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RAWLS, KELSEN AND THE LAW
DISCUSSING FERRARA'S *SOVEREIGNTY ACROSS GENERATIONS*

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ABSTRACT
Building on Ferrara's rejection of Kelsen's theory of validity, I argue that Ferrara conflates two worries that animate Kelsen: one concerning the analysis of legal phenomena, the other concerning the justification of moral values. I argue that while it is true that Kelsen sees moral disagreements as intractable, in contrast with the Rawls of TJ and of PL, the content-independent validity of the law addresses a different question. Conflating the two, Ferrara ends up attributing to Rawls the thesis that unjust (unreasonable) laws are not laws or, to put it another way, that an unjust (unreasonable) constitution is not a constitution. I claim that Rawls does not maintain such a theory. However, if Rawls never conflated law and just law, then changes in the justification of the principles seem unrelated to constituent power.

KEYWORDS
Populism, theoretical reason, practical reason, moral objectivity, value pluralism.

1. INTRODUCTION

In mature democracies, constituent power resides in the hands of the people. As the participle suggests, constituent power is not constituted power. It is not the power to decide whether or not Socrates is a traitor deserving death, but the power to decide how such decisions must be taken. It is, first and foremost, an institutive power, that lingers in the hands of the people to reformulate, revise, correct or abrogate their previous decisions if something has gone wrong (Loughlin 2003).

Once the focus of heated philosophical debates, constituent power no longer attracts much attention. As soon as it is acknowledged that such power is held by the people, questions regarding the nature of this entity, the source of its power and whether or not there are any limitations on it, arouse little interest in current debate.

Alessandro Ferrara's book *Sovereignty Across Generations* (2023) argues that the emergence of populist movements and politicians radically changes the scenario, making constituent power a philosophically lively issue again and one which

requires clarification: who or what is the people? What is the nature and the source of its power? Are there any limits to it?

It is easy to understand why populism changes the scenario. Often self-described 'outsiders' rather than career politicians or members of the establishment, populist movements and politicians promote and defend a program of democratic radicalization over and above constitutional constraints. In the name of the people of whom they are the sole representatives, populists claim for themselves the barely concealed right to an unrestricted exercise of power (p. 19).

In the face of emphatic appeals to no less an entity than the whole people, liberals and anti-populists typically ridicule them, pointing out that the elusive people that populists are constantly talking about is a mysterious entity no one has ever met in person. Ferrara claims that this may not be a good strategy.

In debunking appeals to the people, the aim of liberals and anti-populists is to debunk the self-acclaimed legitimacy of populists to rule with no constraints, thereby protecting constitutional democracy and constitutional procedures. However, to save constitutional democracy and constitutionally constrained power, the irony regarding the ultimate source of democratic power risks masking the inability to understand the real problem that populism poses (pp. 64-66).

Without reflection, constitutional democracies seem to be based on the idea that the sovereign act of people to devise the highest law is an act above and beyond all laws. But if the original act of the sovereign people was above and beyond the laws, why should the members of successive generations respect the current constitution? Why should absolute sovereignty not be returned to each new generation?

According to Ferrara, in order to show that constitutions are removed from the current political game we should show that even the original act of the original constituent power is not unconstrained but already subject to the law. This would not deprive each generation of the power to modify an earlier constitution but would qualify and orient it. Subject to the very same laws or principles, the new generation aspiring to constitutional changes should turn to them to enhance, improve or expand their realization. Arbitrary changes aimed at politicizing constitutional rules and principles would be banned.

Nonetheless, as liberals living in a post-metaphysical world, we cannot strive for transcendental moral laws written in the book of nature and made accessible by principles of reason (p. 2). In our hyper-pluralized world, principles thus conceived would not be accepted and could only be imposed on the people (p. 14).

But if metaphysical restorations are off the table and could only be imposed, what is our real answer to the populist anti-elite claim?

To protect constitutions from political games, Ferrara argues, we need principles of justice that, while guiding and limiting the constituent power of the people, are not "given" as the products of a universal abstract reason beyond popular sovereignty. In conceding a kernel of truth in populists' claims, we need principles that

derive their guiding force from a situated reason, a "reflective judgment that brings principles and situated identity into optimal equilibrium" (p. 2).

These desiderata are provided to us by the groundbreaking novelty of Rawls's *Political Liberalism*.

The Rawls of *Political Liberalism* (hereinafter PL) comes into play in Ferrara's book as the only contemporary political philosopher who, largely unnoticed by the philosophical debate, has addressed the question of constituent power (p. 19). Rawls does not expound an explicit theory of constituent power, as Ferrara acknowledges. But PL's scattered references to constituent power are not marginal or occasional. They relate to deep philosophical issues concerning Rawls's second thoughts on the objectivist ambitions of *A Theory of Justice* (1999, hereinafter TJ).

Ferrara reads PL as Rawls's own post-metaphysical turn, once the question of pluralism made the rationalist and ahistorical claims defended in TJ appear "unrealistic" and a political turn necessary (p. 26). By introducing the concept of reasonable, PL propounds a more modest way of justifying principles of justice than TJ. While the normative and guiding nature of the principles of justice is still central, they are no longer "given" to the community as the product of unincorporated rational inquiry. Introduced as part of a family of reasonable conceptions, PL's principles of justice allow differently situated reasonable peoples to endorse the conception that, out of all the reasonable conceptions, they can see the most reasonable for them (p. 30).

By acknowledging a plurality of reasonable conceptions, Ferrara clarifies, Rawls come to see how justice partakes of two worlds: "that of the finite, imperfect, factual nature of the subject of justice" and that of "the perfect, ideal, purely normative quality of justice". The most reasonable for us combines these two worlds "in the best mix" (p. 133).

One might wonder how a shift in the justification of the principles connects with constitutions and constituent power. However, according to Ferrara, while Rawls's preference for the constitutional regime and constitutional democracy is no mystery, from TJ to PL, the metaphysically suffused view of TJ makes constituent power superfluous. The universally bounding moral laws outweigh people's choices and deliberations. It is with the idea of "the most reasonable for us" that Rawls approaches a genuine theory of constituent power, introducing the historical reality of a specific "us". In PL, the constitution still constrains us by virtue of its dependence on the conception of justice, as the liberal principle of legitimacy states, but the relevant conception is now the most reasonable for us (p. 23). In order to clarify the innovation introduced by the idea of the reasonable and to articulate its contribution to the theory of constituent power, Ferrara compares Rawls to two prominent protagonists of the old-fashioned debate on constituent power: the Austrian legal philosopher Hans Kelsen and the number one enemy of liberals, Carl Schmitt (chap. 3).

The sense of this comparison must not be taken literally. As Ferrara explains, neither Kelsen nor Schmitt are quoted in *Political Liberalism*. Nor is their absence unjustified. The old liberal Kelsen is a glorious exponent of European, mostly continental, legal philosophy whose work had no impact on the American debate (Telman 2016). On the other hand, compromised by his association with Nazism, Schmitt is as distant from Rawls as it is possible to be, and Ferrara is not unaware of this (p. 15). Nonetheless, Kelsen and Schmitt represent the Scylla and Charybdis risk of living in a post-metaphysical scenario. Together with TJ's objectivist view, they offer a triangulation against which the ground-breaking novelty of the reasonable emerges.

I propose to examine this triangulation so as to cast some doubt on Ferrara's reconstruction of Rawls's turn and its connection with constituent power.

Building on Ferrara's rejection of Kelsen's theory of validity, I argue that Ferrara conflates two worries that animate Kelsen: one concerning the analysis of legal phenomena, the other concerning the justification of moral values. I argue that while it is true that Kelsen sees moral disagreements as intractable, in contrast with the Rawls of TJ and of PL, the content-independent validity of the law addresses a different question. Conflating the two, Ferrara ends up attributing to Rawls the thesis that unjust (unreasonable) laws are not laws or, to put it another way, that an unjust (unreasonable) constitution is not a constitution. I claim that Rawls does not maintain such a theory. However, if Rawls never conflated law and just law, then changes in the justification of the principles seem unrelated to constituent power.

Ferrara does not develop the theory of justification he discerns in PL and its difference from TJ, but he revives a famous allegory from Plato to illuminate both. I conclude by casting some doubt on the interpretation of the reasonable that the reformulated allegory seems to offer.

2. KELSEN'S FORMALISM: METAETHICS AND THE LAW

In the alternative moral objective laws vs. unconstrained people, Kelsen holds a very distinctive position. While Schmitt proclaims the people *legibus solutus*, considering constraints of any kind incompatible with sovereignty of the people, Kelsen exceeds in the opposite direction. Kelsen sees constituent power as a fiction, an imaginative tale that we must never confuse with historical reality.

As a liberal firmly intent on keeping the legal order safe from irresolvable metaphysical disputes over moral values, Kelsen sees the validity of a legal order as being produced by a formal, logically presupposed basic norm (*Grundnorm*) which we simply assume for certain theoretical purposes (Kelsen 1967). Self-appointed constituent power, constrained or not, can never found a legal system.

The problem with this formalist solution, Ferrara explains, is that every possible legal system, to the extent that it exists, can be "validated" by a simple act of the

mind. But in so doing, Kelsen makes the validity of laws dependent on their existence, thereby depriving us of "any normative benchmark for criticizing the substance of the constitution" (p. 100). This radically distinguishes Kelsen from Rawls, since, for Rawls, "justice matters" (p. 125).

Sure, for Ferrara, justice matters in two very different ways for Rawls. Indeed, the TJ Rawls would take issue with Kelsen. Despite his implausible solution, Kelsen is certainly right in rejecting an objective moral order scrutinized by reason (Reason?) as a piece of metaphysics.

It is only in the reasonable sense that Rawls grasps how justice matters.

By conceding something to Carl Schmitt's popular sovereignty, the reasonable stops hyper-deflationist reactions to the end of foundations, while avoiding Schmittian essentialist and identitarian normativity. Sensitive to context and identity, the reasonable never lets constituent power promulgate a constitution not based on principles of justice.

However, we can set aside such a distinction. Whether these are objective principles or a reasonable concession of popular sovereignty inscribed in the liberal principle of legitimacy, Ferrara sees Rawls contrasting the validity that Kelsen ascribes to existing laws and legal systems.

So stated, the argument is in my view flawed.

Ferrara seems to be saying that *since* he believes that existing legal systems presuppose a fictious norm explaining their validity, Kelsen prevents the moral evaluation of legal systems, tacitly implying (Ferrara, not Kelsen) that anyone who believes that the validity of legal systems is distinct from their moral rightness or wrongness is saying *ipso facto* that legal systems cannot be morally evaluated. But this is a *non sequitur*.

While it is true that Kelsen had no confidence in objective moral judgements, nothing in Kelsen's theory prevents people from making moral judgements on single laws or entire legal systems. Indeed, this is what Kelsen expects. What Kelsen believes is that people will irreconcilably differ in their judgements on laws and legal systems, not that laws and legal systems cannot be evaluated (Kelsen 1957).

However, if Kelsen envisions moral, albeit divergent, judgments on laws and legal systems, he seems to believe that it is one thing to make moral (subjective) judgements about the legal system, quite another to claim that legal systems *as* legal systems, as systems of norms, exist.

How can Ferrara muddle these two questions?

As Ferrara reconstructs Kelsen, the *Grundnorm* is the result of two independent sources of skepticism. One relates to objective moral values, the other to fictionalism: the belief that foundation myths are just myths, fanciful stories. Skeptical about the existence of the people and skeptical about objective moral value, Kelsen saw no other way to ground the validity of legal systems than an abstract, content-free, *Grundnorm*. But Ferrara misses Kelsen's point.

To illustrate meaningless expressions, the famous logician Gottlob Frege chose "the voice of the people" as an example. In Frege's view, the expression "the voice of the people" has no meaning because there is no such thing as the people, let alone one that speaks with a univocal voice[1]. Although I believe that Kelsen agreed with Frege, it is important to understand that this is not the reason for his *Grundnorm*. Kelsen does not believe that legal orders were created by acts of the mind: their validity is. Even if a law historian, despite Frege's skepticism, were to convince Kelsen that there exist peoples in the world identifying genuine constitutional moments, nothing would change for Kelsen. What would the historian find?

In describing the constituent moment, the historian would say that on day X, such and such a people proclaiming themselves constituent, wrote a series of declarations that they called a constitution, a constitution being a collection of laws. Good. But how did they succeed in making *laws*? Who gave them the authority to do so?

By contrasting Kelsen with Schmitt, Ferrara casts their conflict as pre-eminently political. But although Kelsen is obviously far removed from Schmitt politically, the problem Kelsen raises is primarily philosophical rather than political.

Given his faith in the venerable is/ought question, Kelsen firmly believes that no fact, e.g. smoking causes cancer, can ground a normative judgment, e.g. you ought to stop smoking.

For Kelsen a legal act is an act authorized by a law. Lower laws are authorized by second-level laws, which are authorized by third-level laws until we come to the constitution. Since the constitution must be a law, the constituent power that enacted it must have the legal authority to do so. Who gave it to them? Who authorized them? Well, they just did.

But while it is obviously true that someone drew up the constitution, otherwise there would not be one, this may explain why we have certain laws instead of others, but never their validity. The *Grundnorm* is Kelsen's attempt to distinguish facts that are legal from facts that are not legal but historical, sociological, political and so on.

Note that this is precisely Ferrara's starting question. Ferrara reminds us that populists issue a challenge to constitutional democracy by refusing to respect the constitutional decisions of previous generations. While prompted by the contingency of populism, this is clearly a philosophical question, regardless of people keeping faith or challenging their legal systems. Give up populism, and the question remains. Has the constituent people been given any authority to make the higher law? Kelsen, Ferrara, and Schmitt say that the answer to this question is 'no'. But while for Schmitt the mere deed of one generation suffices to ground the law, for Ferrara, the mere deed of one generation is just a mere deed.

[1] I have a vivid memory of this example given by Frege, but I could not find it again. I apologize if my memory misleads me, but the point of the argument does not change.

However, instead of addressing *this* Kelsenian question, Ferrara reads Kelsen as asserting that any existing legal order is just (instead of valid). When contrasting Rawls to Kelsen, Ferrara slips from a thesis that sees Rawls and Kelsen disagreeing on the objective/subjective moral evaluation of laws, rules, institution, and social systems, to a thesis that sees Rawls interpreting or analysing legal and political obligations as moral obligations. In Ferrara's words, for Rawls "a constitution is binding because its essential elements are assumed to reflect a political conception of justice" (p. 100). But if it is obviously true that in a Rawlsian *just society* the constitution will reflect, in the idiolect of PL, the political conception, what consequences should we draw? Ferrara mocks Kelsen, whose theory of validity "makes invalid laws" conceptually impossible (97). Nonetheless, although I am not sure what an *invalid* law that is nevertheless a law could ever be, more puzzlement arises from dissolving law into morality.

The drawback of making legal validity dependent on justice is that unjust laws are not laws.

However, if there are no unjust laws, what have people been fighting against throughout history? What was slavery? Why couldn't women vote? What is the death penalty (assuming it is unjust)? Most importantly, what is Rawls's theory about?

The peculiarity of Rawls's approach to normative political philosophy is that Rawls conceives of the principles of justice as addressed not to people, but to institutions, institutions being real systems of rules, laws, and obligations.

Although Rawls believes that we have duties as human beings, these duties are different from the obligations we have as members of social systems and are not the object of social justice (TJ).

The fact that the principles of justice do not address individuals but institutions does not mean that whether or not they are endorsed makes no difference to us. The principles of justice commit us to the "political" duty to help to create just institutions (TJ). But it is important to understand that Rawls does not conceive of his principles as obliging Ferrara and me to go to Bill Gates's house and demand the taxes he should pay according to the principles of justice. And not just because Ferrara and I may not even know Bill Gates's home address.

Following Herbert Hart's theory of "secondary norms", Rawls believes that taxes, as well as the act of collecting taxes, are legal, law-dependent, objects. They exist because of an institutional setting (Hart 1961, 1997; Rawls 1955). In the absence of an institutional setting, no act of taking money from Bill Gates would amount to taxation.

This means that, given the system in which we live, Bill Gates does *not* have the legal obligation to (justly) pay more taxes, but a legal obligation to pay the (unfair) amount of taxes that he surely pays. An IRS officer is under the obligation to collect the exact amount of taxes that the system requires, even if they are a fervent

Rawlsian who finds their country's tax system outrageous. Faced with an unjust tax system, the officer can (not must) give up their job. Or being strongly concerned, the officer can (not must) "mistakenly" double (multiply tenfold?) Bill Gates's tax returns, risking jail time.

Rawls obviously believes that unjust institutions of unjust societies provoke justified reactions. Depending on moral principles, we may believe that a slave is morally entitled (not obligated) to kill their slaveholder. We may also believe that, under certain conditions, we are morally obligated to help them. If helping them does not put our life at risk, we may say that we have a moral obligation to help a runaway slave and refuse to report them. We may have an obligation to hide them or give them money to leave. The fact that we have legal obligations does not exempt us from moral obligations. But to deny the reality of unjust laws, their being laws, is to fail to understand the nature of social injustice, i.e. what is "social" about social injustice.

The problem is not just the obvious fact that being a slave means having a legal position. But that fighting slavery means fighting a system, which is quite different from helping a slave.

One might think that if slavery is unjust, we are all morally forbidden to perform any action that makes it possible. If we all met these moral obligations, there would be no slavery.

But this is what I see as not grasping the meaning of social injustice. For Rawls, the law structures people's behaviour. It is not good people who create good laws, but good laws that create good people. Commenting on an ideal conception of citizenship for a constitutional democratic regime, the Rawls of PL, very close to the Rawls of TJ, explains how "it presents how things might be, taking people as a just and well-ordered society would encourage them to be" (PL 213). To deny the reality of unjust laws is to reduce social injustice to bad independent actions of bad independent individuals.

There are many things that distinguish Rawls from Kelsen, but definitely not the fact that legal systems are systems of laws and that, to the extent that they exist, they place obligations on us.

Ferrara attributes to Rawls a theory of constituent power by speculating that Rawls always conceived of laws as just laws. While the TJ Rawls's objective ambitions made constituent power irrelevant, the PL Rawls comes to see how not only principles but also peoples matter, sliding towards Schmitt. But as we have seen, Rawls carefully distinguishes the obligations we have as members of a social system from their evaluation. However, if Rawls never confused obligation and evaluation, it is unclear how the reasonable can introduce a theory of constituent power. Even conceding putatively to Ferrara that the reasonable introduces a sociologically sensitive justification absent in TJ, the reasonable at best changes the justification of the

principles on which to base our evaluations, not the concept of legal obligations. It seems to me that Rawls had no theory of constituent power in TJ or in PL.

3. TJ RAWLS VS PL RAWLS: THE MEANING OF THE REASONABLE

Ferrara does not systematically articulate PL's concept of justification and its contrast with the justification of TJ. He chooses to rely on Plato's famous allegory of the cave to illustrate both.

According to the original allegory, some people chained in a cave watch the shadows cast on the wall by a fire burning behind them, mistaking them for reality. One day a prisoner escapes from the cave. Facing the real world, he realizes that everything he had believed up to that point is wrong. Returning to the cave to tell the truth to his fellow sufferers, he is laughed at. They do not trust his story and take him for an idiot.

Ferrara interprets this allegory as an illustration of the idea that "true knowledge ... provides the foundations for the legitimate use of coercive power, for political obligation and for all the normative concepts found in politics" (p. 26).

According to Ferrara, TJ is the latest incarnation of this view, since Rawls assumes "that everybody in the cave will eventually recognize the superiority of 'justice as fairness' over all the rival accounts of what is outside the cave ... as though the 'burdens of judgements' could be fully neutralized by some philosophical argument" (p. 26). Such a disproportionate expectation expresses the idea that "normativity can originate from without, from subjecting politics in the cave to the 'whole truth' imported from out of the cave" (p. 27).

To shed light on the rupture that PL introduces with such a vision, Ferrara slightly modifies the allegory. In this refined version, more than one prisoner escapes into the real world. However, when they gather to return to the cave, they find that they do not completely agree on their accounts of reality.

What should they do now? "Should the operation of the politics, within the cave, the ordinary working of authority, of government, be suspended until it is determined which of the diverse account is the true one?" Or should an authority decide? Or a referendum? None of the above.

"If oppression mean to be forced, through the coercive power of the law, to live according to principles that one does not endorse" (p. 27), the fugitives agree to keep their reports "blessed by full overlap and to make them the only basis for exercising legitimate authority on the cave" (p. 30).

There is something puzzling in this story. Up until the moment when the fugitives gather after their instructive visit to the real world, Ferrara tells us nothing about the way living in the dark affects the political organization of the cave.

We are told that the chained prisoners mistake shadows for reality, but this does not seem to have any practical relevance. Or at least we are not told which. Maybe

their mistaken beliefs define an ideology that states that some people are born in chains and others are not. Or perhaps they create an egalitarian community that takes from each according to their ability and gives according to their needs. Maybe the shadows put women in the worst conditions among the prisoners, maybe not. Knowing nothing about their social organization, we are also unaware of how they feel. Do they live in peace or are they unhappy? Do they flourish or starve? Does anyone feel mistreated? Is anyone resentful? Is each of them able to form and realize something like a life plan?

We do not know. Neither, we must assume, do the fugitives. However, if the fugitives know nothing about how the erroneous beliefs that reign in the cave determine the political organization of that people, nor do they know anything about their mutual grievances; how do they know that their shared truths will have practical, political meaning for their comrades in the cave? How will the people in the cave know?

In Ferrara's recast version, the fugitives select only what they agree on, or only the story they can agree on. But this might be an enormous amount of knowledge. Should they select only part of their shared beliefs? But which part? They can guess that among their shared true beliefs there must be something useful for political organization. But they cannot say what. They would have to go in, awkwardly saying, "Okay guys, this is all we agree on about what we've learned, but we have no idea how this can be useful for government. Let's appoint a committee and in the meantime go on as usual." But then why not collect all their divergent reports?

There is a moral to all this.

Many have misinterpreted Rawls's idea of overlapping consensus as the thesis that principles of justice should be based only on what we happen to agree on. Ferrara does not make this mistake. That is why he sends some prisoners out of the cave. In Ferrara's version, the overlapping parts of the fugitives' divergent accounts are true or epistemically grounded. They are *epistemai*, as Ferrara states, even if they disagree (p. 28).

But such an improvement in the interpretation of the overlapping consensus is not enough and I have tried to explain why. Truths (or epistemically grounded beliefs) are better than shadows, but far more important for us are *relevant* truths (Anderson 1995). Beliefs that are true and relevant to our purposes.

Unless the fugitives had already established what a conception of justice should aim at, what expectations people have in a society, what the purpose of a system of cooperation is, how individual interests unavailable to collective interests combine with collective interests, what form of government best serves people' aims, and so on, pouring truth into the overlapping part of the fugitives' views does not change much.

I believe that there is some truth in Marx's belief that human beings only conceive of problems they can solve. But I do not think this means that our problems

arise spontaneously from our knowledge. The conceptualization of problems, seeing something as a problem, is also fundamental.

Parodying the TJ Rawls as Plato, Ferrara sees TJ conceiving the search for principles of justice as a purely theoretical enterprise, as some believe the search for knowledge is. This comes in handy for Ferrara, because it allows him to introduce the reasonable as a practical (political) reformulation of the principles of justice, giving practical the meaning of "relative to a specific us". But in so doing, Ferrara shifts from one problem to another, misrepresenting, I believe, both Rawls and Plato.

As I have tried to show, even fugitives must clarify what their knowledge is for, or they have to re-enter the cave only to say, "We know this and that, but we have no idea of the ways and reasons why this knowledge has any practical or political relevance for us." It makes no difference whether the escape scenario is singular or plural.

Even though Plato does not much care about justifying his criteria, nor does he think that, philosophers aside, people can understand their own problems, he had very clear ideas about what a society should serve, how people should cooperate, who must do what and why.

Implicitly or explicitly, we need criteria to say that what is found in the world is a conception of justice and not random pieces of knowledge. We need problems.

This brings us to the real issue Ferrara raises. Ferrara's concern with TJ is not about its "external", speculative solution. It is about problems; it is about the conceptualization of the problems that a conception of justice should solve (Korsgaard 2003).

Ferrara believes that TJ works on the assumption that the problems that people have, the ambitions they pursue as individuals and as members of social systems, the aim of political organizations, and so on are essentially the same for people living in similar social conditions. It is because we have the same problems that TJ offers a unique solution. But this ignores the history, the cultures and the traditions which make our problems, our concerns, our hopes and the meaning we attribute to our cooperation and political institutions different.

This is a *vexata questio* that I dare not resolve here.

I only wish to say that TJ does not defend an external truth imposed from the outside to people in a cave (i.e. us). Outside the cave is not our problem.

TJ is an effort to first conceptualize and then solve the problems of people living under systems of rules, understanding that participating in a system of cooperation implies give and take). Ferrara offers a different conceptualization.

Nevertheless, if TJ conceptualizes and solves the problems of people living under rule systems, the PL Rawls is much less close to Ferrara's vision than Ferrara seems to believe. It is true, as Ferrara says, that Rawls admits of a family of reasonable conceptions of justice. But Rawls says that justice as fairness is the most

reasonable for us. It is Ferrara, not Rawls, who interprets this "us" as historically and traditionally contextualized. As for Rawls, he does not seem to have changed his mind on *our* problems. In PL we find a fairly similar view of the purposes of a conception of justice, which Rawls now hopes can be accepted even by (reasonable) people who do not share the liberal inspiration that moved it.

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