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The "Most Reasonable", or Rawls's Post-foundationalist Normativity

Abstract

In this paper, two valuable aspects of Rawls's legacy in the 21st century are argued to consist of a) his view of liberal-democratic legitimacy as centered around consent on the constitutional essentials ("legitimation by constitution") and b) his post-1980 new normative standard captured by the phrase "the most reasonable for us". The normative models and assumptions undergirding A *Theory of Justice* and *Political Liberalism* are contrasted, the rationale for rethinking liberal legitimacy is reconstructed, and the originality of Rawls's new normative standard is highlighted with reference both to classical political philosophy and the post-Wittgensteinian philosophical horizon.

Keywords: Justice as fairness, reasonability, political liberalism, exemplarity, Rawls, foundationalism, normativity

It is always difficult to spell out what the legacy of a great author exactly consists of, and John Rawls constitutes no exception. The received and established story revolves around the innovativeness of A *Theory of Justice*, credits Rawls for having reawakened normative political philosophy from a century-long lethargy, for having challenged a

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long-standing predominance of utilitarianism in the English-speaking world, for having also resuscitated contract theory and offered an account of a just society along deontological, Kantian lines. This paper aims to supplement that story with a different perspective that brings out two other philosophical achievements, less in focus in the mainstream literature, but potentially of even greater philosophical magnitude. In *Political Liberalism*, Rawls on one hand reformulated the classical liberal doctrine of legitimate government, as grounded on the consent of the governed, along the lines of a ground-breaking theory of "legitimation by constitution". On the other hand, through his notions of "the reasonable" and the "most reasonable" Rawls articulated the first philosophical account of a post-foundationalist normativity that truly lives up to the post-Wittgensteinian philosophical horizon, premised on the rejection of vantage points located beyond, above or antecedently to situated forms of life. I will briefly recall the gist of *A Theory of Justice* as a foil against which these two major breakthroughs of *Political Liberalism* can be measured.

1. *Justice as fairness as unanimous outcome of the original position*

As we all know, John Rawls is a man of countless publications but essentially of two great books: *A Theory of Justice* (1971) and *Political Liberalism* (1993). These two books differ considerably, as we will see, in the responses they offer to the following common predicament: since modern times, we happen to live in societies in which whatever conflicts may arise between competing interests or rival values are not likely to be solved by appealing to a shared conception of the human good. We therefore need a method or a procedure for adjudicating these conflicts in a way acceptable to parties that adopt diverse and often conflicting evaluative standpoints. Furthermore, in both books Rawls wishes that such method or procedure for resolving conflicts be acceptable to all the parties involved as a matter of principle or for its reflecting justice, not out of reasons of prudence or because it is convenient, as in a Hobbesian contract. "Justice as fairness" is the proper name by which Rawls designates the conception of justice that in his opinion can best perform this function.

A *Theory of Justice* offered an account of a just society along deontological, as opposed to consequentialist, lines: a just society is one whose basic structure operates on the basis of just principles. And what principles are just? Reviving and renewing the tradition of the social contract, just principles are, for Rawls, those which rational actors, deliberating behind a veil of ignorance in the course of a thought experiment – called "the original position" and meant to replace the "state of nature" of older contract theory – would select for the purpose of grounding the basic structure of society. I'll leave aside important aspects of Rawls' defense of justice as fairness – namely, the circumstances of justice, reflective equilibrium, the fact of pluralism and the veil of ignorance, the method of comparing candidate conceptions of justice in pairs – just to emphasize that at this stage, deliberation was understood by Rawls to take place primarily within the framework of *rational choice*. It is on that basis that, according to Rawls, after comparatively assessing competing principles that might serve as grounds for the basic structure, the parties would unanimously agree that the basic structure of a just society is best conceived as responsive to the two principles of "justice as fairness". The first principle states that

> Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.[2]

The second principle states that

> Social and economic inequalities are to be arranged so that they are both:
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> a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
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> b) attached to offices and positions open to all under conditions of fair equality and opportunity.[3]

A so-called lexical priority regulates the relation of these two principles: namely, in a just society, freedom can never be balanced against goods that are not freedom itself.

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2 Rawls 1999, 266, hereafter cited as *TJ*.

[3] I*bidem*.

2. T*he transition from* A Theory of Justice *to* Political Liberalism

Undeniably and breath-takingly innovative though it was, A T*heory of* J*ustice* pushed to its extreme limit, thanks to the incorporation of the then-called "fact of pluralism", what nonetheless, in spite of all, still remained a traditional scheme of foundational normative philosophy. If I may take the liberty of using the style of movie reviews, we are offered a pretty traditional plot: philosopher sets a normative standard for judging the world, justifies it against competing standards, and expects the rest of us to unanimously agree.

In the following pages, I will argue that the core of John Rawls's revolutionary contribution to normative political philosophy consists of his moving *beyond* the model reconstructed above, and of doing so in a way unequalled by any fellow liberal normative philosophers, including Habermas and Dworkin. If A T*heory of* J*ustice* is innovative within a long-established paradigm, P*olitical* L*iberalism* revolutionizes the paradigm altogether. It offers a view of normativity in line with a new philosophical horizon, opened up in the first half of the 20th century by Wittgenstein, that considers futile the exercise of bridging the plurality of locally shared frames of meaning (language games, forms of life, comprehensive doctrines) through appealing to some trans-local foundation.[4]

The Wittgenstein-initiated sea-change has resulted by and large in a stalemated philosophical scene, populated either by foundationalists (realists, phenomenologists, rational choice theorists, philosophers of mind, etc.) who simply sideline the problem without solving it, or by contextual-

[4] Rawls rarely cites Wittgenstein. With regard to P*hilosophical* I*nvestigations*, Rawls simply recalls Wittgenstein's argument against postulating "certain special experiences to explain how we distinguish memories from imaginings, beliefs from suppositions, and so on for other mental acts" (*TJ*, 489) – a point clearly echoed in Rawls's rejection of the idea that "antecedent" normative criteria may ground the validity of a theory of justice. However, Rawls can be assumed to have constantly been aware of, and confronted with, Wittgesteinian themes and theses both through direct acquaintance and through his ongoing association with his mentor Norman Malcolm and later with his colleague and friend Burton Dreben. On the presence of Wittgensteinian themes in the later Rawls, see O'Neill 2015, 878-881 and Ferrara 2021b.

ists who give up on context-transcending normativity and limit their inquiries to reconstructions of locally prevailing codes. P*olitical* L*iberalism* breaks that standstill and offers a model of normativity that, like a philosophical beacon, extends its light well beyond political philosophy.

In order to clarify why that is so, first of all we need to answer the question: What was wrong with A T*heory of* J*ustice*? At the end of a long transitional period, which lasted through the 1980's and cannot be addressed here,[5] two aspects of the account offered in that book were found misguided. We are informed about these two wanting aspects by Rawls himself.

The first flaw is mentioned in the original "Introduction" to P*olitical* L*iberalism*. After distinguishing the fact of pluralism from the newly introduced "fact of *reasonable* pluralism", he observes that "the fact of a plurality of reasonable but incompatible comprehensive doctrines [...] shows that, as used in T*heory*, the idea of a well-ordered society of justice as fairness is *unrealistic*".[6] A deep change has occurred in Rawls's argument. The test-case for making sense of such change is utilitarianism. The expectation built in A T*heory of* J*ustice* – before Rawls would introduce the "burdens of judgment" in his framework – was that the parties in the original position unanimously would discard utilitarian principles of justice in favor of the two principles of justice as fairness. The *new* idea is that, insofar as a utilitarian doctrine meets the standard of being reasonable, namely being acceptable to loyal cooperators respectful of the burdens of judgment, it cannot be discarded at all but must be figured in, as one of the several comprehensive views that an inclusive "political conception of justice", to be articulated "freestandingly" but also capable of attracting an overlapping consensus, must be compatible with.

The second flaw is mentioned in footnote 7 of Lecture 2 of P*olitical* L*iberalism*, where Rawls describes the idea that "the theory of justice is a part of the theory of rational decision" as "simply incorrect".[7] The normative notion of "the rational" certainly deserves a role of its own within a *political* conception of justice, but justice as fairness (now reconceived as a *political* conception of

5 On some turning points of this transitional period, see Ferrara 1999, 17-19. For more detailed accounts, see Freeman 2007, 285-323 and Maffettone 2010, 189-209.

6 Rawls 2005, xvii, hereafter cited as *PL* (emphasis added).

7 *PL*, 53, fn 7.

justice) "tries to give an account of *reasonable* principles of justice". Differently from what many theorists from Hobbes to David Gauthier have tried to do, justice as fairness includes "no thought of deriving those principles from the concept of rationality as the sole normative concept".[8]

Too much would be missed, however, by reducing the game-changing quality of P*olitical* L*iberalism* to the exposure of these flaws in the previous version of the paradigm and to the thesis that "justice as fairness" is responsive not just to the rational but also to "the reasonable". Two additional innovations justify the use of the adjective "revolutionary" for qualifying the two breakthroughs found in P*olitical* L*iberalism*. The first can be captured by the phrase "legitimation by constitution". The second consists of the introduction of the normative standard of the "most reasonable".

3. O*n the idea of "legitimation by constitution"*

Let me start with the transformation of liberalism set in motion by "legitimation by constitution". P*olitical* L*iberalism* is a complex answer to one question, slightly different from "What is a just society?" and raised at the beginning of the text: "How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?".[9] The answer, in a nutshell, is that stability can be combined with just institutions if, first of all, in such a well-ordered society "everyone accepts, and knows that everyone else accepts, the very same principles of justice" or a publicly recognized *political*, not comprehensive, conception of justice; secondly, if the basic structure of such society "is publicly known, or with good reasons believed, to satisfy those principles"; and, thirdly, if the citizens "generally comply with society's basic institutions, which they regard as just".[10]

Those three conditions can be met insofar as an overlapping consensus coalesces, and lasts over time, around the core principles of a politi-

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[8] *PL*, 53, fn 7.

[9] *PL*, 4.

[10] *PL*, 35.

cal conception of justice, endorsed by the citizens for principled reasons rooted in their diverse comprehensive conceptions of the good. Finally, an overlapping consensus must not be confused, Rawls hastens to clarify, with "the idea of consensus used in everyday politics".[11] Differently than the standard practice of seeking political compromise by identifying a common denominator that strikes a balance between rival political views and allows them to meet halfway, justice as fairness seeks validation in a freestanding way, by philosophical argument first. The original position finds a new role in this context, as a "device of representation"[12] that enables us to outline such a political conception of justice. If we do a good "constructivist" job, we can *hope* – and no more than hope – that an overlapping consensus will eventually converge on it and allow just institutions to achieve not any kind of stability, but "stability for the right reasons".[13]

Even within a well-ordered society, however, the operation of institutions and authorities will need to be assessed: legitimate exercises of coercive power will have to be separated from arbitrary ones. Political liberalism enriches the tradition that since John Locke identifies the hallmark of legitimate government with the consent of the governed.

In fact, in *any* society, including a well-ordered one, "political power is always coercive power backed by the government's use of sanctions".[14] What distinguishes this legitimate use of force from arbitrary oppression is the perception, shared by the citizens, "that political power is ultimately the power of the public, that is, the power of free and equal citizens as a collective body".[15]

That may sound as a fine proposition, but it doesn't mean that individually one can never find oneself in the position of having to suffer under the coercion of a power that operates contrary to one's will. We are equal to all other citizens as co-participants in the public formation of a political will through elections but, on the other hand, we are also so-called "private citizens" who may suffer the effects of a political power that operates in what are for us unjust terms: we may find questionable or unjust some "of the

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[11] *PL*, 39.

[12] *PL*, 27.

[13] Rawls, "The Idea of Public Reason Revisited", in PL, 459.

[14] *PL*, 136.

[15] *PL*, 53.

statutes enacted by the legislature" to which we are subject,[16] some of the executive orders or decrees issued by an administration, or the sentences pronounced by courts. This predicament poses the problem of specifying the criterion according to which specific exercises of coercive power by state authorities can be considered legitimate and not arbitrary.

For that purpose, Rawls formulates the "liberal principle of legitimacy", which occurs in several slightly different versions.[17] In one of the most widely cited versions,

> 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

[16] *PL*, 136.

[17] The *first* formulation runs: "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason", *PL*, 137. The *second* version runs: "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", *ibidem*, 217. Both date back to 1993, the year of publication of the first edition of P*olitical* L*iberalism*, and were actually preceded a version of the principle published only in 2001 (Rawls 2001, 41), but actually written 10 years earlier: "political power is legitimate only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens, as reasonable and rational, can endorse in the light of their common human reason". On these vicissitudes of the liberal principle of legitimacy, see Kelly 2001, in Rawls 2001, xii; and Michelman 2022, 21-22. A *fourth* formulation, found in the "Introduction to the Paperback Edition" (1996) introduces the theme of reciprocity and a somewhat problematic reference to (subjective) "belief": "our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions" (*PL*, xliv). A year later, in "The Idea of Public Reason Revisited", a *fifth*, almost identical formulation runs: "our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions – were we to state them as government officials – are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons", *PL*, 447.

light of principles and ideals acceptable to them as reasonable and rational.[18]

This account of legitimate authority prompts some comments. Rawls's formulation speaks to us through what it does *not* say. The phrase "in accordance with a constitution" stands over against alternative formulations used in the past and still on offer: for example, against the idea, endorsed by majoritarian, populist views and by "political constitutionalism",[19] that political authority acts legitimately when it acts "in accordance with the will of the majority as expressed in the latest elections". Furthermore, Rawls's formula requires that the constitution be endorsed, at least in its essential elements, by *all* the citizens *as free and equal* and on the basis of *principles and ideals acceptable to them as reasonable and rational*. Consent must be based on considerations of justice as opposed to considerations of *prudence*.

However, Rawls's liberal principle of legitimacy responds not only to rival theories of legitimacy but also to adverse conditions for democracy typical of the 20th and 21st centuries: the immense extension of the electorates, which encourages "rational ignorance"; the institutional complexity of contemporary societies, which negatively affects the accountability of authority; the increasing pluralism of contemporary publics; the anonymous quality of the communication processes whereby public opinion is formed.[20] Starting from the end of the 20th century, new inhospitable conditions, even less propitious for the operation of a democratic regime, have been accruing to those mentioned above: the "nativist" and populist reaction to new incoming migratory tides, the financialization of the economy, social (and political) acceleration, the new structural transformation of the public sphere prompted by the social media, the rise and spreading of forms of supranational governance not always connected with democratic accountability, and the impact of the ever more widespread use of opinion polls upon the perceived legitimacy of the exercise of authority.[21]

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[18] *PL*, 217.

[19] See Bellamy 2007; Waldron 1999a and 1999b; Tushnet 1999.

[20] See Michelman 1997, 154.

[21] See Ferrara 2014, 8-12.

Considered as a whole, these conditions – so unpropitious for the exercise of the citizens' democratic authorship – put on the philosophical agenda a reconsideration of the classic notion of democratic legitimacy, centered on the "consent of the governed".

Citizens should no longer be expected, as in mainstream liberalism, to endorse *all* the details of the legislative, executive and judicial activity of democratic institutions. We must settle today for a less demanding criterion that exempts single outcomes of such activity from *direct* justification: there will always be groups of citizens for whom some verdict, statute, or executive order is unjust and coercive. And yet the consent of the governed can remain the yardstick for assessing the legitimate exercise of democratic authority if properly reformulated as a judgment now passed on the "constitutional essentials" with which all the ordinary legislative, judicial and executive acts must simply *be consistent*. Frank Michelman's phrase "legitimation by constitution" captures concisely the gist of Rawls's theoretical innovation: given the prohibitive conditions of hyperpluralism, institutional complexity, anonymity of the communicative processes in the public sphere, it makes sense to deflect "divisive questions of legislative policy and value (does this law or policy merit the respect or rather the contempt of a right-thinking person?), to a different question (is this law or policy constitutional?), for which the answer is to be publicly apparent, or at any rate ascertainable by means that are [...] less open to divisive dispute than the deflected substantive disagreements".[22]

4. *The revolution of the "most reasonable"*

The second innovation present in *Political Liberalism* concerns the normative standard of the "most reasonable". The "most reasonable" may become relevant at any time: when we assess a legislative proposal, a pronouncement of a supreme court, a constitutional amendment, an outline for the basic structure, a "bill of rights" and, of course, when we debate political conceptions of justice in search of a suitable grounding

[22] Michelman 2019, 1, 65. See also Ferrara and Michelman 2021, and Michelman 2022.

for the basic structure. Perhaps the best way to clarify the "most reasonable" is to go back to the question of what validates "justice as fairness" as an appropriate normative basis for a just and stable society and to reconstruct the inner evolution of Rawls's thinking on this matter.

In A *Theory of Justice* what makes "justice as fairness" preferable over utilitarianism and other competing views is the fact that, in the original position, rational actors who deliberate behind a veil of ignorance would unanimously find it more *rational* to ground the basic structure of the future society on its principles.

Already in 1980, in "Kantian Constructivism in Moral Theory", an important article temporally much closer to A *Theory of Justice* than to *Political Liberalism*, Rawls jettisons this traditional normative model and thoroughly rethinks the normative credentials of justice as fairness, when he writes that

> what justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.[23]

Then in 1993, in *Political Liberalism*, once again justice as fairness is vindicated not as the view that rational actors would select from within a basket of competing views, but on the basis of its being, among all the "at least reasonable" political conceptions of justice, the one "most reasonable for us".[24]

Finally, in the new "Introduction", written for the expanded edition of *Political Liberalism* and first published in 1996, Rawls takes a further step toward reconciling normativity and reasonable pluralism, by imagining that a liberal-democratic society may be home to a "family of reasonable liberal political conceptions of justice", some of which may be mutually "incompatible".[25] However, in the context of a plurality now no longer solely of reasonable comprehensive conceptions of the good but also

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[23] Rawls 1980, 512-572.

[24] *PL*, 28.

[25] *PL*, xlvi-xlvii.

of political conceptions of justice, all by definition reasonable, justice as fairness is still considered "most reasonable" on account of its best satisfying, relative to its competitors (for example, "political" versions of utilitarianism, discursive deliberative democracy, republicanism, etc.) three conditions: a) its allowing for the specification of certain rights, liberties, and opportunities; b) its entailing a special priority for these freedoms; c) its including measures assuring all citizens, whatever their social position, adequate all-purpose means to make effective use of their liberties and opportunities.[26]

Why is this normative benchmark, "the most reasonable", so important? Because it breaks the philosophical spell that has entrapped normative political philosophy in the West for over 24 centuries, since the time when Plato formulated his allegory of the cave in T*he* R*epublic*, and it inaugurates a new perspective still awaiting full elaboration. The allegory narrates of an underground cave where prisoners chained to their benches face a wall onto which shadows are projected by objects lit by a fire positioned behind them. Shadows are all that the prisoners see and are misperceived as the whole of reality, a form of belief that symbolizes shifting and ungrounded opinion. One of the prisoners frees himself, succeeds in reaching the outside world, and painfully slowly acquires true knowledge of the objects and the sun, the source of all light. He decides to return inside and inform his fellow cave-dwellers, only to be derided for failing to discern the contours of the shadows, because his sight is temporarily impaired by the sudden transition from full day-light to the penumbra of the cave. He even risks being killed when he tries to unbind his comrades in order to enable them to take the same journey.[27]

Many metaphysical, moral, and philosophical-anthropological meanings have been read into Plato's allegory of the cave, but its *political philosophical* significance is that truly entitled to legitimately rule over others is only the one individual, taken as representative of the class of the philosophers, who has had the courage to leave opinion or *doxa*, which prevails inside the cave, and to endure the suffering that accompanies the quest for true ideas and, later, the pains of violent rejection, when he

[26] *PL*, xlvi.

[27] Plato 1991, 193-195, 514a-517b.

tries to offer to his fellows an account of how things truly are and what the Good is. Legitimate rule is ultimately rooted in the supremacy of knowledge or *episteme* over mere opinion or *doxa*.

As Hannah Arendt first noted, the grounding of legitimate rule on the possession of true knowledge – the enduring legacy of Plato's allegory of the cave – contains a dangerous ambiguity. On the one hand, the allegory embeds a critical, anti-traditionalist, anti-conventional teaching. On the other hand, it contains a seed of authoritarianism, lodged in the primacy of solitary seeing over action in concert or joint self-definition, and anchored in the subordination of politics to ethics (the Idea of the Good)[28] or, in the modern secularist versions (e.g., Marxism and the social darwinism inaugurated by Herbert Spencer), the subordination of politics to some law-like, non-political sort of truth.

The over 24 centuries elapsed since Plato's time have added variations on this theme, but have left the deep-seated overall teaching basically unchallenged. The idea of the Good, symbolized by the sun, has over time been replaced by the revealed will of a monotheistic God, by insights into the desiring nature of man, by the laws of evolution, by reason in history, by the dynamics of class struggle and revolutionary emancipation. The constant element underlying all these variations is the idea that true knowledge, which precedes intersubjective deliberation and sets the standard for sorting out good and bad deliberation, provides the foundations for the legitimate use of coercive power, for political obligation, and for all the normative concepts found in politics.

The latest reincarnation of such an epistemic approach to normative political philosophy is "justice as fairness" as understood in A T*heory of* J*ustice*. It is the weakest possible version of Plato's allegory, topographically located at the extreme edge, beyond which the model undergoes radical transformation. In fact, within A T*heory of* J*ustice* the fact of pluralism is already part of the "circumstances of justice": the point of "justice as fairness" is to enable us to build a just polity amidst conflicting conceptions of the good, and ultimately it is the consensus of us inside the cave that validates the philosopher's argument – a premise that Plato

[28] See Arendt 1961, 114-115.

would have never endorsed.[29] However, A *Theory of Justice* still lies *within* the bounds of Plato's line of thinking because it incorporates the expectation, later denounced as "unrealistic" in *Political Liberalism*,[30] that *everybody* in the cave will eventually recognize the superiority of "justice as fairness" over all the rival accounts of what is outside the cave, and notably over utilitarianism, as though the "burdens of judgment"[31] were inoperative or could be fully neutralized by some philosophical argument.

It is against the foil of this epistemic understanding of normative validity and legitimacy – right things are right ultimately because they reflect truth – that we can assess the magnitude of the revolutionary innovation introduced by Rawls when he qualifies justice as fairness as binding for us not because "it is true to an order of things antecedent to and given to us" – as the world of objects outside Plato's cave – but because it is congruent "with our deeper understanding of ourselves and our aspirations" and, in light of our history and traditions, it is the "most reasonable for us". It remains to be clarified in what sense this expression can be taken to count not as a negation of the allegory of the cave – along the skeptical lines intimated, among others, by Machiavelli and Hobbes – but as an enriching supplement to it.

In order to clarify that sense, all we have to do is to imagine that not just one, but a group of philosophers, destined to rule the cave, is heading back from the outside world.[32] As in the original version, they want to report what they have seen and to reform life in the cave. Wouldn't they perhaps want to stop, on their way back, *at the entrance of the cave* and consult in order to exchange impressions and check if they can come up with a common story that one of them, as their spokesperson, would relate? And if during that conversation, neither fully inside or outside the cave, the debate dragged on without coming to a close, wouldn't our philoso-

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[29] See *TJ*, 111-112.

[30] See fn 5, above.

[31] *PL*, 54-58.

[32] This extensive interpretation finds an anchoring in some passages (198-199, 519d–520a of Book VII of *The Republic*), where Plato has Socrates and Glaucon debate implications of the allegory based on the assumption that several captives, a group more or less coextensive with the future ruling philosophers, leave the cave and then return. For a more detailed analysis, see Ferrara 2020, 81-98.

phers most likely agree to limit their report to the observations blessed by full overlap and to take the convergent parts of their accounts as the only basis for exercising legitimate authority? As to the contentious conclusions and observations, wouldn't they agree to ban their enforcement through the authority each of them might happen to wield in the cave, and leave them for further discussion in proper venues, for the purpose of possibly extending the area of agreement?

Let us now step back and reflect on what these philosophers are doing. Should we describe their endorsing the prohibition to legally enforce controversial parts of the accounts, so that none of the accounts may triumph or succumb in the cave due to the contingent distribution of power, as just another "opinion" like the ones about the passing shadows? Certainly not, we would have to admit.

Should we alternatively describe the philosophers as endorsing the prohibition "never to back up controversial principles through coercive power" as a principle that they *discovered* in the outside world, as objectively as they found the light of the sun? Hardly so, we would have to admit again.

We would have to concede that the philosophers, during their conversation *sideways at the entrance of the cave*, associate their pro-pluralism stance neither with *doxa* nor with *episteme*, but simply with *the most reasonable thing* for them to do – what Rawls would call *the most reasonable principle for ruling the cave* available to them through their common public reason. In the course of their consultation, the philosophers can be said to have given rise to *public reason* and its twin standard, *the reasonable* and *the most reasonable*.

If so, then, the normativity of what is "most reasonable for us", be it a political conception of justice or a legislative proposal, or whatever, rests not on epistemic grounds, as though its merits were "discovered" outside the cave, but on the judgment that the deliberating subjects form, upon reflection. The location, sideways at the entrance of the cave, symbolizes that "the most reasonable" somehow partakes of two worlds – the imperfect nature of the subject of justice and the ideal quality of justice – and combines them in the best mix "for one singular case".

One predecessor of this exemplary, uniqueness-affirming normativity is Rousseau's account of the legislator's function in T*he Social Contract*. In Chapter 8 of Book II of T*he Social Contract*, the legislator who advises the

deliberating citizens should not aim at having them adopt "laws good in themselves",[33] but rather at laws fit for the people eventually subject to them. Rousseau's intimation for the constitution-making power of the citizens is unequivocal: D*o not author* (*constitutional*) *laws that you're not fit to be respectful of*. This intimation does not imply that the selection of the basic structure is unprincipled, prudential or a projection of the constitution-maker's preferences. Rather, it means that the citizens should balance principle-optimality – i.e., being guided, for Rousseau, by the point of the social contract, to protect the person and property of each associate while leaving her as free as before;[34] for Rawls, being guided by justice as fairness – with their historical experiences and political culture(s). Rawls, furthermore, offers "reflective equilibrium" as a methodological resource for making sense of *when* that balance is achieved.

5. *Conclusion*

The normativity of justice as fairness, in conclusion, now derives not from its being the outcome of a decontextualized thought-experiment, as in T*heory*, but from its being *the most reasonable political conception of justice for us*, where "most reasonable" means that, among all the "merely reasonable" conceptions, it is the one that realizes *the best fit* – tested through reflective equilibrium – between its two freestandingly valid principles (introduced at the beginning, which have simply changed status, not substance) and the historical, political, cultural features salient for the people who intend to constitute a political community.

The normative standard of "the most reasonable", which undergirds the use of public reason, can serve many more purposes than just grounding justice as fairness as the political conception of justice to which a consensus-worthy constitution must be responsive. For example, in the light of Rawls's propensity (rare among liberal political philosophers) to use the concept of constituent power, it can be said to bind the constituent power of a people in enacting "higher law" and using it for articulating its "politi-

[33] Rousseau 1999, Book II, Ch. 8, 80.

[34] I*bidem*, Book I, Ch. 6, 54-55.

cal ideal [...] to govern itself in a certain way".[35] The standard of the "most reasonable" can also be argued to guide exercises of adjudication on the part of a supreme or constitutional court that for Rawls ideally must function as an "exemplar of public reason" when it assesses the consistency of ordinary law with the people's mandated higher law.[36]

In sum, the gist of Rawls's legacy in the 21st century consists of a novel approach to justice and legitimacy that lives up to the 20th century intuition, embedded in the linguistic turn inaugurated among others by Wittgenstein, about the untenability of Archimedean points supposedly over-ranking the local normativity of plural life-forms and language games or, in Rawls' own vocabulary, that acknowledges "the fact of *reasonable* pluralism" and yet remains as fully normative as the standards of the past.

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[35] *PL*, 232.

[36] See *PL*, 235. For a reconstruction of Rawls's conception of constituent power as not unbound, but responsive to the normativity of the most reasonable, see Ferrara 2023, Ch. 3. On the standard of the "most reasonable" as applicable to adjudication, see *ibidem*, 237-244.

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