

SECTION

3

# SECTION 3

## PERSONAL IDENTITY AND MATTERS OF (INTER-GENERATIONAL) JUSTICE

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# DEMOCRACY, AGEING, DISABILITY<sup>1</sup>

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## abstract

*In this paper, we discuss the democratic inclusion of individuals with severe cognitive disabilities and in advanced age with a severe decline of cognitive capacities. Without entering in the question whether the latter condition can be conceptually subsumed in the former, we deem that they present analogous problems from the perspectives of justice. Thus, it is helpful to discuss them together. We specifically comment on the inclusion in democratic processes of individuals that lack a high degree of cognitive capacities. The fundamental problem is present in theories of justice that require such capacities for inclusion of persons as equals in political processes. Such is the demanding deliberative democratic proposal of social contract theories, such as John Rawls's. Worries of exclusion regard two stages of reasoning about justice. The first is the theoretical stage where decisions are made about which individuals should be included in the scope of justice. Although this stage is shaped around the hypothetical reasoning of reasonable and rational persons, there is no decisive reason to exclude individuals with severe cognitive disabilities as beneficiaries of justice. On the contrary, if commonly shared judgments require such inclusion, then this demand shapes the social contract hypothetical reasoning. There are also no decisive reasons why a deliberative democratic theory based on such social contract theories should exclude individuals that do not have high cognitive capacities at the second stage – that of democratic decision-making. On the contrary, their presence and expressive resources are precious sources of knowledge at this deliberative stage, while fairness requires their participation at the stage of decision-making. At this stage, their presence can be complemented by guardians who express the will in their name.*

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## keywords

*deliberative democracy, severe cognitive disabilities, social contract theories*

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The present paper is concerned with the possibility of formulating a demanding version of deliberative democracy that is inclusive of individuals with severe cognitive disabilities and senior members of society that have severely impaired cognitive capacities.<sup>1</sup> In this endeavour, we are aware of the fact that we cannot simply subsume severe decline of cognitive capacities in advanced age under the concept of severe cognitive disabilities. We distinguish the two concepts to remain neutral in relation to definitions of disability. In particular, this is to remain neutral in relation to those definitions that do not classify as disabilities conditions correlated with specific reference groups. In accordance with this view, decrease of cognitive capacities would not be classified as cognitive disability, the same as increase of blood pressure would not be classified as a disease, if correlated with ageing. However, crucially for the aims of this paper, conditions of persons in advanced age with decreased cognitive capacities are related to problems and issues that overlap with those of individuals with severe cognitive disabilities in general. This justifies addressing the questions together, at least to a certain point. Specifically, in the perspective adopted in the present paper, there are plausible reasons to distinguish two cases in the context of the dispute about a general inclusion in the scope of justice that have different normative considerations. On one hand, there is a question of inclusion of individuals that suffer from a decline of cognitive disabilities because of ageing after having been cooperative and economically productive members of society. On the other hand, there could be individuals that have severe impairments in their cognitive capacities and have never had the capacities for being cooperative and economically productive members of society. But, as we see below, the problems become analogous when we discuss entitlements for exercising political rights and democratic equality. Namely, at least for views such as those of deliberative democracy models, only relevant merit is actually having the capacities for competent deliberation and political participation, which would be exclusive of all individuals with severely impaired cognitive capacities, independently of causes.

Democratic inclusion in a deliberative democratic conception is a demanding project. Namely, “deliberative democracy is understood as a form of democracy that values discussion, reflection and consideration over mere voting” (Raisio *et al.*, 2013, p. 79). This definition seems to directly exclude individuals with severe cognitive disabilities. The enterprise appears even

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<sup>1</sup> In some of the upcoming parts of the paper, where the normative issues overlap and are analogous, we refer to all of them as ‘individuals with severe cognitive disabilities’.

more difficult considering that we endorse a particularly demanding form of deliberative democracy, based on John Rawls's proposal (1999; 2001; 2005). His theory is shaped around a conception of legitimacy that precedes democratic deliberation and stems from theoretical reflection that gives form to the basic structure and the principles of justice of a well-ordered society (2001; 2005). Such theoretical reflection is constituted by a thought experiment constructed in order to operationalise our fundamental convictions about justice. In the thought experiment, it is imagined that there are contractors who represent reasonable and rational persons.<sup>2</sup> Because one of these fundamental convictions is that no one must be (dis)advantaged by their (un)favourable contingencies, and in order to operationalise this idea, contractors are imagined to be behind a veil of ignorance about their particular and contingent life circumstances. In Rawlsian terms, contractors are in an original position. The veil of ignorance in the original position provides them with general information about the context for which they make choices but deprives them of all particular information about the reasonable and rational persons that they represent (2001). This operationalises the idea that no one must be favoured by contingencies when the fundamental principles of justice are being selected.

Importantly, for Rawls the problem of justice discussed through the thought experiment based on the original position is constituted by looking for fair terms of cooperation between free and equal productive members of society and resulting principles of justice. These are defined as "the principles that free and rational persons concerned to further their own interests would accept in an original position of equality as defining the fundamental terms of their association" (Rawls, 1999, p. 10).

The principles of justice and political values that result from this thought experiment are, then, used as valid public reasons in the deliberative democratic process which results in concrete political decisions. This means that, when debating in democratic processes about the interpretation and the application of general principles of justice, persons need to justify public decisions through reasons based on the fundamental principles (requirements of justice) that are developed as outputs of the thought experiment.

In summary, within the Rawlsian framework, there are two distinct levels: firstly, there is the phase of inclusion in the scope of justice and selection of fundamental principles of justice (based on the original position thought experiment), and secondly there is the phase of concrete democratic decision-making which is based on, and constrained by, shared fundamental principles of justice selected in the first phase.

It could seem at first that the individuals with severe cognitive disabilities would be excluded at both stages of reasoning about justice. On the other hand, there could be separate considerations that regard individuals that suffer from severe cognitive impairments as a consequence of ageing. They could generally be included in the scope of justice (and diverge, in this way, from the case of other individuals with severe cognitive disabilities). However, they can still remain excluded from the exercise of democratic rights and thus their status would be analogous to the former case.<sup>3</sup>

When it comes to the original position thought experiment, it might be argued that individuals with severe cognitive disabilities are not represented in it because (a) only

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2 These persons are distinct by reasonableness – i.e., the sense of justice, "the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation" (2005, p. 19) – and rationality – "the capacity for a conception of the good [that is constituted by] capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good" (2005, p. 19).

3 We express our gratitude to a reviewer of *Phenomenology and Mind* for having remarked the need to highlight the distinction.

reasonable and rational persons are represented and (b) the goal of the thought experiment is to shape fair relations between productive members of society. As a consequence, they would not be included in the scope of justice, and by extension they would not be considered as covered by principles of justice (Clifford, 2012; Clifford Simpican, 2015; 2016; Kittay, 1999; Nussbaum, 2006). On the other hand, when it comes to the democratic stage, individuals with severe cognitive disabilities (including those whose condition is a consequence of ageing) might be deemed excluded because they are unable to participate in virtue of the high inclusion threshold required by deliberative democracy (Clifford, 2012; Schramme, 2024).

This line of proposals is a target of criticisms of discrimination against individuals with severe cognitive disabilities. These criticisms are based on the idea that it is not warranted to exclude individuals with severe cognitive disabilities neither from inclusion in the scope of justice in general, nor from exercising specific democratic rights (Clifford, 2012; Nussbaum, 2009). Such exclusion represents a violation of the principle of equality of all citizens and constitutes ableism. Unjust exclusions can have two distinct general causes. The first can be directly seen above. Thresholds for admission, when certain disabilities are present, are raised too high to be sufficiently inclusive. The second distinct cause is wrongful attribution of cognitive or communicative disability when such disability is in fact not present. In such cases persons are excluded from political processes, even though they do not lack the required abilities (Bérubé, 2009; Knight, 2015). Even “anticipation of future loss informs credibility judgements” (Young et al., 2019, p. 79) and speakers may be assessed as less credible than they actually are. Typical cases of such injustices are related to ageing (Spencer, 2023).

These criticisms and theses do not cohere fully with common intuitions. On the one hand, there is an increasing awareness of the need to include individuals with severe cognitive disabilities in the scope of justice. On the other hand, in general, it is commonly believed and reflected in institutional practices that participation in political processes requires demonstration of relatively high threshold of cognitive capacities (Raisio et al 2014, pp. 78-79). We agree with authors who argue for the general inclusion in the scope of justice, as well as with those who advocate the inclusion of individuals with severe cognitive disabilities in democratic processes. Full legitimacy requires democratic validation with inclusion of individuals with severe cognitive disabilities. We base this position on two key arguments. The first is that the collective epistemic level in the deliberative process increases as these individuals are included (Schramme, 2024) – this is the epistemic argument. The second is that they deserve fair representation in democratic processes where the general principles of justice are interpreted and applied (Nussbaum, 2009) – this is the argument of political equality. Otherwise, there would be a risk that their interests will be only partially or marginally considered. However, we also believe that the democratic process must be characterized by reasonableness and rationality that includes (a) a reasonable response to highly complex public issues that require high level of expertise, (b) a sense of justice. In order to find balanced answers to all indicated desiderata of inclusion and of qualification, we elaborate a model that considers potential types and forms of proper representation and participation of individuals with severe cognitive disabilities.

We firstly present and comment on criticisms addressed to theories that actually or allegedly include in the scope of justice only reasonable and rational persons, through models of reasoning that embrace exclusively reflection based on these capacities. These criticisms can aim either at the first stage of reasoning about justice (the theoretical stage) when individuals that have never had capacities for being reasonable and rational are concerned, or at the second stage of reasoning (the democratic decision-making stage), where both these individuals, including individuals who have lost the capacities to be reasonable and rational because of ageing are concerned.

We analyse both of these types of criticisms and their implications for liberal theories of political legitimacy. As it regards the criticism that a Rawlsian political theory is insufficiently inclusive already at the first stage, we begin by seriously taking in consideration that such an omission would be a grave flaw. From there, we sketch possible replies to the challenge through re-elaboration of Rawls's original theory. We do not elaborate full conceptions but only show prospective solutions. The intention is to give initial legitimacy to the theoretical, fundamental and more general stage of reasoning about justice, where the frame of a well-ordered society takes form through the imagined reasoning of reasonable and rational persons.

Following that, we present and discuss criticisms of real-life democratic models that attribute a role only to reasonable and rational persons, which would correspond to the second stage of reasoning about justice and political arrangements. We show, but do not fully endorse, a reply to these criticisms. Finally, we describe a proposal that includes the voices of individuals with severe cognitive disabilities, while preserving justification through valid, reasonable and rational reasons.

1. Critics of social contract theories are sceptical about theoretical reasoning that gives form to the basic structure and constructs principles of justice of a well-ordered society through a model based on hypothetical exchange of reasons between reasonable and rational persons (Clifford Simplican, 2015; 2016; Kittay, 1999; Nussbaum, 2006). Such is the Rawlsian constructivist conception of justice that we describe above and that we generally endorse (Rawls, 2001; 2005).<sup>4</sup> The target of the criticism is this constructivist proposal, while theoretical reasoning prior to democratic deliberation as such is not under dispute in this debate. Critics of the social contract model themselves tend to reason theoretically about the fair distribution of rights and entitlements and do not tend to leave giving form to the basic structure to democratic procedures alone. We believe that this is justified. However, their view is that this must be done by identifying the proper basic structure and the principles of justice and attributing them to all humans instead of constructing them through the mediation of a thought experiment that reflects reasons that reasonable and rational persons can address to each other. We think, on the contrary, that the social contract constructivist proposal is superior to their alternative of directly establishing rights, entitlements and other foundations of political structure.

The problem is that rights and justice do not speak by themselves. They are always established by someone's reasoning. This can be done in two ways. One option is that a single theoretician's reasons based on the premises and theoretical constructions that they find valuable independently of whether they could be shared by other reasonable and rational persons. For example, a theoretician can reason by starting from her view about the conception of human dignity, or basic needs of human being, etc., even when these are controversial among reasonable and rational persons and derive conclusions for what she deems the justified conception of justice. Another option is that they can reason through imagining what would be the consensus or convergence among all reasonable and rational persons, which is the Rawlsian option. The question, then, is why the thought of an individual philosopher or theoretician is a better guarantee of fairness and equality, than reasoning through a thought experiment that is supposed to operationalise the reasons that all reasonable and rational persons can offer to each other? The answer must be found in a

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<sup>4</sup> The proposal is constructivist, because principles of justice are shaped through an idealized theoretical procedure and not recognized as having validity previously to it.

comparison of benefits and disadvantages on both sides. To start, we present criticisms of social contract theories that highlight the problems of attributing authority to consensus or convergence among reasonable and rational persons and that favour attribution of rights and entitlements independent of such mediation.

Eva Feder Kittay illustrates the ableist privileging of rationality as the central moral feature in a wide philosophical spectrum. She speaks about Aristotle who deemed rational deliberative capacities as the factor which confers a unique moral status. However the primary target of criticism, targeting a frequently endorsed stance and the most relevant for this paper, is represented by the social contract tradition. For example, John Locke considered rational capacities as defining not only equal citizenship, but also personhood itself. Immanuel Kant considered the capacity to rationally reflect about morality as what attributes dignity (Kittay 2001).

Lucas G. Pinheiro analyses Kant's thought (2016) and says that marginalization and exclusion is not only due to the too high threshold that excludes persons with disabilities, but also the way people with disabilities are depicted. Their exclusion, thus, does not depend only on the moral and political philosophical components of the social contract theory of inclusion. They are characterized as deviant, or lacking, independently of whether they possess capacities for reasonableness and rationality.

Such historical analyses are relevant, but the crucial question in the present paper regards the potentialities of social contract theories in their contemporary forms. Here, the central target is John Rawls (1999; 2005) who is, in fact, the central character of contemporary social contract theories. Kittay describes the main characteristics of his theory that, in her view, constitute the basis for the exclusion of individuals with severe cognitive disabilities (2001). The role of justice is to explain how a fair cooperation among free and equal persons would actually look like, with its distinct requirement related to capacities to recognize, revise and realize conceptions of the good, as well as to recognize and act on fair terms of cooperation. The result is exclusionary for individuals who do not correspond to the description: "Where in this moral universe – and in a social/political world so represented – is there room for those whose rational, reasonable, and reasoning capacities are impaired, perhaps severely? A conception of the primary goods is not tailored to their lives." (Kittay, 2001, p. 564). As a result, says Kittay, those who do not correspond to the capacities for being equal parts in social cooperation, as she says - the "dependents", are put at the periphery of the political (Kittay, 1999, p. 76).

Martha Nussbaum (2006) similarly denounces the alleged insensitivity of social contract theories to the inclusion of individuals with severe cognitive disabilities in the scope of justice. She does so based on their proceduralist form through her analyses of the prominent expression of these theories, i.e., Rawls's (1999, 2001; 2005). There are no rights or status in justice recognized prior to a procedure where idealized reasonable and rational persons deliberate about justice. They are the only persons that have a voice in the deliberative process. In such a procedure, the voices of individuals with severe cognitive disabilities are not even heard (Nussbaum, 2006,). The consequence is that justice benefits only reasonable and rational persons. To be sure, the fact that the scope and content of justice is established by a procedure that mirrors only the capacities of reasonable and rational persons does not necessarily mean that other individuals are excluded. Persons who construct justice do not necessarily exclusively correspond with those that are beneficiaries of justice. However, in Nussbaum's view the initial defect burdens Rawls's theory overall.

Stacy Clifford Simplican (2016) indicates that there appears to be a space for the inclusion of individuals with severe cognitive disabilities in Rawls's social contract theory. First, there is Rawls's claim that a conception of justice must grant inviolability to all agents even when

denying this would favour welfare of others. Second, when fictitious contractors deliberate about justice, they are unaware of their positions. This permits to shape a frame of choice of a conception of justice where no one is disadvantaged by their actual capacities (Clifford Simplican, 2016). However, these possibilities are not used by Rawls himself. On the contrary, he focuses on questions of justice by excluding persons with disabilities not able to cooperate and analyses questions of justice by having in mind people that he describes as in possession of “normal capacities”. Clifford Simplican finds Rawls’s determination of the “normal capacities” in an early Rawls’s article (1999/1951). In that article, Rawls speaks of determination of “normal capacities” through an intelligence test. This is a flaw, in Clifford Simplican’s view, because it gives normative strength to statistical data. Normality, then, becomes an imperative and subnormality determines a disadvantaged, or even none, role in justice (Clifford Simplican, 2016). Besides, individuals with cognitive disabilities that are deemed abnormal are put at the periphery of questions of justice. On the basis of, for example, Rawls’s declaration that reflections on justice must start from relations between reasonable and rational persons, while leaving aside for the moment questions of individuals with disabilities that raise pity and anxiety (Rawls, 1999/1975), Clifford Simplican concludes that Rawls’s social contract view is characterized by exclusion of attention directed to individuals with disabilities, in order not to contaminate our reasonableness and our sense of justice. Reflection on justice is thus impoverished by ignorance of the prejudices, social barriers, segregation etc. that burden lives of individuals with severe cognitive disabilities and which are, in this way, depoliticized by Rawls (Clifford Simplican, 2016). In brief, Rawls’s conception of justice is characterised by an ableist conception of citizenship, where individuals with cognitive disabilities are not only harmed by being relegated to the periphery of questions of justice, but also by a normative idea of normality.

In addition, Clifford Simplican objects, in Rawls’s theory there is a naturalisation of social differences, where having less abilities is equated to being in a less advantaged position in society and the least advantaged are equated with those in a condition of impairment. Rawls declares that there is interconnectedness between the most and the least advantaged in the sense that the former must justify their societal advantages through showing that they favour also the position of the least advantaged. But, Clifford Simplican says, this is a source of tensions and barriers among the best off and the least advantaged (2016). The reason is that wellbeing of the former is conditioned by that of the latter. As a consequence, Clifford Simplican says, in later works consideration of individuals with less ability is removed from considerations of justice. They are thus relegated to charity and virtue of the rest of society. Furthermore, Clifford Simplican says that care about differences in abilities changes as much as one is in need of redress. Namely, she identifies in Rawls a limit to such redress, although this is not clearly specified (2016).

All the criticisms addressed by Clifford Simplican are very important for our topic. Although she does not directly discuss democratic involvement, if her description of Rawls is correct, there would not be a space for individuals with severe cognitive disabilities in the democratic process. This is because they are excluded from the scope of justice in the initial (theoretical) stage. Consequently, when we take them in consideration, we can do this only by considering them objects of pity and our virtue and, in any event, our duties of redressing have upper limits. Their position is thus amply, or even fully, depoliticized and consequently not on the democratic agenda, i.e., there is no interest to include them in the democratic procedure. Namely, if their interests are not political there is no justification for attributing them an active political role.

In what follows, we show possible replies to these criticisms. We believe that a social contract model inspired by Rawls’s thoughts on justice can be valuable for inclusion of

individuals with severe cognitive disabilities in the scope of justice. Moreover, it represents a valuable framework that empowers us to shape the conception of well-ordered society where proper rights are ensured for all individuals when they are meaningful to them in correspondence to their characteristics.

2. In fact, Rawls himself is aware of the improper exclusion of individuals with severe cognitive disabilities from his reflections on justice. He clearly says that his main question, that he sees the fundamental question of political justice, i.e., finding “the most appropriate conception of justice for specifying the terms of social cooperation between citizens regarded as free and equal, and as normal and fully cooperating members of society over a complete life” (Rawls, 2005, p. 20) as only the starting point of discussing about justice. He does not forget that reasoning about justice with a focus only on reasonable and rational persons leaves open “the question of what is owed to those who fail to meet this condition, either temporarily (from illness or accident), or permanently” (2005, p. 21). Among else, he has in mind “mental disorders so severe as to prevent people from being cooperating members of society in the usual sense” (Rawls, 2005 p. 20). Thus, he considers dealing with the contract among reasonable and rational persons as only the first focus, but by no means the only one. Other questions, such as those indicated above, should be discussed after the fundamental question has been settled. Such discussions could demand revisions in a back-and-forth process revisiting the originally formulated conception of justice that was established earlier when determining relations between free and equal, reasonable and rational productive members of society. To be sure, Rawls admits that he is uncertain whether his conception of justice could be able to deal with all these questions. But the important thing for the moment is the awareness and implicit statement that Rawls deals with only part of the relevant questions of justice and that it is necessary to address other questions as well.<sup>5</sup>In what follows we indicate that there is a good prospective for doing this affirmed by at least two plausible proposals.

The first implies a reformulation of the organizing idea of the conception of justice. It becomes not only the idea of society as a fair system of cooperation among free and equal citizens (Rawls 2005). Instead, it becomes the idea of a fair system of cooperation among free and equal citizens and a reasonable extension of justice. The revision is justified by the assumption that reasonable and rational persons are also moved by their judgments about justice, not only by their interests, and such judgments about justice also embrace individuals who are not able to (fully) cooperate in the political and economic sphere. We can endorse this assumption in virtue of our shared judgments that do not define normatively persons as motivated exclusively by their interests. This assumption justifies assuming an extension in the scope of justice beyond those persons who are able to cooperate.

Thus, in a Rawlsian conception of justice individuals with severe cognitive disabilities will be excluded only if their inclusion cannot be coherent with the convictions of reasonable and rational persons. Considering the vehement judgments on which critics of the social contract tradition rely, it seems plausible to assume that this is not an option that they would seriously consider. Therefore, reasoning about justice can be shaped by taking in consideration the inclusion of individuals with severe cognitive disabilities. This can be done in at least two ways

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<sup>5</sup> We would like to remark also that part of Rawls’ terminology, as the term ‘normal’ is dated and we think that it must be read in the light of the new awareness about this and not as signaling an alleged correspondence with exclusionary or discriminatory intentions or attitudes.

that reform Rawls's theory for sake of goals put forward by Rawls himself. As he anticipated, this can require back and forth revisions.<sup>6</sup>

A possible answer to the need of extension and wider inclusivity is to expand the spectrum of individuals that are represented in the original position by embracing also those that have severe cognitive disabilities. The most straightforward example is constituted by including in the scope of theorising on the key considerations on justice representatives of persons in advanced age, i.e. those that certainly were reasonable and rational but have possibly lost some of these capacities. Here we see a key difference between persons that suffer from severe cognitive disabilities due to ageing and others. The former can be included, because we can plausibly embrace the assumption that representatives of reasonable and rational agents know that becoming severely cognitively disabled because of ageing is a not remote possibility for the persons that they represent. Thus, when thinking about what they want to ensure through justice, they would include protection for the age when the persons they represent could become severely cognitively disabled. Representatives of reasonable and rational persons, in the extension of considerations of justice, would protect the interests of the persons they represent anticipating the decline of their cognitive capacities which often happens with age.

An apparently more serious problem is that of persons who have never had the capacities for being reasonable and rational. There are promising solutions, nonetheless. As in Henry Richardson's (2006) and Samuel Freeman's (2018) proposal, if shared judgments of reasonable persons embrace inclusion in the scope of justice of individuals with severe cognitive disabilities, then, we need only to insert their representatives in the devise of the original position where the selection of principles of justice takes place. Thus, in the original position there would be representatives of all variations of reasonable and rational productive members of society, as well as representatives of severely cognitively disabled persons.

An alternative solution to the two presented above is to change the concept of cooperation that we endorse when we embrace the organizing idea of society as a fair system of cooperation. This is the proposal of Christie Hartley (2009; 2009a; 2011; 2020). She lowers the demand for defining an individual as a cooperative member. It is sufficient that they are able to communicate in a certain way and, for example, to enrich our lives through the emotions that they communicate to us, or that they evoke in us, or through the moral education that our intercourse with them favours in our lives. By endorsing this proposal, we can modify the original position by including representatives of these individuals. Perhaps we need to modify the organizing idea of society as a fair system of cooperation among free and equal persons with a simpler idea of society as a fair system of cooperation (where, perhaps, the idea of freedom and equality could be subsumed under the idea of fair relations).<sup>7</sup>

In any event, it is plausible that there is a need to modify the set of principles of justice. In order to do this properly, we must not be engaged only in abstract reasoning, but, when engaged in the thought experiment, we must possess knowledge about conditions of severe cognitive disabilities. This, however, is not a drastic novelty in a Rawlsian conception of justice. We add this knowledge to the set of knowledge of facts about the world (natural

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6 One of the two authors of the present paper, Elvio Baccharini, is engaged in shaping a third possible reply in common works with Iva Martinić. This is presented in Martinić, I. & Baccharini, E. 2023. Sposobnosti i pravednost za ljude koji nemaju sposobnosti razločnosti i racionalnosti. "Filozofska istraživanja". 43(3): 495-507, as well as in a work in progress.

7 A reviewer of *Phenomenology and Mind* has raised the question whether Hartley's argument implies the inclusion of non-human animals in the scope of justice. We do not have a definitive answer. In general, we think that this could be a consequence and that this consequence could find some justification in the raising public judgments and sensibility for the rights of non-human animals and, in particular, pets.

facts, principle of economics, regularities in human psychology, etc.) present in the original position. Sources of information in this case are represented by life experiences, scientific knowledge, or artistic narratives. Because knowledge of specific conditions of various individuals can hardly be reached without an intercourse with them, it is required to communicate with them, by obtaining the best from their communicative resources, including those non-verbal. Narratives of persons in conditions of disability are precious from this standpoint, such as in the example of the autobiographical novel *Everything Calls for Salvation* by Daniele Mencarelli (2023), now also a TV series. It is important, however, to also have a communication open to the communicative resources of individuals with severe cognitive disabilities who are non-verbal. This is in order to avoid epistemic injustice, as is testified that it frequently happens in the case of non-verbal individuals in advanced age (Spencer, 2023). Importantly, the revision of the set of principles of justice must not be unidirectional.<sup>8</sup> For example, we must care about not causing a negative impact to the basic structure by not paying sufficient attention to the motivational components of principles of justice. Due attention must be given to stimulating the economic productive capacities of persons who possess them. Thus, the revision must proceed in a back-and-forth process in the procedure Rawls calls reflective equilibrium.<sup>9</sup>

To summarize, we have replied to both the methodological and the related substantial criticisms expressed by the authors sceptical of the social contract theory of the Rawlsian kind. As shown above, the criticisms claim that it is wrong to base reasoning about justice through a social contract model, because this shapes justice through the view of reasonable and rational persons only. This, the critics say, will remain a permanent limit on the resulting conception of justice that will be unable to overcome the exclusive scope. To counter this, we have shown that the social contract model can be as flexible as required by our firm judgments about justice, including those that relate to individuals with severe cognitive disabilities. Therefore, there are opportunities to modify the conception of justice to meet the needs of individuals with severe cognitive disabilities if this is supported by our firm judgments about justice – which even the critics of the social contract theory would surely support. In a Rawlsian view, reasoning about justice is a back-and-forth process, where each side can be a reason to modify the other, when we meet new challenges and assess them through the perspective of our firm judgments about justice.

Clearly, the two sketches of accommodating the conception of justice with judgments about justice related to individuals with severe cognitive disabilities that we have described do not represent final arguments. They are representations that indicate that the declaration of impotence of the social contract theories to deal with the question of individuals with severe cognitive disabilities is at best premature. We have shown that it is plausible to deem the theory of justice constructed in a Rawlsian social contract sufficiently flexible to be extended to cover other questions and not only what Rawls terms the fundamental issues of justice.

We now move to demonstrating the superiority of this theory in comparison to the proposed alternatives. We claim that these are worse equipped than Rawls's proposal to properly answer to the challenges of the worldview pluralism that is connected with a free society, and of the psychological characteristics of productive members of society that are (a) altruistic only in a limited form and thus in competition for the results of productive activities in society and (b) with a motivational constitution that requires incentives to give the best of their potentialities.

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<sup>8</sup> We express our gratitude to a reviewer of *Phenomenology and Mind* for raising this point.

<sup>9</sup> Rawls (1999).

Related to the first characteristic of the society, we cannot assume that there is an already given true conception of justice that we need only to recognize and implement, which can be done by ignoring what reasonable and rational (i.e. endowed with the sense of justice and the capacity for a conception of the good) members of society believe. The problem is that justice does not speak by itself, but, at best, through the mediation of some persons. But who can be entitled to the role of the spokesperson of justice in a pluralist society? Imagine that we attribute this role to, let's say, Clifford Simplican. Enforcing her conception of justice independently of whether it could be accepted by all other persons endowed with a sense of justice and a capacity for a conception of the good would be an act of authority and coercion, incompatible with the project of a stable society characterised by freedom and equality.

Related to the second characteristic of society, there is an absence of answers in the alternatives to the Rawlsian social contract theory presented above. They are concerned with the distribution of resources, rights and entitlements. However, they do this in a form detached from how to organise the production of resources by optimizing productivity in balance with a distribution that cares in a proper way about the needs of all members of society. Part of the superiority of the social contract theory consists in dealing with this question.

In conclusion, the social contract theory can be assessed as the most suitable proposal in the debate about justice and individuals with severe cognitive disabilities. On one hand, there are plausible social contract proposals to include them properly in the scope of justice. On the other hand, it deals better than rival proposals in protecting other ideals, such as freedom and equality between persons endowed with the sense of justice and the capacity for a conception of the good, and other requirements such as sustaining the optimal level of productivity balanced with addressing in a fair way the needs of all members of society.

For the moment, we highlight one important right that follows from what we have said so far. Because the principles of justice established behind the veil of ignorance are very general, specifications of rights are needed. They are realised and further developed through the democratic processes. Because specifications of rights are disputed in these processes, a fair inclusion of everyone in the process is necessary. Therefore, individuals with severe cognitive disabilities (including those of advanced age in this condition) also need to be included. We dedicate the next part of the paper to this question.

3. Challenges have been expressed to those models of democracy that are based on the dominant role of rational communication and contributions over alternatives like emotional communication because they imply high thresholds of cognitive levels as conditions to be included in democratic processes. (Raisio *et al.*, 2014). This implies unfairness against those that are more comfortable with alternative expressions, or are capable only of such expressions. Further, there is the loss of possibilities of collective deliberative capacities that could be ameliorated through emotional contribution that can, for example, enhance empathy.

We firstly present these challenges and related proposals to reshape concepts of democracy for the sake of inclusion of individuals with severe cognitive disabilities. After that, we put forward a reply to these proposals. We comment on these claims and formulate our own proposal.

We start by showing arguments in favour of inclusion of individuals with severe cognitive disabilities in the democratic processes that we can derive from Nancy Fraser's discussion on recognition and subordination (Fraser, 2000). She speaks about politics of recognition that require sustaining the status of individuals that are members of various groups as "full partners in social interaction" (Fraser, 2000, p. 113). For example, "being prevented

from participating as a peer in social life [...] to be denied the status of a full partner in social interaction”, constitutes misrecognition and is to be equalized to institutionalized subordination (Fraser, 2000, p. 113). In order to redress misrecognition, changing the values that regulate interactions and impede parity of participation at institutional sites is necessary. Although Fraser does not specifically address the problem that we deal with in this paper, reflections such as these pave the way for affirming the need of democratic inclusion of individuals with severe cognitive disabilities. Namely, without this inclusion they are not full partners in social interaction and they are subordinated in the sense of being impeded in participating as peers in social life. Nussbaum (2009) and other authors are engaged in redressing these injustices.

Nussbaum specifically considers what is owed to individuals with cognitive disabilities in general, as responses to the due recognition of their human dignity. While full equality is not always needed and sometimes, like in the case of income, sufficiency is enough, adequacy requires equality in the case of political rights. Thus, only equal voting rights are adequate voting rights. However, it is important to distinguish among specific cases in order to instantiate the rights in the proper way.

First, individuals with cognitive disabilities may be able to politically participate, but stigma and social arrangements that are not hospitable to their characteristics impede or burden this participation. Such are cases of persons becoming fearful in an environment that is not familiar to them, or having difficulties to reach places where political rights are exercised, as in conditions of agoraphobia, or having difficulties to read. Persons in advanced age could suffer from comparable limitations as well. In such cases, political inclusion must be realised by proper reorganization of the environmental contexts, or by organising the opportunity to express political preferences in modified conditions or forms.

Second, there are cases when individuals are not able to exercise political rights by themselves even in modified contexts, but are able to communicate their wish to others. For example, they may be not able to communicate in a way that all can understand, but they are able to communicate with a restricted group. In such a case, says Nussbaum, the person’s right to vote is exercised in her name, by respecting her wish, by a guardian.

Third, there are cases where cognitive disabilities are so deep that individuals are not able to form their own views about choices under question. Such could be cases of the most advanced forms of dementia. These are the most complicated cases. Nussbaum says that the requirement of justice is that the person’s guardian exercises the right instead of her. Thus, it is still important that the right is recognized and the possibility to exercise it is present, even though this happens through a guardian. Otherwise, equal citizenship is denied to persons in these conditions. Nussbaum is aware of problems in these cases. For example, what if the guardian does not vote in the best interest of the disabled person? However, the objection is specious, because the same problem appears in other cases where surrogate decisions are allowed, as in cases that regard property rights, or health decisions.

Nussbaum’s proposal is relevant and it can be integrated in the Rawlsian social contract scheme. Indeed, as we announced at the end of the previous section, it is even required in it. General principles established through the abstract reasoning in the social contract thought experiment need to be specified in democratic processes. Without such inclusion individuals with severe cognitive disabilities risk having their interests misrepresented and not recognised. Besides, they would not be treated as equal citizens, but as subordinated and dominated, as in the definitions of Fraser. However, the form of inclusion proposed by Nussbaum could be not fully satisfactory for proponents of democratic political rights for individuals with severe cognitive disabilities. For some of these, solutions to cases 2 and 3 could be defective, because it is not clear whether the political right exercised through

the participation of a guardian implies also direct participation of individuals with severe cognitive disabilities themselves. For example, is a non-verbal individual with severe cognitive disabilities present at the parliament together with the guardian when they vote, or is only the guardian there? There are proposals that require the public presence and direct exercise of political participation for individuals with severe cognitive disabilities. Such views find inspiration in democratic views opposed to deliberative democracy. In the latter, the central role is attributed to rational exchange of reasons. However, as we have seen, this excludes persons with severe cognitive disabilities in cases 2 and 3. The challenge is relevant for the project of a Rawlsian justification of inclusion of individuals with severe cognitive disabilities in the scope of justice. The Rawlsian view of public justification constitutes a demanding form of deliberative democracy. In such a framework it is crucial that public decisions are supported in a democratic process sensitive to reasonableness and exchange of reasons. At least some fundamental public decisions are justified only if supported through reasons all reasonable and rational persons can endorse. Among them, there are the outputs of the social contract thought experiment shown above. In what follows we firstly present proposals of inclusion of individuals with severe cognitive disabilities in democratic processes alternative to deliberative democracy, and then discuss the possibilities of incorporating their insights in a Rawlsian framework.

The further step of directly including individuals with severe cognitive disabilities in democratic processes and revising the threshold of capacities for rational argumentation typical of advocates of deliberative democracy, finds inspiration in the inclusivist theories of authors such as Iris Marion Young and Nancy Fraser.

The main objection (Fraser, 1990) to demanding forms of deliberative democracy is that requiring high thresholds of rationality leaves unaccomplished the ambition of shaping public debates in a supposed shared public sphere with inclusion and harmony, as opposed to hierarchy and engagement for only particular interests. The intention is to shape interaction exclusively in a rational dialogue that is open and accessible to all, where inequalities are bracketed in order to achieve communication of everyone as peers. But, in fact, the supposed public sphere is shaped to favour particular worldviews and styles of communication that reproduce relations of domination and cultural frames present in society. One such style of communication favours rational exchange of dispassionate arguments. This is why Fraser proposes an alternative to deliberation in democracies. This includes agitational activities and creation of subaltern counterpublics as places of withdrawal and regrouping (Fraser, 1990). Fraser's proposal is not yet open to individuals with severe cognitive disabilities (Knight, 2015) but it paves the way to their inclusion in democratic processes. This is due to her rejection of verbal rational communication as privileged or exclusive.

Fraser's theses are in part echoed by Young's thoughts. She says that deliberative democratic theories tend to be culturally biased and, in this way, silence culturally specific groups. This is, for example, manifested in privileging speech and argumentation against other expressive forms (Young, 1996). To be sure, Young expresses appreciation toward deliberative democracy as inspired by the common good, based on mutually addressed arguments and opposed to interest-based forms of democracy (Young, 1996). However, the exclusivity of one form of communication (formal, general, dispassionate and disembodied speech) reproduces the domination of the privileged class, while others feel dominated (among else, because of having been excluded from the possibility to learn the dominant form of communication). In addition, silencing minority or marginalized voices we have an important epistemic loss. Namely, by letting them express their voice, everyone has the opportunity for better seeing the environment and promoting justice (Young, 2000).

Because of what she judges limits of deliberative democracy, Young proposes

communicative democracy as an alternative to it (Young, 1996). While for deliberative democracy the exchange of reasonable argumentation among persons who are able to understand and rationally assess it is crucial, communicative democracy allows for various forms of communication. In the latter, interlocutors have the aim of mutual understanding, even though they practice different expressive forms and not necessarily rational argumentation. Among else – and particularly important for the present debate on justice and disability – “Proposals for collective policies need not be expressed as general interest, an interest all can share; they may be claims about an obligation on the part of the public to recognize and provide for some unique needs of uniquely situated persons” (Young, 1996, p. 128). This is of prominent value for the present paper, because we can expect that such could be the claims of individuals with severe cognitive disabilities, including individuals that are in such condition due to aging. As something that is of particular relevance for individuals with severe cognitive disabilities, communicative democracy allows alternative forms of expression (such as gestures, smiles, etc.) and not only the rationalistic expressions implied by deliberative democracy. Young notes and supports such nondiscursive means of expression in public disputes (2000; 2001) which include, for example, positive and negative signs communicated via alternative forms of expression. In summary, communicative democracy is fairer to minorities constituted by underrepresented individuals with atypical forms of communication. As such it provides a wider and more suitable exchange of views in a political society.

To conclude, Young’s and Fraser’s theses lay the groundwork for a form of democracy more inclusive of individuals with severe cognitive disabilities because they remove the exclusive, or even central, role of rational discursive verbal deliberation. The threshold for inclusion is thus lowered and these reflections constitute a ground for developing democratic views specifically oriented to inclusion of individuals with severe cognitive disabilities.

4. Clifford (2012) and other authors (Afsahi, 2020; O’Shea, 2018; Rasio *et al.*, 2014; Schramme ,2024<sup>10</sup>) also take the challenge of developing a form of democracy that is inclusive of individuals with cognitive disabilities in various forms, alternative to rationalistic deliberative democracy. The disturbing fact to which these authors intend to respond is that individuals with cognitive disabilities or representatives of their interest groups are rarely members of parliaments and are frequently disenfranchised. However, the project is not only to make classic decision-making institutions, such as parliaments, open to individuals with severe cognitive disabilities. One of the main ideas is to expand the space of deliberation and political processes outside the limits of public political institutions and include conferences on disability rights, self-advocacy groups, local boards, etc. The intention is to create favourable environments and occasions that sustain individuals with severe cognitive disabilities in forming views, refining positions, educating themselves, or giving shape to their requirements in more localised contexts. This echoes Fraser’s advocacy for creation of counterpublics and regroupment. In this way, we obtain a more extended conception of public deliberation beyond contexts where rational and verbal persons challenge each other’s views in an exchange of rational argumentation.

In the context of such political reframing, Schramme (2024) proposes a revision of the deliberative democratic conception of political intercourse that he classifies as a combative model. In it, different actors in the political process confront their reasons and the better

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<sup>10</sup> He refers to such conditions as minority minds, but for terminological coherence in the present paper we will carry on with the expression ‘cognitive disabilities’.

arguments win. Schramme proposes an alternative, the joint effort model. In this model, participants are not seen as competitors with their arguments. Each of them is seen as a contributor to the creation of a collective achievement. The intention is not to find the winning argument, but to enhance collective epistemic competence.

Afsoun Afhasi (2020) advocates the endorsement of the systemic turn as the appropriate frame for a fair inclusion of individuals with severe cognitive disabilities in political processes. The background idea is that the deliberative democratic project of founding political processes on ideal models of rational deliberation is not achievable. There are no institutions or individuals that can respond to such demands. The proposed alternative is recognition of interdependence of individuals and institutions, where, in an epistemic division of labour, each of them gives their contribution in accordance to their potentialities. In this way, each of them contributes to compensate the deficiencies of the others.

The systemic turn justifies inclusion of individuals with severe cognitive disabilities in the deliberative process. Firstly, it recognizes that we are all interdependent and thus the dependency of these individuals is different only in degree with other forms of dependency. Second, it favours relaxing the demands for admission in the public sphere of various potentialities and styles. Namely, diverse persons can contribute to the mutual compensation in different ways.

These views of political processes imply extensions of expressive forms allowed in political communication. Such is the extension of our conception of speech and expression. The communicative skills involved in deliberative practices must be plural and not limited to dialogical verbal forms. They include, for example, bodily non-verbal communication as a precious vehicle and provider of knowledge. This is an enrichment that has already been anticipated by Fraser, as seen above, and echoes Young's proposal of communicative democracy. Presence and visibility of bodies is, in her view, crucial to the understanding of the context of persons and their diverse situations, as well as of the injustices that they suffer.

Such extensions intend to correct the flaws of deliberative democratic theorists who fail to attend to the ways bodies communicate and, consequently, are unable to grapple with inequalities caused by bodily difference (Clifford 2012). Clifford highlights how the physical presence in deliberation of individuals with cognitive disabilities that impede their verbal communication is, nonetheless, important in order to make their condition understood. The presence of the caregiver (and thus democratic participation only through a guardian) is not sufficient, because it is not enough for expressing the entirety of a condition. After all, we are speaking of two different individuals. She provides illustrations that confirm this relevance. One such case is that of Sue Swenson, a disability advocate that appeared at the UN Convention on the Rights of Persons with Disabilities accompanied by her son Charlie. It is only their joint appearance, says Clifford (2012) that testified the complexity of Charlie's situation and their mutual dependence. Furthermore, exclusive representation through a guardian is defective not only for the loss of knowledge that it implies, but also because the value of the represented person is erased. In the case of non-verbal individuals with severe cognitive disabilities, what is needed is collaborative speech between them and care-givers in a joint communication through actions and verbal expressions of differently situated, but coordinated, individuals. Clearly non-verbal communication such as Charlie's can be misunderstood. But this can happen to everyone, and it only shows that he must be integrated in a network of support.

In this example, Charlie's presence enriches the epistemic process, because he contributes as an informant. For example, such presences help in identifying the best possible medical treatments and in understanding what it is like to be disabled. But this is not enough. Specifically, contrary to practices where individuals with severe cognitive disabilities are categorically excluded as participants in the process of normative authorisation, Schramme

(2024) argues that the question of inclusion or exclusion is never systematic or categorical, but rather requires a careful analysis on a case-by-case basis. This implies that a person with severe cognitive disabilities cannot be automatically excluded, as doing so would undermine their political equality. Instead, inclusion or exclusion must be minutely evaluated in more contextualized and individualized cases and, moreover, in every case it must be assessed whether the impossibility to participate is due to their incapacities, or to structural unfairness in deliberative conditions.

Further work has to be done in order to distinguish the role of individuals with severe cognitive disabilities in democratic processes. One of the relevant issues concerns the difference between contexts where their role is decisional and authoritative, and those where the role is informative. From there, debates on the opportunity for their direct inclusion as opposed to inclusion through caregivers are needed.

5. The claims from relevant authors elaborated in the previous section have been partially contested in a paper by Ivan Cerovac and Kristina Lekić Barunčić (2023) who re-affirm the central role of rational deliberators. They offer two main arguments. First, they say that proper deliberation implies the capacity of reason-responsiveness, i.e., the capacity to change one's mind if provided with good reasons for doing this. In the case of the loss of this capacity, deliberative virtues are irrevocably lost. Thus, one deliberative virtue of diversity is the cooperative engagement of diverse individuals. Each of them brings some knowledge that completes the lack of knowledge of others (similar to Afhasi's proposal) and in this way, they achieve better epistemic outcomes collectively. But if one is not able to change their mind in virtue of evidence provided by others, they do not improve in their knowledge. If the point of deliberative democracy is to link political processes to epistemic improvement, linking final approval to the individuals that stay still with the portion of knowledge that they originally have means being severely limited.

Another claim put forward by Cerovac and Lekić Barunčić is also relevant. Specifically, they attribute the role of informants within the deliberative processes to individuals with cognitive disabilities that impede them in being reason-responsive. However, the next stage of decision-makers belongs only to persons who are reason-responsive.

6. In our view, there are ameliorable aspects in all of the outlined positions, although they all offer relevant contributions. We agree with the authors who endorse the claim about the duty to include individuals with severe cognitive disabilities in democratic processes. Further, we agree with the position that contributions to deliberation must not be limited to verbal and rational forms of expression. However, Cerovac and Lekić Barunčić are right in advising for caution and distinguishing between the deliberative stage of collecting and forming the required knowledge on one hand, and the decision-making stage on the other hand. In the stage of acquisition of knowledge, interaction and carefully listening and interpreting messages of all relevant parties is of primary importance. Among such messages also non-verbal expressions of individuals with severe cognitive disabilities are to be included. To the proposal of Cerovac and Lekić Barunčić, we add an additional caution regarding the role of individuals with severe cognitive disabilities as informants. Namely, caution must be present in interpreting and giving authority to their expression. Think about the incontrollable opposition of some children with severe cognitive disabilities to dental interventions that aim at their good. The opposition derives from the incapacity to understand the reasons for the intervention and can be so strong and irremovable that full anaesthesia is required (Schulz-Weidner, N. *et al.*, 2022). While their reactions to tooth pain indicate that they want to be treated, there is contrasting evidence through their strong opposition to

the dentists who want to perform the needed actions. The criterion of listening their voices yields indeterminate responses, to say the least. It seems that the decision must be made by persons who are able to assess relevant reasons. The situation appears to be very different to those in cases when we listen to the voices of persons with the capacity of rationality. In such cases compulsory treatment, as that in the case of dentists who apply full anaesthesia to overcome opposition to the intervention is clearly not justified. What makes the difference is the condition of reason-responsiveness, and this is the key element that makes refusal of treatment authoritative.

To be sure, a counterexample is not sufficient to defeat Schramme's claim, because he does not presuppose a universalized thesis. He only assumes that we cannot exclude individuals with severe cognitive disabilities in a generalised manner. At the end, however, the illustration seems to show that final assessments must be made by reason-responsive persons. This is true also in simpler cases like the need for dental interventions, and not only for complicated issues of macroeconomy, as indicated by Schramme.

However, in such complicated cases that include competition for resources the relevance of reason-responsiveness is even clearer. We cannot expect fair results if we don't have the dominant, if not the exclusive, role of persons responsive to reasons such as fair treatment of others' needs, or those derived from the social contract thought experiment that justifies the basic structure and principles of justice of a society. We have no warrant of fairness apart from the crucial role of persons that have the capacity for a sense of justice. There are no perspectives that can substitute it, not even being a member of a disadvantaged group. As Young says, "by pointing out how the standpoint of those in less privileged positions can reveal otherwise unnoticed bias and partiality I do not mean to suggest, as have some standpoint theorists, that people in less advantaged social positions are "epistemically privileged". They too are liable to bias and self-regard in overstating the nature of situations, misunderstanding their causes, or laying blame in the wrong place" (Young, 2000, p. 117).

These considerations seem to justify excluding from the decisional stage individuals who are not capable of reason-responsiveness, for the sake of preserving a democracy that is not characterised by fight for particular interests, but by collective reasoning for fair decisions. However, we must be cautious with this conclusion, as well. It implies risks for members of vulnerable groups and it is not clear that we need to sacrifice them in the name of deliberative democracy.

In this way we see also a reason to deem Cerovac and Lekić Barunčić's orientation to exclude individuals with severe cognitive disabilities from the decisional stage of public deliberation too quickly. Democratic procedures have several desiderata. Among them, there is political equality, in the sense of equal representation. Another one is the potential to provide high quality decisions. Further, reaching decisions that are fair is another desideratum. We can hardly expect that decisions will be fair if a part of the population is excluded from the decision-making process. This presents two requirements. On one hand, we need to have reliable and exhaustive knowledge about the needs and aspirations of different sides. This speaks in favour of inclusion of individuals with severe cognitive disabilities, because of the unreplaceable contribution to knowledge that they can provide (Knight, 2015; Schramme, 2024). On the other hand, different sides must be fairly represented in order to have equitable chances to achieve fair decisions. After all, even when deliberation is circumscribed by principles of justice fairly established previously through valid theoretical reasons, as could be the case with Rawlsian original position shown above, there is antagonism in their interpretation and application. We can hardly expect that democracy is never combative at all, to use Schramme's terminology. In this sense, attributing a voice and a role in the decision-making procedure even to individuals with severe cognitive disabilities that

are not reason-responsive is a better solution than excluding them. When developed cognitive reason-responsiveness capacities are required, there is also a solution that optimises balancing the desiderata. This consists in including guardians of individuals with severe cognitive disabilities among the actors in the decision-making stage, as indicated by Nussbaum, with further including the presence of individuals with severe cognitive disabilities directly, as indicated by Clifford.

This is an approach that has been challenged, as highlighted by Amber Knight (2015). Such challenges are sceptical toward surrogate speaking and urge for disadvantaged individuals to speak by themselves. Yet, Knight's view is that practices of guardianship are helpful and welcome when individuals are truly not able to do this (2015). The view is supported by Kittay as well (2001). This favours reasonableness in the deliberative process, together with fair representation.

A further caution that is worthy of emphasis regards the risk of unfair exclusion from a direct decisional role in the political process and representation through a guardian in decision-making. The society owes to individuals with severe cognitive disabilities to assess not only their actual, but their potential capabilities. Thus, attempts to help them in ameliorating their possible achievements are required. We relate these considerations to Tom O'Shea's proposal of a participatory politics of self-emancipation (O'Shea, 2018). This is intended to supplement contestatory forms of democracy, that include opportunities to challenge arbitrary power and procedures to assess whether such challenges are justified, where the conclusive decision-making role belongs to persons with high cognitive capacities. Participatory politics of self-emancipation interpret the political arena as a space to "develop knowledge, skills, and confidence to challenge arbitrary power" (O'Shea, 2018, p. 8). This involves various political activities as engagement for self-education, advocacy through trade unions, etc.

Although O'Shea's proposal seems to fit with the cases of individuals with disabilities that are not so severe as those we consider in the present paper, we appreciate it and we recommend its implementation whenever possible. Tentative implementation is recommended also in cases of severe cognitive disabilities, in order to try to improve the capabilities of individuals where some of them could appear at some point as not equipped for a direct role in the decision-making stage of democratic processes, but the condition could be improved.

Overall, our view is that individuals with severe cognitive disabilities must be actors within the deliberative democratic process. They need to participate with their physical presence as well. Their presence contributes in various ways to the deliberative democratic process, among else with bodily and non-verbal expressions. Such expressions must be taken in consideration in the decision-making stage. However, decisions must be sustained through reasonable justification in accordance with demanding deliberative democratic views, such as Rawls's. This implies the use of reasons such as the outputs of the social contract thought experiment seen above. This requires persons capable to respond to such reasons, although, among them, there must be guardians of individuals with severe cognitive disabilities. The latter complement the former with their physical presence, for the reasons mentioned above. Thus, the latter are not disenfranchised, but exercise democratic rights in a specific, modified way.

7. In this way, we have demonstrated that social contract theories have greater potential for the inclusion of individuals with severe cognitive disabilities, including persons in advanced age in this condition, within the scope of justice than critics presented in this paper believe. This is visible at the level of constructing the theoretical framework of the basic institutions

and principles of justice in a well-ordered society. We have shown the opportunities of doing this in a political liberal conception of justice. In it, the framework is shaped by having in mind our firmest convictions about justice. If they correspond to those favoured by the critics of the social contract theory analysed in this paper, the way of reasoning in the social contract device must be shaped accordingly, and then, individuals with severe cognitive disabilities must be included in the framework of justice.

Because principles justified in the theoretical model are general, their specification is needed in democratic processes at further stages. This is why the theoretical model requires inclusion of individuals with severe cognitive disabilities in democratic processes. Our summarised view is that they need to be included both in political deliberation, and in the decision-making stage. In the case of the latter, we suggest that this be operationalised through their physical presence supported by guardians.

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