

# THE IDEA OF AN OVERLAPPING CONSENSUS AND THE KANTIAN INTERPRETATION OF *POLITICAL LIBERALISM*

**DAVID MARTÍNEZ**

*Instituto de Ciencias de la Educación  
Universidad Bernardo O'Higgins, Santiago (Chile)*  
david.martinez@uoh.cl

## **ABSTRACT**

According to the familiar interpretation, *A Theory of Justice* (TJ) develops a strong Kantianism. Rawls himself understand his own theory in Kantian terms, and basic components of TJ, such as the original position and reflective equilibrium, have been understood as relying on Kantian practical reason. Meanwhile, the consensus concerning *Political Liberalism* (PL) is that this book is less Kantian. Even, for some, the later book is not Kantian at all. Rainer Forst argues against the later claim, developing a Kantian reading of PL. In this interpretation, the key concept in the development of Rawls's view is a Kantian notion of practical reason. This component is essential in Rawls, and not only concepts such as the original position and reflective equilibrium have to be understood from this foundation, but also others such as the overlapping consensus of comprehensive doctrines. This article maintains that PL is less Kantian than Forst argues, and that is better to understand this theory as postkantian. I examine in positive terms this feature of PL, arguing that Rawls is a *sui generis* thinker. This shows among other things his substantive contribution to the development of political philosophy.

## **KEYWORDS**

A Theory of Justice, Political Liberalism, Kant, Constructivism, original position, overlapping consensus.

## **1. INTRODUCTION**

It is commonplace to understand John Rawls's philosophical project as belonging to the Kantian family. (Habermas 2011a; Vallespín 1998; Selemé 2003, 2004; Peña 2011, 2017; Forst 2011, 2017; Guyer 2018; O'Neill 2018; Flikschuh 2018) Rawls himself

offers a Kantian interpretation of his theory, arguing that his version of the social contract – developed in his theory of justice – is specifically Kantian. (Rawls 1980) In addition, Rawls proposes the elaboration of a normative theory that assumes meta-ethical premises based on Kantian constructivism. (Rawls 1980; O’Neill 2003) It is important to notice that this does not mean that Rawls is recommending Kant’s moral philosophy as the best way to organise modern democracies. Indeed, he wants to distinguish the Kantian interpretation of his theory from a Kantian comprehensive doctrine,<sup>1</sup> namely, Kant’s moral philosophy. Particularly in *Political Liberalism* he makes this point very clear, since a plural society cannot rely for its stability only in one philosophical comprehensive doctrine.<sup>2</sup>

After we made this clarification, also in the literature it is possible to find an interpretation in which perhaps not *TJ*, but *PL* supposes a departure from Kantianism. This is why Burton Dreben points out in relation to this book that “Kant’s talk about practical reason is useless for understanding Rawls”. (Dreben 2003, 340) He makes this claim when he is discussing the meaning of reasonable, and he says that practical reason does not help at all to understand this concept. Rather, according to Dreben, Rawls correctly defines the reasonable as “the willingness to propose and honor fair terms of cooperation” and as “the willingness to recognize the burdens of judgment and to accept their consequences.” (*PL*, 49) Moreover, Onora O’Neill claims that there is an important difference Rawls and Kant: the latter does not presuppose social and political structures in his moral philosophy, nor the concrete links between the citizens of a democratic society, as Rawls does. (O’Neill 2003, 362)

This article focuses on the Kantian interpretation of *PL* developed by Rainer Forst and to a particular criticism which he addresses with his Kantian defence of Rawls. The objection has a formulation on the Habermas-Rawls debate, and it relates to the concept of the overlapping consensus of comprehensive doctrines. According to Rawls, the political conception that is at the base of a democratic order must be neutral with respect to comprehensive doctrines (Rawls 2011, 34). If the political conception is not neutral and favours a particular doctrine, then citizens who believe in other doctrines have no reason to accept that political conception. For Habermas, the strategy to make the overlapping consensus neutral in the face of comprehensive doctrines results in Rawls avoiding giving an epistemic-normative justification to this concept (Habermas

<sup>1</sup> At the beginning of Section 3 I explain in more detail what does comprehensive doctrine mean.

<sup>2</sup> In the following, when I refer to the “Kantian interpretation”, I mean an interpretation of Rawls’s theory which claims that this theory is fundamentally Kantian, but not that is a Kantian comprehensive doctrine. Rainer Forst’s Kantian interpretation of Rawls shares this point with Rawls’s interpretation of his own theory.

2011b, 92). Moreover, the political conception is valid not because it is rational in normative terms, but because it synthesizes political values shared by citizens. This objection has been defined as the descriptive criticism insofar as Rawls's theory would be limited to describing existing political principles, which would have normative validity only because they are widely shared (Raz 1990, Cohen 2008, Selemé 2003, Hedrick 2010). Therefore, if for example in a particular society most people believe that some are naturally superior than others, then insofar as this is a widely shared view then it seems that this idea could be part of the political conception. One can think in many other situations: for example, in a particular society, most people believe that immigrants have less rights than nationals. Does this mean that these beliefs should be part of the political conception, just because they are generally accepted? According to the descriptive criticism Rawls leaves room to answer this question with a yes. Rainer Forst rejects the descriptive criticism: the overlapping consensus is not a construction that synthesizes the values that citizens simply and for whatever reason share. On the contrary, the political conception has normative validity, which is prior to being the focus of the consensus.

Consistent with this interpretation, Forst claims that *PL* should be read as a non-comprehensive Kantian theory (Forst, 2017a). To the extent that it is not comprehensive, it is neutral towards comprehensive doctrines and therefore can be the focus of the overlapping consensus. And being Kantian allows it to have a normative weight. I agree with Forst that Rawls incorporates a normative component on the political conception based on practical reason. That said, a fully Kantian reading of *PL* is incoherent with some essential components of this theory. Forst himself sees that his Kantian reading seems to conflict with important tenets of *PL*, namely, that the political conception relies on “fundamental ideas seen as implicit in the public political culture of a democratic society” (*PL*, 13). Therefore, I propose a socialized and historicized view of the political conception, which does not reject practical reason, but still sees the political conception as a social and historical achievement.

To properly understand this interpretation, we can look towards the postkantian tradition. According to Terry Pinkard (1994, 1999) and Robert Pippin (1989, 1991), among Fichte and Schelling, one of the most important postkantian philosophers was Hegel. Pinkard and Pippin offer an interesting reading of the intention and outcomes of Hegel's critique of Kant. The relationship between morality [*Moralität*] and ethical life [*Sittlichkeit*] is the point of view from which Hegel elaborates his understanding of normativity. In the *Philosophy of Right*, he claims that ethical life is freedom converted into an existing world and the nature of consciousness (Hegel 1991). This thesis contains the core of Hegel's intention in his critique of Kant, namely, that freedom (or autonomy) can only be actualized in concrete social institutions and practices. This

relationship is the basis of the postkantian interpretation. According to this reading, Hegel is not only a philosopher who writes after Kant, but he is a Kantian philosopher. The fundamental point is that Hegel does not reject his predecessor's concept of moral autonomy in favor of another concept.

Hegel agrees with Kant that the moral will is autonomous (Patten 1995; Freyenhagen 2011). For example, in § 133 of the *Elements of the Philosophy of Right* Hegel notes that Kant should be praised because he proposed a notion of autonomy which is the basis of moral reasoning. That said, in the same book, Hegel claims that it is necessary to move beyond pure autonomy, towards ethical life, otherwise morality becomes an empty formalism. The object of this criticism is Kant, because in his philosophy the moral point of view does not recognize the dimension of ethical life. For this reason, Kantian morality is constituted as a purely formal theory, divorced from real life, its values, practices and institutions. The dialectic between morality and ethical life is Hegel's main contribution to overcome the empty formalism of Kant's practical reason. In this approach, the point is that reason cannot define the autonomy of the will independently of historical time and social space. In this sense, Hegel help us to understand that autonomy only takes shape in the middle of the institutions and practices of modern ethical life. In this way, Hegel must be considered as extending Kant's rationalistic morality, criticizing and complementing it, but not rejecting it. In this article, I am not trying to argue that Rawls is Hegelian (See Gledhill 2011). Rather, the article shows that some components of *PL*, have some affinities with the postkantian tradition, in the sense that Pinkard and Pippin give to this approach.

## 2. THE BACKGROUND: THE HABERMAS-RAWLS DEBATE

The historical background which explains the relationship between Rawls and the tradition of critical theory, is his debate with Habermas. This debate took place in 1995 in the *Journal of Philosophy*, and it consists of three articles: *Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism* (Habermas 2011a); *Reply to Habermas* (Rawls 2011); and *"Reasonable" versus "True," or the Morality of Worldviews* (Habermas 2011b). According to the literature, this was a dispute within the Kantian family (Habermas 2011a, 25; Müller 2002; Forst 2011; Laden 2011; Finlayson 2019). This is because among other things both Habermas and Rawls propose a conception of justice based on Kantian notions of practical reason (Forst 2011, 153). Moreover, the debate is a privileged place to examine the link between political legitimacy and morality in the theories of these authors (Finlayson 2016, 2019; Martínez 2019a).

It is important to examine the meaning and scope of the debate. A first issue is that for several interpreters the high expectations associated with this encounter have a disappointing result. Jonathan Wolff refers to the debate as a failure of two of the greatest contemporary thinkers to meet (Wolff 2008). One of the reasons for that assessment is that these authors seemingly have very different orientations (Skinner et al. 2002, 8). According to O'Neill, the works of these authors contain too many premises that go in many different directions (Skinner et al. 2002, 9). Similarly, O'Neill explains the failure because Habermas and Rawls are responding with their theories to different political contexts: the first, to the historical legacy of Germany and the construction of a democratic order; the second, to the reality of the movements for civil rights and other social struggles.

However, these claims could be weakened if we follow Finlayson's interpretation of the debate in which he proposes a distinction between an early debate and the debate itself. The early debate begins a decade before the debate itself took place. (Finlayson 2011, 2; 2019) The early debate was marked by certain misunderstandings. The main one was to understand Rawls's *TJ* and Habermas's discourse ethics as similar theories, referring to the same objects. To avoid this misconception, it is important to notice that Rawls's theory aims to construct principles of justice for the fundamental institutions of society. Therefore, Rawls focuses on social justice, so to speak. While Habermas's task is the reconstruction of the point of view of morality to assess actions in a broad sense. Thus, according to Finlayson, Rawls develops a theory of justice for the main institutions of society, and Habermas a moral theory to assess the moral value of a wide scope of human actions (Finlayson 2011, 3-4).

The early debate is based on some criticisms that Habermas develops, which are scattered in texts such as *Moral Consciousness and Communicative Action* (1990) and *Between Facts and Norms* (1996). These criticisms were continued by some followers of Habermas and critics of Rawls (White 1988; Baynes 1992; Benhabib 1992). One of the main criticisms is that in *TJ*, Rawls follows the Kantian model based on the philosophy of consciousness, in which moral reasoning takes place in the isolated reflection of the moral agent. On the contrary, for Habermas moral reasoning is an intersubjective practice, which takes place in the communicative praxis of social actors (Habermas 1990, 66). A second criticism is that with his idea of the original position as a mechanism of representation, Rawls supposes a fictional situation that must be replaced by the idea of rational dialogue between concrete actors (Habermas 1990, 198). This criticism continues to be addressed in the debate in 1995, then, in what follows, I examine the dispute itself.

With the publication of *Between Facts and Norms* and *Political Liberalism* the situation changes. First, in *PL* Rawls can no longer be subject to the criticism of the early

debate, insofar as his concepts of autonomy and justice are notions that are understood in the middle of intersubjectivity (Habermas 2011, 25; Forst 2011). And in that sense, notions such as deliberation, consensus and public justification as concrete practices are central. Second, in these two books a common ground emerges in which it was possible to develop the debate. According to Finlayson, both works give plausibility to the debate, because the thinkers discussed a common theme, namely, the question of the legitimacy and justice of political institutions (Finlayson 2016, 2019). Let us remember that that was not the case on the early debate, where Habermas was developing a moral theory and Rawls a political theory. Habermas opens the debate with three criticisms. First, he criticizes the way in which Rawls's device of representation, namely, the original position, is constructed. Second, he criticizes the features of Rawls's overlapping consensus. Finally, he challenges the relationship proposed by Rawls between popular sovereignty and basic human rights. In the following, I focus on a discussion which pertains to the second criticism.

### 3. POLITICAL LIBERALISM AND THE QUESTION OF STABILITY

In *PL*, Rawls addresses the question of the stability of a democratic society. However, this does not mean that this concern only begins with *PL*. For example, three years before that *TJ* was published, Rawls claims that “a conception of justice is stable if the institutions which satisfy it tend to generate their own support” (1968, 171). And in *TJ*, he says that “stability means that however institutions are changed, they still remain just or approximately so, as adjustments are made in view of new social circumstances.” (*TJ*, 481). It is important to notice that stability does not only mean that a system will remain in time. Rather, in Rawls stability has a normative weight and a democratic system must be stable for the right reasons (1999, 45).

In *PL*, Rawls address this issue in the context of pluralism, a scenario that makes unlikely a consensus on a particular comprehensive doctrine, for example, the Kantianism of *TJ*. This new focus explains the move from *TJ* to *PL* (Seleme 2001, 2004; Weithman 2011). Although many might think that they understand what Rawls means with the concept “comprehensive doctrine”, it is better to provide a brief note to clarify this concept. According to Rawls comprehensive doctrines cover religious, moral and philosophical aspects of human life (2005 59). A comprehensive doctrine can be a) a religion (for example, Catholicism, Protestantism, Buddhism, Judaism), b) a moral theory (for example, Kantianism, utilitarianism), or c) a philosophical doctrine (for example, existentialism, Stoicism) (Finlayson 2019, 112). Thus, the diversity of comprehensive doctrines explains that there cannot be only one comprehensive doctrine that is

accepted by all citizens, and any of them can be rejected by reasonable people (Rawls 2005, xvi).

Rawls claims that the diversity of comprehensive doctrines is the result of the evolution of practical reason in history. However, diversity poses a challenge to social stability. The religious wars in Europe are the paradigmatic case that shows how the struggle between different comprehensive doctrines could challenge social stability and reach a point in which conflicts end in violence. The problem is that, if the citizens are divided by dissimilar comprehensive doctrines, it seems difficult to expect an agreement on the basic principles of justice that guide democratic institutions. PL develops this problem and the proposed solution rests on the overlapping consensus of reasonable comprehensive doctrines. The political conception with the fundamental principles for a democratic social order can become the focus of the overlapping consensus of comprehensive doctrines. Thus, a basic core of principles for the regulation of society will be shared by citizens, although they may find themselves divided by various comprehensive doctrines. The relationship between the political conception of justice and comprehensive doctrines has been the focus of intense discussion. By means of the analysis of the Habermas-Rawls debate, I will develop one criticism that challenges the way in which this relationship works.

#### 4. HABERMAS'S CRITIQUE OF RAWLS'S OVERLAPPING CONSENSUS

Here, we do not need to go into historical and philosophical details of the Habermas-Rawls debate, because others have done that well already (Hedrick 2010; Finlayson 2016, 2019). Instead, in the following I focus on what is relevant in the debate for the discussion developed in this article. Habermas discusses the political meaning of the overlapping consensus, which would be motivated by the diversity of comprehensive doctrines. (Habermas 2011a).<sup>3</sup> According to Rawls, the political conception must be neutral with respect to comprehensive doctrines (Rawls 2011, 34) and this means that it must not go beyond the political sphere. That is, it should not be introduced into the controversial areas of philosophy, morality, metaphysics and religion. Otherwise, it would not be possible to expect citizens to adhere to the political conception. Habermas describes this as an "avoidance strategy", which means the avoidance of getting into controversial issues, indicates a certain lack of clarity regarding the justification of Rawls's theory (Habermas 2011b, 92). This strategy makes the political conception valid not because is rational in normative terms, but because synthesizes the political

<sup>3</sup> Here we just focus on this criticism developed in the Habermas-Rawls debate. For a detailed account of the other criticisms see Habermas 2011a; Finlayson 2011, 2019. Also, Hedrick 2010.

values that for whatever reason citizens share. Thus, it might be the case that the political conception rests on values that are wrong from a normative point of view, but still it might be valid because it based on widely accepted values. If Habermas's interpretation is correct, then PL would simple describe the existing political values in a democratic society, that only have normative validity because they are the values that we have, so to speak. This objection has been defined in the literature as the descriptive criticism (Raz 1990, Cohen 2008), since *PL* is limited to describe the existing political values, which do not necessarily have normative validity (Raz 1990, Cohen 2008, Hedrick 2010). According to the descriptivist criticism, the overlapping consensus is valid because it describes what is generally accepted.

Rawls himself addresses this objection in *PL* and he denies that the overlapping consensus can have a *modus vivendi* interpretation. By this Rawls means that the overlapping consensus cannot be the result of a compromise between citizens that do not necessarily share a view about justice and its principles.<sup>4</sup> Moreover, the overlapping consensus is not a set of principles in which citizens agree to avoid conflict. Instead, it has a moral value, in the sense that it rests on normative principles which are agreed because most citizens have good reasons to accept them. Or in Thomas Nagel's formulation, no one can reasonably reject these principles (Nagel 1998, 105-106). Nevertheless, this neither convinced Rawls's critics nor Habermas.<sup>5</sup> The latter questions whether the overlapping consensus plays a cognitive or simply instrumental role in stabilizing democracy (Habermas 2011a, 34). With the distinction between cognitive and instrumental Habermas means that in the first case the overlapping consensus has a normative value. In the second case, the overlapping consensus is like a political mean, which is useful to stabilize society, but that not necessarily has normative value. According to Habermas, Rawls seems to be more concerned with the stability than with the normative justification of his own theory, and this is contradictory with his claim that stability should be based on good reasons. Therefore, the issue is that Rawls's strategy of avoidance goes against his own theory. Likewise, the problem is simply obscured by introducing the concept of 'reasonable' instead of 'true', but this difference is ambiguous for Habermas (Habermas 2011a, 37). This is because, on the one hand, 'reasonable' could mean morally true, or on the other, as a kind of attitude or "thoughtfulness' in dealing with debatable views whose truth is for the presented undecided" (Habermas

<sup>4</sup> A good example of a *modus vivendi* arrangement is the type of relationship between adversaries that find more convenient to avoid open conflict.

<sup>5</sup> As a matter of fact, Habermas's critique was written after Rawls's wrote *PL* so, one alternative is that the latter did not understand the former, or that he was not totally convinced by his arguments. Another alternative is that Habermas was trying to exaggerate an interpretation of *PL* to encourage Rawls to clarify his position. Indeed, this seems to be a good alternative, because Habermas himself describes his intention as of a reviewer.



2011a, 37). In short, what worries Habermas is that Rawls seems to be weakening the normative justification of the political conception, and this results in collapsing the difference between normative validity and mere acceptance (Habermas 2011a, 36).

In his reply, Rawls indicates that the answer to this criticism rests in the way in which political liberalism specifies three levels of justification of the political conception: *pro tanto*, full justification, and political justification (Rawls 2011, 56). In the first level, “the political values specified by it can be suitably ordered, or balanced, so that those values alone give a reasonable answer by public reason to all, or nearly all, questions concerning constitutional essentials and basic justice” (Rawls 2011, 56). In this regard, “the *pro tanto* justification of the political conception is basically the coherentist method of reflective equilibrium” (Finlayson 2011 & Freyenhagen, 17). And according to Rawls, “The overall criterion of the reasonable is general and wide reflective equilibrium” (Rawls 2011, 55). In the *pro tanto* level, the task is to check the coherence and completeness of the political conception, and its coherence with practical reason. Thus, the *pro tanto* level provides the normative underpinnings and this overcome Habermas’s criticism.

In addition to addressing the objection, Rawls develops a critique of Habermas and argues that the latter is hostage to the incorporation of certain philosophical elements, which pertain to a comprehensive doctrine (Rawls 2011, 47). In his response, Habermas does not deny that his theory is comprehensive and philosophical (Habermas 2011b, 93). Rather, his argument is that a political theory must be founded on normative requirements that frame the comprehensive doctrines of citizens. According to Habermas, supporting this position and affirming the neutrality of the political conception implies incorporating premises that go beyond the limited space of the political, as Rawls constructs it (Habermas 2011b, 94; Rawls 2011, 47), and introducing contents that are properly normative and philosophical (Habermas 2011b, 93). In this way, Habermas even claims that constitutional democracy cannot be possible without a normative core founded on what he calls Kantian Republicanism (Habermas 2011b, 112-113; 2008, 102). In that sense, his interpretation implies understanding *PL* as a comprehensive theory of democratic legitimacy. Despite Rawls’s intention to present his theory as *freestanding* – or independent of comprehensive doctrines and non-comprehensive.

## 5. RAINER FORST’S KANTIAN INTERPRETATION OF *POLITICAL LIBERALISM*

As I have shown above, one objection against *PL* states that the overlapping consensus could be the result of the coincidence between the different comprehensive doc-

trines. Therefore, it only synthesizes the shared political values of the actual comprehensive doctrines. It could be otherwise. For example, it could be possible to imagine another political conception, depending on other existing comprehensive doctrines. Thus, in one society the overlapping consensus of comprehensive doctrines could justify equality between men and women. In other society, the overlapping consensus could be that men and women are essentially different and that justify differences in status, dignity, rights, and so on. Of course, this relativism seems to be incoherent. And this is what the literature calls the descriptivist or conventionalist interpretations of *PL*. In his reading of *PL*, Rainer Forst proposes to understand it developing a political conception founded on Kantian, but non comprehensive, premises. According to this interpretation, Rawls would be able to answer the objection of the normative deficit, because the political conception has a normative core based on a Kantian notion of practical reason. Therefore, according to Forst, conventionalist, historicist and descriptivist readings and criticisms does not apply to Rawls.<sup>6</sup>

Forst shows that from the beginning to its end *PL* is based on Kantian practical reason and looking at this concept is the best way to deal with those criticism that appeal to the normative deficit. Forst's main thesis is that "the liberal conception of justice is compatible with a plurality of comprehensive doctrines as long as they share the independently defined and grounded essentials of that conception of justice – that is, as long as they are "reasonable," to use the term that does most of the Kantian work" (Forst 2017a, 123). Therefore, the liberal conception could be neutral and compatible with different comprehensive doctrines, insofar as it is based on practical reason.

In what follows, I summarize in broad brushstrokes Forst's Kantian interpretation of *PL*: A) The political conception is grounded on Kantian practical reason and neither on comprehensive doctrines nor on their consensus. B) The relationship between the political conception and comprehensive doctrines is one in which the former has normative priority over the latter. Thus, in public life any dispute between the political conception and comprehensive doctrines must be decided in favour of the former. C) The political conception has priority over both any *de facto* consensus and historical arrangements. This explains its critical power, insofar as it can provide normative standards to criticize existing social conditions. One example that supports this thesis is that at some point of history moral claims like the wrongness of slavery were not shared understanding. D) Due to their normative and epistemic powers, citizens are motivated

<sup>6</sup> Although he refers to "conventionalist," "historicist", "hermeneutic" and "practice depending" interpretations and criticisms of Rawls, and he does not mention the descriptivist criticism, he is certainly referring to the same set of issues.

to act according to the political conception – because they are motivated to act according to practical reason – before any other commitment, namely, their comprehensive allegiances.

Despite its parsimony I argue that Forst’s reading makes unnecessary efforts to develop a Kantian interpretation, which does not seem to be coherent with some elements of *PL*. Forst himself points out that it seems problematic to harmonize his Kantian interpretation with Rawls’s claim that the political conception relies on “fundamental ideas seen as implicit in the public political culture of a democratic society” (*PL*, 13). According to Forst, this claim is usually cited by the conventionalist or historicist interpretations. Nevertheless, he argues that this does not mean that a conventionalist program is “lurking” in *PL* (Forst 2017a, 131):

For Rawls never says that these fundamental ideas are in fact guiding current practice or are widely shared in contemporary democratic societies, nor does he say that the theory of justice uses them because they are generally shared or factually present (Forst 2017a, 131).

Rather, according to Forst, these ideas are implicit in a democratic society if this society can claim to be democratic at all, and these ideas are presented as ideas of practical reason. Thus, when Rawls ask that we collect historical and present beliefs which underpin the political conception, these are provisional standards “that any reasonable conception must account for” (*PL*, 8). Forst sees here that the order of justification is not from historical facts or beliefs to the justification of the theory. Instead, “the theory has to provide independent normative reasons for such progressive and emancipatory ideas and fit them into a general account of justice.” (Forst 2017a, 131).

In the following, I provide a less demanding defence of *PL* against the descriptivist criticism. First, against the descriptivist criticism, *PL* does not have a normative deficit. In this point I agree with Forst in the sense that practical reason is essential to frame a political conception for a democratic society. Indeed, practical reason provides normative standards to evaluate rules, values and principles. Second, practical reason arises only within historical and social contexts, and never beyond them. Therefore, against Forst, the activity of doing political philosophy implies a hermeneutic effort of reconstructing the values and principles that arise in the middle of social life. Perhaps this seems to be a minor change, but as I show below, it provides a better explanation of *PL*. And it shows with less effort than Forst how some of the essential components of *PL* fit.

In short, my view is that the principles of justice, as practical reason, are situated in social space and historical time. However, that does not mean that whatever principles, practices, rules, etc., that exist have normative value, or are coherent with practical reason. Of course, this seems to be Forst’s main worry against the conventionalist reading.

In this regard, I argue that some principles and practices can be even widely accepted by a particular society, and at the same time they can be wrong from the normative point of view. Then, we can distinguish here between justified principles and non-justified principles. Nevertheless, that does not mean that they come from different realms: political values are a “subdomain of the realm of all values” (*PL*, 139). In this realm one can distinguish political values, ethical values, moral values, and so on. Even values that justify practices that could be seen as irrational or abhorrent. Values for example that distinguish between different “categories” of human beings, or that perpetuate inequalities. But in any case, they are part of the same universe of objects, so to speak, where also we can find values which are normatively justified. And this universe only arises in social life, and in the middle of its institutions and practices. Thus, against Forst we can understand political philosophy as a hermeneutic effort, insofar as its task is to find normative criteria and values immanent to social life. Simple because it would be impossible to reach another realm of values and principles which go beyond our given social and historical conditions. But again, this does not mean that whatever principles and values we find in social life are justified from the normative point of view. Only political values have a public justification, which means that every reasonable citizen must recognize them and respect them. In this regard, Rawls claims that as reasonable they accept that political values “normally outweigh whatever values may conflict with them”, because they are “very great values and hence not easily overridden” (*PL*, 139).

When Forst claims that “the theory has to provide independent normative reasons”, he also says that their justification neither depends on historical facts nor in comprehensive doctrines and beliefs, but only in practical reason. However, where if not in history, in social life, can we find practical reason? Nowhere else. Indeed, the basic experience which confront us with an order of values is the historical fact of our social existence. That thesis was already present in Aristotle when he described human beings as *zoon politikon* and *zoon logon Echon*. The most salient feature of these definition of the human is its social status. Even though *logon* could mean reason, its more important meaning is speech and speaking, which always refer to a relationship between people. From this fact arises an order of values which in one way or another refer to others. Think for example in some of the basic normative principles which Rawls – and the tradition of political philosophy – identifies, namely, equality, public reason, reciprocity, the duty of civility, autonomy, fairness, and so on. All of them refer to social relationships. And they do not only refer to social life, but at the same time, they arise from social life.

Moreover, commonly values arise in the middle of conflicts. This shows their historical and social pedigree. Social conflicts demand normative principles to regulate

them and to avoid means such as violence. Religious wars are a good example which shows how normative values, such as the principle of tolerance, arise historically. According to Rawls “the historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath” (*PL*, xxiv). It is true that here Rawls probably is referring to political liberalism as a political view, and not as a political theory, but still the political theory and *PL* only exist because political liberalism as a political view historically exists.

Therefore, the thesis defended here is that not all values and principles have normative weight in the sense that they are justified and can be agreed by all. That said, all values and principles are historical. In this normative universe – as I have called it above – by means of the never-ending practice of providing and exchanging reasons, we can progressively distinguish between justified and non-justified values and principles.<sup>7</sup> Indeed, on his reply to Habermas, Rawls seems to adopt this perspective. Discussing the main features of reflective equilibrium, which is the first step to build the political conception, he claims that,

It is a point at infinity we can never reach, though we may get closer to it in the sense that through discussion our ideals, principles, and judgments seem more reasonable to us and we regard them as better founded than they were before (Rawls 2011, 55).

With this as a background, I can summarize my position in relationship with Forst. I agree with him that practical reason justifies principles and values for a democratic society. Then I also agree with him that *PL* does not have a normative deficit, as someone like Habermas seems to claim in his critique. But I disagree with Forst when he argues that these principles and values cannot be found through the historical or hermeneutic effort and are only the result of a procedure of reasoning, or ideas of practical reason. Values, principles, and the normative standards that allow us to assess whether they could be justified or not are social and historical products.

This interpretation provides a better explanation of the relationship between the political conception and comprehensive doctrines. Let us recall that Rawls himself avoids a Kantian interpretation of *PL* because this moral doctrine has a comprehensive character. In this respect, Paul Weithman claims that “the Kantian conception of the person is not a neutral starting point for political theorizing, but is a conception with which many reasonable people in a pluralistic society would disagree” (2011, 19). However, Kaufmann suggests that *PL* does not rely on a Kantian conception of the person (2012, 253). The extent to which the features of the political conception of the person

<sup>7</sup> In this respect, this position seems to be more related with the Habermasian alternative, in the sense that normativity is a process of mutual learning (Habermas 1996). Insofar as this article focuses on Rawls, we cannot go into detail here on Habermas’s position. For important discussions on this see Rosenfeld and Arato (1998).

are Kantian depends on the degree to which the conception of the person in the public political culture of a democratic society is Kantian. If the latter is Kantian, then the parties represented in the original position will share features with the Kantian conception of the person.

On this issue, Forst argues that *PL* is Kantian but non-comprehensive. In this reading, what is at the centre is a Kantian conception of the citizen, not of the person. Nevertheless, this leaves room for an issue that should be addressed, namely, despite the fact that this Kantianism claims not to be comprehensive, what reasons do we have to expect that the citizens will endorse a Kantian conception? And why can we expect that they will give priority to the Kantian conception than to their comprehensive doctrines? Yes, after all it might be true that constitutional democracy would work better if we were all Kantian citizens. But precisely departing from this assumption was the starting point of *Political Liberalism* (*PL*, xvi). Indeed, Rawls talks about a “serious problem”, that “concerns the unrealistic idea of a well-ordered society as it appears in *Theory*” (*PL*, xvi), in which all its citizens endorse justice as fairness, which is a Kantian doctrine. Therefore, when Forst tries to solve an issue in Rawls he revives another. A problem that *PL* since the beginning was aimed to overcome. As a matter of fact, according to Weithman, that was the point of writing *PL*.

I claim above that my interpretation provides a better explanation of the way in which the relationship between the political conception and comprehensive doctrines works. In this regard, for Rawls in an overlapping consensus:

Each citizen affirms both a comprehensive doctrine and the focal political conception, somehow related. In some cases, the political conception is simply the consequence of, or continuous with, a citizen’s comprehensive doctrine; in others it may be related as an acceptable approximation given the circumstances of the social world (*PL*, xix).

This passage shows that for Rawls the relationship between comprehensive doctrines and the political conception does not work like Forst argues. Instead, Rawls clearly says that the political conception could be the consequence or continuous with the comprehensive doctrines, or at least could be an acceptable approximation. Therefore, even though the political conception is independent of the comprehensive doctrines – because its normative justification does not depend on any of them, not even of their overlap – it seems that its substance comes from these comprehensive doctrines. Perhaps we do not need to make this strong claim and go too far. It would be enough to say that the political conception is part of a democratic culture, in which diverse comprehensive doctrines interact and sometimes conflict, and not only the result of a process of reasoning, such as the original position or reflective equilibrium. As a matter of fact, those normative standards that allow us to evaluate the validity of different principles and rules – which according to the Kantian tradition are underpinned

by practical reason – are immanent to a democratic culture and they arise historically from the interactions and struggles between citizens. Therefore, not only our comprehensive doctrines, beliefs and practices are situated in historical time and social space, but even our standards to assess their validity.

## 6. CONCLUSION

To conclude this article, I would like to examine the following question, if Rawls is not as Kantian as many think he is, then what is the family to which he belongs? Perhaps, a simple and good answer would be to say that Rawls is Rawlsian. This means that he developed a rich tradition of political thought. Also, that his theory is original and unique. Thus, not being fully Kantian is a positive feature of his work and shows its singularity. Another possibility would be to understand Rawls closer to other big names of philosophy. Since probably the biggest contemporary challenger of Kant was Hegel, then one can think of him as the true philosophical father of Rawls. In this article, I cannot develop this issue in depth, but it would be interesting to assess whether Rawls is an heir of Hegel (See Gledhill 2011). The historical and socialized features of his theory, at least in *PL*, seem to give plausibility to this reading. Does this mean that this would be a return of conventionalism? (as Forst worries). I think it does not. The post-kantian interpretation of Hegel understands him as reconciling Kantian practical reason [morality] with historical time and social space [ethical life] (Pippin 1989, 1991, Pinkard 1994, 1999). Perhaps, that is exactly what happens on Rawls's work.

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