

Rawls with Hegel: the concept of “Liberalism of freedom”

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Abstract: The purpose of this paper is to stress the common characteristics of Hegelian and Rawlsian thoughts. We show that Hegel and Rawls have similar objectives, since they both attempt to determine the possibility condition of the reconciliation of the reasonable and the rational, of the universal and the particular. These two authors share a similar aim, which is different from Kant’s: their theories examine how political freedom can be achieved. The Hegelian and Rawlsian criticisms of Kant offer proof that both authors want to build empirical and implementable theories.

Keywords: philosophical theories of justice, Rawls, Hegel, social justice, liberalism of freedom

Introduction

We know that the main objective of Rawls’s major work, *A Theory of justice* (1971, *TJ* in the following), is “to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau and Kant” (*TJ*: xviii). But Rawls also intends to develop “a systematic account of justice that is superior (...) to the dominant utilitarianism of the tradition” (*TJ*: 20) and he continues as follows: “the theory that results is highly Kantian in nature”. The connection between the Kantian concepts and those which Rawls mobilizes in his theory of justice as fairness, is thus perfectly explicit. In fact several studies meticulously carried out have already analyzed the nature and the implications of this proximity (see Canivet 1984, Höffe 1988 and Audard 1993).

In this paper, our concern is to analyze the evolution of the positions of Rawls vis-à-vis the Kantian moral philosophy. Many commentators of Rawls, great admirers of the research program elaborated in *TJ*, expressed reservations and doubts about later writings of the author. It is undeniable that the reflections of Rawls on moral philosophy present a noticeable evolution from *TJ* to *Political Liberalism* (Rawls 1993, *PL* in the following) which gathers the whole of his writings between 1980 and 1990 or to *Justice as Fairness, A Restatement* (Rawls 2001, *JAF* in the following). Rawls himself recognizes straight out such an evolution. But he stands up for himself against reproaches according to which he would have given up the progressive dimension of his theory of justice in his later writings. He says: “I presuppose (...) the same egalitarian conception of justice as before; and though I mention revisions from time to time, none of them affect this feature of it. I make this comment since some have thought that my working out the ideas of political liberalism meant giving up the egalitarian conception of *Theory*. I am not aware of any revision that implies such a change and think the surmise has no basis” (*PL*: 7 and footnote 6).

On this point we share the judgment of Munoz-Dardé (2003) who remarks that the point of view adopted in *PL* is an egalitarian liberalism much more coherent and ambitious than the one adopted in *TJ*. To support our thesis we will call on an author never or seldom associated with Rawls: Hegel. To our knowledge only Guillaume (1999: 89-98) establishes a connection between these two authors. How to explain that the evident parallels existing between the Hegelian and Rawlsian works never were the subject of a specific examination in literature? An immediate response of chronological nature could be suggested. Apart from some circumstantial references in *TJ* and a little paragraph on the Hegelian criticism of contractualist approach in *PL*, a consistent reference to the Hegelian political philosophy appears in the last writings of Rawls. Only there does Rawls mention his intellectual debt to Hegel.

Indeed, the last part of the *Lectures on the History of Moral Philosophy* (Rawls 2000, *Lectures* in the following) is devoted to Hegel. These lectures are the last that Rawls gave in Harvard in 1991. Rawls was used to distribute his lectures in the form of duplicated notes to his students; but the Hegelian lectures never were the subject of such a treatment. “Given Rawls’s long-standing interest in Hegel” (*Lectures*: xiv, footnote 3) the editor Barbara Herman made the judicious decision to publish these lectures by compiling them from Rawls’s notes. In this last chapter on Hegel, Rawls stresses the criticisms Hegel directed at the “atomistic” liberalism of social contract theoreticians and declares that he fully shares the judgment of the author of the *Philosophy of Right* (1821). According to Hegel, this form of liberalism “fails to see (...) the deep social rootedness of people within an established framework of their political and social institutions” (*Lectures*: 366). Rawls adds: “A *Theory of Justice* follows Hegel in this respect when it takes the basic structure of society and the first principles of justice they select are to apply to the basic structure. The concept of person and society fit together, each requires the other and neither stands alone” (*Lectures*: 366). Rawls doesn’t hesitate to stress also: “I see [Hegel’s] as an important exemplar in the history of moral and political philosophy of the *liberalism of freedom*. Other such exemplars are Kant and, less obviously, J.S. Mill. (*A Theory of Justice* is also a liberalism of freedom and learns much from them)” (*Lectures*: 366). According to Rawls, Kant, Hegel and himself belong “obviously” to this cultural trend he calls “liberalism of freedom”. And the first principles of the liberalism of freedom are “principles of political and civic freedoms, and these principles have a priority over other principles that may also be invoked” (*Lectures*: 330).

Hence, Kant is included in this tradition. But the argumentation of the Rawlsian commentary of Hegel reveals that the Hegelian moral and political philosophy realizes an *Aufhebung* of Kant, i.e. it conserves and surpasses at the same time the doctrine of the “categorical imperative”. We claim that Rawls follows the same line of reasoning as Hegel and, therefore, that the “second” Rawls is much closer to Hegel than to Kant. That is the thesis which we defend in our paper.

The remainder of the paper is organized as follows. First we analyze Kantian characteristics of the Rawlsian work. From *TJ* to *PL* we show that Rawls renounces the perspective of achieving a comprehensive, global moral doctrine, and moves towards a political comprehension of justice. This evolution conveys a certain contraction of the initial project of *TJ*. Second we develop the Hegelian reference in the Rawlsian theory with the aim of defining the concrete content of the concept of political freedom through one of the major Hegelian concepts: “reconciliation”.

I. Evolution of the Kantian characteristics of Rawls’s work

Rawls’s aim is to generalize the theory of the social contract as found in Locke, Rousseau, and Kant and to propose a theory of justice. Besides, his goal is to reconcile two conflicting traditions, that of Locke, which is connected with freedom and that of Rousseau, which stresses equality. Rawls’s theory is a deontological one, which gives priority to the right action over the good one. Consequently, the work of Rawls is indubitably influenced by Kant. Nevertheless, some significant differences with the philosopher of Königsberg have arisen in his recent writings. In this first section, we analyze the evolution of the Rawlsian thought from *TJ* to *PL* and *JAF* and point out how Rawls’s opinion about Kant has evolved.

I. 1. *A Theory of Justice, the initial program: two irreconcilable concepts?*

Rawls deals with an ambitious objective: to reconcile freedom and equality. He invokes two theoretical concepts for that purpose. However, these two concepts seem to be incompatible and compel Rawls to reconsider his initial program. Thus, the evolution of the Rawlsian thought can be explained by taking into account this incompatibility.

In *TJ*, Rawls’s aim is to devise a conception of justice called justice as fairness. In “a hypothetical situation of equal liberty” (*TJ*: 11) – the original position –, the persons are capable of determining the principles of justice, which apply to the basic structure of society. However, according to the theory of the social contract, some conditions must be satisfied in order to admit these principles of justice. The main innovation of Rawls is to design a process for an equitable deliberation between the persons in the original position – the parties. According to him, free, equal and rational persons behind a veil of ignorance choose the two principles of justice he proposes. The concept of the social contract implies this idea: “the merit of the contract terminology is that it conveys the idea that principles of justice may be conceived as principles that would be chosen by rational persons, and that in this way conceptions of justice may be explained and justified” (*TJ*: 14-5). Besides, Rawls stresses that: “the concept of rationality must be interpreted as far as possible in the narrow sense, standard in economic theory, of taking the most effective means to given ends (...). One must try to avoid introducing into it any controversial ethical elements” (*TJ*: 12). One of the first

goals of Rawls stems from this quotation: to found his theory of justice on the theory of rational choice in order to determine and justify the choice of the principles of justice in the original position.

On the other hand, the chief connection between Kant and Rawls proceeds from Rawls's determination to integrate into his own theory Kant's concept of autonomy. Actually, the descriptions of the original position and of the veil of ignorance are closely related to Rawls's interpretation of the Kantian doctrine: "Kant held, I believe, that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being. The principles he acts upon are not adopted because of his social position or natural endowments, or in view of the particular kind of society in which he lives or the specific things that he happens to want. To act on such principles is to act heteronomously" (*TJ*: 222). How do the persons behave behind the veil of ignorance? They are rational, free, equal and deprived of any information, which could make them prefer any principle of justice for reasons that serve their interests. Consequently, "the principles of justice are also analogous to categorical imperatives" (*TJ*: 222). Indeed, as opposed to hypothetical imperatives, Kant defines categorical imperatives as those, "which represent an action as necessary of itself without any reference to another end, that is, as objectively necessary" (Kant, 1785, p. 31); whatever desires or particular conception of the good the moral person has. Therefore, we point out the second goal of Rawls: to integrate into his theory Kant's concept of autonomy and thus, to be able to regard the principles of justice as categorical imperatives.

We claim that both goals stressed above are key elements of *TJ* and, in a general way, of Rawls's whole work. But are they compatible? This question provides a lead towards understanding how and why *TJ*'s author reconsiders his theory.

According to Höffe (1988: 59), regarding principles of justice as categorical imperatives is questionable for one can assert that Rawls wants to deduce the principles of justice from a rational prudential choice. Actually, the rules of prudence are hypothetical and not categorical imperatives; they are heteronomous and thus opposed to the Kantian autonomy. Let us read Kant on this point: "now skill in the choice of means to his own greatest well-being may be called prudence, in the narrowest sense. And thus the imperative which refers to the choice of means to one's own happiness, that is, the precept of prudence, is still always hypothetical; the action is not commanded absolutely, but only as means to another purpose" (Kant 1785: 33). While implying that the selection of the principles of justice behind the veil of ignorance is only due to the theory of rational choice, Rawls seems to give up his second goal. Hence, parties which fear risk just obey a simple rule of prudence. In these conditions, the difference principle is similar to maximin. Consequently, considering principles of justice as categorical imperatives is irrelevant: they are only hypothetical imperatives.

Rawls himself is ambiguous on this issue. At the start of *TJ*, he asserts that "the theory of justice is a part, perhaps the most significant part, of the theory of rational choice" (*TJ*: 15) and stresses that "it is useful as a heuristic device to think of the two principles as the maximin solution to the problem of social justice. There is a relation between the two principles and the maximin rule for choice under uncertainty" (*TJ*: 132). Moreover, parties are equal, free and rational: "one feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested. This does not mean that the parties are egoists (...). But they are conceived as not taking an interest in one another's interests" (*TJ*: 12). Audard (1988: 170) concludes that since no particular moral doctrine influences the

reasoning of the parties, rational prudence only guides their choice. This observation fits well with Rawls's first goal. However, founding the principles of justice on the theory of rational choice raises an obstacle on the way of conciliation: there is no agreement on the status of the principles of justice. Of course, Rawls is aware of this and in his *mea culpa* in 1985 he acknowledges that: "it was an error in *Theory* (and a very misleading one) to describe a theory of justice as part of the theory of rational choice (...). What I should have said is that the conception of justice as fairness uses an account of rational choice subject to reasonable conditions (...). There is no thought of trying to derive the context of justice within a framework that uses an idea of the rational as the sole normative idea. That thought is incompatible with any kind of Kantian view" (Rawls 1985: footnote 20). Which are the reasonable conditions to which Rawls refers? Actually, Hume's circumstances of justice apply behind the veil of ignorance. Besides, some formal conditions constrain the principles of justice: generality, universality, publicity, ordering and finality. And, of course, last but not least, the key element of the original position is the veil of ignorance, which constrains the procedure and guarantees the fairness of the original agreement. Both goals could then be compatible according to Audard (1988: 171-2) : thanks to the formal constraints of justice, the subject is no longer simply careful and interested, but moral.

But the intense polemic between Rawls and some economists as Harsanyi entertains some confusions and ambiguities on these issues. This debate concentrates on the choice of the decision criterion in uncertainty (Mongin and Fleurbaey 1996: 255). Because of the connection Rawls establishes between justice as fairness and the theory of rational choice, some economists such as Arrow (1973), Musgrave (1974) or Harsanyi (1975, 1977) indeed compare the principle of difference to maximin and criticize it accordingly (about the connections between the Rawlsian theory and the economists, see d'Aspremont 1984). Therefore, in spite of the considerable efforts expended by Rawls to make both his goals compatible, the status of the principles of justice as categorical imperatives is threatened by the theory of rational choice since, despite the reasonable conditions of justice, the polemic about the status of the principles of justice goes on and opinions diverge (Meyer 1984: 42-3; Audard 1988: 180-1; Höffe 1988: 63).

To sum up: in *TJ*, Rawls resorts to the theory of rational choice in order to justify the choice of the principles of justice in the original position; he aims, moreover, to take part in the Kantian tradition and regards his principles of justice as categorical imperatives. The question is to determine if *TJ* manages to reconcile in a convincing way both these goals. We stressed three steps during which Rawls tries to combine them:

- the theory of rational choice threatens the status of the principles of justice as categorical imperatives.
- It is then necessary to introduce some reasonable elements into the procedure of determination of the principles of justice.
- However, the attempt to regard the principles of justice as categorical imperatives remains questionable.

Consequently, it is essential to clarify the connections between the rational and the reasonable, while asserting the autonomy of the parties. How will Rawls succeed in doing it? Since the eighties, Rawls's work has seemed to follow two lines: more and more Kantian in his method and less in the objective of the theory he proposes.

1.2. Invoking the Kantian method: the relations between the reasonable and the rational

Since 1980, with the *Dewey Lectures*, Rawls has tried to alleviate the drawbacks of *TJ*. In order to divert any suspicion about the status of the principles of justice, Rawls attempts to subordinate the rational to the reasonable and to prove that the parties in the original position are autonomous. To do so, Rawls elaborates three parallel strategies. First, he makes a distinction between the rational autonomy of the parties and the full autonomy of the citizens: rational autonomy is the autonomy of the parties, which are agents of a process of construction; it is a narrow concept related to the Kantian hypothetical imperative (or to rationality in neoclassical economics). Full autonomy is the autonomy of the citizens in everyday life, having a particular vision of themselves and applying the principles of justice.

Second, he modifies the definition of the primary goods proposed in the first version of *TJ* and grants two moral powers to the persons: a capacity for a sense of justice and a capacity for a conception of the good: “a sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation (...). The capacity for a conception of the good is the capacity to form, to revise, and to rationally pursue a conception of one’s rational advantage or good” (*PL*: 19). The primary goods permit the persons to develop their moral powers. Thus, the primary goods are regarded as an answer to citizens’ moral needs and not as an answer to their actual desires or preferences. Therefore, the motivations of the parties cannot be considered as heteronomous or egocentric for they try to guarantee the necessary conditions so that citizens can develop their moral powers.

Third, he defines more precisely the reasonable: “persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that others propose” (*PL*: 49). The moral power, that is the sense of justice, is thus related to the reasonable, whereas the rational concerns the conception of the good. Consequently, the reasonable and the rational are both present in citizens since they have these two moral powers.

It should now be stressed how these two aspects intervene in the original position. On the one hand, the rational is already present in the original position since the parties are supposed to be free, equal and rational, and they try to increase the primary goods allocated to the citizens they represent. On the other hand, the reasonable is integrated in the original position by means of some constraints: the publicity, the veil of ignorance, the symmetry of the situation of the parties and the fact that the basic structure of society is the first subject of justice. In order to prove that the rational is subordinated to the reasonable, Rawls uses extremely eloquent terms: the reasonable “presupposes” and “governs” the rational. It even “limits” it (Rawls 1980).

Consequently, Rawls, whose goal consists in dismissing any ambiguity on the status of the principles of justice, seems to succeed as Canivet (1984) stresses: thanks to the full description of the original position, Canivet admits that the Kantian concept of autonomy is achieved in it. Therefore, since the *Dewey Lectures*, thanks to the distinction between the rational and the reasonable, the ambiguity about the status of the principles of justice has disappeared. Thus, Rawls’s method is Kantian. On the other hand, some ideas developed in

TJ are abandoned: whereas the principles of justice are considered as categorical imperatives in *TJ*, the “second” Rawls does not pursue this line of reasoning. Why? According to Audard (1988), the demonstration of the superiority of the reasonable over the rational implies that the principle of toleration – toleration towards citizens’ different conceptions of the good – encounters some inconsistencies.

In order to avoid this drawback, which would be fatal to Rawls’s aim of reconciling freedom and equality, the rational and the reasonable, it is consequently essential to distinguish between the legal or public identity and the nonlegal or moral identity of the individual. Indeed, extending justice as fairness beyond the basic structure of society causes some results opposed to *TJ*’s aim for “the only alternative to a principle of toleration is the autocratic use of State power” (Rawls 1985: 230). One must develop a political conception of justice. “The second” Rawls develops this aspect and more particularly from 1985 onwards abandons the idea of devising a moral conception of justice.

1. 3. The emergence of political liberalism

In the eighties, Rawls “narrows” his theory to a political conception of justice for a constitutional democracy. Rawls stresses two main distinctions between *TJ* and the theory he now defends. On the one hand, his new theory is political and avoids certain philosophical claims. On the other hand, it applies to the basic structure of modern constitutional democracy and does not claim to be operational for “different kinds of societies existing under different historical and social conditions” (Rawls 1985: 225). This theory is thus political and not metaphysical: “the idea is that, in a constitutional democracy, the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines. Thus, to formulate such a conception, we apply the principle of toleration to philosophy itself” (Rawls 1985: 224). The political conception of justice is the only one, which is appropriate for a democratic society, since “under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable – and what’s more reasonable – comprehensive doctrines will come about” (*PL*: 36). This fact called “fact of reasonable pluralism” is characterized by the diversity of reasonable comprehensive doctrines resulting from modern democratic societies. Here the concept of “reasonable” is opposed to the concept of “irrational” in the sense that these reasonable comprehensive doctrines “are not simply the upshot of self- and class interests, or of peoples’ understandable tendency to view the political world from a limited standpoint. Instead, they are in part the work of free practical reason within the framework of free institutions” (*PL*, 37). According to Rawls, irrational comprehensive doctrines cannot continue in a democratic society. Note also that any reasonable comprehensive doctrine, which claims to be shared by all citizens, “would likewise require the sanctions of State power to remain so. Call this the fact of oppression” (*PL*: 37).

Political liberalism must be in particular distinguished from a comprehensive liberal doctrine such as Kant’s. The political conception of justice defended by Rawls differs indeed from broader doctrines: its subject – actually, it is similar to *TJ*’s – is the basic structure of society composed by the economic, social and political institutions. The principles of justice, once determined, apply to it and only to it. Besides, the conception of the person moves towards a political conception of the person. One must distinguish between the public identity and the moral identity of the person. The conception of the good that citizens pursue does not

belong to the political domain. Thanks to political liberalism, citizens are free to have, in their nonlegal or moral identity, the comprehensive doctrine they choose. Modifying their nonlegal identity does not affect their legal identity: “on the road to Damascus Saul of Tarsus becomes Paul the Apostle” (*PL*: 31). Yet such conversion implies no change in his legal identity (on this issue, see Audard 1988 and 2003; Habermas and Rawls 1997). That is why Rawls argues that in political liberalism freedoms of public autonomy and those of moral autonomy are complementary ideas and cannot exist on their own. Consequently, Rawls considers that the conflict between the two types of autonomy specified by Locke’s and Rousseau’s traditions is solved (Habermas and Rawls 1997: 110-21).

We can now understand why the “second” Rawls ceases to consider the principles of justice as categorical imperatives: “persons can accept this conception of themselves as citizens and use it when discussing questions of political justice without being committed in other parts of their life to comprehensive moral ideals often associated with liberalism, for example, the ideals of autonomy and individuality (...). As comprehensive moral ideas, autonomy and individuality are unsuited for a political conception of justice. As found in Kant and J.S. Mill, these comprehensive ideals, despite their very great importance in liberal thought, are extended too far when presented as the only appropriate foundation for a constitutional regime. So understood, liberalism becomes but another sectarian doctrine” (Rawls 1985: 245-6). The Kantian idea of autonomy, closely related to the concept of categorical imperatives, is unsuited for the political conception of justice. Therefore, the principles of justice cannot be analogous to categorical imperatives. Within the framework of political liberalism, citizens have full autonomy, but Rawls stresses that: “this full autonomy of political life must be distinguished from the ethical values of autonomy and individuality, which may apply to the whole of life, both social and individual, as expressed by the comprehensive liberalisms of Kant and Mill. Justice as fairness emphasizes this contrast: it affirms political autonomy for all but leaves the weight of ethical autonomy to be decided by citizens severally in the light of their comprehensive doctrines” (*PL*: 78). According to Munoz-Dardé (2003), the evolution from a comprehensive liberalism to a political liberalism solves what could be a fatal mistake. For instance, if the State compels individuals to be ethically autonomous, that brings about heteronomy. Rawls indeed considers the Kantian concept of autonomy as comprehensive, for it means to prevent citizens from pursuing their own conception of the good and to abolish the rational in society. Consequently, it is essential that the reasonable and the rational be able to coexist, the latter being subordinated to the former. The possibility condition of this reconciliation is political liberalism.

Finally, it is possible to discuss the criticisms about Rawls’s thought. Is there a renouncement of the aim initially exposed in *TJ* as many commentators have emphasized? Of course, the following quotation of *TJ* gives rise to controversial debates: “justice as fairness is not a complete contract theory. For it is clear that the contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles for all the virtues and not only for justice. Now for the most part I shall consider only principles of justice and others closely related to them; I make no attempt to discuss the virtues in a systematic way. Obviously, if justice as fairness succeeds reasonably well, the next step would be to study the more general view suggested by the name rightness as fairness” (*TJ*: 44). In *TJ*, Rawls thus does not exclude the possibility of extending justice as fairness beyond the political sphere. The ambiguity of *TJ* on this point is acknowledged by Rawls himself: “in *Theory* a moral doctrine of justice general in scope is not distinguished from a strictly

political conception of justice” (*PL*: xv). On this issue, the distinction with the Kantian doctrine is emphasized by the “second” Rawls. Let us examine how Rawls describes the differences between Kant’s and his own theory, the vocabulary being extremely eloquent: “justice as fairness is a political conception of justice for the special case of the basic structure of a modern democratic society. In this respect it is *much narrower in scope* than comprehensive philosophical moral doctrines (...). It focuses on the political (in the form of the basic structure), *which is a part of the domain of the moral*” (*JAF*: 14, emphasis added). Thus, political liberalism is elaborated in the domain of political philosophy, conceived as a part of moral philosophy. In this respect Rawls narrows his conception of justice to a political conception of justice. He criticizes Kant for the comprehensive aspects of his doctrine and prefers a political autonomy to a comprehensive one, which becomes heteronomous. In order to take the rational into account, one must narrow justice as fairness to the political domain. Consequently, although the vocabulary used by Rawls can cause some disappointments, a closer examination denies these initial feelings: actually, Rawls reaches *TJ*’s aim thanks to political liberalism since it enables him to reconcile freedom and equality, the rational and the reasonable.

On many aspects, we observe that Rawls is influenced by Kant. But his thought has evolved and some connections with Hegel’s theory can be pointed out. In our second section, we establish in which way Rawls’s theory is related to Hegel’s.

II. The Hegelian reference in the Rawlsian theory

As we announced above, the explicit reference to Hegel appears tardily in the work of Rawls. But Rawlsian considerations on Hegel show that the fundamental concepts of the Hegelian political philosophy always accompanied him in his intellectual career. Closely examined, we notice that the interest of Rawls for the philosophical and political work of Hegel relates to the same fundamental question which held the attention of the author of *Philosophy of Right*, i.e. the question of the reconciliation (*Versöhnung*) of the reasonable and the rational in order to allow the rational the broadest development of its potentiality while subordinating it to the jurisdiction of the reasonable. From this point of view, the Hegelian reading of Kant presents a narrow similarity with Rawlsian one, as the last texts of the *Lectures* reveal. And when Rawls writes that he “see[s] his [Hegel’s] liberalism as an important exemplar in the history of moral and political philosophy of the *liberalism of freedom*” (*Lectures*: 330), he also counts Kant in this liberal tradition but in the sense that the Hegelian liberalism integrates and surpasses the Kantian moment. We will consider first the significance of this surpassing (*Aufhebung*) of Kant by Hegel and, secondly, we will examine the precise content of the reconciliation suggested by Hegel and Rawls.

II. 1. From Hegel to Rawls: the criticism of the Kantian moral theory

Rawls’s commentary of the Hegelian political philosophy starts with the definition of the “free will” as we find it in the 10th and 27th paragraphs of the *Philosophy of Right* (Hegel 1821): “[t]he free will is the will that wills itself as the free will” (*Lectures*: 330). This commentary shows that the Hegelian approach of the question of the “free will” opposes and integrates, at the same time, the Kantian point of view. In Hegelian terms, one could say that

it *aufhebt*, i.e. it preserves and overcomes this point of view. It preserves it because Kantian definition lays also down that the free will wills itself and it is “inwardly related to itself alone” (Hegel, §135: 89). Indeed Kant says that “a good will is good not because of what it performs or effects, not by its aptness for the attainment of some proposed end, but simply by virtue of the volition [*das Wollen*]” (Kant 1785: 12). The free will has its origin and its determination in reason, regardless of any emotional, intellectual, cultural, aesthetic or social experience. The will is fully free only when it is the will of “duty” and the individual acts freely and voluntarily only when he obeys duty. This obedience to duty allows the individual to withdraw from any external determination, to escape the constraint of “inclination” [*Neigung*]. “Duty, says Kant, is the need for acting from respect for the law [*Achtung für Gesetz*]”, (Kant 1785: 21). The latter establishes itself as a pure duty, through the “single categorical imperative” or the “universal imperative” from which “all other imperatives of duty can be derived”: “act only on that maxim whereby thou canst at the same time will that it should become a universal law [*allgemeines Gesetz*]” (Kant 1785: 38). “The free will that wills itself as the free will” corresponds to what Rawls calls the “reasonable”: “The distinction between the reasonable and rational goes back, I believe, to Kant: it is expressed in his distinction between the categorical and the hypothetical imperative in the *Foundations* and his other writings.” (*PL*: 48-49, footnote).

But the Hegelian definition of the free will surpasses Kant’s point of view, because the latter constitutes only one of the two moments of the free will: it is thus an abstract and formal definition. What Hegel calls “abstract” in his specific terminology is a reality that did not yet succeed in reaching existence, that has not been able yet to express, to carry out the virtualities of its being. What is abstract is yet “in itself”, jealous of its original purity; it still stands on the doorstep of the existence, i.e. of the “negative” which alters inevitably and necessarily the serene identity of the “I”. According to Hegel, the Kantian moral subject endeavors to protect itself against any alteration, i.e. against any external determination. Rawls points out the same shortcomings in the Kantian moral philosophy when he writes: “Hegel views Kant as moved by a desire for radical purity, by a desire to act from the moral law itself and by nothing else” (*Lectures*: 335). The Kantian moral nourishes a mistrust with regard to what is external, because any relationship with the “outside” contains the danger of a dependence of the free will on another reality than itself. It is true that this moral recommends an infinite respect towards our fellows, by taking care not to regard them as simple means but always as “ends in themselves”. But this infinite respect with regard to the others remains nevertheless, in the final analysis, an abstract and formal position. This is why Hegel reproaches the Kantian moral for not being able to liberate himself from the status of the “ought to be” [*Sollen*]: “what is universally valid is also universally effective; what *ought* to be, in fact also *is*, and what only *ought* to be without [actually] being [*ohne zu sein*], has no truth [*Wahrheit*]” (*Phenomenology*: 151). The Kantian moral fears to assume the risk of moving towards the existence, the risk of facing the other and assuming the danger and the threat such a confrontation can represent against the “radical purity”. In other words, Hegel wishes that the Kantian “free will” opens up, actually, to the world; that is also Rawls’s wish.

The second moment of the Hegelian free will, i.e. this opening up to the world, is “the transition from undifferentiated indeterminacy [*Unbestimmtheit*] to the differentiation [*Unterscheidung*], determination, and positing of a determinacy [*Bestimmtheit*] as a content and object” (Hegel 1821, §6: 22). The Hegelian definition of right, to which Rawls devotes profound and suggestive comments, allows us to understand the meaning of the overcoming

of the formalism of duty: “an existent of any sort embodying the free will, this is what right is. Right therefore is by definition freedom as Idea” (Hegel 1821, §29: 33). Defined in these terms, right is not reduced to a simple list of legal measures (rights, duties, bans, prohibition, rules, laws, etc.) aiming to regulate social life. More precisely, right makes the will and consequently freedom exist empirically. On the other hand, the Kantian definition of right is profoundly different: Right, says Kant, is “the *restriction* which makes it possible for my freedom or self-will to co-exist with the self-will of each and all according to a universal law” (Kant quoted in Hegel 1821, §29: 33). In contrast to Hegelian definition, Kantian definition reduces the right to a set of borders which tends to separate carefully citizens’ spheres of freedom. Thus, the Kantian definition attributes to right a purely negative function, and citizens governed by a right of such a negative nature have only negative ties between themselves. In other words, moral subjects who are already supposed to enjoy their freedom, regardless of any particular relation with their fellows, meet in the Kantian juridical area with a feeling of suspicion and fear and try to protect their private sphere against the threats of the external world. But, according to Hegel, such a vision of right proceeds from an abstract formalism which conceives the relation to others or the “mediation by others” as an external constraint the moral subject is condemned to undergo because he is unable not to cohabit with others. In the sphere of Kantian right the other represents a constraint. The existence, the outside –as it represents the “hypothetical imperative”-, inspires mistrust and fear to the categorical imperative’s will. The surpassing of the Kantian formalism requires, according to Hegel, that moral consciousness frees itself, precisely, from the mistrust, from the anxiety about what Kant calls “heteronomy”.

Here we have the central point of the Hegelian criticism of Kant. In the final analysis Kant supposes an absolutely sovereign, autonomous subject, having an infinite power to escape any external determination, and complying strictly with the injunctions of the categorical imperative. Thanks to the categorical imperative, the Kantian moral consciousness reaches the status of a universal legislator: “the *principle* that every human will is *a will which in all its maxims gives universal laws* (...) would be very well *adapted* to be the categorical imperative, in this respect, namely, that just because of the idea of universal legislation it is *not based on any interest*, and therefore it alone among all possible imperatives can be *unconditional*” (Kant 1785: 49). Hegel never disputes the foundation of this principle, i.e. the Kantian concept of free will as categorical imperative rigorously unconditional. On the contrary Hegel agrees totally with Kant on the fact that man owes his moral subject identity to the existence of this categorical imperative in himself. What is here at stake is to know what kind of attitude the moral subject could adopt with his internal categorical imperative. Because as long as the moral subject acts as a self-sufficient reality with its unconditional moral law, as long as it keeps itself rigorously pure, there is no social existence in the strict sense of the word. The moral subject must act, i.e. he must accept to become an object of interest for the external world, for the others. Kant recommends an infinite respect towards others, but closely examined Kantian relations between moral subjects appear as relations between rigorously identical realities, i.e. between abstractions. Moral law governs me as it governs the other. In this sense the moral Kantian order is the reign of the same. There is no “difference” in the categorical imperative order. In other words the other, in his concrete reality, doesn’t exist in such an order. What confers to the other his concreteness is, precisely, his difference compared with me. The other is different from me precisely because he shares another moral conception, another “comprehensive moral doctrine”, another idea of the good.

If the categorical imperative order is the reign of the same, the order in which the other exists effectively, in its concreteness, is the reign of plurality. In other words, the other exists as such in the hypothetical imperative order, which Rawls calls the “rational”. This is why the “second” Rawls gives up the idea undertaking the construction of a theory of justice as a moral doctrine based on the concept of categorical imperative. As we have stressed already above, the “second” Rawls concentrates his attention on the nature and the content of principles of justice, not on a general level, but as principles peculiar to a specific system of constitutional democracy. Because only constitutional democracy leaves the largest place for the plurality and diversity of the other. And as we will see it in our next subsection, in a society organized on the basis of the requirements of a system of constitutional democracy, principles of justice, which represent the reasonable i.e. the universal, must be confined to the political sphere. Here we have the reason of the contraction of the Rawlsian theory of justice from a general moral theory drawing its inspiration from the Kantian philosophy of categorical imperative to a theory of political liberalism. To confine principles of justice –the reasonable-, to the political sphere means leaving the choice of moral principles in the care of particular individuals, in the terms of Rawls in the care of the “rational”. In other words, the Hegelian necessity of the “mediation by others” and the Rawlsian criticism of a comprehensive liberalism, which excludes the rational, are close. We thus argue that Hegel and Rawls share the same aim, which is not that of Kant: to define a concrete theory, which enables the opening up to the world. Rawls says: the political philosophy “looks not to a world that ought to be, that lies beyond the world (as Hegel thought Kant’s philosophy did), but to a world before their eyes that actualizes their freedom” (*Lectures*: 332). We find here the concept of reconciliation.

II.2. The question of “reconciliation” (Versöhnung)

Expressed in its most concise form, reconciliation means a particular mode of coexistence, the achievement of a particular and unstable equilibrium between the reasonable and the rational, as Rawlsian terminology calls them. We first examine what the rational side is. Then we discuss how the reasonable makes it possible to balance it out. From that discussion the similarities between the Hegelian and Rawlsian thoughts become apparent.

The sphere of the rational is composed of a multitude of “comprehensive philosophical moral doctrines” (*JAF*: 6) which are mutually exclusive and contradictory. The rational is essentially heterogeneous, fragmented, anarchistic. Each individual has his specific, particular conception of the world. The Hegelian “civil society”, as the second moment of the Hegelian free will, corresponds exactly to the Rawlsian concept of the rational. Actually, in civil society, the individual “is himself the object of his particular aims [*besondere Zweck*]” (Hegel, 1821, § 182: 122). In civil society, the individual develops his potentiality, his virtual capacities, his creativities, his aptness to innovate. As such, civil society is the sphere of the emancipation of subjectivity. In his specific terminology, Hegel calls this second moment the moment “for itself” (*für sich*). In civil society, the individual lives for himself, acts for himself, thinks, imagines, creates, invents for himself. That is precisely the reason why civil society gives to the observer the spectacle of a completely anarchistic, fragmented, heterogeneous order. But the idea which interests Rawls in the Hegelian analysis of civil

society is the fact that the emancipation of subjectivity fundamentally needs this apparent chaos.

Note that all States, in history, didn't accept to leave any space for such a chaotic order. Hegel shows, with remarkable rigor, how the ancient world, the one of Plato, resisted the emergence of this specific social sphere, the individual sphere as an autonomous reality, between *oikos* and State. The ancient world is frightened of "the development of particularity to self-subsistence" because the self assertion of the individual as subjectivity appears "in the ancient world as an invasion of ethical corruption and as the ultimate cause of that world's downfall" (Hegel, 1821, §185: 123). The individual who just pursues his exclusive objectives and whose spiritual horizon ends at the borders of his particular "comprehensive philosophical or moral doctrine" constitutes a threat against the integrity of the city. Such an individual may become more and more indifferent to the cause and to the supreme interests of the community in favor of his egoistic comfort and of his exclusive particular interests. The State loses control on such an individual. To say it differently, in the ancient world, the reasonable is anxious about the danger of losing control over the rational. An individual existence led by the sole objective of satisfaction of needs inevitably sinks into excess. Such a logic leads society to the indeterminate accumulation of wealth and to the deadlock of the pursuit of immoderate pleasure. In his specific terminology Hegel says: "Particularity by itself is measureless excess (*Masslose*), and the forms of this excess are themselves measureless. By means of his ideas and reflections man expands his desires, which are not a closed circle like animal instinct, and carries them on to the false infinite (*schlecht Unendliche*)" ((Hegel, 1821, §185: 267). This "false infinite" is the greatest danger the ancient State wanted to prevent. That is the reason why it systematically tries to prevent the development of the rational.

Civil society is thus specifically a modern phenomenon. In the ancient world, the individual is never a really social being: he is either a member of a private family (*oikos*) or a member of the State (citizen). The "sociality" of the individual could develop only in the sphere of civil society where individuals are subject to "hypothetical imperatives", if we return to the Kantian terminology. An imperative is hypothetical when "the action (*Handlung*) is good only as a mean to *something else*". In contrast, if the action "is conceived as good *in itself* and consequently as being necessarily the principle of a will which of itself conforms to reason, then it is *categorical*" (Kant 1785: 32). Taking some liberties with the rigorous content of the Kantian concepts, Hegel implies that categorical imperatives prevent hypothetical ones in the ancient world. In the Rawlsian terminology the latter expression means that the reasonable prevents the existence of the rational. The originality of the Hegelian approach lies in the fact that if in the ancient world a great anxiety exists about the perspective of an infinite development of the "reflexive self-consciousness", insufficient development of reason at that time explains this phenomenon. It is because of its weakness that the reasonable tries to drive the rational out of society. In other words, the weakness of the ancient State condemns it to prevent the emergence of civil society. On the other hand, the modern State is much more mature and strong thanks to the development of reason in modern society. It can therefore accept without reserve the emergence and the development of this new social sphere, namely civil society: "the principle of modern States has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the extreme of self-subsistent personal particularity, and yet at the same time brings it back

to the substantive unity and so maintains this unity in the principle of subjectivity itself” (Hegel 1821, §260: 161).

The modern State is now sufficiently strong to allow individuals to develop their subjectivity. In the Rawlsian terminology this proposal could be expressed as follows: the reasonable is now sufficiently strong to allow the rational to develop and liberate itself. How do we have to understand such a proposal? What could mean the idea according to which the State or the reasonable which are not yet sufficiently strong necessarily tend to prevent subjectivity or the rational and to repress their potential creativity? We claim that this paradoxical observation reveals the proximity of the Rawlsian and Hegelian spiritual experiences concerning their analytical efforts to grasp the specificity of modern society. What confers to the State or to the reasonable the strength which allows them such serenity in front of subjectivity or the rational is a certain renunciation, i.e. the renunciation of the desire to make their citizens happy. The modern State and the modern form of the reasonable cease considering themselves as being invested of a mission to guarantee the happiness of moral subjects. The essential duty of the State and of the reasonable is to ensure the individual’s freedom. The State or the reasonable have to limit the area of their jurisdiction. Rawls says: political liberalism “assures all citizens adequate all-purpose means (primary goods) so that they can make intelligent use of the exercise of their freedoms. Their happiness, though, is not guaranteed, for that is a matter for citizens themselves. The liberalism of the (classical) utilitarians (...) is distinct from the liberalism of freedom. Its first principle is that of the greatest happiness summed over all individuals” (*Lectures*: 366). Here we have the fundamental specificity of the modern State.

Therefore, the question of the modern State seems to be analyzed in a very similar way by Rawls and Hegel. As observed above, we can speak of a certain renunciation of the ambition to build a general theory of moral philosophy or a general moral doctrine concerning the “second” Rawls. Indeed, any theory or moral doctrine implies a particular conception of the world and as such it comes necessarily within the field of the “rational”. In *PL*, Rawls aims at restricting the extent of the reasonable in order to afford the greatest place to the “rational”, i.e. in order to allow the broadest development of the particular. The “second” Rawls tends to bring the reasonable back to a finite number of principles of justice and to border its field of action by the frontiers of politics. Therefore we can say that the “second” Rawls undertakes an operation of contraction of the sphere of the reasonable.

Let us examine Hegel’s case. The Hegelian comparison between ancient and modern societies reveals that the emergence of civil society required from the modern State implies a similar contraction with respect to the ancient State. The expression “not to be anxious of subjectivity” means, in the Hegelian thought and in this context that the modern State lets its citizens exist as individuals pursuing their own private ends, developing their own comprehensive moral theories. In other words, in modernity, the State retires to the sphere of politics by releasing an immense space of the social existence in which civil society takes shape and develops. We have here an approach of social reality which is closely similar to that of Rawlsian. The State corresponds in the Hegelian system to the reasonable in the Rawlsian theory of justice, and the subjectivity which develops in civil society corresponds to the rational. We thus argue that the Hegelian State can be understood and interpreted as the “basic structure of society” from two points of view. On the one hand, both the Hegelian State and the basic structure of society confer to the individual public or legal identity. In other words, the individual reaches the status of a citizen. The universality of the State and the principles of justice, which apply to the basic structure of society, institute the individual as a reasonable being. Thanks to the State and to the basic structure of society, which recognize all

members of society as free and equal, the individual has the possibility condition of his particular potentialities as a rational being. On the other hand, the substantial universality of the State and the principles of justice limit the infinite reflection of subjectivity, the infinite development of the particular, the infinite extension of the rational. Taking part in the universality of the Hegelian State enables the particular to circumvent the “false infinite” as the public identity of the individual prevents the comprehensive doctrines from being plunged into the irrational (that is the reason why Rawls calls them reasonable comprehensive doctrines).

What does universality concretely mean concerning the State? What confers to the State the privilege to represent universality? Closely and concretely examined, it is the totality of the community which confers to the individual universality, political identity as a citizen, political freedom. The individual achieves universality or political freedom if he is *recognized* by his fellows. In other words, universality or political freedom exists actually on condition that each member of the community recognizes each other as universal, free and equal, i.e. as a reality which deserves the same respect, the same consideration, the same interest and the same care as myself. This remark explains why in the Hegelian political philosophy the individual political freedom necessarily supposes the freedom of all the individuals of the community. The recognition of each one by each other is the only condition in which a society as “a fair system of cooperation over time” (*PL*: 15) is possible. But in the Hegelian political philosophy as in that of Rawlsian this act of recognition is also an experience of the particular. We find here again the notion of “opening up to the world”. Recognizing the other is to accept him as well as I would wish to be accepted by the others. Recognizing the other as being strictly equal to myself amounts to saying that I must accept his part of opacity, i.e. his part of the rational as well as I would wish that my fellows accept me with my part of opacity, with my existence as a rational being. The opacity of the other lies in his particular “comprehensive doctrine” which is different from my own. This act of recognition is reconciliation with the world, with the pluralism of the rational. As the modern individual progressively learns not to fear the other and not to oppose the institutions of his society, the State as the reasonable makes place for civil society which is the space of the emancipation of the rational. The individual must let himself to go into the world, in what Hegel calls *die Sittlichkeit* (the ethical order). He must go into the world not to defy the “political and social institutions” of society, but to recognize himself in them, to appropriate them as his own work. Here we have the significance of the concept of reconciliation. In the modern State the reasonable is reconciled with the rational and the universal is reconciled with the particular.

Conclusion

The purpose of this paper was to stress the common characteristics of the Hegelian and Rawlsian thoughts. We claimed that Hegel and Rawls have similar objectives, since they both attempt to determine the possibility condition of the reconciliation of the reasonable and the rational, of the universal and the particular. These two authors share a similar aim, which is different from Kant’s: their theories examine how political freedom can be achieved. The Hegelian and Rawlsian criticisms of Kant offer proof that both authors want to build empirical and implementable theories, which is not Kant’s target.

This connection between Hegel and Rawls, which is very rarely stressed in literature, comprises two parts. First, we examined the development of the Rawlsian thought from *TJ* to *JAF*. This emphasized the exact meaning of the criticism he directs at Kant and its reasons. Indeed, the incompatibility of the two concepts Rawls invokes in *TJ* – to found his theory of justice on the theory of rational choice and to integrate Kant’s concept of autonomy – compelled him to clarify the status of the reasonable into justice as fairness. But then the demonstration of the superiority of the reasonable over the rational is so convincing that the main assumption of liberalism – the principle of toleration – might encounter some inconsistencies. In order to circumvent this drawback, Rawls developed a political conception of justice called political liberalism: the Kantian theory is thus regarded as a comprehensive liberalism. Consequently, political liberalism aims at conciliating the reasonable and the rational in society. Second, a thorough examination of the Hegelian thought concerning the reconciliation between civil society and State provides proof of the similar objectives of Hegel and Rawls.

Finally, neither Rawls nor Hegel aim at rejecting Kant or at abandoning the categorical imperative and the reasonable. On the contrary, they aim at reconciling the categorical imperative with the hypothetical one, the reasonable with the rational, or according to the Hegelian terminology, the universal and the particular. That is the reason why Rawls grants a major conceptual dimension to the Hegelian reconciliation, *Versöhnung*. In a modern, constitutional and democratic society, the State – the reasonable – must learn how to be reconciled with the rational or subjectivity. On the other side, the particular must learn how to be reconciled with the universal. In Rawls’s intellectual career, the effort required by this double reconciliation represents the opposite of an abandonment of the progressive dimension of *TJ*.

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