the reasons of my position, first of all it is necessary to return to the issue of the burdens of judgment. Because of the limitations they pose to our knowledge, at present we do not have a moral doctrine that is conclusively justified (at least, this is one of the assumptions of this essay). But why should this meta-ethical uncertainty be reflected only by principles that seek the best way to distribute goods, and why should it not be reflected by those ones that seek a criterion of moral personality? If we seriously consider the limits set by the burdens of judgment, this means, in my view, that we accept to be unable to provide a conclusively justified solution to both those problems. Therefore, it is useful to distinguish among the following:

- the moral persons: according to a moral doctrine, individuals that hold particular moral rights and/or duties;
- the criterion of moral personality: the criterion through which a certain moral doctrine establishes who are the moral persons;
- the political persons: according to a political conception, individuals that hold particular political rights and/or duties;
- the criterion of political personality: the criterion through which a certain political conception establishes who are the political persons.

Since, at least at the moment, we do not have a moral doctrine conclusively justified, our problem must not be confused with the problem of searching for a criterion of moral personality that is objectively true: rather, we should try to establish a valid criterion for the political personality.

Now, as in the case about how to distribute the goods available to the society, we face a serious problem. In fact, without the possibility of basing our moral claims on the sure ground of objective truth, it seems difficult for us to identify the reasons through which we can establish the class of the political persons. However, if we do not want to abandon the pursuit of a principle of political personality, nevertheless we can recognize that the choice of such a principle cannot depend on the pure power of action that is available to individuals. In fact, we search for a political conception to establish, *a priori*, one or more principles through which we can determine firstly the set of political persons, and secondly how to distribute the goods available to the society. If we allow the pure power of action to decide those principles, we do not solve our problem since the latter approach legitimates any institution that has indeed been realized (*i.e. a posteriori*). At least in this essay, I do not have much more to tell to those who are willing to embrace this view (I cannot state whether this attitude is good or wrong, recognizing the constraints set by the burdens...
of judgment), apart from suggesting that they think carefully about the consequences of their choice. But I think and hope that these people are few; instead, I hope that each of us is willing to recognize as valid all those argumentations that attempt to determine the class of the political persons, as well as the legitimate principles of distribution, regardless of the use of pure power of action.

The reflections just developed here trace out the ones embraced by Rawls and that I have exposed in the first paragraph of this essay: however, at the same time they impose a general reflection about some of his key theses: first of all, about those expressed through the liberal principle of legitimacy. This general reflection is the aim of the next section.

2.3. A reformulation of the liberal principle of legitimacy

As I have just affirmed, I assume and hope that our goal is to be able to find a political conception starting from considered convictions on which all reasonable and rational individuals could agree. But if we now try to ask ourselves what those convictions could be, we can easily see that they can no longer be considered implicit in the liberal principle of legitimacy. Let us resume its formulation:

Our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational.

Rawls is arguing that the exercise of political power is legitimate (or reasonable) only when it could be accepted by all citizens, i.e. by all individuals with the two moral powers. However, the fact that only these individuals are citizens is something that, as we have seen, must be

32 From the existential point of view, undoubtedly the problem of the relationship between reasonable and unreasonable persons is dramatic. However, if we accept the validity of the argument that, at present, we do not have any moral doctrine conclusively justified, political philosophy has little to say about it. However, this is anyway important, and it can be summarized in two points: a) the conduct of a reasonable person towards an unreasonable one should be guided by the rights and duties established through a reasonable conception of justice, so that the limits of tolerance should be argued in terms of public reason; b) as a consequence of the preceding point, a reasonable person, as long as he can and as far as possible for him, should try firstly to show the merits of a reasonable conduct to unreasonable persons and, secondly, to suggest to the same unreasonable ones that their doctrine can support a reasonable conception. In this connection, see the following rawlsian passages: *The idea of public reason revisited*, pp. 783-787; *A Theory of Justice*, pp. 211-228.
questioned: within the problems that a political conception must show to be able to solve, there is also the problem of identifying a criterion of political personality. Therefore, the liberal principle of legitimacy should reflect this fact; its reformulation might be the following:

the exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which reasonable and rational persons be expected to endorse in the light of their principles and their ideals.

Reasonable persons are those who recognize firstly that they do not have, at least momentarily, any moral doctrine conclusively justified, and secondly that they are willing to build a political conception (namely, to identify one or more principles to determine to whom distribute the goods available to the society and one or more principles to determine how to distribute these goods) regardless of the pure power of action. Rational people are those who possess the capacity to determine which the best means to achieve this aim are.

At this point we must note that people so characterized cannot agree on the three fundamental ideas suggested by Rawls. I want to remind them: the idea of society as a fair system of cooperation, the one of citizens as free and equal and the one of a well-ordered society. The problematic idea is the second one: once more the reason is that it refers to citizens, assuming that the set of the political persons has already been identified. We can remedy this situation simply by stating that at least initially reasonable and rational people would agree on the remaining two ideas, and then they would think about the just society to achieve as a fair and stable system of cooperation between individuals. This general idea will be valid when, through its continuous specification, it will be possible to establish a criterion of political personality. Thus, it should be possible to apply the idea of public reason, namely the constraints that a reasonable and rational person must respect, to a set of political issues wider than the one Rawls indicated. In fact, among the political issues concerning the constitutional essentials and the matters of basic justice that the public reason must demonstrate to be able to solve, there is also the issue about the identity of political persons. In the following sections I will attempt to develop just this issue, trying to respect the constraints on the argumentation put by the Rawls’s idea of public reason.

2.4. A pre-original position

Starting from the general idea of fair and stable social cooperation, is it possible to get to identify a valid principle of political personality?
Once again, to answer this question I think that it can be useful to resume the parallel rawlsian argumentation.

As we have seen, for the American philosopher a reasonable political conception represents a fair and stable social cooperation between citizens who conceive each other as free and equal. To attempt to give a more precise meaning to this idea, he suggests that we can try to imagine ourselves as representatives of citizens whose specific identity we do not know, but whose interests we must maximize. This mental experiment is simply one of the possible ways to make the liberal principle of legitimacy effective, that is to represent the condition of reasonable and rational people seeking for consensus on which conception of justice should be adopted (1.6, 1.7). However, it seems clear that adopting this strategy is not enough for us any more. In fact, this strategy has already assumed the possession of a valid political principle by which we can determine who is a political person and who is not, who must be part of the original position and who is excluded from it: but, as I tried to argue in the previous pages, the research of this principle and consequently the research of the individuals who should be represented in the original position is part of our problem.

I am convinced that it is possible to try to solve this difficulty by building a mental experiment similar to the original position. Namely, we can imagine that some reasonable and rational persons, placed under a veil of ignorance, have the task of searching for a principle of political personality: the principle that in this circumstance they would choose will be the valid one, i.e. the one we should adopt as part of our reasonable political conception. This pre-original position, as we can call this new mental experiment, should work exactly like the original one proposed by Rawls: it is a heuristic device which can be used to construct a model for the restrictions to be imposed on the reasons that we put forward for our political proposals, specifically in support of a particular principle of political personality rather than in support of another one. Other authors have suggested the adoption of a pre-original position: however, there are profound differences between their version and the one I intend to propose. I will focus on the most important differences in the next section, but before it is necessary that I explain precisely how I believe that the reasonableness and the rationality of the parties can be represented in the pre-original position.

As we know, reasonable persons have two characteristics. The first consists in recognizing the limits set by the burdens of judgment to the moral reflection: with reference to the theme under discussion, this means that at least in principle they must accept the possibility that every entity, either living or non-living, could be considered a political person. Therefore, we can represent this first aspect of reasonableness introducing
every imaginable entity, living and non-living, among the represented in the pre-original position, and assuming that the parties have the duty to maximize their own interests.

The second characteristic of the reasonableness consists in the willingness to propose fair terms of cooperation, namely independent from the pure power of action available to them: we can represent this attitude by placing the parties under a veil of ignorance that prevents them from knowing not only the natural assets, the social position, the special interests and the particular doctrines of their represented\(^\text{35}\), but also their specific ontological characteristics. Hence, the parties must not know whether the entities that they must protect are living or non-living, whether they belong to the vegetable kingdom or to the animal one, whether they are human or non-human, whether they are at the beginning or at the end of their lives and so on.

Finally, as regards the representation of rationality in the pre-original position, we can assume that the parties have the ability to protect the interests of their represented at their best.

To summarize: the parties, that are rational agents unaware of the particular identity of their represented, are responsible for maximizing their interests: which principle of political personality do they freely agree on?

Before answering this question, I will present the main differences between the model of pre-original position I proposed and the model suggested by other authors, specifically by Donald Van De Veer and Mark Rowlands.

### 2.5. Versions of the pre-original position

Even authors such as Donald Van De Veer and Mark Rowlands suggest the adoption of a pre-original position: however, there are at least two important differences between their proposals and mine\(^\text{34}\).

\(^{35}\) The claim that the parties must not be aware of the doctrines of the represented must be interpreted, as in 1.7, in a broad sense. That is, the parties must be deprived not only of the knowledge of the real doctrines held by people whom they have the responsibility to protect but, more generally, they must be deprived of any possible set of existing doctrines. The risk that adaptive preferences distort the agreement on justice is present also in the discussion concerning the possible criteria about political personality. On this issue see for example: D. Nibert, *Animal Rights/Human Rights. Entanglements of oppression and liberation*, Rowman & Littlefield Publishers, Lanham/Bovider/New York/Oxford 2002.


Firstly, the reasons under which they propose this new experiment are different from those I have just presented. These two authors argue that the introduction of the pre-original position is the logical conclusion of Rawls’s argumentation in favour of the original position. They identify the rationale of this idea especially in §17 of *Theory*, where Rawls discusses some issues concerning the second principle of justice as fairness\(^5\). In that paragraph, the American philosopher suggests that after careful examination each of us can converge in finding that casual factors beyond the individual control and responsibility, such as natural and social contingencies (being a man or a woman, having being raised in a rich or in a poor family…) are arbitrary from a moral point of view, and therefore that they should not affect access to the opportunities, to income and to wealth.

Continuing in this direction, Van De Veer and Rowlands claimed that also belonging to a species is a casual event beyond the control of an individual; therefore it is an event that should be judged morally arbitrary. A man did not choose to be born a man, a dog did not choose to be born a dog, a fish did not choose to be born a fish, and so on. If we accept that being a man or a woman is morally irrelevant, why should we not think the same about the possibility of being human or animal? For example, Rowlands writes:

> The property of belonging to a particular species is as morally arbitrary as race, gender, or eye color. So, in the original position, knowledge of [...] species is also something that should be excluded behind the veil of ignorance\(^6\).

Depriving the parties in the original position also of the knowledge of the species to which individuals belong seems to be the coherent development of the argument present in the §17 of *Theory*.

Although this argument, which I will call the argument of the contingency, can be plausibly regarded as an important part of the rawlsian work, when we read the early Rawls in the light of his later works we should reduce its role in political discussions. In fact, the constraints posed by the idea of public reason require us to argue our political proposals only through reasonably political values, \textit{i.e.} regardless of the reference to a doctrine without foundation: but attributing or not some moral relevance to social and natural contingencies depends on such a doctrine, be it, for example, a kantian view of morality (this may appear to be the case

\(^5\) *A Theory of Justice*, pp. 100-108.  
for Rawls), or be it a religious vision of history and of man. Therefore should the argument of contingency be interpreted this way (also in the extended variant suggested by Van De Veer and Rowlands), it would be incompatible with the liberal principle of legitimacy: hence, we cannot base on it our answer to the problem inherent in the identification of a principle of political personality. More generally, and I am thus resuming the reasons that led me to the introduction of a mental experiment like the pre-original position, I have been arguing that, at least momentarily, we cannot rely on any doctrine to solve this issue, since no doctrine can legitimately be deemed conclusively justified. But if we are not willing to seek a solution through the use of pure power of action, we can employ the pre-original position as a filter for our public political arguments.

The second difference about the pre-original position, between my idea and the idea held by the two authors we are considering, is related to its internal structure. In fact, Van De Veer and Rowlands do not distinguish between the condition of the representatives and the condition of the represented: in their version, those who choose the principles of justice must take a decision whereas, as a consequence of the veil of ignorance, they do not know anything about their identity and their distinctive traits. They conceive the pre-original position on the basis of how Rawls, in Theory, presents the original position: having already established that moral persons are only the individuals possessing the two moral powers, he can avoid distinguishing between those who can and must choose a political conception and those towards whom this conception will ensuingly be applied. Rawls introduces this difference only in the course of Political liberalism, not because he changes his mind about the identity of moral persons, but rather because he tries to resolve some issues concerning the just savings principle due to future generations. Regardless of the reasons for this change and of their efficacy, the change itself comes forward in its importance in order

57 This is so although explicitly Rawls excludes this interpretation of the text (A Theory of Justice, p. 584). Regarding the main differences between Rawls’s conception and a political theory such as the luck egalitarianism, that is based on the argument of contingency, see: Rawls and luck egalitarianism, in S. Freeman, Justice and the social contract, Oxford University Press, Oxford 2007, pp. 111-142.

58 Yet this does not mean: a) that the argument of contingency cannot be accommodated within the background culture of civil society, thus contributing to the formation of a reasonable overlapping consensus (about this point, see: N. Daniels, Democratic equality: Rawls’s complex egalitarianism, in The Cambridge Companion to Rawls, pp. 241-276); b) that some considerations concerning the individual responsibility cannot be accommodated within arguments proposed by the parties in the original position (and that they cannot be accommodated within the argumentations at the basis of the introduction of the mental experiment of the original position, as the luck egalitarians instead stated).
to face properly the problem of political personality. In fact, from the descriptive premise that only a few individuals can reflect on the morals and come to establish a political conception, it does not necessarily follow the prescriptive conclusion that only those individuals should be considered as moral or political persons. The distinction between representatives and represented in the pre-original (and in the original) position reflects precisely this point. This separation between roles is important, because it encourages us to reflect critically about the political personality, a problem treated often superficially. It also presents the advantage to set a pre-original position (and the original one, although I cannot further investigate that subject here) that is more feasible than the one proposed by Van De Veer and Rowlands. These authors ask us to choose principles of justice as if we did not know anything about our particular identity. However, several critics have argued that for us it cannot make any sense to ask ourselves which principles we would choose if, once lifted the veil, we discovered to be animals: in fact, they do not have the capacity to reflect on justice. Instead, a pre-original (and an original) position that distinguishes in itself between the representatives and the represented is a more natural guide for intuition. Imagining ourselves as parties, we must not think about what we would want if we discovered to be animals, once the veil is lifted: rather, we must look for the principles of justice through the greatest ability to defend the interests of all our possible represented.

2.6. The choice of the principle of political personality in the pre-original position

After clarifying the features of the pre-original position model that I proposed, we are ready to ask ourselves which principles of political personality the parties would choose in this imaginary circumstance. Obviously, the answer to this question cannot depend on a deductive argument. Therefore, to help our reflection we can follow the Rawls’s strategy once again: i.e., we can make a short list of the most important principles of political personality present in the available literature about

59 In the words of Rowlands: «the fact that the framers of the contract must be conceived of as rational agents does not entail that the recipients of the contract, that is, the individuals protected by the principles of morality embodied in the contract, must be rational agents» (M. Rowlands, *Contractarianism and Animal Rights*, «Journal of Applied Philosophy», 14 (3), 1997, p. 236).

60 A similar problem arises in relation to children. About this issue see for example: S. Brennan e R. Noggle, *Rawls’s neglected childhood: reflections on the original position, stability, and the child’s sense of justice.*
this argument and think about the choice in the pre-original position as restricted to one of those principles. Here is a short list of the most important of them:

1. all human beings must be considered political persons;
2. all those individuals possessing the ability to form, revise and pursue a doctrine of the good and the ability to act according to justice must be considered political persons (as we have seen, this is the position of Rawls);
3. all living beings that are self-conscious must be considered political persons;
4. all sentient individuals, namely all living beings able to feel pleasure and pain must be considered political persons;
5. all living individuals (from the simplest forms of life, such as unicellular organisms, up to the most complex ones, like man) must be considered political persons.

This short list does not claim to be exhaustive of all the possible positions about this topic, but I believe that in order to orient ourselves in the reflection it is more than sufficient. Now, which of these possible principles would the parties in the pre-original position choose?

I suppose there are good reasons to think that they would grant the title of political person to all the sentient beings (principle 4). In fact, we can think the status of political person to be the primary good for excellence, in the sense that having this good, namely being recognized as political persons, first of all means being recognized as somebody and not as something; and for everybody not being seen as a thing is a necessary condition in order to be considered as an individual legitimately entitled to pursue, prima facie, his/her own interests, an individual to whom, consequently, a certain part of all the other primary goods indispensable to the satisfaction of said interests is due (which specifically these other goods are, and how they should be distributed, are questions that will

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61 For a principle of this kind, see: T. Regan, *The case for animal rights*, University of California Press, Berkeley and Los Angeles 1983.
be addressed in the next steps of reasoning). I remind the reader that in this essay, as I wrote in the first paragraph, I use the term «interest» to describe the ability of an individual to perceive that an action or state of affairs is positive or negative for himself/herself: X is in the interest of A if X makes the life of A better or worse for A (1.1). Hence, the condition that an entity must meet to have interests is to be sentient, namely to feel pleasure or pain. Since being recognized as a political persons is the necessary condition for one’s own interests to be taken into account in the reflection about the way the goods available to the society are distributed, surely the representatives in the pre-original position would not maximize the interests of their represented if they chose a principle of political personality that excludes one or more sentient living beings from the title of political person.

But why, we could object, should the parties not choose to assign this title more generally to all living beings (principle 5)?

To answer to this objection, we must draw our attention to the fact that the task of the parties in the pre-original position is to maximize the interests of individuals whose specific identity they do not know. In the case of animals without sentience, of plants or of embryos, this cannot happen: in fact, it is not possible to represent the interests of those who do not have interests.

Several experts argue that some individuals, even though they are not sentients, have an ultimate end to achieve, objective interests that cannot be violated. The problem with this position is to be able to demonstrate firstly the existence of this objective interest, and secondly the existence of our moral duty to respect it. Until we cannot demonstrate this, holding a doctrine based on such two assumptions is equivalent to embrace one of the possible doctrines. As we have seen, however, if we want to build a political conception regardless of the pure power of action, we must try to search for its principles of justice independently of a specific doctrine of the good. This point is reflected in the pre-original position where the parties, while they do not know the specific identity of their represented, must wonder if they have an interest in being recognized as political persons. But, while it is possible to recognize and attribute this interest to beings endowed with sentient capacity, it is not possible to

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65 With the expression *prima facie* I intend to attribute a presumption of validity to this right: if we accept what I have sustained up to now, then from this stage of the reflection onwards we have the burden to argue in a valid way (thus respecting the constraints to the argumentation set by the idea of public reason) why and when such right can be limited or unheard (and, certainly, this is a necessary commitment in order to build a practicable conception of justice, since the interests of sentient individuals are often in contrast with each other), and no longer, on the contrary, why it must be respected.
do the same for beings without that capacity. In this connection they are
dumb, they do not tell us anything; therefore, they cannot be represented
by the parties in pre-original position. The fact that a more or less large
set of non-sentient individuals can be the object of contrasting interests,
or doctrines, is an issue that concerns the way the different primary goods
should be distributed between individuals who we have already decided
in the pre-original position that they are political persons. In fact, at that
first stage the parties must choose which individuals and therefore which
interests will have to be taken into account later in the original position:
hence, this choice cannot depend on the particular interests of any of
the represented in the pre-original position.

Another objection, similar to the previous one, could be the follow-
ing. Why, we might ask, should we embrace the very definition of the term
«interest» proposed in the first paragraph of this essay? In fact, it seems
clear that, since on this definition seems to depend the total validity of
the argumentation related to the pre-original position, we should have
good reasons to adopt it.

I believe that, within a political conception, the choice of giving a
specific meaning to a term depends ultimately on all the key meanings
of the same conception and of the social role assigned to it. In the case
of this essay: the meaning I attributed to the term «interest» is closely
related to the theme of the burden of judgment, namely to the thesis
according to which, perhaps only temporarily, we do not have a founda-
tion for any moral doctrine; in turn, this is connected to the ‘subjective’
meanings I decided to assign to the terms «good» and «violence»; and so
on..., in a network of meanings that led me to think that the social role
of a political conception must be that of placing itself as an alternative of
the arbitrary use of force in resolving interpersonal conflicts. I am aware
that the network of meanings which I proposed will meet with many
disagreements, for example from those who think they have discovered
a foundation for their moral doctrine. However, here I have assumed
the validity of the thesis for which, at least at present, we cannot deem

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66 Let us consider, for example, what Paola Cavalieri writes in her The Animal Ques-
tion: «if, when we consider how a certain being is affected by our actions, we become aware
that the being cannot care about what we do, why should we restrict our behaviour? If
the beings involved have no positive or negative attitudes towards their treatment, who
or what has the authority to tell us that we should act towards them in one way rather
than in another one? In this sense, every approach that overrides the authority of the
individual tends to become “metaphysical”» (P. Cavalieri, The Animal Question: Why
35). On the same topic, although from a different perspective, see: J.N. Shklar, Ordinary
to have a foundation for any moral doctrine: my goal is to convince of the validity of my thesis those who already agree with this assumption. Therefore, I will not discuss further this objection.

2.7. The problem of the stability of a reasonable and interspecific conception of justice

In the previous section, I argued that a reasonable political conception should give the status of political person to every sentient being: among other things, this means that a reasonable political conception must be interspecific, at least to some extent, and consequently it must engage itself in organizing and regulating the relationships not only between humans, but also between humans and other animals\(^{67}\). However, the limits of this work do not allow me to discuss this problem. In the rest of this paragraph I intend to deal with another issue, which in a certain sense is a priority compared to the one I have just left. In this specific instance, I will ask myself whether a conception of justice, in some way extended to include also the interests of animals different from the humans, can be stable. Even if I did put aside the problem of identifying with precision the principles of interspecific justice, we can in fact assume that a reasonable conception of justice is interspecific, to an extent still to be determined. Thus, in this section, I want to try to answer to this question: can individuals who grew up in institutions ruled by a reasonable and interspecific conception acquire a sense of justice able to provide them with sufficient motivations to respect its rules and principles? A negative answer to this question would make useless any further effort towards a specific elaboration of those rules and those principles and, therefore, it would invalidate the principle of political personality that I proposed in the previous pages\(^{68}\).

\(^{67}\) Henceforth, I will try to use a language appropriate to the principle of political personality proposed in the preceding section: thus, whenever possible, I will try to use a less misleading expression (in general terms, for example as in the passage to which this footnote refers, or in a more specific form, for example referring to those we usually call animals by the expression ‘non-human animals’).

\(^{68}\) I am aware of the degree of generality of the arguments that will be outlined in this section: however, my goal is just to instil doubt in those who think that any argumentation in favour of ‘animal rights’ (and therefore that argumentation I proposed in the previous pages) does not deserve even to be considered, since a political conception based upon some examples of it would certainly result to be unstable. Clearly, more detailed arguments about the issue of the stability of a reasonable and interspecific conception can be provided only after discussing the nature and the extent of our duties of justice towards other animals. One more point: it is important that it is clear that the problem of the stability does not overlap completely with the one of the realizability. In fact, while
To address the problem I have just set, drawing on Rawls’s discussion, it may be useful to distinguish between two questions, and in particular:

1. Is it possible that an individual, grown up in a society in which also animals different from humans are considered political persons, become motivated to sustain its institutions?
2. Assuming that this individual can acquire these motivations, will the latter have the strength to prevail over those arising from his own particular doctrine?

Let us start from the first point. It is evident that humans are able to feel affection towards non-human animals, or that they may be concerned about their sufferings. Firstly, these possibilities are related to our empathic capacity, namely to our ability to perceive cognitively the internal states (feelings, emotions, thoughts…) of another person: with regard to this, it is important and interesting to note that studies of psychology are today inclined to claim that the empathy of human animals towards non-human animals is not substantially different, in quality and functional consequences, from the one towards other human animals (even if, probably, our emphatic capacity does not have the same potentialities towards each non-human animal)\(^69\).

Now, I will try to propose a draft about how it might be possible to integrate the theory of psychological development of the reasonable citizen proposed by Rawls (1.5), with some considerations about how this development could proceed if we were in a society that assigned the status of political person not only to those who hold the two moral powers, but to every sentient being. For convenience, I will divide this development into three phases, too\(^70\).

At an early stage, even when new-born, the baby begins to develop his empathic capacity. In a just society he is looked after by careful and thoughtful parents: who cares for him can satisfy the baby’s needs and by appropriately expressing his own emotions can immediately provide him a reasonable model of how human relations work. At the next stage, the preschool child begins to develop language. He is more curious and

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\(^{69}\) About this subject see, for example: F.R. Ascione, *Children and Animals: Exploring the Roots of Kindness and Cruelty*, Purdue University Press, West Lafayette 2004.

\(^{70}\) The theses I will propose are largely based upon the book of Ascione cited in the previous footnote.
Andrea Passoni

constantly explores the limits of the physical and social world. Clearly, the way in which these limits are placed can affect the development of the empathic capacity: when a child observes how human and non-human animals are treated, he/she learns how to behave with them. In a just society, the child finds a guide in adults to properly interpret the body language and the cries with which the non-human animals communicate their emotional states. Thanks to these instructions, he learns to have many characteristics in common with other members of the animal world. This fact increases his cognitive awareness of the internal states of the other individuals (human and non-human animals) and, at the same time, it increases his awareness of when a particular behaviour may cause pleasure and when it may cause pain: this facilitates the establishment of good relations between him and the social world as a whole. The third stage coincides with the beginning of school going. In a just society, this institution adopts curricula that lead to further development and strengthening of the empathic capacities of the child: he continues to develop more attention to the suffering not only of humans, but also of every sentient being.

If we now try to reconsider the psychological principles belonging to reasonable citizens as suggested by Rawls in the light of the framework I have just drafted, you can feed a solid hope that an individual, grown up in a society organized according to a model of reasonable and interspecific conception, can come to acquire a sense of justice sufficient to motivate him to comply with its institutions. In fact, when an individual realizes that these institutions are justified by their rejecting any arbitrary and indiscriminate violence, and thus when he becomes aware that their function is to protect from this circumstance the individuals (human and non-human animals) to whom he feels empathy, there is a good likelihood that he is also willing to respect the principles of justice linked to such institutions71.

71 Ensuring that children develop at their best their empathic potentialities has benefits also for men. For example, it seems that a strong correlation exists between the cruelty of children towards non-human animals and their behaviour towards other humans. Many philosophers, including for example St. Thomas Aquinas, John Locke and Immanuel Kant, had affirmed the existence of such a relationship (about the philosopher-animal relationship, see: G. Ditadi, I filosofi e gli animali, Isonomia, Este 1994). Today, to give scientific support to this claim, there are many psychological studies. As a consequence of this fact, in recent editions of the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) cruelty to animals was included as a symptom of conduct disorder (Ascione, Children and Animals). In my text I did not mention what I am saying in this footnote in order not to give rise to misunderstanding: we must treat every sentient being with respect for reasons of justice and not because, indirectly, this fact contributes to the human welfare. If anything, the latter consideration may be a further motivation to
Regarding the second part of the problem of the stability, \textit{i.e.} whether the reasons related to any reasonable and interspecific conception can be stronger than those inherent in a particular vision of the good, I believe that Rawls’s solution remains valid. In fact, also in this case we can hope that, in the context of a fair society, the simultaneous development of a vision of the good and of a sense of justice lead to the formation of a doctrine able to participate to a reasonable overlapping consensus. As already pointed out, it is important that the content of this consensus is not searched for through a compromise between the interests related to the doctrines \textit{de facto} existing in an unjust society: by proceeding along that way, we would do nothing but re-propose the model at its basis. On the contrary, a reasonable overlapping consensus is the one we can hope to achieve from all those doctrines able to spread and survive in the background culture of a society ruled in accordance with a reasonable and interspecific political conception.

3.1. Possible objections

In order to consider possible objections to the argumentation that I have carried on through the previous pages, in this final paragraph I will present the way other authors think that Rawls’s theory, to be consistent, should address the issue of political personality\textsuperscript{72}.

As we have seen, Rawls argues that our duties of justice concern only those individuals who have moral personality: this principle, for example, excludes that severely disabled people and animals be considered political persons (1.3, 2.1). This position has been, and continues to be, the object of great attention by many thinkers. They can be divided into three categories.

Firstly, there are those who think that the rawlsian contractualism cannot, without destroying itself, extend the idea of public reason and that of justice as fairness to determine our duties of justice towards severely disabled people or non-human animals: I call this thesis exclusivist.

Secondly, there are those who argue that Rawls’s theory can be extended so as to attribute the status of political person to every human being but not to the rest of the animals: I call this thesis partially exclusivist.

Finally, there are those who believe that this extension can and should include not only every human being, but also many other animals: I call this thesis inclusivist.

\textsuperscript{72} As I wrote in the introduction to this essay, in these pages I move within the rawlsian paradigm and, therefore, the objections I am going to discuss are only those made by the authors that show to share such paradigm, or assume to do so.
The position I have argued in the preceding paragraph belongs to the third group: however, even if the conclusion is the same, we will see that my argumentation differs in several aspects from the one by other inclusivist thinkers.

3.2 The arguments in support of the exclusivist thesis

A large number of authors argues that the rawlsian contractualism, for reasons of internal consistency, cannot extend the duties of justice towards those who are devoid of the two moral powers.

The argument of mutual advantage

In a famous book of his, Brian Barry distinguished two models of theory of justice. The first one is based upon the idea of justice as mutual advantage: in this view, just these principles are those that an individual can sustain as a consequence of his personal interest. Instead, the second model is based upon the idea of justice as impartiality: in this case, the just principles are those that take the interests of all into equal account. Here is how Barry identifies the difference between the two models:

[...] under the first approach the agreement is allowed to reflect the fact that some people have more bargaining power than others. It is bound to do this because it appeals to self-interest as the motive for behaving justly.[...] The second approach, however, is not constrained by the requirement that everyone must find it to his advantage to be just. It can therefore afford the luxury [...] of detaching justice from bargaining power73.

Now, some thinkers argue that Rawls is obliged to accept the exclusivist thesis because his conception of justice is based upon the idea of mutual advantage, at least to certain extent74. As first evidence to support their conclusion, they draw our attention to the rawlsian discussion about the circumstances of justice, in particular to those concerning the equality between the force of individuals and their mutual disinterest (1.6). Obviously, if an individual, in order to have rights, must have physical skills similar to the others’ ones, and if everyone thinks about the realization only of his own interests, disabled people and non-human animals...
are excluded from justice. A political conception built starting from the circumstances of a justice of this kind accepts that only those who possess sufficient power to demand their claims be considered political persons.

The second evidence that the authors who read justice as fairness according to the line of interpretation of the mutual advantage bring in support of their conclusion, underlines the meaning that in *Theory* Rawls repeatedly assigns to the society: «a cooperative venture for mutual advantage». This definition shows that people enter the society because from their union they hope to gain something more, if compared to the case in which everyone should himself provide to satisfy his own needs. Evidently, in this view, if the advantage that an individual derives from social cooperation is missing, the only reason for him to be willing to take part in it disappears as well. Since normally the disabled people and the non-human animals are not productive, and therefore it is not useful for a person with normal abilities to cooperate with them, they should not be considered political persons.

In his *Theory* Rawls welcomes the circumstances of justice and in it there are many passages (such as those based upon the idea of society as «a cooperative venture for mutual advantage») that legitimately can make his political conception be interpreted as based upon the idea of mutual advantage. However, this reading is incompatible with the liberal principle of legitimacy. It states that power is legitimate only when it is in accordance with a constitution that could be accepted by reasonable and rational people. One aspect that characterizes the reasonableness of people consists in their willingness to accept that the terms of cooperation of the society are set regardless of the pure power of action available to everyone. In this perspective, then, in order that a person can be included in the sphere of justice as owner of legitimate claims, it is not necessary for him to have a power equal to the others. All interests, independently of the capacity through which they may be pursued, are entitled to some consideration. The motivation mutually disinterested of the parties in the original position does not prevent this claim but, rather, it makes it binding. On the other hand, assuming that all people are benevolent and have an interest to meet the needs of others is a hypothesis, that beyond being unrealistic is also inconsistent with the idea of public reason. In fact, it seems to rely on a particular vision of the good: still, as I repeatedly stressed, if we accept the idea underlying the political liberalism, we cannot build our political conception, or our original position, from a moral doctrine for which we do not have a valid foundation.

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75 In this regard, see: Barry, *Theories of Justice*, pp. 160-163.
76 See, for example: *A Theory of Justice*, p. 4.
77 Some of the proposals to revise the disinterested motivation of the parties and to construct a benevolent contractualism were made by: M. S. Pritchard and W. L. Robinson,
As for the way of understanding the society, we must remember that in *Political Liberalism* it is no longer defined as «a cooperative venture for mutual advantage», but as «a fair system of cooperation over time»\(^7\). According to this new definition, the benefits that all the people should obtain from cooperation must be established on the basis of a reasonable conception of justice, without reference to what everyone could achieve in a hypothetical state of nature or in an unjust society. It is clear that a social cooperation as conceived stands in contrast with the idea of justice as mutual advantage.

Should we abandon the liberal principle of legitimacy, or should we leave the definition of society present in *Theory* and those circumstances of justice regarding the relative equality between the powers of individuals and their partial mutual disinterest?

Given the key role that the idea of fair terms of cooperation has in the Rawlsian political conception, and since, for reasons I hope will be clear to the reader at the end of this essay, I recognize to a conception of justice based upon it a normative force superior to a conception based upon the idea of mutual advantage, I believe it is possible and desirable to maintain and preserve the liberal principle of legitimacy. If we accept this interpretation, the idea of mutual advantage finds no place within the Rawlsian conception, and therefore cannot provide any valid argument to support the exclusivist thesis.

*The argument of sense of justice*

Another position diffuse among thinkers is the one according to which the morally relevant characteristic that justifies the exclusivist thesis consists in the capacity to have a sense of justice. After all, the capacity to have interests is common within many animals, not just within humans. Instead, the ability to agree and respect contracts is exclusive only to the latter: only they, it is said, are entitled to be considered as political persons. It is important to note that this argument is different from the one about mutual advantage. In this case, the discriminant does not consist in the level of power possessed by individuals: it is enough that they have the capacity to respect the principles of justice granted.

But why should this capacity be considered morally relevant? An argument that is not circular (the sense of justice is morally relevant because who has no sense of justice is not a political person) may con-

\(^7\) See, for example: *Political Liberalism*, p. 15.
sist in underlining its importance in order to maintain the stability of a conception of justice. This is the position that Rawls seems to embrace. For example, with specific reference to this moral power, in his *Theory* he wrote: «while I have not maintained that the capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict justice anyway to creatures lacking this capacity»\(^7\). Why does the possession of this capacity by citizens of a just society help to conserve its institutions over time? In my view, the link between stability and sense of justice consists in the security of knowing that what is justly due to me is not jeopardized. Let us recall the second postulate of the reasonable psychology presented by Rawls (1.5):

2) When they believe that institutions or social practices are just, or fair […] , citizens are ready and willing to do their part in those arrangements, provided they have sufficient assurance that others will also do theirs.

Our author seems to argue that, if an individual is aware that other individuals have a sense of justice, then he can have confidence that they comply with the law, and therefore he can maintain a reasonable expectation to receive what he is entitled to: consequently, he does not have any reason to violate the principles of justice. Surely, the eventuality can also arise that someone else (who is capable of understanding and willing) breaks the law: however, in this case you would expect that the guilty is punished, and to the extent that happens, he still has no valid reasons for violating the fair terms of social cooperation. But why would the attribution of the status of political person also to those who lack the capacity to act according to justice change things? If I were aware that an individual is devoid of this capacity, I certainly would not expect that he acts respecting my rights: however, this does not justify the indiscriminate use of force against him. In fact, the laws of a State may be framed in a way that prevents him from injuring my person or my property, and should that happen anyway, in such a fashion that provides forms of compensation: my rights would not be put under discussion, thanks to such devices, and therefore I would remain without reasons to violate the principles of justice.

It is important to stress that these considerations are not inconsistent with the postulates of reasonable psychology suggested by Rawls. To attribute the status of political person to people who lack capacity to make promises or pacts is not an unreasonable psychological behaviour.

\(^7\) *A Theory of Justice*, p. 512. Also in *Theory*, p. 510: «Those who can give justice are owed justice». See also: *The Sense of Justice.*
since it does not necessarily threaten the stability of a well-ordered society, and it does not seem to represent a utopian attitude for citizens who have developed their sense of justice in a fair society, given that a legal protection for disabled people is now widely and generally accepted by most citizens of democratic countries. Therefore, neither the argument of the sense of justice seems to constitute a valid reason in favour of the exclusivist thesis.

3.3 The arguments in support of the partially exclusivist thesis

According to the proponents of the partially exclusivist thesis, severely disabled people, however excluding non-human animals, could and should be considered by Rawls political persons just like the individuals with the two moral powers.

The argument of considered convictions

The first argument that I examine in support of the partially exclusivist thesis is based upon the concept of considered convictions. Some authors argue that our beliefs, while they are in contrast with the inclusion of non-human animals in the sphere of justice, are converging to the view that all humans should be given the status of political persons.

The response to this argument is double. If the considered convictions which it intends to consider are those that belong to reasonable people, then the argumentation proposed in the previous pages is my answer to it. But let us instead say that the considered convictions which this argument intends to consider are those specific of people that are not reasonable. Thus, let us suppose that a unanimous consensus on a particular principle of political personality exists, or that someone is willing to accept that the legitimate principle is the one accepted by the majority of people. Due to the burdens of judgment, we are not able to demonstrate that this principle is just because it is in accordance

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80 Formally, the argument of considered convictions (as well as the next one, dealing with the potentiality) is not necessarily related to the partially exclusivist thesis. However, since they both have mainly been used to justify the attribution of the status of political person to all human beings but not to the rest of the animals, I entered them for discussion in this paragraph.


with the objective truth: more in general, for the time being we cannot attribute that value to any moral principle. So, even if a widespread agreement were detected between our considered convictions, it would not be an evidence of their objective truth, but only the manifestation of a convergence of interests. Thus, the choice must be made between a criterion decided by the pure power of action and a criterion established instead regardless of it. In the previous paragraph I tried to show that if we opt for the latter, then we should give a certain consideration also to the interests of non-human animals, independently of the opinion of the majority of human animals and of their capacity to agree on legitimacy of the use of arbitrary power against non-human animals.

The argument of potentiality

According to Rawls, to have moral personality an individual must possess the capacity to develop a vision of the good and the capacity to develop a sense of justice. It is worth remembering he writes that «the minimal requirements defining moral personality refer to a capacity and not to the realization of its»\(^83\).

From the latter consideration, some authors have proposed an extension of justice as fairness so as to confer the status of political person to every human being\(^84\); in fact, every member of the human species, even though he has not yet realized the capacities necessary to achieve that title, has in any case the potentiality to do so. On the contrary, animals different from the humans do not have such potentiality, and thus they should not be regarded as political persons.

The most obvious difficulty faced by this argument consists in assuming part of what should instead be argued: the issue is why the two moral powers should be considered as the morally relevant characteristics, even when considered in their potential state.

Furthermore, as many authors have pointed out, this argument neglects the difference between being in potential and being in act. The fact that I have the potentiality to become Prime Minister does not mean that, currently, I should be entitled to the same rights of the Prime Minister. Similarly, from the fact that in potential children or disabled people are political persons does not necessarily follow that they are immediately treated as such\(^85\).

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\(^83\) A Theory of Justice, p. 509.

\(^84\) Among many, see, for example: R. Di Silvestro, Human Embryos in the Original Position?, «Journal of Medicine and Philosophy», 30 (3), 2005, pp. 285-304. Adding himself to a long list of thinkers, the author uses the argument of potentiality to justify the extension of our duties of justice even to human embryos.

\(^85\) The criticism to the argument of potentiality has now already a vast literature: therefore, I will not discuss it further, and I remand the interested readers to the follow-
The argument of stability

Another possible argument in support of the partially exclusivist thesis is the one suggested by Peter Carruthers. Once established that rational agents are political persons, he attributes the same status to all those human beings who lack rationality, such as children and disabled people, by appealing to the value of stability.

Rightly, the author points out that one of the main objectives that a political conception must reach consists in the ability to know how to maintain itself over time: amongst other things, this means that the burden related to the consequences of implementing the principles of justice must be psychologically bearable for the citizens. But a universal characteristic of the human behaviour, Carruthers continues, consists in the possibility to feel sentiments of attachment towards all human beings, whether or not they are rational agents. Let us imagine a society where a status different from the one of other humans is assigned to people with disabilities. The protection of their interests would completely be at the discretion of moral agents: they could be killed for reasons of public interest, for example in order to be used as guinea pigs in scientific experiments and researches. But «we can see in advance that these arrangements would be highly unstable. Those whose loved ones were at risk would surely resist with violence, and would band together with others to so resist».

Carruthers says that, to avoid these dangerous circumstances, the moral agents must assign their equal status of political persons to all human beings, including people with disabilities.

We might be tempted to use the same chain of arguments to justify the award of the same title to animals: after all, many of us experience sentiments of affection towards them. However, the author says, this would be a mistake. Indeed, sentiments of attachment that some of us can feel


86 Carruthers embraces a form of contractualism according to which only the rational agents have rights within the sphere of justice. In particular, a moral agent is every creature that is «capable of governing its behavior in accordance with universal rules (such as «Don’t tell lies»), and that is capable of thinking about the costs and benefits of the general adoption of a given rule, to be obeyed by most members of a community that includes other rational agents». Carruthers attributes the same position also to Rawls, thus distancing himself (at least partially) from the reading proposed in this essay. Anyway, this difference is not relevant to this discussion. See: Carruthers, Against the moral standing of animals, p. 2.

87 Carruthers, Against the moral standing of animals, p. 6.
Rawls’s idea of political liberalism and the ‘animal question’

towards some animals are not a universal component of human nature, but rather the result of culturally induced beliefs. But we must «recall that rational agents engaging in the contract process are forbidden from appealing to any antecedent moral beliefs – whether their own or other people’s. (This is because moral truth is to be the outcome of the contract, and shouldn’t be presupposed at the outset»88. It would be a mistake, Carruthers claims, to include in the sphere of justice even animals.

It is possible to advance at least three criticisms towards the argument of the stability.

Firstly, if the reason according to which we should consider also children and disabled people who hold legitimate political claims is that, by doing so, it is possible to maintain the stability of society, there is nothing that in particular circumstances could not force us to consider also the non-human animals as owners of similar claims. Indeed, if a group of animalists were able to carry out terrorist acts thus jeopardizing the continuing existence of social institutions, we might be forced to yield to their demands and to give the status of political persons also to the non-human animals they are trying to protect. It seems clear that such a society would not be organized according to the liberal principle of legitimacy: are we available to accept this fact and to allow that the decision on the inclusion of an individual in the sphere of justice depends on the power with which he, or someone who feels affection for him, is able to assert his interests?

Carruthers might reply to what I have said resuming the idea according to which the interest of some individuals to the protection of animal rights is a conviction that expresses political values different from the reasonable ones: if a reasonable political conception must do without any reference to those values, then we cannot let them fall within the reasons in favour of a inclusivist thesis. Notwithstanding, and so I arrive to my second criticism, the criterion by which the author distinguishes between a reasonable political value and an unreasonable value is different from the criterion used by Rawls. He seems to argue that while the first kind of values is derived from an innate instinct of the human nature, the second depends on the culture; instead, for Rawls a reasonable political value is the one that can be detected by developing the liberal principle of legitimacy and the three key ideas associated with it, while an unreasonable political value is the one unobtainable from this principle and these ideas. What we should ask is: do we have any good reasons to embrace the criterion of Carruthers and to refuse Rawls’s one? I believe we do not. In fact, I think it is difficult to maintain the thesis

88 Carruthers, Against the moral standing of animals, p. 8.
that all beliefs deriving from some innate human impulses, such as aggression, should be regarded as reasonable political values, as a result of this relationship. Moreover, it remains highly doubtful the idea that the sentiments of affection that a human animal can feel towards an animal are never innate but always culturally induced: the empathy of human animals to non-human animals (as I mentioned in 2.7) does not appear to be substantially different, as regards quality and functional consequences, from the empathy towards other humans.

Let us come to the last criticism. Even assuming, for the sake of discussion, that the first two objections to the argument of the stability pointed out by Carruthers are not valid, it remains to be explained, in a manner consistent with the recognition of the limits set by the burdens of judgment on our moral reflection, why we should accept that rationality be the criterion by which we can establish which individuals should be considered political persons and which should not.

3.4. The arguments in support of the inclusivist thesis

Another group of authors argues that, to be fully consistent with his theory, Rawls is obliged to extend our duties of justice to include not only all human beings, but also many other animals. One of their arguments, the one of the contingency, has already been discussed in section 2.5. Next, I will address another important inclusivist argument.

The argument of marginal cases

In some passages of his works, for example mentioning the argument of the potentiality or discussing the issue of paternalism, Rawls seems to hold the partially exclusivist thesis. However, many authors think that all the arguments in favour of this view are doomed to failure: in particular, they believe that there is not any morally relevant characteristic that can be used to give each human being, but not other animals (at least, to a part of them), the title of political person. This is the argument of marginal cases. Briefly, his argumentative model is the following:

Premise 1: X is the characteristic identified as morally relevant.
Premise 2: There are human beings, the so-called marginal cases, who do not have any X.

89 About this argument, see: D. Dombrowski, Babies and Beasts: The Argument from Marginal Cases, University of Illinois Press, Champaign 1997. Considered what I have sustained in the previous pages, in this paragraph I will take under consideration only the non-foundationalist version of the argument of marginal cases.
Conclusion: Either these humans are given the same consideration given to non-human animals that do not have any X, or the premise 1 must be abandoned.

Let us suppose that language, or that a minimum of intelligence, is the characteristic to which we attribute moral relevance. We have to admit that there are some people who for various reasons, such as serious illness, do not possess this characteristic. At this point, if we exclude the argument of potentiality (I discussed its difficulties in 3.3) two solutions remain available. The first one consists in attributing to these marginal humans the same consideration we have for all those non-human animals that, like the former ones, do not possess the ability to speak or are not intelligent enough. The second one consists instead in identifying other morally relevant characteristics: specifically, if our goal is to extend our duties of justice towards all human beings (according to these authors, this is the aim of Rawls), then we must look for properties owned by all humans without exception. Excluding the membership to the same species (a property that is considered morally irrelevant by the defenders of the argument of marginal cases, and not only by them), the only characteristic possessed by all humans indistinctly is the ability to feel pleasure and pain. But this is a property that belongs also to many other animals. From this fact, the conclusion of these authors is: if Rawls wants to remain faithful to his intention to give all human beings political personality, then he can only pose the ability to feel pleasure and pain as a morally relevant characteristic, and therefore he must consistently assign the same status to all those non-human animals that have the same sentient capacity.90

The argument of marginal cases is not inconsistent with the suggestion made by the liberal principle of legitimacy: rather, its limits consist in a certain incompleteness. In fact, it leads us to discard the possibility of embracing the partially exclusivist thesis, but it provides a limited framework within which we should decide whether to accept the exclusivist or the inclusivist thesis. This argument invites us to choose between a society where our duties of justice are extended only to human animals with the two moral powers and a society where our duties of justice are extended to all human animals and to all sentient non-human animals. The idea of a reasonable conception of justice puts us in front of a more general choice: in fact, it invites us to choose between a conception of

justice that depend on the pure power of action and a conception built, instead, regardless of it.

**Conclusion**

In the preceding pages I have been looking for a possible answer to the question: «Who should be treated according to an idea of justice?». In particular, from a reinterpretation of the rawlsian idea of political liberalism, I have sustained that all the sentient beings should be considered political people, namely holders of particular political rights and/or duties. As I have previously noted, having developed such an argumentation does not mean having a theory of interspecific justice. To reach this result, there are problems still to be solved: all the problems related to the question of what these rights and these duties should specifically be, as well as all the difficulties linked to the identification of a workable balance between them.