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Rereading Rawls in Arendtian light

Reflective judgment and historical experience



1 The importance of an Arendtian legacy

Very early in her *Philosophical Diary*, Arendt wrote: ‘If we leave aside the faculty of judgment, everything turns into vertigo’.¹ Already by 1951, she was puzzled by the need of judgment and by the difficulties of understanding what judgment is. Two things, over with which she would be pondering all her life, underlie her acknowledgment of that need and this perplexity. In the first place, there was her conviction, later increased and further elaborated, that judgment, understood as the capacity for distinguishing right from wrong, underlies the lack of response to the swelling totalitarian historical processes that took place in the first half of the past century. Arendt lived through those dark ages in an exercise of understanding these processes and, for so doing, struggled against the for-grantedness of current political understandings or ideologies that, to her thought, missed the nature of the evils of contemporary society; and she condemned their underlying philosophical hindrances – so she thought them – that prevented understanding and led action to so many blind alleys. But, in the second place, the need of judgment and the difficulties in understanding it frame her perplexity regarding the ambivalent, Janus-status of judgment itself. Judgment is a normative discriminatory capacity that relates, on the one hand, to the distinct faculty of thinking or *vita contemplativa* because it brings into the world the understanding and mapping of what right and wrong are; but thinking, nevertheless, has to have a free and unconditioned status as a personal exercise of rationality, even in solitude,² unconstrained by

the circumstances of action. Thus, on the other hand, judgment, as a faculty that, at a specifically concerned distance, pertains to the spectator and not to the actor, remains also segregated from immediate action and politics, albeit it has to frame them if its discriminatory powers are to have any function. As a distinct faculty, judgment – the faculty that remained almost absent in dark times – is required as an exercise of concernment and immediacy but requires, at the same time, the peculiar distance that only theory can give. Arendt gave constant attention in her writings throughout her life to this perplexing predicament of judgment and her late systematic return to the Third Critique and to Kant's political writings has been shown to be a hidden thread to all her philosophical endeavors.³

In this article I will not be dealing with Arendt's and Kant's theories of judgment and their known difficulties, but will take heed of the aforementioned Arendtian insight regarding the need of judgment, an insight that I take still to be, in mutated historical circumstances, absolutely relevant. I would like to suggest that the need for judgment in order to tell right from wrong, in Arendt's terms, can be mirrored in Rawls' proposal of the need for theory, or political philosophy, in order to tell just from unjust institutions. Certainly, both needs, of Arendtian judgment and of Rawlsian theory, are framed in very different philosophical approaches – and specifically, in parallel and not coincident returns to Kantian practical philosophy – but it may not be mistaken to say that it is the same drive which moves both theoretical enterprises and, what may be more significant, tints them with a host of similar strategies and problems. Nevertheless, there is a hard philosophical problem, the roots of which can be traced to Kant's analyses of practical rationality, that seems to differentiate Arendt's and Rawls' approaches. While Arendt tried to understand Kant as developing a new type of philosophical understanding of the political that in crucial points breaks away with the understanding of moral rationality as determinate judgments, I would suggest Rawls' intention is to read back into Kant's moral philosophy, to the realm of the Second Critique, the reflective turn that the Third Critique introduced in the realm of the aesthetic or, more precisely, to discover that already Kant's analysis of practical reason, and sometimes *pace* his own examples, is reflectively modeled. The important, philosophical issue here is the status of norms or principles in guiding action and the process of their justification. Arendt stressed a certain parallelism between Kant's treatment of aesthetic judgments, with which we judge when we do not have general rules, and the historical moments she lived, which, in a somehow similar way, were characterized by 'the total collapse of moral and religious standards among people who to all appearances had always firmly believed in them'.⁴ Her interest in Kant's *sensus communis* is, like Kant's, the urge to dispel with any arbitrariness

in such relevant matters and the possibility of forming discriminating judgments – and thus norms and principles – that could guide action. Rawls, on his side, starts with a less suspicious and more robust notion of the guiding role of norms or principles as would be required by his goal of articulating a theory of just institutions, but understands reflectively the process of arriving at their justification as determining their very validity. We can, thus, picture Arendt as trying to articulate judgment in the search for principles, but without taking their definition or their validity for granted, and even being suspicious of their alleged role, and Rawls as not doubting their guiding function, but acknowledging the role judgment plays in their justification. But in spite of these important differences,⁵ some important parallelisms come to the fore: both regard politics as a sphere of action, as a type of institutions and practices, that needs, first, to be understood as the realm of plurality and diversity and that can be understood, second, as an exercise of a peculiar type of rationality – i.e. practical rationality – that can be differentiated from other rational enterprises. More specifically, both center their attention in the idea of judgment as a clue to that type of political and practical rationality and, in different though somehow parallel ways, both relate the idea of judgment with what each takes the appeal to theory to mean.

With Arendt's approach in the background, I will be pursuing the ways in which the need for theory articulates itself in Rawls' version of the problem and pinpoint how the Kantian mould of reflective judgment gives form to the construction of a theory of justice via the mechanism of reflective equilibrium. Thus, I will not be going into the particulars of Rawls' theory – i.e. of the set of reasons and arguments that characterize his substantive liberal proposal – but will focus on the architecture of his global design that exhibits, in the field of normative political philosophy, the work of reflective rationality.⁶ I will suggest that the need for theory so devised has constantly to move between the demands of theory itself – the social contract tradition as understood by Rawls – and the demands of action that in this case are understood as the guide our considered judgments lend to our understanding of the social world. A final goal of my analysis will be to suggest that a particular grasp of the lessons of historical experience, as a way of fulfilling the need for theory that lies in the heart of the exercise of judgment, is what renders theoretically attractive the Rawlsian proposal and what constantly underlies the construction of his theory. His approach, which can be taken as paramount of other similar philosophical theories of the last 30 years, is – sometimes with instabilities that are not minor – an exercise of a certain kind of theory that frames judgments and is devised to enhance them, but that relies on particular, historical exercises of judgment in order to articulate itself even as theory and to show its very plausibility.

2 The need for theory

In his justification of the fundamental ideas of political liberalism, and in explaining the use of the abstract conceptions that build up its framework, Rawls addresses a certain type of skepticism regarding the theoretical effort required in political philosophy. Although *PL* consciously limits itself to the political, not metaphysical, even there any effort to reach rational agreements will need to envisage abstract concepts and theories. ‘In political philosophy’, he states, ‘the work of abstraction is set in motion by deep political conflicts’ (*PL*, 44). Only an ideological or visionary stance, he continues, would fail to experience such conflicts. And he adds:

We turn to political philosophy when our shared political understandings, as Walzer might say, break down, and equally when we are torn within ourselves. We recognize this if we imagine Alexander Stephens rejecting Lincoln’s appeal to the abstractions of natural right and replying to him by saying: the North must respect the South’s shared political understanding on the slavery question. Surely the reply to this will lead into political philosophy. (*PL*, 44 f.)

It is important to note that Rawls is trying to articulate the need for theory at two different but confluent levels: a first level of the immediate political life and a second level regarding the type of theory or philosophy to which we appeal when dealing with conflict and disagreement. At the first level, closer to immediate political life, he seems to be arguing that we cannot resort to the taken-for-granted character of communitarily based values, for this character is, precisely, what is questioned: as it breaks down when conflict arises any appeal to the justificatory role of shared beliefs would fall below the importance and the reality of the conflict itself. Certainly, not every political conflict or social disagreement may need a full-flown theoretical enterprise, as Rawls’ work might exemplify in our days or as Hobbes’, Locke’s or Rousseau’s did in earlier times. The need for theory refers to those, in Rawls’ wording, ‘long-lasting controversies’, whose depth and whose resolution have framed the basic understanding of our democratic societies. Rawls’ two recurrent examples, to the exemplary character of which I will return, if briefly, in the last part of this article, are, on the one hand, the freedom of conscience and the right of resistance that after the Reformation became the matrices of theoretical and political liberalism, and, on the other, the extensive debates that, as the above quote shows, divided North American political culture regarding slavery and the nature of the union between the states of the young republic. Both examples draw us to specific historical experiences of conflict and disagreement and to very different historical and cultural processes in the diverse western traditions, but a

general point could be made regarding them that puts into light one of Rawls' central insights that tints all his philosophical enterprise: the acknowledgment of the fact that certain types of conflict unveil that the diversity of comprehensive, philosophical and moral doctrines is a permanent feature of a democratic public culture, a diversity the public expression of which can only be barred by the use of force. This structural feature, of historical and social character, parallels a second type of structural diversity, more general and of epistemological nature, that springs from what Rawls terms the 'burdens of judgment' and that could be summarized in the ulterior fact that 'our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion' (*PL*, 58).

The former structural plurality of doctrines or this latter diversity in the appraisal of values and beliefs, need not express themselves in terms of explicit conflict or controversies, but underlie those that are most relevant in our political self-understandings and explain how such conflicts could not be resolved via the continuous reiteration of one of the doctrines, judgments or beliefs in question nor, even less, via the imposition of one of them over the others. It would be naïf not to acknowledge that these options have been frequently the case in history, but – and this is a crucial, Enlightenment insight – in the long run they prove to be socially harmful and unsustainable. In order for a conflict or dispute to be resolved, some modification in the order of the first-order doctrines or beliefs is necessary and, Rawls' suggestion, this is one of the roles philosophy – and in political affairs, political philosophy – has. Philosophy helps in this need to make explicit the reasons and understandings that underlie the different positions and, thus, to turn the taken-for-granted character they might initially have had into explicit considered judgments. Nevertheless, this explicitness does not cancel their diversity – it may even strengthen it – and the plurality of doctrines and judgments will continue to be a structural trait in democratic conditions. This first level in the appeal to theoretical considerations has only pointed to the need of different doctrines to become reflectively aware of the plurality in which they are already immersed and has not, obviously, solved the conflict in which they might be engaged. Maybe not all doctrines – as would be the case of tyrannical ideologies or visionary doctrines – pass this initial test of reflexivity that would render them, in Rawls' terminology, as reasonable comprehensive doctrines, and a serious problem thus arises concerning how to address these non-reasonable positions. Leaving now aside Rawls' position regarding the limits of toleration, it must be underscored that a constant effort in his analyses, and one of his best contributions, from *TJ* to his last writings on public reason, is to push forward *theoretical* arguments that dissolve

the initial resistance to the acknowledgment of plurality on the part of different comprehensive doctrines or against the parallel move of trying to deny or dissolve the structural diversity of reasonable doctrines via what could be considered reductive understandings of the role of philosophy in dealing with public disagreements and in understanding them (and both utilitarianism and intuitionism could be taken, in different ways, to exemplify such a move at a philosophical level).

This last consideration takes us to the second level in which the need for theory can be analysed, the characterization of the type of theory that can be appealed to after acknowledging the structural nature of (reasonable) pluralism. But we could, first, point to the significant parallelism between Rawls' understanding how theory is needed and Arendt's conviction that politics starts with the acknowledgment of the plurality of men, as she would put it, because political action is what happens *between* different individuals, in their shared, but diverse, lives. Where Rawls, with an approach that is more structural in bent and with the intent of defining just institutions, focuses on doctrines or structures of belief, Arendt underscores the fact of the plurality of persons; but both take these pluralisms as the relevant starting point of their respective investigations and both would stress that this acknowledgment of pluralism is at the core of democracy. But, still further, the acknowledgment of this pluralist predicament determines the type of complex, rational justification that any doctrine aware of pluralism has to adopt. For a doctrine or set of beliefs to be justified one could turn, internally, to the ways in which it appeals to its founding reasons. As an exercise of deliberative rationality – to which I will return, if briefly, in the following section in analysing narrow reflective equilibrium – it makes clear for she or he who sustains such a doctrine or set of convictions what is implied in it, and why: it settles, so to say, the internal architecture of the building of our beliefs. But this internal sense of justification does not suffice if structural pluralism is seriously taken into account; it needs a further step, that of extended thinking, to put it in Kantian terms, i.e. the understanding of one's doctrine in the light of different sets of beliefs. We then need also a type of external justification even to make sense of our internal understandings and, to continue the metaphor just used, city planning is required to understand the very habitableness of our own building. This seems to demand an understanding of what a valid reason might amount to be: it must be a shareable reason between different sets of beliefs. Rawls' version – that already embodies his distinction between the two sides of rationality, the rational and the reasonable – is:

[J]ustification is argument addressed to those who disagree with us, or to ourselves when we are of two minds. It presumes a clash of views between persons or within one person, and seeks to convince others, or ourselves, of the reasonableness of the principles upon which our claims and judgments

are founded. Being designed to reconcile by reason, justification proceeds from what all parties in the discussion hold in common. Ideally, to justify a conception of justice to someone is to give him a proof of its principles from premises that we both accept, these principles having in turn consequences that match our considered judgments. (*TJ*, 508)

We might ask ourselves if, with this appeal to common, shared meanings, we are not back to the point we started with, if it might not be the case that questioning our shared understandings is, thus, an impossible, if not a dangerous, task and, finally, if to ‘reconcile by reason’ is just to sew together again what conflict tore apart. This communitarian interpretation could be answered by pointing out that the fabric of our living together is not the same after introducing the acknowledgment of pluralism and the external interpretation of what justification is. However dense our shared values might be taken to be – and communitarian and liberal interpretations will strongly differ regarding this issue – they already have had to incorporate a theoretical and reflective interpretation of what it is at all for them to be shared. This first level of the need of theory does not, then, leave things unchanged.

To return to Rawls’ second type of appeal to abstraction and theory, it should be noted that not all types of political philosophy could match the task it must undertake as a second-level theory that explains how, and according to what tenets, we can reconstruct the broken fabric of social life. Theory, in this second sense, is both an interpretation of the reasons and dimensions of conflict and the advancement of what types of solution might be adopted to end it. These possible solutions can be taken to be sets of articulate general and basic reasons all the parties involved could adopt should they desire to arrive at a new understanding of their situation that would end an unbearable conflict. In short, we could understand these sets of basic reasons as sets of principles, the nature of which need not, nevertheless, be understood as ultimate (or as metaphysical, i.e. they need not contain a full theory of reality) but as tailored to the dimensions and the type of conflict we are involved in. We can have theories of very different levels of abstraction and which can cover very different fields of our knowledge and interests. The just mentioned appeal to principles is, nevertheless, centered in the issues under discussion – to the moral semantics at stake, as I will call it in the last section of this article – albeit we could continue to engage in further investigations and reflections regarding related topics. One of the tasks of political philosophy would be, first, to establish some boundary conditions of the theories that might be relevant (what they should or should not contemplate) and, second, to focus on the discussion of the available theories that are candidates for explaining what we are engaged in when we dispute deep issues that concern us and what the solutions to our conflicts might be. Thus, not only the reflective awareness of

pluralism and the external justification of our doctrine are required, though an interpretation of such elements must be a necessary constituent of any second-level theory we might envisage. In order to avoid relativism or passivity regarding the issue at hand, we seem also to need a certain *normative* capacity on the side of the type of philosophy we might subscribe. If we are divided regarding an important, deep issue – as in the case of slavery and basic liberties – in which our political self-understanding is at stake, our engaging in discussion and our appeal to theory is the search for some type of solution that relates to actions that can be taken in order to implement it. Theory, in this sense, not only illuminates the depth of disagreements and conflicts, nor helps only in acknowledging pluralism; it not only describes our predicament: it demands, or is thought to demand, some type of guide for actions in the way of principles, as I understood them before. We should note that even the shift between Rawls’ two major works, *TJ* and *PL* – a shift that has as one of its roots an effort, like the one I have just described, at tailoring theory to the specific nature of the political – does not amount to a denial or an abandonment of theory. In fixing its attention on the political, the practical role theory accomplishes may even stronger.

This last remark might be too general and abstract, but points to a crucial feature that relates directly to the understanding of this, Kantian, appeal to judgment: theories do not act, and only figuratively are said to be in conflict; only persons and social agents do. The appeal to theory in understanding our social predicament and the type of rationality there involved must be an appeal to types of sets of reasons or principles that, along with the relevant perceptions and adequate emotions, can be taken to be the motivating force for the agents’ actions. Theory, seemingly detached from the immediacy of actions, finds, nevertheless, in this immediacy one of its crucial roles. It is important to note also that this appeal to theory is not, thus, only a second-level characterization of what political philosophy might be. Certainly, there might be many possible characterizations of it, but in order to meet the constraints that the resolution of conflicts sets, even meta-philosophy, if we might call it thus, has to adopt a normative or practical turn. The different possible alternatives we might envisage (in Rawls’ case, the abstract or general interpretations that utilitarianism and intuitionism contain regarding what could be taken to be principles of justice and their respective interpretations of practical rationality itself, theories with which he contrasts his version of Kantian constructivism) are to be judged according to their capacity of being adopted by social agents the social predicament of which I described in the previous paragraph.

The need for theory does, certainly, contain a free, detached, moment in which a very extensive realm of possible alternatives – be they in form of theories or of particular arguments and beliefs – can be envisaged.

Theory – or, in Arendt’s terminology, thinking – does have this free-standing tint. But the need for theory, as I have been suggesting it works in Rawls’ theory, and as is suited to a more general understanding of judgment, is framed by the severe constrictions that the demands of action and the resolution of deep conflicts place. We should not forget that we are dealing with *practical* reason. But we should neither forget that such an appeal to theory, even as constrained as it has been and as clearly as its tasks may have been settled, contains the shade of what is provisional and tentative. ‘Our present theories’, writes Rawls in *A Theory of Justice* speaking of moral theory, ‘are primitive and have grave defects’; we should not, nevertheless, be paralysed by their fuzziness and complexity but ‘we need to be tolerant of simplifications if they reveal and approximate the general outline of our judgments’ (*TJ*, 45). The appeal to theory, thus, is a continuous, even provisional and never closed process that – framed in reflexive equilibrium, to which I will turn to in the next section – ‘continues indefinitely’ (*PL*, 97).

3 Considered judgments and reflective equilibrium

Let me now turn to the internal structure this appeal to theory has in Rawls’ own theory. We shall see that this structure replays the reflective process we have already envisaged and allows for a neater understanding of the architecture of judgment. It seems that when we are immersed in deep conflicts we have to discern both what the internal and external justifications of our beliefs are, on the one hand, and what type of theory, or set of abstract principles, might be suitable to interpret and illuminate our very predicament, on the other. The role of this latter type of discernment, I have just suggested, is to guide our actions (and concordant beliefs) to re-sew the broken social fabric. This general characterization of the different types of discernment involved may be sufficient to claim that they are central elements of what, in more general terms, we take judgment, and the faculty of judgment, to mean and what the different strands of the Kantian heritage have taken it to mean. Discerning or judging is, thus, a twofold enterprise. To use Kantian terminology, when we judge we have to make clear both what maxims our actions embody, on the one hand, and the principles under which these maxims might be justified or corrected, on the other: we have both to justify maxims and justify principles. Further elements are, certainly, needed to arrive at a fully blown, post-Kantian conception of judgment, such as the capacity of perceiving the significant circumstances and pertinent facts, the precise discernment of what has to be taken as relevant, and the reasons why that might be so, or the array of motivational resources that move us to action. To some of these elements I will be returning in the last section

of this article under the rubric of moral semantics. But the cognitive component in judgment can be fully understood by appeal to the double discernment I have just referred to. We have to be both concerned, enlightened citizens and political philosophers. The important and debated issue is how to relate these two tasks that constitute judgment.

The term 'judgment' narrowly refers to the proposition that embodies an assertion or statement, and in a moment I will be referring to Rawls' use of this meaning when he analyses our considered judgments. But the wider meaning of 'judgment' I have been using, i.e. the exercise of the faculty of judgment, allows us to see how the relationship I was asking for at the end of the previous paragraph can be grasped in the way of the *process* of arriving at such assertions. This process is the way of linking and making congruent the twofold enterprise that was there proposed. Nevertheless, and provisionally, it is convenient to start our description of this process with the first meaning of judgment as it appears in Rawls' analyses, namely, his conception of considered judgments.⁷ Considered judgments are assertions or beliefs we hold under special circumstances and in relation with certain topics. These circumstances refer, on the one hand, to certain facts normatively appraised by us as social agents and, on the other, to certain mental and psychological dispositions we have and exhibit when making and holding those judgments. Thus, considered judgments, first, take into consideration the relevant facts; they articulate, second, the person's normative intuitions (as his or her previous judgments or values); and, third, are formulated with confidence, or with no hesitation or under no pressure. In everyday settings we could say that considered judgments show the threads of our moral and political beliefs as we appeal to them in judging what we take the relevant issues to be. So depicted, considered judgments are not, then, spontaneous opinions or guesses, but meditated expressions of our moral and political life, of our considered convictions, as Rawls also puts it. In Rawls' words: 'Considered judgments are simply those rendered under conditions favorable to the exercise of the sense of justice, and therefore in circumstances where the most common excuses and explanations for making a mistake do not obtain' (*TJ*, 42).

Surely, considered judgments, which we know are ours, exhibit a first-person authority; but in them a parallel awareness that they are not everybody else's is implied and, in certain cases, such as deep social conflicts or when we are divided in ourselves, we might be prone to revise them. It is important, also, to note that considered judgments incorporate, albeit not necessarily in a conscious way, normative theories that, if made explicit, might give systematic justification to what we judge to be the case and why we do so. For example, in debating the right to abortion, different persons start with different appraisals, the roots of which can be traced back, among other things, to different conceptions

of the human life or to different interpretations of what it is to decide about one's body and what constrictions those different conceptions put on our actions. Considered judgments are already, as if in a fractal, reflective exercise of judgment, condensed fragments of our diverse moral and political standings and we normally take them for granted as expressions of these standings. If we focus on each person's considered judgments and clearly lay out with her or him the systematic nature that her or his convictions have, or might have in the light of some adequate theory, we are making the person aware, in a process that Rawls called *narrow reflective equilibrium*, of the specific architectural nature of her or his beliefs. This process may not, normally, achieve a fully satisfactory result, and points to the suggestion that judging what we truly believe is, also here, a continuous process, not necessarily successful. 'Many of our most serious conflicts' – writes Rawls in *Justice as Fairness: a Re-statement* – 'are conflicts within ourselves. Those who suppose their judgments are always consistent are unreflective or dogmatic; not uncommonly they are ideologues and zealots' (*JaF*, 30). Such situations of internal conflict demand, at least locally, a further effort of judgment.

But also in situations of deep social conflict, it is considered judgments which can be taken to be shattered: they no longer serve to fully satisfy, neither in our *foro interno*, nor *vis-à-vis* other people, a commonly appraised set of principles that could be accepted by all. But having been formulated as part of a moral understanding that frames them – what Rawls calls our sense of justice – we can suppose that we might be prone to revise them in order to stitch together again the torn fabric of social life. This can be done in various ways, but what is significant of Rawls' suggestion is that tuning up our sense of justice in these new circumstances can be done via the way of making explicit the theories that might underlie our judgments *and* assessing them in the light of different alternative possibilities – and this the new, crucial, claim. With these possibilities in vision our internal conflict or our position in the social conflict is framed in the wider field that Kant's extended thinking proposed and which Arendt so clearly formulated. Not only is it more widely framed – i.e. taking other people's convictions and judgment into consideration, or envisaging and imagining different alternative theories – but it can be modified and altered. The philosophical insight that underlies this last suggestion – which could be traced back to Stoic, Humean and Kantian moral philosophy – is that our judgments are dependent on concepts and that if we consciously modify those concepts our judgments will be consequently altered. We should note that we are already using a wider meaning of 'judgment', i.e. we are dealing with the process of judging in which the citizen gets immersed when, in philosophical reflection, he or she ponders the extent to which a debated issue that concerns him or her alters, or should alter, his or her more

immediate considered judgments; or, on the contrary, why and how such assessment deepens his or her conviction in them. As I have just anticipated, Rawls describes this process as *wide* reflective equilibrium:

[W]e regard as wide reflective equilibrium . . . that reflective equilibrium reached when someone has carefully considered alternative conceptions of justice and the force of various arguments for them. More exactly, this person has considered the leading conceptions of justice found in our philosophical tradition [including views critical of the concept of justice itself (some think Marx's view is an example)], and has weighed the force of the different philosophical and other reasons for them. (*JaF*, 31)

As we can see, wide reflective equilibrium is another way of understanding the need for theory or political philosophy which we saw at play in the first and second sections. As Rawls depicts it, it is a recurrent mechanism in his interpretation of our cognitive predicaments in times of conflict, in the layout of his theory, and even in the meta-interpretation he displays of his own work. Rawls is further suggesting that building up a theory like his – or any other that meets the demands I previously analysed – is another step in the very same process of thinking and judging we practise all the time. So much so that in the detailed design of his proposal (for example, when dealing with the mechanism of the original position, that is just a device of representation) he will repeatedly turn to our immediate practices of reflective judgment to make it plausible. Thus, at the very end of *TJ*, summarizing the meaning of his proposal and addressing once more some of the different philosophical critiques to the contractarian tradition, he states:

Finally, we may remind ourselves that the hypothetical nature of the original position invites the question: why should we take any interest in it, moral or otherwise? Recall the answer: the conditions embedded in the description of this situation are ones that we do in fact accept. Or, if we do not, then we can be persuaded to do so by philosophical considerations of the sort occasionally introduced. (*TJ*, 514)

The device of the original position – the core of Rawls' version of social contract theory – is just a modeling procedure of the process of judging at the two levels that I suggested articulated the exercise of judgment: it is a representation of the process of discriminating immediate maxims of action and of discriminating principles. We relate to that mechanism or device as an interface between our considered judgments and the representation of the conditions that theoretically and hypothetically could widen them when in doubt or in conflict. And we do so with the aim of attaining clarity and precision regarding the normative principles we might adopt (this is the hypothetical moment) if the doubt or the conflict were to be solved. But we look for those principles not only to achieve hypothetical perspicuity; we strive to arrive at *prescriptive*

norms or principles to adopt in order, in fact, to act as to solve our conflicting predicament (and this is the normative moment).

We move between immediacy and abstraction, back and forth: we envisage the device of representation and check it with our judgments, modifying it if necessary and modifying our judgments accordingly; and, in a *mise-en-abyme*, the parties themselves in the original position do the same when they consider different alternatives to the principles of justice they are striving to formulate – and we do the same through them. As fiduciary figures of our moral and rational powers, the parties in the original positions are, in a way, philosophical alter egos that mirror the real moral egos we, as citizens, are. But also, in adopting through them a hypothetical stance towards ourselves, towards our judgments and our convictions, we unfold our exercise in judgment: we both are *there* and *here*, we are both, so to say, spectators and actors in different and shifting positions. We are spectators when we represent ourselves the arguments and debates that our alter egos display in the original position; even we are spectators when, from such position, we regard our real moral egos; but we are actors because we address their arguments and, frequently alter them, or when they force us to assess our considered judgments. When we are able to view ourselves in this hypothetical light, we adopt a distanced stance towards ourselves as actors; and, as actors, we check the exact concerned distance our fiduciary spectators must take. This unfolding, reflective process incorporates the different moments of our faculty of judgment and shows that the appeal to theory is itself a moment of our practical exercise of this faculty.

4 From historical experience to theory and back again

The process of judgment we have seen in action in Rawls' analysis of reflective equilibrium has been depicted, up to now, as a cognitive exercise that is tailored to guide and make more precise our sense of justice when we strive to formulate the principles that are to articulate just institutions. These can be, thus, understood as embodying our reflective reasonableness; but at the same time, they can be taken to be preconditions of its exercise. Different renderings of this process are possible, but I take it that what has been said suffices to understand Rawls' theory as embodying the central elements of an architectonic of reflective judgment. I now turn to a last set of considerations that flesh out this architectonic in a way that makes it adequate to the aim it was put in exercise for. Although we can make a philosophical rendering of the cognitive or motivational structure of the faculty of judgment, as we have done in the previous two sections, judging itself is always a situated and focused process, i.e. it operates around the relevant facts and

normative considerations of an issue or topic. We need not understand this circumstanced exercise in too restrictive terms. Judging is an activity that moves across different levels of generality, to paraphrase Rawls, and some judgments relate to particular instances, problems or conflicts, whose understanding requires detailed descriptions and nuances. To engage in any democratic debate in order to solve an ongoing social conflict in our societies, or even to understand it, requires highly developed hermeneutical and descriptive skills that tie our judgments to these down-to-earth realities. But, at the same time, we can place these debates and conflicts within a larger picture that widens and, if correctly achieved, deepens our understanding of the issue in question. We, thus, arrive at a general understanding that, nevertheless, does not withdraw us from history and circumstance. Quite on the contrary, we tend to say that something has historical character if we can view it within this larger picture. The crucial debates Rawls refers to, and with which we started to outline his way of rendering the need for theory, the long historical debates around slavery and freedom of conscience, are examples of such general, though circumstanced exercises. Similarly, Arendt's search for judgment concerning how to deal with totalitarianism and lack of freedom refers to a type of judgment, or a set of types of judgment, that cannot be understood if the dark times she lived through are disregarded or forgotten.

Two things, which again parallel the dialectic of particularity and generality we have seen at play in the previous sections, seem to intertwine in this understanding of judgment as a general, though circumstanced, exercise. In the first place, there is the set of different, contingent historical circumstances and processes the above examples refer to. Their maddening particularities can drown us in vertigo, so powerful are the almost supra-human descriptive capacities needed to grasp and understand them. In Rawls' cases, we are dealing with discussions and conflicts that went on, and are still going on, in the course of centuries and throughout different continents; Arendt's case of totalitarianism, though apparently more circumscribed in the time-scheme, similarly relates to centuries-old processes, as anti-Semitism may easily show. But, in the second place, the vertigo that these different, particular processes might cause us is mitigated, if it does not disappear, when we are able to place them under some type of general category – slavery, freedom of conscience, totalitarianism – that both focuses our understanding and enables us to formulate certain actions that relate to the issues thus understood. These general categories – which have descriptive and evaluative components – constitute what we have been called the moral semantics involved in judging. They are the moral or political issues and topics that concern us, which we take as relevant to discuss and which require some action on our part. Certainly, as we shall see in a moment, the

very capacity of arriving at some clarity regarding this moral semantics – of arriving at the understanding that slavery, lack of freedom, and totalitarianism are evils and harms to be avoided – is, itself, an exercise of judgment, and has a similar role to the one that our ability in discriminating principles plays in order to justify our maxims of action or to the one that wide reflective equilibrium sought to achieve. Had we not had a precise moral semantics in continuous process of elaboration, in which concepts and sensibilities are engaged, regarding those particular actions and institutions, we would have not understood them as what we understand them to be now, i.e. as avoidable evils that concern us. We could thus say that judgment is not only articulated in the twofold cognitive enterprise of discriminating maxims and principles that we saw in the previous section, but also that it has this third necessary component I am referring to by the term moral semantics, a crucial component that brings to the fore its circumstanced, historical dimension. But perhaps we could add something even more important: the articulation of this moral semantics is the rationale of judgment itself, at least if we take it to mean what Rawls' and Arendt's need for theory is looking for, i.e. the discriminating capacity of telling, of the issue at hand, whether it is right or wrong. The analysis of the cognitive structure of judgment or the layout of its tasks as a procedure aimed at decision in formulating principles of action, does not substitute this judgment itself nor constitutes alone a theory of justice. When we judge our situation and ponder over its conflicts we are exercising a form of rationality that stems from our concern with what we are facing and with the moral issue at stake. Or conversely, what is frequently more important – as Arendt's distressed reflections show – judgment is an exercise of practical rationality that shows that we should be concerned with what we leave to go unnoticed.

What I am referring to by the moral semantics component of justice, and its historical dimension, can be illustrated again with Rawls' two recurrent crucial examples: the abolition of slavery and the fight for freedom of conscience. In very different places throughout his work⁸ Rawls returns to these two conflicting experiences as processes in which principled judgments we now acknowledge as being in the core of democratic societies were forged. We cannot expect Rawls to provide any detailed analysis of the historical processes that built up these conflicting experiences. Rather, his intention as a normative theorist is to show that they could not have achieved the central normative status they have had they not been subject to theoretical elaborations as much as they have been the issue of institutional arrangements – and frequently they became institutional issues because they had previously been theoretical issues. In *Political Liberalism*, and in characterizing his approach as a Kantian, political constructivism that works up from judgments that are taken as basic facts and articulates them, he writes:

Political constructivism does not look for something for the reasonableness of the statement that slavery is unjust to consist in, as if the reasonableness of it needed some kind of grounding. We may accept provisionally, though with confidence, certain considered judgments as fixed points, as what we take as basic facts, such as slavery is unjust. But we have a fully philosophical political conception only when such facts are coherently connected together by concepts and principles acceptable to us on due reflection. These basic facts do not lie around here and there like so many isolated bits. For there is: tyranny is unjust, exploitation is unjust, religious persecution is unjust, and on and on. We try to organize these indefinitely many facts into a conception of justice by the principles that issue from a reasonable procedure of construction. (*PL*, 124)

In spite of the stress here given to concepts or theories over semantics and experience, I think it would be a mistake to take this quote to mean that the procedure of construction – what I before termed the architecture of the process of judgment – is what by itself renders the principles of justice. Rawls is suggesting, rather, that the moral semantics of democracy has to be articulated in the precise way we saw in the previous sections: theory is needed. Thus he continues:

Further, constructivism thinks it illuminating to say about slavery that it violates principles that would be agreed to in the original position by representatives of persons as free and equal; or to put it in Scanlon's way, that it violates principles that could not be reasonably rejected by persons who are motivated to find a free and informed basis of willing agreement in political life. . . . Some such general characterization as this links together the many facts such as: slavery is unjust, tyranny is unjust, exploitation is unjust, and the rest. This is what is meant in saying that the basic facts are not disconnected. (*PL*, 124)

Someone could ask how the very process of articulation that constructivism achieves came into play. Here again, moral semantics comes to help: as I started by saying, the need for theory, and its continuous process of elaboration, was articulated in historical experiences and debates; equally, the structure of theory is due to a continuous process of re-elaboration. Although, as theory, it may represent itself as an Athena, being born fully armored – that is, as theory it must present itself in terms of internal coherence and deductive structure, if only to favor the pedagogy or thinking and judging – we can understand its cogent demands as having been strenuously forged in historical discussions and debates. And these debates, again, dealt with those specific issues I was referring to as our moral semantics. In order to formulate and understand Scanlon's version of the contractarian rationale – that only those principles are justified that cannot be rejected by free and equal persons in certain conditions of argument and desire – we cannot disregard the very meaning some of the aforementioned

basic facts have in order to understand what our notions of justification, freedom or equality are. But neither should we forget that these facts are, themselves, the result of reflective historical experiences. In the same way that our considered judgments fractally incorporated theories, these basic facts contain the accumulated history of reasoning about human freedom and about human harm. Constructivism may put under new light these reasonings and, in doing so, may help us in making more acute and precise our moral insights and sensibility; it can, further, be indispensable in formulating principles that guide our actions and straighten our institutions. But it can only do its job when and while operating in the field of our moral semantics.

Nevertheless, this moral semantics, whose historical roots I started acknowledging, need not, and must not, be understood in particularistic terms. And not only for the reasons adduced at the beginning of this section, but even for a further argument that might be of some interest in times of globalization. Rawls' use of his two crucial examples – to which the fight against exploitation can be added – obviously takes for granted a western, enlightened, political culture, which we tend all easily to identify with the democratic tradition. But, first, this tradition is made of diverse, not always congruent, strands. Not all the western nations underwent the Reformation – and those that did, passed through very different processes – nor all nations had to suffer a civil war that had as one of its issues the abolition of slavery. Nevertheless, second, even cultures that were not benefited by the Reformation, or nations that did not have slavery as one of the central elements of their economy and their institutions, now sustain the same principles of freedom of conscience and the prohibition of enslaved labor. That slavery is unjust and that the denial of freedom of conscience is rejectable are 'basic facts' that pertain to our wide, contemporary moral culture. It may be interesting to ask how such a generalization of a moral experience took place, how it was even possible in 1949 to have the Declaration of Human Rights signed, how its content has become part and parcel of the considered judgments of a large part of humanity (or conversely, why is still possible that it is not the case in many regions and cultures). The point I am striving to make is that our moral semantics cannot be understood in a totally particularistic spirit. Societies do in fact learn from the experiences of others and a non-minor part of why it may be so gives a further reason for the role abstractions and theories play in determining our judgment and our sensibilities.

But in order to downplay any naïf optimism, we could continue asking how it is possible that even those settled basic facts continue to be so widely denied (as torture, death penalty, exploitation and discrimination show), even in democratic cultures. This question brings back Arendt's distress and makes her appeal to judgment absolutely relevant

and contemporary. And similarly, in Rawlsian spirit, it gives urgency to the appeal to a theory of justice that could adequately frame our actions as citizens in order to shape our institutions.

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Notes

- 1 H. Arendt, *Diario filosófico*, ed. U. Ludz and I. Norman, Spanish trans. R. Gabás (Barcelona: Herder, 2006), p. 58; third entry of February, 1951.
- 2 H. Arendt, 'Some Questions of Moral Philosophy', in *Responsibility and Judgment*, ed. J. Kohn (New York: Schocken Books, 2003), p. 98.
- 3 Cf. R. Beiner, 'Hannah Arendt on Judgment', in H. Arendt, *Lectures on Kant's Political Philosophy*, ed. R. Beiner (Chicago, IL: University of Chicago Press, 1982), pp. 89–174; S. Benhabib, 'Judgment and the Moral Foundations of Politics in Arendt's Thought', *Political Theory* 16(1) (1988): 29–51; A. Ferrara, *Justice and Judgment* (London: Sage, 1999); M. Passerin d'Entrèves, 'Arendt's Theory of Judgment', in *The Cambridge Companion to H. Arendt*, ed. D. Vila (Cambridge: Cambridge University Press, 2000), 245–60; A. Wellmer, 'H. Arendt on Judgment: the Unwritten Doctrine of Reason', in L. May and J. Kohn, *H. Arendt: Twenty Years Later* (Cambridge, MA: MIT Press, 1997), pp. 33–52.
- 4 Arendt, 'Some Questions of Moral Philosophy', p. 138.
- 5 Rawls, as far as I am aware, only mentions once Arendt's work (*Political Liberalism*, 206 n. [see next note]) to differentiate his proposal from the peculiar strand of pessimistic civic humanism that he sees in her. More importantly, he would deny, along with important strands of philosophical liberalism, that politics is the all-embracing and paramount exercise of human rationality and the very center of its endeavors. In Rawls' terms, Arendt could be exemplifying a substantive, comprehensive doctrine – civic humanism – that has important Aristotelian roots.
- 6 I will be quoting Rawls' works in the text, using the following short forms: *TJ* (*A Theory of Justice*, rev. edn [Oxford: Oxford University Press, 1999]); *PL* (*Political Liberalism* [New York: Columbia University Press, 1993]); *JaF* (*Justice as Fairness: a Restatement*, ed. E. Kelly [Cambridge, MA: Harvard University Press, 2001]).
- 7 Cf. *TJ*, 40–6, 507–9; *PL*, 8; *JaF*, 29–32; T. M. Scanlon ('Rawls on Justification', in S. Freeman (ed.) *The Cambridge Companion to J. Rawls* [Cambridge: Cambridge University Press, 2003], pp. 139–67), offers a more detailed analysis to which I am indebted.
- 8 Among others: *TJ*, 216; *PL*, 8, 44 (quoted above), 124, 152 n., 196; *JaF*, 1 f.