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Reflective Agreement: a Nonideal Approach to Political Justification

Summary

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The Dilemma of Political Liberalism

The aim of this dissertation is to address the issue of public justification in political theory. I develop my analysis starting from the Rawlsian paradigm, as I believe that Rawls has provided us with an extremely exhaustive and powerful paradigm for building up – and justifying – a political theory of justice. Yet, Rawls' theory of justice faces many criticisms and encounters deep problems. For this reason, the first goal of this dissertation is to show that it is possible, starting from a general Rawlsian paradigm, to work out a procedure of justification that differentiates itself from the traditional accounts of political justification that have been outlined. In the development of this work, I discuss the "political turn" in Rawls' theory and I show that a strictly political account of liberalism faces an intrinsic tension within its model. According to my interpretation, the "political turn" gives rise to a dilemma between two aspects of the justificatory procedure: on the one hand, the philosophical side demands that the procedure of justification provides a sound argument granting the normativity of the whole structure; on the other hand, there are practical constraints involving a major focus on the actual circumstances of justice and on the fact of pluralism.

In order to develop a procedure of justification consistent with both commitments, Rawls claims that the philosophical argument for justifying principles of justice should be freestanding; i.e. completely detached from any specific comprehensive doctrine. And yet the arguments that inform the public – and freestanding – justification should be consistent with different theories of the good life, so that the resulting political principles might obtain support from different moral perspectives. In order to claim that a belief (or principle) is **publicly justified**, such belief must be justified through reference to strictly political arguments, eschewing any reference to a specific comprehensive doctrine. In this regard, the regulative ideal that informs the procedure of public justification requires that political principles achieve robustness in relation to various metaphysical and epistemic theories. **Robustness** is an epistemic notion according to which a theory $T1$ is robust vis-à-vis another theory $T2$ to the extent that the justification of $T1$ is insensible to any possible modification that occurs in $T2$. Hence, in order for the political theory to be robust in relation to extremely different comprehensive doctrines, it is important to show that public justification can motivate citizens to support the political module, even though such citizens start their reasoning over political matters from their actual, and extremely different, sets of moral and comprehensive intuitions. If a public justification fulfils the task to make liberal tenets

robust with regard to a wide variety of comprehensive views, then political liberalism will be justified through a procedure that is philosophically adequate, while respecting the fact of pluralism and the variety of comprehensive doctrines held by citizens. Nevertheless, the more the theory acquires political efficacy being robust with regard to as many as comprehensive doctrines possible, the more the theory loses philosophical depth. In fact, if the procedure of justification is to be freestanding, then the array of philosophical arguments that can be employed into the justification is extremely reduced. Moreover, if the justification of political principles cannot employ the beliefs that citizens hold more strongly within the deliberative procedure, since such beliefs are strongly connected with different comprehensive doctrines, then it seems that the motivational force attached to the resulting political principles is substantially reduced. In this regard, political liberalism seems to be counter-intuitive, as some of the most important beliefs for us - beliefs that are strongly held by citizens - cannot be engaged in the public deliberation over political principles. As Maffettone (2010) points out, political liberalism faces a dilemma between stability for the right reasons and pluralism. Thus, it seems that political liberalism gets to a dead end. Either political liberalism accepts the realistic stance all the way down and therefore becomes inclined to focus its attention more on the issue of the actual consent than on the quest for a philosophical normative argument, or it faces the fact of pluralism by affirming the validity of liberalism as a true – and philosophically justified – theory of justice.

In the dissertation I will introduce different arguments for showing that at the end the Rawlsian' account does not completely solve the dilemma of political liberalism, as his approach is tied down to a strictly ideal analysis, namely, he looks for a justificatory procedure in which some idealizations are always employed. Since such dilemma stresses the inner tension that arise between philosophical and normative requirements on the one hand and the attempt to be motivational adequate on the other; then I claim that it is not possible to solve this tension if normative reasoning is employed just within the limits of ideal theory. For this reasons, my own proposal for re-interpreting and modifying the Rawlsian paradigm, in order to make it adequate for coping with the dilemma of liberalism, is to distinguish between **an ideal and a nonideal part of the theory of justice**. In this regard, I distance myself from Rawls, as he claims that the normative task is fulfilled just by ideal theory, while nonideal theory has to deal with the actual implementation of a perfect notion of justice when the circumstances of justice are not idealized. Hence, one of the fundamental goal of this dissertation is to

demonstrate that, *pace* Rawls, both ideal and nonideal theory play a normative role within the justificatory procedure. On the one hand, ideal theory introduces **robust infeasibility constraints**, namely idealized assumptions with regard both to the epistemic and moral capacities of the actors and to favorable social conditions. Thanks to these idealizations, ideal theory develops a normative theory of justice assuming that citizens are able to abide by the principles of justice, once that they have been laid out. Ideal theory provides us with a description of how justice would work in an idealized – quasi-perfect world – and therefore establishes a loose normative liberal framework that works as a normative criterion to which look at when dealing with the actual deliberation on political matters. On the other hand, nonideal theory addresses the actual possibility of developing a deliberative process for justifying a specific theory of justice that applies to the contextual circumstances and that should be supported by real citizens. Thus, an extremely important normative role can be fulfilled just by nonideal theory, to wit, the development of a deliberative procedure in which actual citizens discuss among them and try to publicly justify a set of principles and mid-level rules for ruling the political society.

In this dissertation I provide different reasons – epistemic as well as political – in defence of this division of the justificatory procedure in an ideal and a nonideal stage. In this brief introduction I cannot properly expose these reasons. Still in order to explain which is my view on the division of labour between ideal and nonideal theory, let me introduce a metaphor that explains my view on the matter. Liberalism can be described both as a theory-framework and as a theory-picture. While a <u>theory-framework</u> establishes a loose normative framework as a criterion for assessing and regulates the actual process of political deliberation, <u>a theory-picture</u> deals with the actual possibility of building up a complete theory of justice, made up by principles and rules and by specific interpretations of general concepts. Following this metaphor, we can say that for Rawls the purpose of nonideal theory is to reproduce, in the best way possible given the circumstances, the original picture that the ideal theory has provided. However, since the brushes are defective and the canvas is ruined (i.e. the actual circumstance of justice are not favourable as under an ideal argument), the copy will never be perfect as the original. By contrast, according to the view that I want to defend in this dissertation, the ideal theory provides autonomous and well-justified arguments for establishing a loose normative liberal framework, while nonideal theory deals with the actual political process that should be established in order to publicly deliberate on political matters.

Hence, the ideal theory constitutes just the frame of the painting, while the original picture should be drafted by the nonideal theory. Admittedly, this division of labour implies that we cannot establish in advance which would be the outcomes of the nonideal procedure, since the ideal theory provides us with a normative framework for regulating the deliberation within the nonideal stage, rather than yielding a full defined theory of justice that can guide the social process of reform all the way down. Consequently, this account of the public practise of justification is more instable, as the regulative ideal that guides our public deliberation is just loosely established. Yet, the main goal of this work consists in showing that we can establish a method of reasoning, **reflective agreement**, that grants the epistemic and normative role played by the loose normative framework even when any justificatory argument *from* abstraction is abandoned. In this regard, reflective agreement works as a "bridge" between ideal and nonideal theory.

In the first chapter I address the epistemic constraints for a nonideal theory of justice. Then, in the two central chapters, I address the historical and contextual constraints that nonideal theory should cope with. Here, I articulate Rawls' paradigm and some of the critical contributions to the "public justification" debate in recent years (e.g. Quong, Gaus, D'Agostino, Sen, Habermas). In the third chapter I also introduce and discuss my own proposal for a justificatory paradigm that couples both ideal and nonideal theory and that therefore requires a **multistage framework**. Finally, in the last chapter I assess the validity of my justificatory framework, by testing it on specific cases study.

A Moderate Epistemic Conception

In the first chapter of the dissertation I address epistemic issues and claim in favour of a *moderate* epistemic account. I hold that a fallibilist view with regard to moral and political knowledge, when coupled with a moderate approach in moral epistemology, expresses the best scheme available to us – as moral agents constrained by the limit of our rationality – for establishing a normatively binding, and yet realistic, procedure of justification for political institutions and practices. According to this **moderate epistemic view**, the agent plays a fundamental deliberative role within the justificatory process, as she is the last authority for determining which theory or principle or which specific interpretation of an already established principle is more compatible with her wide set of beliefs. According to this moderate view, the epistemic role of justification

is not exhausted by the introduction of a set of reasons 'R' that provides a <u>propositional justification</u> for *p*. Rather, if the epistemic value of a justification in part hinges on the deliberative role played by moral agents, then any comprehensive justification should involve a <u>doxastic analysis of S's beliefs</u>, focusing on the actual possibility that S should believe, for sound reasons, that *p*. Thus, the provision of a set of good reasons 'R' is not a sufficient condition for the agent S to believe correctly that *p*. Agent S might believe that *p* for different, and unjustified, reasons or, even, do not accept the set of reasons 'R' as acceptable within her doxastic system. Consequently, a doxastic justification is one in which propositional justification is supplemented by a <u>basing requirement</u>, namely the fact that agent S bases her belief on the reasons that propositionally justify it. The doxastic view on justification that I defend requires that when we analyse the set of reasons 'R' that are available to an agent S, we should also take into consideration the epistemic performance by the same agent S. This moderate perspective stresses the role played by agents, instead of referring primarily to the value and the validity of moral truth *per se*.

I hold that for a political theory of justice, a moderate epistemology and a fallibilist account of knowledge are better tools in order to respect and deal with the fact of pluralism and the doxastic aspects of our moral knowledge. According to **fallibilism**, knowledge is compatible with the possibility of error. In this regard, it should be distinguished between two meanings of "knowing":

i. If S knows that *p*, then S is justified in believing that she is not mistaken about *p*.

ii. If S knows that *p*, then S could not be mistaken about *p*.

Fallibilism accepts (i) and rejects (ii). Indeed, (ii) requires a too high standard, namely the "impossibility of error" argument, according to which "to know something requires that it be that sort of thing that you could not be mistaken about" (Feldman 2002: 125). The rejection of the impossibility of error argument follows from the fact that for fallibilism the reasons that an agent can hold in her doxastic system are merely good, but never infallible and that, therefore, it is possible to have very good reasons and yet holding a false belief. Holding a fallibilist approach implies that one claims for the validity and justification of her moral and political beliefs, <u>but along with the awareness that such justification is not irresistible</u>. Indeed, for a justification to be conclusive it requires that we are able to grant that no defeaters are available. Yet, given our limited epistemic abilities, fallibilism is telling us that we will never be able to claim in a conclusive way against any possible defeaters. Thus, the epistemic regulative ideal of a

nonideal model of deliberation does not sit well with the establishment of ultimate truths that are once and for all undefeated, rather it is fulfilled by the pursuit of principles that moral agents would be best justified in believing. In this regard, under the fallibilist perspective, I want to argue in favour of a normative theory of justification that support **coherentism as a general justificatory framework**.

Coherentism is a theory of justification according to which there are no foundational beliefs, as all justified beliefs are inferentially justified. The agent S is justified in holding the belief *p*, if and only if, *p* is part of a coherent system of beliefs and therefore can be justified inferentially through the connection with other beliefs that are part of the same coherent system. In this regard, the degree of S being justified in holding *p* is directly proportional to the level of coherence achieved by the whole belief system. Hence, the fundamental methodological principle of coherentism claims that justification should always take in consideration the whole system, as no assessment or justification is available when beliefs are evaluated singly.

In the first chapter I provide different epistemic reasons for supporting coherentism instead than foundationalism. Among these reasons, there is the fundamental fact that coherentism is able to account for a possible accommodation of disagreement, while foundationalism is not. Indeed, if the justificatory structure hinges on the discovery of – at least – one self-evident moral truth, then it follows that disagreement can never be defined as genuine, but solely as the outcome of a defective cognitive deliberation by some of the moral agents. According to foundationalism, moral disagreement can derive from nothing but the recognition of the fact that "at least one of the protagonists has to be guilty of a deficiency in the way he arrives at his view, or to be somehow constitutionally unfit" (Wright, 1995: 222). Apart from the strictly technical reasons for believing so, it is also true that coherentism is more adequate as a general paradigm, for it better accounts for moral phenomenology, since moral phenomenology tells us that moral disagreement arises genuinely during moral deliberation.

Following this line of argument, I show that coherentism provides us with a sensible narrative of how our moral deliberation works and it also yields good tools for facing disagreement accepting that disagreement is often genuine, rather than the contingent outcome of a defective cognitive appraisal. Hence, I maintain that a fallibilist approach, when coupled with a coherentist epistemology, is exactly the kind of general paradigm that provides us with a good strategy for dealing with disagreement. As a matter of fact, a coherentist procedure of justification, especially when anchored to

fallibilism, provides us with a deliberative structure that is intrinsically open to *reform* and *revision*. The nonideal approach I want to defend can be summarized through the following different propositions:

− it is possible to achieve a sound justification of moral beliefs and principles, even avoiding reference to any foundational beliefs;

− it is possible to account for genuine and strong disagreement, given that agent evaluative perspective is always part of the procedure of justification;

− the procedure of justification can be described as a work in progress enterprise, given that − at least theoretically − it is always possible to claim in favour of further improvements, or revisions, of our coherent system of beliefs;

− beliefs and principles are objective, where objectivity hinges on the intrinsic normativity attached to the criteria of the "epistemic correctness" that are employed in the assessment of the validity of our moral practice of deliberation. In this regard, this notion of objectivity is independent from the metaphysical analysis about the ontological status of moral facts.

The Ideal Stage of the Theory

In the second chapter I introduce and discuss Rawls' paradigm of justice, showing that this model does not successfully cope with the dilemma of political liberalism. As I said, this dilemma derives from the necessity, for political liberalism, to be sensitive both to pluralism and to stability for the right reasons constraints. Recognizing the fact of pluralism entails that principles of justice, in order to be able to gain support from the members of the political constituency, should be justified publicly, averting any reference to a liberal comprehensive doctrine. The stability for the right reasons constraints instead demands that liberal theories yield a normatively binding procedure of justification that grants the acceptability of political principles, more than their contextual acceptance.

In *Political Liberalism* (hereafter PL) Rawls embeds the freestanding stage of the theory − grounded on strictly philosophical arguments − within a justificatory structure that takes some facts of our contextual political life as relevant. Although a top-down justificatory argument is still present in PL, such argument is part of a wider structure of justification that employs both a coherentist paradigm of justification and a contextual standpoint. Rawls has clear in mind that, for solving the liberal dilemma, it is not

sufficient to provide good philosophical arguments for justifying a principle; it is also necessary that these philosophical arguments are accepted as victoriously justified within the doxastic systems of the members of the constituency. Consequently, it is not sufficient that the priority of the right over the good is supported by theoretical arguments. Rather, the priority of right should be justified in a way that is acceptable, and therefore motivational adequate, for the actual members of the constituency. Even though Rawls is aware that the theoretical analysis is not sufficient for solving the dilemma, his approach remains tied down to a strictly ideal analysis, namely, he looks for justificatory arguments in which some idealizations are always employed (i.e. the fact that the overlapping consensus is reached just by *reasonable* citizens). By contrast, I think that there are good possibilities of providing an account of justification in political philosophy that, articulated in the light of Rawlsian attempt, can respect some fundamental neutrality constraints and yet avoid the liberal dilemma. In order to articulate this approach, it is important to stress the role played by a coherentist paradigm of justification within the Rawlsian paradigm. As a matter of fact, Rawls believes, that even if turns out that our moral knowledge is actually grounded on some basic beliefs, still the way in which we can justify such beliefs depends on moral intuitions that we held in our doxastic systems. A coherentist paradigm is the most reasonable with which we are left with in order to account both for a normatively valid procedure of justification and for the fact that our practical reasoning is far away from being perfect and unflawed. Rawls introduces a coherentist procedure of justification within his system through the concept of **reflective equilibrium** (hereafter RE). RE is a justificatory procedure that looks for the establishment of coherence between some general principles and particular moral intuitions held by the citizens to whom the general principles should be addressed. The method of RE looks for a coherent balance between some general principles and some "considered moral judgments" held by moral agents. According to a moderate paradigm of moral epistemology, no sound and definite justification of general principles can be achieved without discussing the issue of how these principles approximate our strong beliefs on moral matters. In order to achieve a proper justification, general principles of justice should be embedded in our doxastic systems. Consequently, if they are incoherent with our strong intuitions about justice all the process of justification is doomed to fail. Therefore, RE can be described as a method that looks for the actual possibility that principles of justice can be embedded within the doxastic sets of beliefs held by citizens.

RE is a highly valuable method as it allows us to develop a justificatory procedure that takes into consideration both strictly normative arguments and the actual circumstances in which the agent tries to embeds such normative arguments within her doxastic system of beliefs. RE is the perfect expression of a moderate epistemic view with regard to the procedure of justification, for the political conception is justified if and only if it achieves coherence with all the other beliefs held by a moral agent in her doxastic system. Strong intuitions about past cases of moral conflicts as well as background theories about general matters are parts of the doxastic system. All these beliefs constitute a web of beliefs that mutually sustain each other. The procedure of mutual adjustment between general principles and strong intuitions held by moral agents can provide stable results and yet be intrinsically revisable. Indeed, new evidence can be brought into the picture or a new conflict might arise among different interpretations of general principles already justified. These are instances of possible reasons for revising our previous achieved balance between principles and intuitions. RE is therefore an **intrinsically liberal method of reasoning**, as it respects a general fallibilist account and consequently is benevolent toward the confrontation among different opinions and is always open to readjustments. Upholding a fallibilist view does not mean that the principles of justice are left without normative force. Indeed, their cogency is a matter of the best argument that can be victoriously justified within the doxastic perspective. Yet, the strong disagreement among citizens implies **a nested inconclusiveness** with regard to the interpretation of these principles of justice. As Gaus (1996: pp. 179-194) explains, a public justification of principles of justice is possible. However, this justification, although being victorious, involves a nested inconclusiveness according to which different undefeated, yet not victorious, interpretations of a victoriously justified principle are available. Therefore, even when principles of justice – constituting a specific concept of justice – are correctly and victoriously justified, still different reasonable interpretations of such principles are available. In order to respect the epistemic authority of every member of the constituency, it is not possible to claim for a specific *conception* of justice to be victoriously justified in the same way as it was claimed for the *concept* of justice. Hence, any particular <u>conception of justice</u> can be viewed as an inconclusive interpretation of a set of principles that constitute a victoriously justified <u>concept of justice</u>.

In my proposal, RE is fundamental, as this method determine both the input and the output of the procedure of justification in ideal theory. In order to understand this assumption, let's analyse the role that RE method plays in the different ideal justificatory stages of the theory. First of all, I shall clarify that, following Quong (2011), I hold that the overlapping consensus constitutes the input of the whole theory of justice. According to this interpretation, the overlapping consensus is a consensus over the fundamental organizing ideas of a liberal democracy. Such organizing ideas are laid out starting from a specific historical context – as they have been developed, although imperfectly, within the historical process that has originated the first liberal democracies. According to Quong, any theory of justification that builds up a justification of liberalism starting from deep disagreement is doomed to failure. In order to provide a justification of political principles, we should start from some shared ideals that at least an idealized constituency might share. These organizing ideas provide the theory with a **loose normative framework** around which will be possible afterwards to build up a specific conception of justice coupled with a strictly freestanding justification of principles of justice. This theoretical and normative framework is necessarily loose for at least two reasons. First, this framework is loose as it derives, partly, from a contingent historical process. In this regard, the looseness of the framework is a necessary condition, as possible revisions are always possible and the fixed points are just provisionally justified. Second, the framework should be loose in order to meet the pragmatic commitment of dealing with disagreement. The organizing ideas of a well-ordered society and of free and equal people are shared ideas of a public political culture, but they might become prescriptive if, when embedded in the doxastic system of an individual, are able to motivate such individual to uphold a liberal theory of justice in order to "become" a citizen that indeed lives as free and equal in a well-ordered society.

According to this interpretation, the overlapping consensus on the underlying ideas of political liberalism (e.g. the ideal of a well-ordered society as a fair system of cooperation and the idea of citizens as free and equal) is already an outcome of a RE procedure. Such organizing ideas are extrapolated by a context where their normativity stems from the fact that they already "fit" some of our considered intuitions in RE. These organizing ideas become the Archimedean points around which we can try to build up a normatively relevant theory of justice. The way in which the organizing ideas are justified hinges on the reference to a General Wide Reflective Equilibrium in which

idealized members of the constituency agree on such ideas starting from their specific comprehensive doctrines. Naturally this constituency is idealized, as we assume that the members of such constituency are reasonable and therefore willing to find an agreement between their comprehensive doctrines and these organizing ideas. According to Quong, it is much more reasonable to expect different people to be able to find an agreement on some underlying ideals, rather than on specific principles of justice – as instead sustained by the common view on overlapping consensus. Every reasonable citizen, starting from her specific doxastic set of beliefs, agrees on some liberal ideals whose normativity is determined and justified not through a top-down approach, but thanks to a bottom-up argument that justify them referring to the historical democratic process. Of course, this kind of overlapping consensus is an idealized procedure in which the organizing ideas are under the scrutiny of just idealized reasonable members of the constituency. Yet, it is reasonable to expect that thanks to a contextual approach, these organizing ideas can be embedded in the doxastic systems of beliefs of the members of the society. Indeed, people that already live in a liberal democracy and that accept the legitimacy of the political regime thanks to the procedure of the balloting and that engagement in the practice of public deliberation show an acceptance of the organizing ideas of liberalism. Admittedly, this agreement is a loose agreement on vague concepts. Still, the Rawlsian insight is that we can start from this loose agreement and try to build on it a stronger and as much as possible stable theory of justice.

After that an overlapping consensus among reasonable members of an idealized constituency has been reached, the freestanding argument for the construction of the general liberal principles can be presented. The rationale for the construction of the original position argument is provided by the organizing ideas included in the overlapping consensus. Consequently, these organizing ideas constitutes the benchmarks – the Archimedean points – around which developing the freestanding argument of justification. The procedure of justification here aims to provide a sound justification of a specific concept of justice, a "political module". This justificatory stage is articulated in the light of the idea that the principles that will result to be justified, would be determined as the best expression of some shared notion of fairness. In this regard, RE method is again employed within an abductive argument that refers to the explanatory power of the freestanding argument. The idea is that the principles of justice that are displayed in the original position argument, can be justified referring to the fact that they would provide the best explanation of the considered moral judgments

of the idealized constituency, since they are coherent with the organizing liberal ideas that have informed the historical democratic process and that have been justified in overlapping consensus. Here coherence is viewed as a hint of "explanatory power": it is not the coherence itself the reason for believing something as correct; rather coherence is the proof that the general principles are supported, in RE, by the organizing ideals shared in overlapping consensus by an idealized constituency. Looking for a RE between the political "module" and fixed normative beliefs that are victoriously justified within the doxastic systems of idealized moral agents is fundamental, since the resulting coherence reflects the reasons why moral agents can support this political module. In this regard, coherence is a criterion of justification, not a justifying property. The kind of RE that characterizes the *pro tanto* stage of the justificatory procedure is a strictly <u>Political Reflective Equilibrium</u> as the political module is determined thanks to a freestanding argument and the equilibrium reached with the underlying organizing ideas relies on strictly political arguments.

The articulation of RE as a fundamental aspect of the whole procedure of justification within the ideal stage is consistent with the account of the overlapping consensus defended by Quong. In fact, when it is claimed that the overlapping consensus concerns an agreement over some organizing ideas that constitutes a loose normative framework of reasoning, the background intuition is that the RE method shapes the whole procedure of justification. Within the overlapping consensus different members of the idealized constituency achieve a consensus over some specific liberal ideals starting from their different perspectives. Here, a coherentist procedure is engaged, since every member tries to find a coherent way for connecting political ideals to her comprehensive system of beliefs. The resulting overlapping consensus constitutes the loose deliberative framework against which the device of representation of the original position is constructed. Therefore, the original position itself is shaped in the light of the already achieved agreement on the loose framework of deliberation. The normative role played by the veil of ignorance and the relation among the parties are laid down with reference to the already shared notion of well-order society and free and equal citizens. Without presupposing an agreement among these organizing ideas, the same construction of the original position device would be impossible, or at least normatively irrelevant. Consequently, a normative, philosophically relevant, argument might be provided in order to justify a conception of justice. Still, this argument should have already being embedded in a coherentist framework in which a normative role is

attached to some Archimedean points on which there is a convergence of agreement by different comprehensive perspectives. In this regard, the role that overlapping consensus plays in the ideal phase of the theory is to guarantee a justification of the Archimedean points around which the entire structure of justification of political liberalism will be built on.

The part I have just discussed deals with the **ideal phase of the theory**. In this phase RE is both the adequacy test for the whole theory and the method for achieving justification with regard to the single perspective of moral agents. At the first level, the overlapping consensus one, RE is a useful tool for identifying the Archimedean fixed points about the liberal notion of justice. These organizing ideas, when justified in RE, vis-à-vis the doxastic sets of the members of the idealized constituency, become a sort of shared considered moral judgments about what justice requires. Here RE is more an individual, reiterated, procedure for achieving coherence between comprehensive and political ideals. The way in different actors, defined as reasonable members of the constituency through an idealization, draw the line between the political and the comprehensive domain is a matter that can be resolved just with reference to the actual method of RE. Then, the freestanding argument – that it is not necessary to outline in term of original position – provides a strong philosophical argument for justifying a general concept of justice that accounts for the considered moral judgments shared by the members of the constituency in overlapping consensus. This political module is justified as far as it demonstrates to be coherent with the ideals shared in overlapping consensus. Again, a RE method is employed. However, here the RE is more an adequacy test for the theory that a reiterative method for achieving coherence. The adequacy test requires that the theory developed on the basis of the freestanding argument is able to achieve coherence with the considered moral judgments shared by an idealized constituency of citizens. The general political theory should match the moral intuitions of the moral agents, otherwise this theory would be not fully justified. Since the overlapping consensus grants that political ideals are victoriously justified within the doxastic sets of reasonable citizens, then the normativity of the freestanding argument, although independent and philosophically valid, hinges on the fact that reasonable citizens has actually agreed, in overlapping consensus, on the value of these shared Archimedean points.

This analysis allows me to claim that Rawls' paradigm of justification, when limited to ideal theory, can be soundly defended. The most difficult problems, though,

arise precisely when the ideal phase is abandoned. If in the nonideal stage we cannot assume an idealized constituency of just reasonable citizens, then it is not possible to believe that an actual overlapping consensus is achievable. According to Quong this is not a problem, since the internal concept of political liberalism does not claim to be able to justify its tenets to unreasonable citizens in the same way that it does with reasonable citizens. Consistently with this idea, Quong maintains that the full justification is achieved when both the overlapping consensus and *pro tanto* justification are fulfilled. By contrast, my analysis aims to stress the fundamental role played by the nonideal stage of the theory. According to my scheme, the full justification cannot be produced if the analysis stays at the ideal phase of the justificatory framework. I believe, instead, that <u>a fundamental role for a *political* theory of justice is to accommodate the disagreement in nonidealized circumstances</u>. A major charge pressed against the political turn in the Rawlsian framework has been that such strictly political justificatory procedure requires a schizophrenic attitude from citizens. On the one hand, they have to heartily uphold the political concept thanks to the reference to internal reasons they find in their doxastic set of comprehensive beliefs. On the other hand, the same political concepts should be trumping over all comprehensive considerations they may have. Admittedly, this twofold line of argument involves tensions. In my opinion, however, the difficulties produced by this justificatory account are due to the fact that the two phases of the process of justification, the ideal and nonideal one, have not been properly distinguished. The ideal phase of the theory is focused on the identification of a set of political ideals that constitutes the loose framework in the light of which it is then possible to build up a specific theory of justice. This loose framework of underlying ideas provides us the raw material from which building up an <u>optimal eligible proposal of public rules and principles</u> that grants that "the disagreement in our private judgment is extensive but is bounded within a set" (Gaus, 2010: 43). The nonideal phase, instead, is devoted to the completion of a *full justification* whose purpose is to show that, under real conditions, the political concepts can still claim to be victoriously justified within the doxastic systems of beliefs of the actual members of society.

The Nonideal Stage of the Theory

I believe that an overlapping consensus, when viewed as the first justificatory stage in an idealized phase of the theory, provides us with a sound and justified common

evaluative standards. Nevertheless, my thesis is that, for accomplishing a full justification, we need a nonideal stage of the theory that deals with the actual disagreement among citizens, and that therefore renounces to appeal to justificatory arguments that hinge on abstractions and idealizations. Hence, the full justification cannot be granted just with the reference both to the overlapping consensus and to the *pro tanto* argument. Rather, for yielding full justification we must introduce a new argument, less ideal, in which the overlapping consensus can be viewed as a feasible option even by a nonidealized constituency. In this regard, we can say that **full justification** is the justification that should be accomplished when the political module justified in the ideal stage of theory is able to reaffirm its validity even when the idealizations are undone. <u>The ideal stage tells us what people would think about justice if they were perfectly rational and reasonable. The nonideal theory, then, would try to accomplish this ideal in the actual, unconstrained political reality</u>.

The possibility of reaching an agreement on a concept of justice are far fewer at the nonideal level. In this regard, we can distinguish between a liberalism-framework and a liberalism-picture (See Maffettone, 2010: 217). The **<u>liberalism-framework</u>** would be the loose normative framework developed within the ideal stage of the theory. This loose framework is depicted in the light of the organizing ideas that are justified in overlapping consensus by reasonable citizens. The ideal analysis, thanks to a freestanding argument provides us with an optimal eligible set of unvictoriously justified conceptions of justice and interpretations of the organizing ideas. All the different proposals within the optimal set are able to be publicly justified vis-à-vis the doxastic systems of beliefs of the members of the idealized constituency. However, none of the different interpretations might be uncontroversially justified as well. In this regard, such liberalism-framework works as it usually works a frame with regard to the picture, to wit, it provides the limits within which the picture can be painted. The hope is to grant that the **<u>liberalism-picture</u>**, even at the nonideal level, might be constrained by the normative frame while trying to establish an ethical and political institutionalized conception of justice. Following this metaphor, we can say that even though at the nonideal level it is not possible to introduce strong idealizations in order to grant strict compliance, still the nonideal reasoning can refer to the outcomes of the ideal stage as a "loose normative framework" in the light of which developing the actual deliberative practice. Notwithstanding this intrinsic vagueness and work in progress characterization of the nonideal stage, we can refer to some organizing ideas and contextually

established Archimedean points as the normative frame that regulates and limits the deliberative process. This picture-frame metaphor, in my opinion, perfectly expresses the fact that the goal of the nonideal phase is not simply to transform the imperfect reality in order to adhere more closely to the ideal model. Rather, nonideal theory plays an independent role in the determination of the outcomes of the justificatory and deliberative process.

In the nonideal stage of the theory we are left with a political module – or more precisely a set of optimal eligible proposals – that would be stably and victoriously justified under fair and idealized conditions. Nevertheless, which is the normative weight of such political module when the ideal circumstances are abandoned? The validity of this module is not endangered, as its normativity depends on the reference to a freestanding, philosophically relevant, argument. But, if the political constituency is no more necessarily reasonable, can one still argue in favour of a public and shared agreement on this political module? This is the question I try to answer introducing the concept of **Reflective Agreement** (hereafter RA). I use reflective <u>agreement</u>, instead of reflective <u>equilibrium</u> in order to highlight the intrinsic work in progress aspects of such a procedure. For, it is true that I articulate RE as intrinsically revisable; still, when achieved, RE is an equilibrium. By contrast, <u>RA is an agreement that the members of the political constituency reach on a loose normative framework starting from the actual circumstances of justice</u>. This agreement depends on an actual public deliberation among citizens and not simply out of moral reasons, as prudential and strategic reasons as well are part of the deliberative account when we are dealing with a nonidealized constituency. Even though an equilibrium is not a realistic expectation in the nonideal stage of theory, I believe that an agreement can be reached – and this agreement is actually realized in the ongoing practice of liberal democracies.

While in the ideal stage of the theory, the validity and normative force of the freestanding political argument were grounded on the overlapping consensus, at the nonideal level we have to call into question the possibility of actually achieving a sort of "nonideal overlapping consensus". The argument from abstraction is not motivationally strong enough to guarantee a consensus when the actual citizen are engaged in the public deliberation and no idealizations are employed. Still, the overlapping consensus argument has a normative weight, as provide us with a loose framework of evaluative standards for assessing our concrete political situations. Moreover, the analysis of *which-would-be-our-beliefs-on-justice-when-reasonableness-is-imposed* might became

relevant within our deliberative procedure. As a matter of fact, we know that if we want to act as "reasonable citizens", then we have to deliberate on political matters choosing reasons and rules that are part of the eligible sets. <u>RA, therefore, tries to solve the contrast between what citizens would agree on, starting from their actual doxastic systems and what they could agree on if their doxastic beliefs were filtered by a reasonableness requirement</u>. In this regard, we cannot assume the reasonableness as starting point – as it happens for the overlapping consensus -, rather we might try to achieve an agreement on a normative framework starting from a contextual analysis.

The Archimedean points might be victoriously justified in the doxastic system of beliefs of every person that accept the reasonable constraints. Few citizens however are actually fully rational and reasonable. Nevertheless, democratic regimes, although imperfect, constitute a quite stable default option for liberal societies. In this regard, I think that Sebastiano Maffettone (2010: pp. 21-24; 222-228) is right when he claims that, within nonideal theory, the institutional bases of liberal democracies should be analysed from a double perspective, accounting both for <u>justification</u> and <u>legitimation</u>. According to Maffettone, the normative argument for justification is not strong enough for granting the stability and validity of a liberal regime vis-à-vis the unconstrained doxastic set of beliefs of actual members of the political constituency. For this reason, the freestanding justification of the political concept of justice should be embedded in a wider argument that starts from the contextual evaluation of the ongoing institutional practice. Actual citizens are not perfectly reasonable; but still they happen to live in an institutional framework that already loosely reflects the organizing ideas around which the freestanding argument for justice might being built up. Therefore, if citizens are living in an institutional framework and accept it *de facto*, trying to improve it through the democratic process, then it is reasonable to assume a sort of **bottom-up legitimation** of the organizing ideals by the contextual reference "to fact that liberal democracy is, in our age, a (relatively) successful practice" (Maffettone 2010: 23). While we can have different reasons for sustaining the justification of a political concept, as expressed by the WRE achieved in the overlapping consensus, the legitimation is a sort of contextual agreement that stems from the same institutional process. I think that this "<u>institutional practice of legitimation</u>" is the best way for interpreting the contextual turn in the Rawlsian paradigm. The bottom-up practice of legitimation stresses the fact that a public agreement, which in the overlapping consensus has been granted by the theoretical strategy of restricting the constituency to

the reasonable citizens, can be reached in the nonideal circumstances thanks to a contextual analysis. In the nonideal phase, liberal theory is engaged in the procedure of justifying its underlying ideals and its institutions when they have been already established. Naturally, these institutions are imperfect and certainly a perfect model of democracy has not yet been realized. Still, the contemporary liberal democracies have been constructed out of the loose reference to some general political ideals as liberty and equality among citizens. Therefore, the Archimedean points that are explained and legitimated by the justificatory procedure of the overlapping consensus are actually present also in the contextual environment of contemporary liberal democracies. In this picture, the shared ideas of the public culture of liberal democracies become the provisional fixed points that any theory of justice should try to account for. However, these same ideas are not taken for granted once for all, as they are subjected to the scrutiny of coherence as much as all the others components of the justificatory framework. In fact, if such organizing ideas turn out to be inconsistent with the doxastic sets held by the members of the constituency or with some institutional features, then it is possible to revise and re-interpret them in the light of the renewed political context.

If we assume as valid the distinction between justification and legitimation, then it should be also clear why the Archimedean points might be valid normative constraints in the nonideal stage as well as they are in the ideal one. In the nonideal stage, the Archimedean points cannot be justified thanks to an overlapping consensus in which every citizen converges on these ideals from her doxastic perspective. Given the fact of pluralism, the only way for overcoming disagreement is not through a top-down, strictly philosophical, argument for the validity of political liberalism itself. Rather, it is possible to show to citizens that when they accept a specific institutional process, they, maybe indirectly, are also accepting a loose normative framework hence attesting the validity of some specific organizing ideals. Of course, the kind of justification that is provided is a contextual one, as some background beliefs are taken for granted as already justified and their validity is not under scrutiny anymore. As a matter of fact, citizens that live in contemporary democratic regimes usually do not debate the validity of the background beliefs, such as the wrongness of slavery or the universal suffrage or the necessity of some forms of social cooperation. In this regard, we can say that the Archimedean points that are widely accepted, and whose justification is in some sense assumed as a "default" option, constitute the "society's political capital" of democratic

regimes. Of course there are different interpretations of these background beliefs, as the nested inconclusiveness is a stable feature of contemporary pluralistic societies. However, at least a contextual legitimation of these background beliefs is available. Then, if we want to discuss the actual validity of this legitimation, wondering whether a systematic justification of these same beliefs is available, we can again introduce the justificatory arguments articulated in the ideal phase of the theory.

RA is an agreement than can be achieved, in the nonideal stage of the procedure of justification, by the actual citizens of a contemporary liberal regime, over a specific concept of justice insofar as such concept of justice proves to be victoriously justified within the nonidealized doxastic sets of beliefs of the citizens. The ideal stage of the theory yields <u>a set of optimal eligible proposals</u>, a set that includes all the unvictoriously justified interpretations of the principles of justice and of the vague organizing ideas that might be accepted by every reasonable citizen. RA is focused on the possibility that actual citizens can accept the same optimal eligible proposal as the most adequate. In this regard, RA does not aim to achieve an agreement over a specific interpretation within the eligible set, rather looks for an agreement on the normative constraints that can afterwards lead citizens to agree on specific rules and principles to be institutionalized. Recalling the metaphor of liberalism-framework and liberalism-picture, we can say that RA is the method that attempts to grant the public justification of the "liberal normative frame" even when, in the nonideal stage of the theory, the arguments from abstractions are abandoned.

In this last part of the third chapter, therefore, I argue that <u>RA represents the actual possibility of achieving a *full justification* of the background beliefs that constitutes the loose normative liberal framework</u>. These background notions are justified as normatively binding thanks to the freestanding argument and the achievement of overlapping consensus among an idealized constituency. Still, when the argument from abstraction is abandoned, there are no guarantees that such arguments might be assessed as valid by all members of the unconstrained constituency as well. For this reason, before engaging in the social practice of public reason, we have to establish an antecedent **meta-agreement on some normative constraints**. Citizens cannot respect the constraint of public reason if they do not hold as victoriously justified some background beliefs, within their doxastic sets, about a fair system of public deliberation. Again, these constrains are expressed by the concept of reasonableness. The point here is that a democratic regime, thanks to actual institutional practices, should be able to

motivate real citizens to abide by some reasonableness constraints, such as the burdens of judgments, and the normativity attached to some evaluative standards whose validity is granted by the overlapping consensus.

RA is an agreement on a **justificatory framework**. The idea is that actual citizens, when called to deliberate on political matters, might be able to converge on an antecedent meta-agreement over the correct evaluative framework for assessing the validity of every proposal introduced into the deliberation. The justificatory framework would work as a "filter" that grants that any argument introduced is at least mutually acceptable. If citizens are able to accept this justificatory framework, then political deliberation will have to cope with a justificatory disagreement, instead that a foundational one. Justificatory disagreement occurs when those who disagree between each other still share some premises hence the disagreement lies in different views about what these premises entail. By contrast, disagreement is foundational when it stems from a contrast on basic convictions, as when someone holding an egalitarian view of society confronts another holding a hierarchical view. The second kind of disagreement is almost impossible to be reconciled, as the people involved would almost certainly disagree about the epistemic and normative standards by which their dispute might be solved. Granting the feasibility of a justificatory disagreement is the first goal of RA. In this regard, RA is the actual agreement that can be achieved among citizens over some evaluative standards of justification. Without RA in fact, the disagreement would be so intractable to endanger any normative commitment toward public deliberation. By contrast, if RA is achievable, then public political deliberation can be accomplished, respecting some evaluative standards. RA is a consensus that depends on the internal consistency that every citizen might reach between her beliefs and the background beliefs regarding the normative meaning of the institutional liberal practice. Indeed, the legitimacy of a liberal regime is not just an issue of procedural pedigree, but it rather hinges on a plausible interpretation of what justice requires. What reasonable people could accept as a legitimate concept of justice works as a filter and RA argues in favour of the fact that actual citizens might consider this regulative ideal as victoriously justified in their doxastic sets. Two people that deeply disagree about which is the best institutional framework for granting the equality before the law for all citizens probably hold a different view about which is the best interpretation of the political concept of "equality". Yet, these same actors agree, through the method of RA, that an egalitarian view of society is victoriously justified within their doxastic sets.

According to this account of the justificatory procedure, political liberalism provides the general framework of justification, but some justificatory tasks are actually left to citizens. Naturally, the results of this justificatory stage cannot be determined *ex ante* by theory, as the actual willingness of citizens to accept a normative framework of evaluative standards cannot be taken for granted. However, a democratic institutionalized regime might promote the realization of RA thanks to the educational role played by democratic institutions and by examples of good public deliberations obtained thanks to the normative framework underlying citizens' deliberation. The possibility of increasing the number of citizens that accept the normative framework of evaluative standards and that, consequently, are guided in their deliberation over political matters by such normative standards, does not rely exclusively on theoretical argument. Rather, it depends as well on the ordinary practice of public discussion and on the democratic institutions' ability to improve **the democratic attitude of citizens**. RA, when achieved, reflects the individual willingness of every citizen to engage in a public method of justification and to respect some normative constraints when dealing with political deliberation. Within the nonideal stage of the theory it is not likely to expect every citizen to be reasonable. Hence it is possible that the set of citizens are willing to achieve a RA might be empty or occupied by few, extremely reasonable, citizens. However, I do also believe that the actual, maybe not reflexively justified, acceptance of the democratic procedures by citizens living in democratic societies is already a good starting point for working out the development of a RA on a normative framework of deliberation.

In the nonideal stage of the theory illiberal and unreasonable citizens as well as reasonable ones are to be taken into account. We have done away with any initial idealization, hence the concept of RA needs to be introduced in order to grant a new normative criterion for real citizens to be realistically reasonable. Those accepting RA are the actual members of the political constituency that are willing and/or able to achieve consistency between their personal doxastic states and the normative standards with regard to the practice of public reasoning. By contrast, the citizens that do not reach RA, are not willing to limit their public reasoning according to some normative constraints and therefore belong to the constituency threatening the very possibility of achieving a public justification of political decisions. Still, political deliberation is not an "all or nothing" practice. Indeed, when we are in the nonideal stage of the theory, it is not necessary to establish in advance who are the reasonable citizens or even if we

want to refer to just reasonable members of the society. In the nonideal stage, starting from a contextual analysis of the historical achievements of democratic regimes, we try to enlarge the RA to as many as possible citizens. Some citizens will respects normative bounds without reflecting on them, just as part of the legitimate political context in which they happen to live. Some others will be more aware of the normative weight and the difficulties attached to the public ideal of "being a reasonable citizen". Other citizens will reject any normative constraints, as they are unwilling to give up the strong commitment toward their personal comprehensive values. However, the practice of political deliberation addresses both reasonable and unreasonable individuals *qua* citizens. Furthermore, the nonideal stage of the justificatory paradigm can be divided into two levels. The first one is exhausted by the search for RA. The second, instead, looks for the establishment of **public reason** as the general practice of public deliberation within a democratic political arena. While RA looks for an actual agreement among citizens over a normative framework of deliberation, the public reason stage is dedicated to the real deliberations for establishing a victorious interpretation of the concept of justice that is outlined in the ideal phase of the theory. Public reason characterizes the public justification stage of the structure of justification, even if its meaning is broader than that. As a matter of fact, we can have two slightly different interpretations of the role played by public reason in public deliberation. On the one hand, public reason entails a specific notion of democratic deliberation that presupposes that citizens have been already able to achieve a RA over the validity of a specific normative framework of rules and guidelines about how to reason "publicly" with the other fellow citizens. Here, the value of public reason stems from a normative framework of public justification that provides us the criteria for assessing the legitimacy of citizens' reasons in the context of political deliberation. This first, more procedural, meaning of public reason derives its value from the idea that a concept of justice, when soundly justified, might work as a public standard for determining the evaluative set of acceptable reasons. On the other hand, public reason is the means by which public justification can be achieved. Of course these two meanings of public reason are intertwined, as the public justification both of a political regime and its principles and rules depends on the intersubjective agreement achieved by a public deliberation *via* public reason. When citizens share an agreement over a normative framework of deliberation thanks to the individual achievement of a RA, then these

citizens should respect the **duty of civility** and therefore be ready to engage themselves in a public deliberation regulated by the constraints of public reason.

According to the democratic deliberation interpretation of public reason, its major task is to guarantee that political decisions in a democratic arena are reached following a normative framework of discussion. Once that a socially optimal eligible set is defined thanks to an ideal procedure of justification, the democratic practice of public reasoning should try to reaffirm the validity of such eligible set by the reference to the contextual legitimation of the democratic system itself and by engaging in a public discussion over its regulative ideals. The fundamental role played by public reason is to demonstrate to be robust enough to face the full, unconstrained, doxastic perspective of citizens. If RA becomes a wide spread contextual agreement over the validity of some evaluative public standards of reasoning, then a public deliberation developed following the bounds of public reason becomes feasible. In this regard, the legitimation of political decisions in part relies on the normative relevance attached to the public reason's constraints. In this regard, this wider version of public reason respects the fallibilist perspective I have claimed being the most adequate in order to account for the fact of moral disagreement. Indeed, the notion of legitimacy is necessarily modified when the fact of disagreement is acknowledged as an intrinsic feature of contemporary democracies. If a political principle is legitimated if and only if can be justified in the light of the different perspective of citizens to whom this principle is addressed, then the fact that citizens hold different, even contradictory, doxastic sets is a fundamental aspect of the political practice of deliberation. Indeed, a reasonable citizen should recognize the fact that she has not political right to impose her comprehensive doctrine over other citizens. Moreover, a reasonable citizen calls for the same kind of attitude by other citizens. In this regard, the best paradigm for explaining such attitude by reasonable citizens is a fallibilist one, as this approach is consistent with the claim that it is possible for S to be justified in believer that p, while also being justified in believing that Z is justified in believing that $\sim p$. As a matter of fact, in the nonideal stage of the theory, it cannot be assumed that the doxastic states held by citizens are considered judgments that have been already been filtered by epistemic and moral constrains. Consequently, there is disagreement both t concerning different interpretations of the political concept of justice and the procedure of justification of the concept of justice itself. I claim that fallibilism is the correct framework for dealing with such wide-spread disagreement, as it is an intrinsically anti-dogmatic intellectual stance that provides us

with good reasons for believing in the rightness of our beliefs and still remaining open to new evidence. Given the fact of disagreement, if a quite widespread RA obtains over a loose normative framework, then we can grant that different citizens share evaluative standards, even in the lack of shared reasons. Thus, I believe that the *proviso* introduced by Rawls in his last work on public reason "The Idea of Public Reason Revisited" is correct and necessary, as it claims that citizens could introduce their personal reasons within public deliberation to the extent that this move does not undermine the shared normative framework of reasoning. If we want to respect the moderate epistemic paradigm concerning political justification, then we cannot defend a single model of reasoning as the only one adequate in order to justify a political system. Within the nonideal phase of the theory, it is required that every citizen, in order to be reasonable, should recognize that some other citizens hold in their doxastic systems undefeated beliefs that, by contrast, in her doxastic set are defeated. The only way for dealing with this deep disagreement, and meanwhile providing a normative framework for ruling the procedure of public reasoning, is to **translate the justificatory problem in a more tractable deliberative one**. According to this view, political deliberation is a sort of large scale coordination among moral agents and at the end of this practice the hope is to achieve an agreement over a political conception of justice that has been victoriously justified through public reason.

Scheme of the Justificatory Paradigm
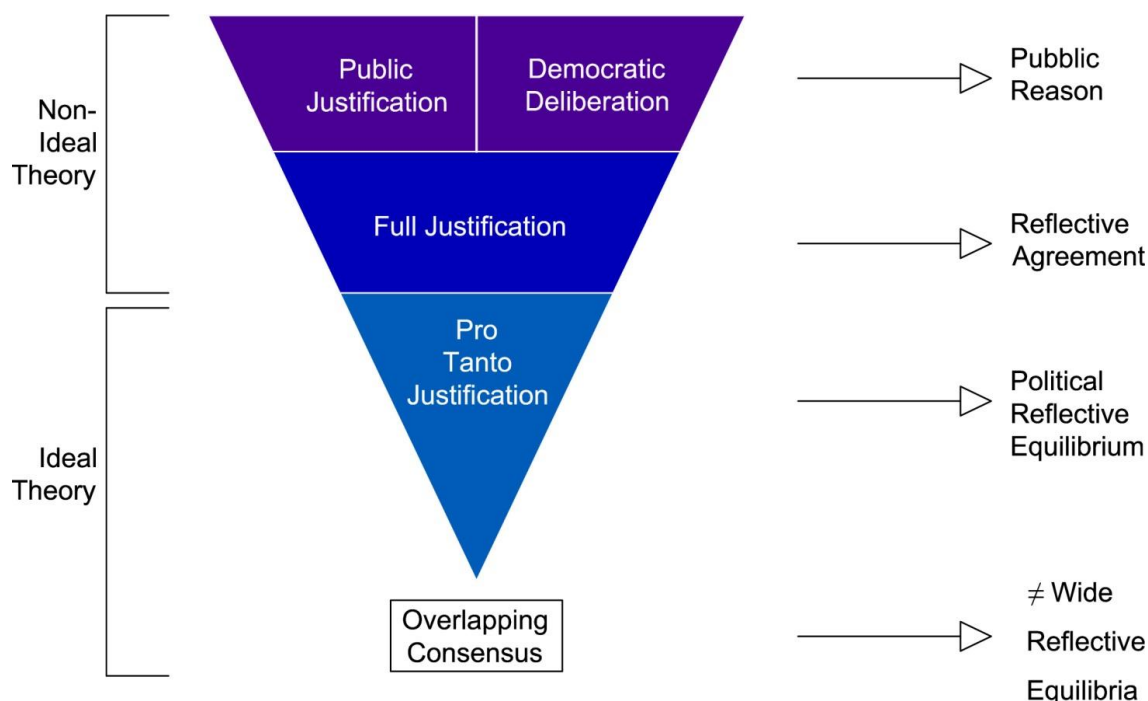
Nonideal Deliberation and Case Studies

In order to assess the validity of my proposal, in the last chapter I introduce and discuss the application of the justificatory paradigm in the light of two specific cases studies. In this regard, I believe it is theoretically fruitful to distinguish between an ideal and a nonideal case. Indeed, with regard to the ideal case we can provide an analysis of the role played by coherentism as a general justificatory paradigm. Then, facing the nonideal case, we can expose RA and the open negotiation procedure in a more precise way. The underlying idea is that there are principles and/or issues that should be solved at the ideal stage of justification, as they are such fundamental matters that it is even impossible to build up a liberal theory of justice without providing a justification and granting a wide agreement on such issues. On the other hand, there are political issues that are less fundamental and that therefore does not require reaching an ideal agreement – extremely more demanding both from the normative and the feasibility perspective – and that might be solved at the nonideal stage of public deliberation.

I believe that the best example of an issue that should be solved at the ideal level is the justification of human rights. Indeed, human rights "purport to offer a metapolitical moral framework for politics and social interaction more generally that is compatible with a wide variety of political and legal institutional arrangements" (Bellamy, 1999: 167). In this regard, the justification of the validity of human rights is a sort of pre-condition for promoting the outline and the justification of a liberal and democratic theory of justice. Therefore, the recognition of the validity of human rights as a fundamental political and moral concept should be considered as a feature of the loose normative framework that should be the successful subject of an overlapping consensus. A public justification of liberal tenets cannot be achieved if there is no wide agreement on the justification of human rights as well. Hence, the theory of human rights must be able to claim a degree of universality and objectivity granting the required wide agreement on the validity of human rights. People can argue and disagree on which rights should be included in the list and new rights that are not included now might be included in the future. In this regard, the human rights set is not fixed once for all, nevertheless I believe that it is quite impossible to build up a sound and consistent theory of liberal justice if the justification of the theory of human rights is not granted in a way that place it among the "issues that are not controversial anymore". In order to achieve this stage, it is important to show that the human rights set and the normative ideals underlying their defence are part of a conceptual framework that is consistent

with extremely different conceptions of the good life. Since public justification of human rights cannot appeal to partisan or comprehensive values, we should find a way to guarantee the normative force to the human rights doctrine, without affecting the public justifiability requirement. In my opinion this standard can be met by a coherentist argument according to which if we cannot appeal to a foundational argument that hinges on a first order moral reasoning apparatus, then we should begin from what we have, namely our ongoing practice of human rights and our considered judgments on them. My argument for providing a public justification of human rights doctrines hinges on two fundamental aspects: on the one hand calls attention to the normativity that can be extrapolated from the international institutional practise of human rights; on the other hand refers to the moral concern for human dignity that underpins the formulation of human rights and provides us with a normative criterion for assessing the ongoing practice. In order to demonstrate that even the reference to the moral concern of human dignity can be publicly justified, I develop an argument for showing that there is an intrinsic aspect we think of when referring to <u>human dignity</u> that is practice-dependent. Since political institutions have a fundamental impact on our life, then it is important to understand that the value of human dignity cannot be exhaustively articulated without referring to the way in which political institutions treat citizens and deal with their requests and needs. According to this interpretation of human dignity, such value is fully respected not just when people acknowledge, in horizontal relations, the equal respect due to other people, but requires as well that the institutional framework in which one person is embedded is outlined in a way that is respectful of human dignity.

In the second part of the last chapter, instead, I face a very harsh case that is widely debated nowadays, namely the legal attempt to extend the right to marry to same-sex couples. This case is extremely relevant as helps me showing that even when there is a stable and shared agreement on a specific human right as it happens for the right to marry (see Article 16 of UDHR), still many public conflicts arise with regard to the implementation of such right. As a matter of fact, the case of same-sex marriage involves a public discussion with regard to the meaning of a specific concept, as "marriage", that has been determined long time ago and that is now undergoing a process of re-conceptualization. A set of members of the society is against this process, while some others believe that modifying the concept, in order to make it more inclusive, is the only way for respecting the liberal ideal of equal respect for persons. I discuss the same-sex marriage from two different perspectives. On the one hand, I

articulate different legal arguments that, following the "fundamental right" strategy, show that law should enforce rights, such as the right to same-sex marriage, whose enjoyment grants equal treatment before the law for every citizen. On the other hand, I show that it is also important to dwell on the political arguments – regarding what political institutions ought to do - in favour of the extension to marry to same-sex couples. These arguments acknowledge the fundamental role played by the **symbolic aspects** in the political deliberation over the same-sex marriage debate. In fact, same-sex couples' request challenges the traditional view on family and in the case that their claim were accepted as valid, then the public meaning of marriage will drastically be modified, running afoul of the morality of the majority. Hence, we can describe the same-sex marriage case as a circumstance in which many citizens, even citizens that usually are willing to agree on the general validity of the organizing ideas justified in RA, do not see the compelling normative reasons for revising their interpretation of the marriage practice. Therefore, the fundamental role that both the political institutions and the legal system can play is to publicly recognize the normative reasons that underpin the requests of extending the right to marry to same-sex couples. In this regard, a correct deliberative procedure would involve a "**concept negotiation**" in which different alternatives are depicted and evaluated assessing their adherence to the normative evaluative standards that people have legitimated *via* RA and the contextual circumstances in which they should gain support from actual citizens. Again, this concept negotiation is a work in progress procedure and positive outcomes, both from the perspective of justice and stability, are not granted. Still, I maintain that if an actual RA over a normative evaluative set of standards and about the political legitimacy of some organizing ideas is established, then the concept negotiations can provide good results.

This section of the chapter works on the symbolic meaning of public space in order to demonstrate that the legal battle in favour of same-sex marriage implies fighting for full citizenship, namely equal visibility and equal membership within the public space. Indeed, within liberal democracies, the public space is defined as a neutral and impartial space that should not be partisan and hostage of one party. Yet, historically established majorities do not see their positional power in determining the social meanings of political and moral concepts as an unfair advantage. Majorities accept minorities claims with difficulty, since reframing the public space *via* re-interpretations of rights and by modifying political practices in order to make them more equal involves an enlargement

of the paradigm of "normality". My aim is to show that the misrecognition of same-sex couples as full members of the public space is an outcome of the long history of public invisibility that homosexuals have suffered and of the attempt, by the majority, to maintain the control over the positional power for determining the public standards of "normality" that articulated the public arena. In this regard, the extension of the right to marriage to same-sex couples would not constitute an unnecessary modification of an established practice in order to favour a minority that is already tolerated and whose equal dignity is recognized in the public space. On the contrary, extending the right to marriage to same-sex couples is the only correct way for granting them the **full enjoyment of the status of equal citizens**.

After having discussed these two cases studies, in the last chapter I also briefly introduce the issue of **open negotiations**. I maintain that democratic deliberation is a multilayered concept that can be employed in different ways, with regard to different contextual circumstances and to the different public reasoning procedures that can be uphold by reasonable or unreasonable citizens. Different citizens react differently with regard to the public practice of political deliberation. Some of them, for example, will accept the reasonable constraints and willingly engage themselves in public deliberation. Some others, more for passive acquiescence, will accept principles and rules outlined by the democratic procedure of decision without necessary looking for a more committing participation in the public debate and they may also turn out to uphold some philosophically unreasonable view. Finally, politically unreasonable citizens will endanger the same practice of political deliberation, rejecting any normative constraints that should rule the democratic process. However, the modality in which unreasonable citizens endanger the political practice of democratic deliberation cannot be determined in advance and once for all. The reality is much more blurred than the theory. For this reason, there might be citizens that, although holding philosophically unreasonable views, are able to accept the political constraints of a public form of deliberation or, at least, accepting passively the validity of the outcomes of the democratic deliberative process. Or, for example, some usually reasonable citizens might lack the political reasonableness when facing a particular harsh case of disagreement that calls into question some of their most believed non-political beliefs. Therefore, the attempt to yield a full justification of normative liberal evaluative standards of public reasoning is a never ending enterprise. In this regard, if some citizens are unable or unwilling to achieve a personal RA with regard to the validity of such evaluative standards, then we

need a political arrangement, different from a strictly normative justification, for facing such foundational disagreement. In my opinion, the **practice of open negotiation** is extremely valuable in these cases. Provided that political institutions respect some normative constraints, it is possible to articulate an open negotiation between citizens and institutions in which even unreasonable citizens are included in the political processes. Naturally, the trade-off achieved would be less than a justified and conclusive agreement over a specific principles or mid-level rule. However, even partial resolutions are better than an unsolvable clash among different and irreconcilable views. The flexible and multi-stage structure of a liberal theory of justice allows for the possibility of establishing an initial *modus vivendi* and trying afterwards, thanks to the educational role played by democratic deliberation, to develop a more stable and normatively binding agreement. Even though open negotiations sometimes can provide nothing but an unstable agreement *via modus vivendi*; still this *modus vivendi* is not a fixed fact of our contextual democratic reality. Rather, an initial *modus vivendi* – hopefully – can be transformed in a more stable agreement or, even better, ends up in the establishment of a wider RA. Liberalism does not have a conclusive answer that is already defined for all circumstances and issues, but it has the opportunity to demonstrate that its theoretical background is adequate for answering in the best way, given the concrete conditions of reality, to the multi-faceted and complex reality of contemporary democracies.

Indeed, I believe that the actual dialogic practice that incurs among citizens and political institutions, if conducted in the right way, could result in demonstrating that the very same citizens, through their claims, are expressing adherence to a certain loose normative framework that is working on the background. That is, the analysis of specific claims by minorities toward political institutions already reflect the fact that the minority's members might be carriers of certain ideals about political society itself. If one believes of being entitled (by right) to fight for the recognition of her identity, not only in terms of a public acquiescence for private individualistic differences, but *via* a public re-framing of the public space, then it means that individuals who raise such claims believe that democratic societies have particular obligations towards their citizens. In this regard, if a citizen struggles for the public recognition of her identity (or for a specific need) calling for the normative fact that such recognition is "due" and publicly justifiable within a democratic context, then the same citizen has demonstrated that she agree (at least implicitly) on a loose normative framework that informs her

public requests. According to this account, it is the very same dynamic of public negotiation, if conducted in the right way, to bind citizens to respect some evaluative standards. As a matter of fact, when citizens directly claims for an action from the political institution for amending a previous situation of injustice, this political claim reflects the confidence of getting a positive answer. Essentially, they are declaring that they believe that democratic political institutions can indeed respond properly to their requests. Consequently, the normative principles underlying democratic institutions are recognized, at least implicitly, by those advancing claims for amending previous injustice and making the public space a more inclusive locus. Notwithstanding this compelling argument, the reality is extremely different from such an ideal description. Even citizens that take advantages from the democratic context in which they happen to live are ready to take up an illiberal stance if such position favours their positional conditions instead of those of a minority. Of course such inconsistencies are not due solely to cynic calculus. Rather, very often citizens do not realize the unfairness or illegitimacy of some positions that they hold. For this reason, again, is fundamental that a **multilogical (**Moodod, 2010: 10) dialogue is established among citizens (horizontal relation) and among all citizens and institutions (vertical relation). Establishing such a normative committing dialogue is extremely difficult and very often people are not willing to submit the background theories and comprehensive principles they hold to a revisionary process in order to make them consistent with the political framework they contextually support. However, the reference to the past cases of good public negotiations and the fact that many citizens, every day, are engaged in fighting for having their rights completely recognizes are reasons for hoping in the possibility of building up a fruitful paradigm that couples the regulative ideal of public justification and the more concrete practice of open negotiation. If political institutions accept to engage themselves in negotiations with citizens and meanwhile citizens are able to recognize the possibility of agreeing on a RA - over some evaluative standards and organizing ideas that are already reflected in democratic procedures, legal practices and in the ongoing political culture -, then the political arena might properly become that public space in which all individuals are equally entitled to be first-class citizens and where a fair exchange of reasons and motivations can lead to efficient and normatively committing public decisions that, at the end of day, would also promote democratic values.