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Reflective Agreement: a Nonideal Approach to Political Justification

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Chapter 3   –   Reflective Agreement in Nonideal Theory

Chapter 4   –   The Justification of Human Rights and the Same-sex Marriage Case

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Introduction

The aim of this dissertation is to address the issue of public justification in political theory. I develop my analysis starting from the Rawlsian conception of liberal justice, 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 faces many criticisms and requires amendments. The first goal of my dissertation is to show that it is possible, starting from a general Rawlsian paradigm, to construct a procedure of justification in alternative to the traditional accounts of political justification that have been outlined in the last decades. In the development of this work, I discuss the "political turn" of Rawls' theory and show that a strictly political account of liberalism faces an tension: according to my interpretation, the "political turn" gives rise to a dilemma between the attempt of such theories to be sensible to the actual circumstances in which political theory should apply and the normative requirement of establishing criteria of justice for assessing the actual political circumstances. Different theories of justice address the dilemma either by proposing to give priority to one of the two horns of the dilemma or by claiming that such dilemma can be solved on a theoretical ground.

I present an argument to show that the Rawlsian theory does not solve the dilemma. My proposal for re-interpreting and modifying the Rawlsian paradigm is to distinguish **an ideal and a nonideal part of the theory of justice**. One of the main problems of Rawls' justificatory paradigm is to assess which role is played by the ideal aspects of the theory, namely whether the ideal justification is sufficient alone to provide justification, or whether a normative role is required for nonideal reasoning as well. My line of argument is that if we do not distinguish properly between the ideal and the nonideal aspects of the justificatory procedure, it will be impossible to understand if and how a theory of justice can solve the dilemma of liberalism.

In order to understand why I consider such a distinction fundamental, in this introduction I want to highlight the fundamental differences between an ideal and a nonideal approach to the practice of justification in political theory. I will start from the distinction as Rawls has explained it[1]. According to Rawls, the ideal theory provides the

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[1] For good analyses of this distinction see Phillips (1985), Valentini (2009) and Simmons (2010).

input of the whole theory of justice, as we should articulate a "perfectly just scheme" that will "guide the course of social reform"[2]. Ideal theory is developed starting from idealized conditions that grants **strict compliance** with the principles of justice from citizens. According to this model, strict compliance with the principles of justice is granted by the fact that ideal theory provides a justification that relies on some idealized conditions that are applied both to the circumstances of justice and to the citizens' epistemic capacities. By contrast, nonideal theory has to face the actual circumstances of justice and the impossibility of grant strict compliance given the actual set of beliefs held by citizens. It is for this reasons that Rawls claims that nonideal theory cannot look for nothing more than **partial compliance**. In this regard, Rawls claims:

"The principles of justice that result are those defining a perfectly just society, given favorable conditions. With the presumption of strict compliance, we arrive at a certain ideal conception. When we ask whether and under what circumstances unjust arrangements are to be tolerated, we are faced with a different sort of question. We must ascertain how the ideal conception of justice applies, if indeed it applies at all, to cases where rather than having to make adjustments to natural limitations, we are confronted with injustice. The discussion of these problems belongs to the partial compliance part of nonideal theory"[3].

According to this distinction between ideal and nonideal theory, the normative aspects of the theory are granted by the ideal theory, while the goal of the nonideal theory is to amend as much as possible the imperfections of the concrete political context in order to establish a political system that it might be as close as possible to the ideal conception. Following this account of the relation between ideal and nonideal theory, the latter theory cannot help in solving the dilemma of liberalism, as the nonideal stage of the theory will be restricted to managing the actual circumstances of justice in order to eliminate injustices in the light of the normative example furnished by the ideal theory. This model maintains that the whole normative role is played by the ideal theory, while the nonideal theory looks for the actual circumstances of implementations of the normative theory.

"In practice we must usually choose between several unjust, or second best, arrangements; and then we look to nonideal theory to find the least unjust scheme. Sometimes this scheme will include measures and policies that a perfectly just system would reject. Two wrongs can make a right in the sense that the best available arrangement may contain a balance of imperfections, an adjustment of compensating injustices"[4].

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[2] Rawls, 1971, p. 215.
[3] *Ivi*, p. 309.
[4] *Ivi*, p. 247.

Rawls maintains that the purpose of nonideal theory is to find the best way for establishing a political social system that, beginning from the actual circumstances of justice, might become as much close as possible to the political model developed and justified in the ideal theory. Therefore, the nonideal theory deals with the <u>feasibility aspects</u> of the theory of justice, rather than with the <u>desirability aspects</u>. Rawls holds this view both in his first work *A Theory of Justice*[5] (hereafter TJ) and in his last one on international justice *The Law of People*[6]. Therefore, we can say that this distinction is a stable feature of his whole paradigm.

Following Rawls' paradigm, it is true that the every argument for granting the desirability of a theory of justice should be addressed by an ideal model of reasoning. Meanwhile, nonideal theory must work on modifying the actual circumstances of justice, so that a nonideal implementation of the ideal concept of justice might meet feasibility constraints. Therefore, nonideal theory addresses the <u>transitional aspects</u> of the theory of justice, rather than being employed within the justificatory procedure. This aspect is coherent with the idea that every normative aspect of the theory of justice stems from ideal reasoning. Ideal theory introduces constraints on feasibility, namely idealized assumptions with regard both to the epistemic and moral capacities of the actors and to favorable social conditions. Thanks to these idealizations, the ideal theory may develop a normative theory of justice assuming that citizens are able to abide by the principles of justice, once that they have been laid out[7]. Ideal theory provides us with a description of how justice would work in an idealized – quasi-perfect world – and therefore establishes a normative criterion for assessing and revising the nonideal world[8]. According to this view then, the task of nonideal theory is to modify the actual circumstances of justice in the light of the ideal paradigm and trying to transform partial compliance in strict compliance even within a nonidealized world[9]. What can be

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[5] Rawls, 1971.

[6] Rawls, 1999b.

[7] In this regards, Valentini (2009, p. 252) states: "all idealisations are false statements, which make the world appear simpler or better than it actually is".

[8] "Viewing the theory of justice as a whole, the ideal part presents a conception of a just society that we are to achieve if we can. Existing institutions are to be judged in the light of this conception and held to be unjust to the extent that they depart from it without sufficient reason", Rawls, 1971, p. 216.

[9] "There are, as we saw in the Introduction, two kinds of nonideal theory. One kind deals with conditions of noncompliance, that is, with conditions in which certain regimes refuse to comply with a reasonable Law of Peoples; […]. The other kind of nonideal theory deals with unfavorable conditions, that is, with the conditions of societies whose historical, social, and economic circumstances make their achieving a

accomplished in nonideal theory depends on the reference to the normative framework already justified by ideal theory. Indeed, nonideal theory needs that an ideal theory had already been developed, in order to have the normative criteria by which assessing the imperfections of the actual words.

"Nonideal theory asks how this long-term goal might be achieved, or worked toward, usually in gradual steps. It looks for policies and courses of action that are morally permissible and politically possible as well as likely to be effective. So conceived, nonideal theory presupposes that ideal theory is already on hand. *For until the ideal is identified, at least in outline—and that is all we should expect—nonideal theory lacks an objective, an aim, by reference to which its queries can be answered.*"[10].

The major task fulfilled by ideal theory is to provide a normative framework against which to assess the actual conditions of justice and injustice in the ongoing societies. Even if actual citizens will never perfectly adhere to the idealized view on them, still the regulative ideal of a theory of justice as a whole is to provide us good reasons for supporting those changes that will mitigate the causes of injustices, making the nonideal context closer to the ideal one. "Where ideal theory dictates the objective, nonideal theory dictates the route to that objective (from whatever imperfectly just condition a society happens to occupy)"[11].

I think that this account of the distinction between ideal and nonideal theory is not adequate if compared to the issues arising from the dilemma of liberalism. I hold that we need a nonideal theory that does not simply deal with the actual conditions of noncompliance and the unfavorable social circumstances. Rather, it is fundamental to stress that even the nonideal theory should play a normative role within the justificatory procedure. Since the dilemma of liberalism stresses the inner tension between normative and motivational requirements , it is not possible to solve this tension just from the ideal point of view. Therefore, I defend the view that we should distinguish the two parts of the justificatory procedure in an ideal and a nonideal stage. Both stages are designed to provide normative arguments in favour of the justification of a political system; nevertheless the tools that can be employed in the ideal stage are different from those used in the nonideal one. However, the fact that the ideal theory applies robust idealizations to the justificatory framework, while nonideal theory should develop

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well-ordered regime, whether liberal or decent, difficult if not impossible. These societies I call *burdened Societies*", Rawls, 1999b, p.90.

[10] *Ivi*, pp. 89-90 (emphasis added).
[11] Simmons, 2010, p. 12.

arguments starting from the actual circumstances, does not necessarily mean that the task of nonideal theory is limited to remove injustices in the light of a regulative ideal provided by the ideal theory. Once that the intrinsic tension between normative requirements and the fact of pluralism has been brought to the foreground, then it is not possible to claim that the whole normative task can be accomplished by the ideal theory alone. I maintain that a crucial important normative role can be fulfilled by nonideal theory, to wit, the development of a deliberative procedure in which actual citizens discuss and try to publicly justify a set of principles and mid-level rules for ruling the political society.

In this dissertation I provide different arguments to the purpose – epistemic as well as political. 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 I will discuss more exhaustively later[12]. Liberalism can be described both as a theory-framework and as a theory-picture. While a theory-framework establishes a loose normative framework as a criterion for assessing and regulate the actual process of political deliberation, a theory-picture 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 goal of nonideal theory would to reproduce in the best way possible the original picture that the ideal theory has provided, even if the brushes are defective, the canvas is ruined and therefore the copy will never be perfect as the original. By contrast, according to the view that I defend here, the ideal theory provides autonomous and well-justified arguments for establishing a loose normative liberal framework, while nonideal theory should address the actual possibility of ruling a deliberative process for actual circumstances of justice. Hence, the ideal theory constitutes just the frame of the painting, while the original picture should be drafted by the nonideal theory. Of course, this division of labour implies that we cannot establish in advance which the outcomes of the nonideal procedure will be, as the ideal theory does not furnish us with a full-fledged theory of justice for social reforms. The main goal of this work consists in *showing* that, in order to solve the liberal dilemma, we should distinguish carefully between the two different normative tasks that apply respectively to the ideal and the nonideal stage.

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[12] I will discuss the metaphor more exhaustively later on. See *infra*, section 2.4.3.

The second part of my dissertation will focus on the epistemic and feasibility constraints of an adequate non-ideal theory of justice for actual circumstances. Some of these are: *impossibility of obtaining strict compliance by citizens; unfavourable historical, social or economic conditions; indeterminacy; inconclusiveness; fallibility; disagreement; human vulnerability; human nature, problems of institutional design*[13]. These features expresses two slightly different way in which a theory can be nonideal. On the one hand there are strictly epistemological features that constrain the public practice of reasoning over political matters. On the other hand, there are nonideal circumstances and contextual features that define the requirements for a fact-sensitive theory of justice[14].

My aim is to investigate the nonideal features of a theory of justice referring both to the epistemic and the feasibility constraints. In the first chapter I address the epistemic constraints for a nonideal theory of justice, defending what I call a moderate epistemic view: that is, a fallibilist account of knowledge within a coherentist view of justification. Then, in the two central chapters, I analyse the historical and contextual constraints on nonideal theory. Here, I articulate Rawls' paradigm and some of the critical contributions to the "public justification" debate of the recent years (e.g. Quong, Gaus, D'Agostino, Sen, Habermas). In the third chapter, I introduce and defend the idea of a **multistage framework**. Although the justificatory paradigm is developed along Rawlsian lines, I defend a view different from Rawls' about the role played by the nonideal theory. This is the view that, in order to solve the dilemma of liberalism, nonideal theory plays an autonomous normative role, instead than being relegated to deal with transitional issues. In order to assess the validity of my proposal, in the last chapter I discuss the application of this justificatory paradigm to some cases studies. Case studies are essential to highlight how epistemic and contextual feature constrain the theory Clearly, the way nonideal theory deals with the concrete case studies will partly depend on the normative framework justified by ideal theory, but this is not in contrast with the multistage framework I have in mind: rather than conflicting, ideal and

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[13] See Farrelly, 2007, p. 847.

[14] There is a deep disagreement, among theorists, with regard to how fact-sensistive a theory of justice should be. Gerald Cohen (2003), for example, maintains that a good theory of justice should be completely fact-insensitive. By contrast, Rawls holds a view that is fact-sensitive. My line of argument, however, is that in order to stress the normative role played by nonideal theory, the theory of justice should become even more fact-sensitive than it has been in Rawls' theory. For an exhaustive analysis of the theoretical relation between ideal and nonideal theory on the one hand, and fact-sensitivity on the other, see Farrelly, 2007.

nonideal theory mutually support each other and the outcomes of the theory should be analysed and evaluated against the whole justificatory paradigm. Going back to the frame-picture metaphor, we can say that it is impossible to evaluate whether a frame suits a painting, before trying to put them together. The value of the frame stems from the fact that the frame is useful to reveal the value of the painting. By the same token, the painting itself requires the frame in order to be complete. This is true the other way as well: before we start painting, we do not know which image is going to be represented in the painting, and yet we can count on a solid and stable picture frame for establishing in advance which should be the limits of the painting.

Chapter 1 – A Nonideal Account of Moral Justification

"Fallibilism is an anti-dogmatic intellectual stance or attitude:
an openness to the possibility that
one has made an error and an accompanying willingness
to give a fair hearing to arguments that one's belief is incorrect"
Adam Leite (2010 p. 370)

"Our holding a moral belief
is never best explained with reference
to the assumption that it is true"
Folke Tersman (1993, p.74)

1.0   Introduction

In this chapter, my aim is to provide a broad account of the procedure of justification in ethics. Even though my primary area of interest is political philosophy, in this first chapter I want to outline a broad description of what it means to hold a *justified* moral belief. I believe it is worth spending some time analysing the issue of justification from a general perspective, as this analysis will lead me to specify which kind of epistemic paradigm I consider to be the most valuable in the domains of ethics and political philosophy. Indeed, in the introduction I have already stated that in this project my first goal is to show that a correct procedure of public justification should be divided in an ideal and a nonideal phase. Consequently, it is extremely relevant to begin this work addressing some strictly epistemic issues, in order to define a general framework that will be employed in a more specific way when we will be dealing with the different stages of the justificatory procedure.

My analysis will be developed in different steps. First of all, I briefly present some general well known remarks about what it means to justify a belief (1.1). Secondly, I discuss the fundamental epistemic differences between foundationalism and coherentism (1.2 and 1.3). Thirdly, I connect the nonideal approach to moral justification with a general paradigm in political philosophy (1.4). Finally, I introduce

the distinction between top-down and bottom-up justification, providing reason for preferring the late one – at least within the field of political philosophy – and I examine the issue of <u>political constituency</u>, connecting therefore the matter of justification with the practical analysis of determining who are the addressees of moral justification (1.5).

1.1   The Epistemic Gap Between Justification and Warrant

1.1.1   A Moderate epistemic view

In the last few decades liberal theories have been divided into two camps: those theories that support a morally strong foundation of liberalism and those theories that look for a moderate, often strictly political, account of the justification of liberalism. In this chapter my goal is to analyse this debate from the perspective of moral epistemology, as I hold that a technical analysis of what it means to justify a belief will provide us with good reasons for supporting a moderate epistemic account of justification in political theory. I define the epistemic perspective about justification I am defending as moderate, since is equidistant from two extreme positions. On the one hand, an extremely demanding position is occupied by those theories that maintain the impossibility of providing a sound justification without coupling the justificatory argument with the attempt to discover moral truths. On the other hand, there are theories according to which there are no rational grounds for choosing among competing moral systems. A moderate perspective is equidistant from these two perspectives, as it maintains that the selection of an objectively justified moral theory does not necessarily depend on the attempt to establish moral truths. A moral principle might result to be publicly justified – through sound reasons – and yet the agent that holds such moral principles is not committed to the existence of a corresponding moral truth[1]. According to a <u>moderate epistemic view</u> the primary purpose of justification in ethics is to provide sound reasons to an agent for choosing among different moral theories or principles. The justificatory procedure provides sound arguments to an agent for choosing one moral theory instead of another. The moral agent plays a fundamental deliberative role within the justificatory process, as she is the last authority for determining which is the moral theory she is going to uphold. In this regard, this moderate perspective about

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[1] For a discussion of this issue close to mine, see Little, 1984.

justification stresses the role played by the agents, instead that referring primarily to the value and the validity of moral truth *per se*[2]. Consequently, the relevant feature of the procedure of justification is not its connection with a truth-conducive argument; rather its value lies in being a <u>selective procedure</u> within the deliberative perspective of moral agents.

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 hinges in part on the deliberative role played by moral agents, then any comprehensive justification should involve a <u>doxastic analysis</u> that implies focusing on the actual possibility that an agent S might believe, for sound reasons, that *p*. In this regard, Thomas Scanlon is right when, in his "Rawls on Justification", starts his analysis with this epistemic distinction:

a. To justify a principle or judgement is "to say that it is supported by good and sufficient reasons";

b. but there is also the issue of "a person's being justified in holding a certain view"[3].

This distinction perfectly explains the difference between propositional justification and doxastic justification. The former justification refers to the conditions under which a proposition can be proved to be justified independently of what an agent believes, whereas the latter accounts for the deliberative process through which an agent justifiably holds some beliefs[4]. According to this epistemic distinction, the provision of a set of good reasons 'R' is not a sufficient condition for the agent S to correctly believe 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 usually defined as a justification in which non-doxastic justification is coupled with a <u>basing requirement</u>, namely the fact that agent S

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[2] In this regard, I think it is worth mentioning that one the most important critique that Rawls develops against intuitionism is that such approach leaves not enough space to the agent's deliberation within the procedure for determining the principles of justice. See Rawls (1993, p. 92): "The third feature concerns the sparse conception of the person. Although not explicitly stated, this feature may be gathered from the fact that rational intuitionism does not require a fuller conception of the person and needs little more than the idea of the sell as knower. This is because the content of first principles is given by the order of moral values available to perception and intuition as organized and expressed by principles acceptable on due reflection. The main requirement, then, is that we be able to know the first principles expressing those values and to be moved by that knowledge".

[3] Scanlon, 2003, p. 140.

[4] For a deep analysis of the value of doxastic justification in moral epistemology, see Timmons (1993, 1996)

bases her belief on the reasons that propositionally justify it[5]. The doxastic presupposition that I defend implies 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.

"The way in which the subject performs, the manner in which she makes use of her reasons fundamentally determines whether her belief is doxastically justified. Poor utilization of even the best reasons for believing *p* will prevent you from justifiedly believing or knowing that *p*"[6].

This epistemic distinction between propositional and doxastic justification is extremely important for understanding the value of the moderate epistemic perspective about justification I am dealing with. From the epistemic perspective, in fact, it is possible that sometimes a moral agent is justified in holding a belief (b), even if from an external epistemic perspective, such belief is not warranted (a). In order to understand this epistemic tension it is useful to introduce a quite common epistemic distinction between two fundamental concepts[7]:

i. <u>Judgement</u>, i.e., activity that pertains to the epistemic appraisal of the judger. It is a subjective epistemological notion governed by the rational connections among different agents' internal mental states. Even if subjective, this epistemic activity of producing judgements is ruled by normative criteria (e.g. being correct or incorrect; meeting rationality constraints) and therefore epistemic justified beliefs are those beliefs that is rational to believe.

ii <u>Warrant</u>, i.e., is a feature of the relation between agent's judgements and the external world. In this regard, the notion of warrant is more an objective or external criterion. If a judgement is subjective, even when it has been produced according to epistemic normative criteria, then its correctness depends on some epistemic warranties that are in some senses independent from the subject. "Epistemic warrant is whatever, when added to truth and belief, makes knowledge. Knowledge is true, epistemically warranted belief"[8].

I have introduced this epistemic distinction in order to argue that, within the field of moral epistemology, <u>justification and warrant may be contingently related</u> (coincide

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[5] "S's belief that *p* at time *t* is [doxastically] justified (well-founded) iff (i) believing *p* is justified for S at *t*; (ii) S believes *p* on the basis of evidence that supports *p*", Feldman, 2003, p. 46.
[6] Turri, 2010, p. 318.
[7] See De Paul (1993, p. 5), Wedgwood (2007, pp. 154-8), Skorupski (in Dancy (ed.), 2000, p. 121).
[8] Peter Markie in Dancy, Setup, Sosa (eds.), 2010, p. 72.

to be precise), but not necessary so. If I will be able to demonstrate the validity of this statement, then this argument would be extremely useful for arguing against those strong versions of moral justification (like intuitionism) that identify in the most basic beliefs that justify an epistemic assertion (justification) the mark of causal import of the external world on our senses (the warrant).

When Scanlon distinguishes between the epistemic claims that a principle is justified (a) and that a person is justified in holding a certain moral view (b), I think that he is referring to the same epistemic tension I am outlining. Indeed, we can have situations in which our justificatory procedure grants the coincidence of justification and warrant. Nevertheless, it could also be the case – and often is – that justification and warrant do not coincide. As Scanlon points out: "a person can be justified, in this sense, in accepting a principle (for certain reasons) even though the principle itself is not justified because, say, there are other factors (which he could not be expected to be aware of) that undermine the justificatory force of the considerations he takes to be reasons for it"[9]. According to this example, a moral agent that has been engaged in a sound deliberative procedure is able to provide a <u>justified judgement</u>, even if such judgment is not sustained also by warranty.

"A *justified* choice is one that a real agent could make given all the reasoning that it has performed *up to the present time* and without violating the constraints of rationality. A *warranted* choice is one that would be justified if the agent could complete all possibly relevant reasoning"[10].

This stark distinction between justification and warrant could appear as problematic, since it could seem that any possibility of providing objective moral statements should be excluded. However, I want to argue that within the field of moral epistemology judgement and warrant are two distinct epistemic concepts, but that it is possible to provide an account of moral justification in which these two aspects of justification are defined as contingently related, even though not necessarily coincident. Sustaining a moderate perspective about moral epistemology implies that we can argue in favour of an objective status of moral judgements without at the same time requiring a necessary coincidence of justification and warrant. Claiming for a coincidence between justification and warrant that is not necessarily guaranteed does not imply that doxastic justification is a no truth-related epistemic perspective. Rather, what I want to

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[9] Scanlon, 2003, p. 140.
[10] Quote from Pollock in Gaus, 2010, p. 244.

stress is that, even though the doxastic justification is still a justification for believing true a certain proposition *p*, the whole epistemic procedure of justification cannot guarantee truth by definition. As a matter of fact, if the coincidence of warrant and justification cannot be taken for granted, then the truth-conduciveness aspects of the epistemic procedure of justification should be handle carefully. On the one hand, the moderate perspective about justification maintains that when a sound justification is obtained, such justification provides a good reason to believe true. On the other hand, this same justification, being constitutes both by a doxastic and a propositional side, cannot guarantee truth necessarily.

The moderate perspective is again equidistant from a strong and a weak conception of moral justification. Whereas a strong approach in epistemology requires the necessary relation between judgement and warrant[11], the weak perspective maintains that this coincidence is impossible to attain. By contrast, a moderate perspective claims for the possibility of achieving a coincidence between justification and warrant, as the epistemic relevance of the procedure of justification stems from the possibility of providing good reasons in order to believe something true. Nevertheless, the moderate perspective is aware of the epistemic difficulties of such justificatory procedure and, therefore, does not take for granted the coincidence between justification and warrant. The epistemic gap between warrant and justification can be determined by different factors, not necessary correlated. Firstly, it might be the upshot of our limited cognitive capacities. In this regard, the fact that not always a justified belief is as well warranted would stem from our flawed and imperfect epistemic capacities. Secondly, it could be the case that the gap between warrant and justification depends on the fact that truth is not at all attainable. Of course, this two arguments focus their attentions on different features, the first relying on an epistemic argument with regard to our cognitive capacities and their relation with the external world, while the second being supported by an anti-realist stance about the ontological status of truth. I will discuss these two different possibilities later one, when I will deal with sceptical scenarios.

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[11] It is important to recall that not just foundational theories (as intuitionism) require the coincidence of doxastic and propositional justification. Indeed, constructivism as well implies a justificatory procedure in which these two aspects of justifications coincide. According to constructivist in mathematics for example, mathematical truths are the outcome of a correct procedure, not a path of discovery. If one is justified in following a procedure, such justification is not simply a subjective process of reasoning; rather implies the construction of a system of beliefs that is objective. Justification and warrant coincide in this case.

If we accept the distinction between doxastic and propositional perspective, then the epistemic gap between justification and warrant is extremely relevant. For example, a moral agent that has been engaged in a sound deliberative procedure may be able to provide a justified judgement, even when such judgement is not as well sustained by warranty. As a matter of fact, if the perspective of the agent is part of the procedure of justification – as I think it should be – then the justification in not necessary connected with the warrant. Within moral perspective it cannot be the case that a sound justification of moral judgement (propositional perspective) might be completely detached from the fact that a moral person is actually justified in holding this specific moral view (doxastic perspective). If a complete procedure of justification has to take into consideration both the doxastic and propositional perspective, then the issue of the relation between justification and warrant is always problematic, as it is impossible to solve the epistemic asymmetry between the two once for all. However, I want to argue that within the field of moral epistemology judgement and warrant are two distinct epistemic concepts, but that it is possible to provide an account of moral justification in which these two sides of justification can be contingently related without necessarily coinciding.

1.1.2 The Gettier's Argument

The epistemic distinction between justification and warrant can be better understood if we introduce the argument by Edmund Gettier against the classical definition of knowledge as justified true belief. This definition of knowledge merges together the two different aspects of justification that Scanlon has described, namely the idea that a belief could be defined as genuine knowledge if and only if an agent is justified in holding this belief (doxastic justification) and such belief is also warranted as true belief (propositional justification). Gettier, in his short paper "Is Justified True Belief Knowledge?"[12], introduces several counter-examples to show that such conditions are necessary, but not jointly sufficient for genuine knowledge.

Gettier starts from the classical definition of knowledge according to which:

Sonia knows that *p* if and only if:

i. *p* is true;

ii. Sonia believes that *p*;

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[12] Gettier, 1963.

iii. Sonia is justified in believing that p[13]. Gettier provides some counter-examples to such definition by showing that the three conditions are not jointly sufficient for having genuine knowledge. Gettier shows that "it is possible for a person to be justified in believing a proposition that is in fact false"[14]. His counter-examples concern situations where a person's belief is assumed to satisfy all these conditions, but given that her knowledge is acquired by accident, then the examples show that the conditions used to define knowledge may be unsatisfactory.

A Gettier-type of argument would assume this form:

i. Sonia wants to know which time it is;

ii. Sonia checks her watch and it tells her that is noon;

iii. it is actually noon when she looks at her watch.

Can we say that Sonia <u>knows</u> that it is noon? It seems that she knows that is noon from the moment in which she has looked at her watch, given that now she has a true belief (it is noon and Sonia has the belief that is effectively noon) and this belief is also justified (given that her watch is telling her that is noon when it is actually noon and usually a watch is a reliable tool for ascertaining what time is it). However, it could be also the case that:

iv. Sonia looks again to the watch later and she discovers that it is stuck, because it still tells noon even if at least two hours have passed by.

v. Sonia has checked her watch at noon and her belief about the fact that was noon was right just by chance, given that in every other moment of the day her watch would have given her wrong information instead that the correct one.

This counter-example is shaped on the Gettier intuition that <u>a justified true belief is still not enough to establish knowledge</u>, since is always possible to build up a counter-example in which our actually true and justified beliefs are not providing knowledge, for they have been formed just because of luck and therefore are just accidentally true. This example is helpful for clarifying the framework in which the epistemic relation between doxastic and propositional justification is viewed as contingent. As a matter of fact, in a Gettier-type example, the doxastic and propositional justifications seem to coincide, but this relation is obtained just out of luck. In this regard, an epistemic approach that looks for a positive relation between doxastic and propositional

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[13] *Ivi*, p. 121.
[14] *Ibid*.

justification, although without requiring a necessary coincidence between the two, has to take the sceptical challenge seriously. Facing the sceptical challenge implies that one is aware that even idealized justification might not correspond with truth, as arguments of irreducible scepticism are always raisable[15]. For example, if we are brains in vats or our perceptions are misled because of a Cartesian evil demon[16], then it is impossible to warrant that any of our justified beliefs guarantees truth. Under a sceptical scenario it could be the case that one agent is justified in holding a certain belief, since her belief is supported by a sound deliberative route of reasoning; even if this belief is not true. In this regard, the coincidence of doxastic and propositional justifications can never be taken for granted.

Gettier's argument, coupling the issue of the relation between internal and external criteria for guaranteeing justification with the issue of determining what knowledge is, has shown that epistemic scepticism is relevant to the extent that tells us not that our beliefs are false, but that they might be false. The sceptical challenge implies that if we want to take scepticism seriously, then we have to claim in favour of an evidence that is intrinsically fallible. According to a fallible paradigm, knowledge, that is defined as necessarily dependent on doxastic evidence as well as on propositional arguments, 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"[17]. According to Feldman, a fallibilist view rejects the Introspective Indistinguishable Argument that maintains that "there cannot be cases of knowledge that are introspectively indistinguishable from cases of nonknowledge"[18]. By contrast, fallibilism maintains that

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[15] The irreducible sceptical argument can be always raised against theories of justification or knowledge. Two famous arguments in this regard are those of evil demon presented by Descartes (1642) and the possibility that we are just brains in a vat developed by Hilary Putnam (1981).

[16] Descartes in the *Meditations on First Philosophy* (1992 [1642], p. 29) states that: "I shall, then, suppose hat not the optimal God – the font of truth –, but rather some malign genius – and the same one most highly powerful and most highly cunning –, has put all his industriousness therein that he might deceive me: I shall think that the heavens, the air, the earth, colours, figures, sounds and all external things are nothing other than the playful deceptions of dreams by means of which he has set traps for my credulity".

[17] Feldman, 2002, p. 125.

[18] Ibid.

"for some P, it is possible for one to know that P even if one could have exactly the same justification for believing P when P is false" and yet that "for some P, it is possible for one to know that P even if one's evidence for P does not necessitate or entail the truth of P"[19]. This conclusion follows from the fact that fallibilism maintains that the reasons that an agent can hold in her doxastic system are merely extremely good, but never perfect and that, therefore, it is possible to have very good reasons and yet holding a false belief. In this regard, fallibilism is against the sceptical idea that knowledge necessary requires certainty or the impossibility of error.

The moderate epistemic perspective I am defending embeds within its paradigm the fallibilist stance with regard to the epistemic status of the evidence at our disposal. In this way, a moderate perspective can explain why the coincidence between justification and warrant is never necessarily guaranteed and, still, being not constrained by the argument itself to give up the possibility of claiming in favour of the fact that it is an intrinsic feature of the epistemic meaning of justification to be truth-related. Thus, the moderate perspective does not maintain that sceptical arguments are irresistible. However, this approach takes seriously into consideration the kind of scenarios that scepticism outlines. By contrast, models of justification grounded in an epistemic paradigm that I defined as too demanding claim that sceptical challenges are irrelevant, since there is always the possibility of providing a justificatory argument that guarantees the coincidence between warrant and justification[20]. In order to explain this line of argument, in the next section I analyse and confront two general paradigms of the structure of justification: foundationalism and coherentism.

1.2   Foundationalism vs Coherentism

1.2.1   Structure of Justification

Foundationalism is an epistemic theory of justification according to which all justified beliefs are either basic or derived from some basic beliefs. Following foundationalism, an agent S is justified in believing that *p* if and only if *p* is either non-inferentially justified, or it is derived from a basic belief. A foundational theory of

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[19] Adam Leite contribution on "Fallibilism" in Dancy, Setup, Sosa, 2010, p. 370.
[20] For a deep analysis of the sceptical issue, see Brink, 1989.

justification claims that only those beliefs that are foundational or that are derived inferentially from such foundational beliefs are justified[21].

"The first principles of morals are not deductions. They are self-evident; and their truth, like that of their axioms, is perceived without reasoning or deduction. And moral truths, that are not self-evident, are deduced not from relations quite different from them, but from the first principles of morals"[22].

The challenging point about foundational theories of justification concerns the nature of the non-inferential justification of foundational beliefs. Which kind of justification is this one? Some theorists have argued in favour of the existence of some self-evident moral truths that can be grasped by our intellectual capacities without being derived from nothing else. Intuitionism provides the best example of this perspective[23]. However, although foundationalism is often connected with intuitionism, the two theories are different. Intuitionism is a more demanding theory that claims not just that there are foundational moral beliefs, but also that we have knowledge of evidence-independent moral facts that are not-natural. In this regard, we can say that intuitionism is a theory about the nature of moral values and about the specific faculty through which one discovers such moral values (namely by intuition), whereas foundationalism is an epistemic theory regarding the structure of justification. Therefore, we can hold a foundational theory of justification in moral epistemology without necessarily sustaining intuitionism. A confirmation of this conclusion is given by the theoretical possibility of defending a foundationalist theory of moral justification in which all moral beliefs are derived inferentially from foundational beliefs that are not moral[24].

Coherentism, on the contrary, is a theory of justification according to which there are not foundational beliefs. In this regard, 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

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[21] A good example of a contemporary foundational theory is the one provided by Gerry Cohen. For example, Cohen (2003, p. 214, italics in the original) claims that: "*a principle can reflect or respond to a fact only because it is also a response to a principle that is not a response to a fact*. To put the same point differently, principles that reflect facts must, in order to reflect facts, reflect principles that don't reflect facts".

[22] Reid, 1788 (1969), p. 471.

[23] As defenders of intuitionism, see Clarke (1728), Price (1787), Reid (1788), Sidgwick (1879, 1907), Moore (1903), Broad (1930), Ross (1930) and Prichard (1949).

[24] This kind of theory would be part of a naturalist framework according to which normative statements can be derived and justified in the light of non-normative facts. By contrast, intuitionism is exactly the theory that pairs a foundational theory of justification with an anti-naturalist account of moral facts.

being justified in holding *p* is directly proportional to the level of coherence achieved by the whole coherent system. Hence, the fundamental methodological principle sustained by coherentism asserts that justification should always take in consideration the whole coherent system, as no assessment or justification is available when beliefs are evaluated singly[25].

The first important remark to add is that a coherentist justification does not just imply logical consistency among all the beliefs of the coherent system. Logical consistency is a necessary condition, but not a sufficient one as well. As a matter of fact, we can have completely consistent systems that are still false[26]. For this reason, a sound coherentist theory of justification requires that the mutual support among beliefs establishes coherence as well as explanatory connections. In this regard, David Brink clams that "the degree of a belief system's coherence is a function of the comprehensiveness of the system and of the logical, probabilistic, and explanatory relations obtaining among members of the belief system. In particular, explanatory relations are an especially important aspect of coherence"[27].

In the next chapters I will analyse a specific coherentist justificatory procedure: the reflective equilibrium method. In this first chapter meanwhile, I want to focus primarily on the discussion about the fundamental differences between foundationalism and coherentism, in order to show why I consider the latter a better option for a theory of justification in political philosophy[28].

Foundationalism is very often regarded as a more appealing proposal than coherentism as a theory of moral justification, even if how we can get non-inferential sound justifications for some of our moral beliefs is not at all clear. My hint is that this preference stems from the fact that foundationalism appears to be a more "grounded" theory than coherentism. This truth-conduciveness ascribed to foundationalism by its

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[25] This methodological epistemic principle can be defined as **holistic**. In this regard, I recall that holism owes its popularity to W.V. Quine (1951), as he has claimed that a scientific theory cannot be tested in isolation, because it is part of a web of theories that mutually support each other. Another slightly different perspective about holism is the one provided by Jonathan Dancy. Dancy (2004, p. 7) claims that holism, as a theory of reasons, implies that "a feature that is a reason in one case may be no reason at all, or an opposite reason, in another".

[26] In this regard, one can say that both astronomy and astrology are coherent systems of beliefs and that we do not have a criterion for determining which of the two provides a correct account of the world. Hence, coherence alone is not a sufficient condition for discriminating between the correctness and the incorrectness of alternative, but equally coherent, systems of beliefs.

[27] Brink, 1989, p. 103.

[28] Most of arguments I am going to develop in the second part of this section are based on the analysis provided by David Brink in his *Moral Realism and the Foundation of Ethics* (1989). Another important source for a subtle analysis of these issues is Sayre-McCord (1996).

defenders seems to be a feature of justification that we are not willing to give up lightly especially when moral values are at stake. Indeed, as I outlined in the previous section, a fundamental epistemic issue is to determinate if, for having justified moral beliefs, it is necessary that justification and warranty are epistemically related. According to foundationalism, a justificatory structure must guarantee the coincidence between doxastic and propositional justification and therefore the epistemic relation between justification and warranty is determined as necessary. However, foundationalism will lead to warranted judgments in moral reasoning if and only if non-inferential justified beliefs prove to be exactly what foundationalism thinks that they are: a sort of self-justifying moral truths. In this regard, foundationalism is a good example of the epistemic approach that I have defined at the beginning of this chapter as too demanding. Indeed, under a foundationalist perspective, the moral theory that is chosen at the end of the justificatory procedure is not just the "best" theory according to the array of theories we have to choose among, but it is rather an infallible theory that necessary guarantees the truth. A moral theory grounded and justified through a foundational procedure depends on some beliefs – at least one[29] - that are non-inferential justified and therefore are warranted, no matter what. Theoretically speaking however, we are far away from reaching an agreement about the nature of such non-inferential form of justification. For this reason among the others, I deem much more reasonable to focus our theoretical efforts on a moderate perspective according to which a theory of justification in ethics provides sound reasons for preferring a moral theory over the others; without connecting the procedure of justification with the even more debatable issue of ascribing a character of necessary truth-conduciveness to such procedure[30].

David Brink, in his *Moral Realism and the Foundation of Ethics*, claims that there are two important arguments in favour of foundationalism:

- a regress argument;
- a sceptical argument.

The <u>regress argument</u> objects to coherentism that its procedure of justification leads to an infinite regress, as every belief is justified inferentially and therefore the

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[29] I think that all moral theories that are grounded through a theological argument about the existence of God could be described as foundational theories in which one self-evident truth provides all the necessary normative force.

[30] On the same line Gaus (1996, p. 42) states: "a rational belief system is to be analysed in terms of the relations among its members (reasons and beliefs) and not with reference to the idea of truth"

inferential chain would be endless. According to the regress argument, the coherent procedure of justification is described by this framework:

i. belief p is justified given that q;

ii. q is a justificatory premise that needs to be justified itself;

iii. q is justified given that r;

iiii. r is justified given that s;

iiii and so on, *ad infinitum*.

A foundationalist theory of justification never risks producing an infinite regress, since every inferential chain is stopped by a self-justifying belief. In this regard, we can outline different schemes of argumentation concerning justifications[31]:

(a) every justification is both linear and inferential;

(b) every justification is inferential, but not all of them are also linear;

(c) every justification is linear, but not all of them are inferential.

According to the regress argument, just the option (c) is able to avoid any possible infinite regress. The option (c) represents the justificatory structure that is employed by a foundationalist theory of justification. With regard to coherentism, by contrast, it is reasonable to wonder whether a coherentist perspective is represented by the scheme (a) or (b). The scheme (a) is clearly unable to avoid an infinite regress. As a matter of fact, if every inferential deduction is also linear, then the inferential chain is never-ending[32]. Is (a) the correct scheme for describing a coherentist procedure of justification? If we defend a sophisticated theory of coherentism, one in which some epistemic constraints are respected, then we can affirm that coherentism is well described by (b), rather than by (a). A coherentist theory of justification might avoid the risk of infinite regress thanks to the fact that the justificatory connections among different beliefs are not like a linear chain, rather could be represented by the image of a holistic web. In this regard, the mutual support scheme looks for arguments that are all inferential, but not all of them are also linear, as every system's set of beliefs will support each other circularly. Within this coherent holistic web we can encounter situation in which a belief q is justified through the reference to some other beliefs (s; r; p) that are justified thanks to some other beliefs (z; t; y) whose justification is at the end in some way justified also by the reference to belief q. However, in order to avoid a vicious circularity, the coherentist

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[31] Brink, 1989, pp. 115-122.

[32] According to Brink, the argumentative scheme outlined by (a) will lead to scepticism, given that we cannot hold an infinite number of beliefs.

method requires that the procedure of justification must respect an <u>independence</u> <u>constraint</u> according to which if a set of beliefs (Z) provides justificatory support for a set of beliefs (Q) that is in some way independent from the support that (*Q*) receives from being consistent with another set of beliefs (S), then some interesting, nontrivial portions of the set of justificatory beliefs for (Z) must be disjointed from the set of justificatory reasons in support of (S)[33]. All beliefs within the coherent system mutually support each other, but some justificatory chains should be disjoint from some others, so that the independent constraint is respected.

1.2.2   *The Sceptical Argument*

<u>The sceptical argument</u> is a challenge for both foundationalism and coherentism. However, I suppose that the sceptical challenge is one of the reasons why common sense attitudes are inclined to consider foundationalism as more adequate within the domain of moral reasoning. The idea is that a foundationalist perspective of justification, providing non-inferential, justified moral beliefs, is definitely more adequate for coping with sceptical arguments. I think it is worth spending some time developing an argument that might spell out analytically the common sense preference for a foundational reply to sceptical scenarios:

i.   If we are to answer skeptical doubts, justified beliefs must rule out sceptical scenarios.
ii. Hence, justified beliefs must be true.
iii. Purely inferential accounts of justification cannot ensure contact with reality.
iv. Hence, purely inferential accounts of justification cannot ensure that justified beliefs are true.
v.   Coherentism is a purely inferential account of justification.

vi. Therefore, coherentism cannot answer sceptical doubts.

This argument is usually defined as the <u>no contact with reality objection</u>. According to this argument, even if a coherent system of belief might appear as justified, given the internal explanatory connections of mutual support among the beliefs of the system, still there is no epistemic warranty that the coherent system is connected in any relevant way with the external world[34]. A coherentist approach can provide sound reasons for

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[33] See Daniels (1996), De Paul (1993). I will discuss again the theoretical possibility of having a circular support among beliefs that is not vicious in the third chapter, when I will outline Nelson Goodman theory of induction.
[34] For a deep analysis of this issue, although focused just on the reflective equilibrium approach, see DePaul, 1993, ch. 1, pp. 13-56.

supporting a coherentist account of justification, nevertheless this same account does not grant epistemic warrant for a coherent theory of knowledge as well[35]. This outcome is strictly speaking consistent with the general framework in moral epistemology I am outlining. As a matter of fact, if coherentism provides an account of moral justification that refers just to the justificatory relations that can occur among beliefs, then the fact that the epistemic relation between justification (doxastic) and warrant (propositional justification) is not necessary guaranteed is a sensible outcome of the procedure of justification itself.

Refuting the idea that a sound justification must imply the necessary coincidence of the set of reasons 'R' that constitutes the right evidence for S to believe *p* (doxastic justification) with the external warrant for this same belief (the propositional justification depending on the actual evidence it is available for believing rationally *p*) means that we are against the second assumption of the argument (ii), namely the fact that justification must guarantee true. Brink calls this principle <u>objectivism about justification</u>[36]; a principle according to which "justification for believing *p* is justification for believing *p* to be true"[37].

Is coherentism obliged, by definition, to refuse objectivism about justification and therefore to concede to the validity of the sceptical challenge? The answer is no. However, the only possibility that coherentism has for satisfying objectivism about justification is to assume a constructivist theory of truth, according to which a coherent theory of truth is true[38]. In this way, truth would be always coincident with the coherent system of justified beliefs, since the truth itself would be determined by a coherentist theory of truth. At a first glance this would seem to be a good solution, in order to reply in a definitive way to sceptical challenges. Indeed, the possibility of coupling coherentism and constructivism is a strategy that will settle the sceptical challenge once for all. Nevertheless, this is not the solution I want to undertake. In introducing my version of a moderate account of moral justification I did not take a stance with regard

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[35] Keith Lehrer (in Dancy, Sosa, Setup (eds.), 2010, p. 281), in this regard states that: "A defender of coherentism must accept the logical gap between justified belief and truth, but she may believe that her capacities suffice to close the gap to yield knowledge. That view is, at any rate, a coherent one".

[36] In this regard, Brink (1989, p. 106) affirms: "Now realism and objectivism about justification provide an antisceptical argument for foundationalism. For only an account of justification that includes non-inferential justification can possibly guarantee that our justified beliefs accurately describe a world whose existence and nature are independent of our beliefs about it".

[37] Brink, 1989, p. 106.

[38] "Systematic coherence is not only the criterion we use for truth; it is what in the end we mean by truth" (Blanshard 1939, p. 304);

to the ontological status of moral facts. In my opinion, in fact, an account of moral justification can be described as "moderate" when it is determined that the structure of justification that is employed is not foundational. What I believe to be relevant is the fact that a foundational epistemology dismisses the doxastic presupposition as irrelevant with regard to the procedure for providing an ultimate and infallible justification. As a matter of fact, if we take seriously the doxastic presupposition and the epistemic gap between justification and warrant, then the requirement of the principle of the objectivism about justification appears to be extremely demanding. Objectivism about justification, in fact, maintains that it cannot be the case that a justified belief is not at the same time also warranted. I have already claimed that even though is correct to see justification as a reliable evidence toward truth, still there are good epistemic arguments for refusing a more committing claim, namely the fact that justification must guarantee truth. Knowledge implies truth, but justification does not. Moreover, we have seen – through the reference to Gettier's argument – that even the definition of knowledge is extremely debatable and that we always have to deal with the possibility that our justified beliefs might be false anyway. Therefore, even in the case that realism would be true, still there are good epistemic reasons for refusing objectivism about justification. I hold that one of the most important aspect of coherentism is that this approach, if coupled with a general fallibilist account about human deliberation, is able to argue against objectivism about justification inasmuch this requirement is viewed as too demanding, as it presupposes unreasonably high standards for knowledge. The rejection of objectivism about justification as adequate epistemic standard rests on simply epistemic arguments like, for example, the recognition of the unbridgeable gap between justification and warrant[39].

This conclusion is extremely relevant, as it shows that the fundamental issue at stake, when dealing with sceptical scenarios, is the determination of which structure of justification we deem to be the most adequate, not to determining which is the ontological status of external facts. Indeed, if a moderate account of epistemology refuses the principles of objectivism about justification, then it does not matter if realism or constructivism are true. A moderate account of moral epistemology can be

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[39] A similar view is present in Lehrer's epistemic account when he claims that there is an intrinsic epistemic difference between a belief being "completely justified" and a claim about a belief producing knowledge. See Lehrer, 1974, p. 214.

agnostic with regard to the ontological status of moral facts[40] and still providing sound arguments in order to supporting coherentism, and therefore refuting foundationalism. Coherentism, supporting a structure of justification that is strictly inferential, refuses the validity of the principle of objectivism about justification. This principle, indeed, requiring to necessarily close the epistemic gap between justification and warrant, is a too demanding principle that can be maintained and defended solely under an ideal paradigm of justification.

Now, coherentism reject objectivism about justification. But what about the ontological status of moral facts? Does coherentism necessarily imply an anti-realist perspective about moral facts? Coherentism provides an articulation of the way in which moral beliefs can be justified, as it tells us that such justification depends on the relations of coherence among beliefs that are part of the same doxastic system. Consequently, coherentism entails as well that every sound moral justification must take the agent's perspective in consideration. However, this statement does not entail anything regarding the metaphysical status of moral facts. Indeed, coherentism is compatible both with realism and anti-realism to the extent that the ontological status of moral fact is at stake. On the one hand, there are theories that couple a coherentist approach about the justificatory procedure with moral constructivism (that claims the necessary dependence of moral facts from the evidence in their favour)[41]. On the other hand, there is the possibility of sustaining both coherentism and a realist account of the moral facts embedded into the coherent system[42]. What usually has seemed at odds between coherentism and moral realism is that moral realism is defined as "the view that there are moral facts and true moral claims whose existence and nature are independent of our beliefs about what is right and wrong"[43]. Since according to coherentism all justification is inferential, then it seems that coherentism is unable to account for moral facts that are objectively true regardless of what we believe. However, it is possible to hold a realist thesis regarding moral facts (that claims that moral facts are true or false according to whether some facts obtain in the world) and

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[40] I will introduce more reasons for upholding an agnostic stance with regard to the determination of the ontological status of moral facts when I will deal with the determination of the paradigm I claim to be the best one within the field of political philosophy, see *infra* sections 1.4 and 1.5.

[41] Two good examples of this tendency could be founded in Blanshard (1939) and BonJour (1976, 1986). Regarding Rawls, I would say that it is not clear if he could be described as a supporter both of coherentism and constructivism. I will try to clarify my position on this issue in the next chapter.

[42] For a very well developed theory of this kind, see Brink, 1989.

[43] *Ivi*, p. 7.

still defend a coherentist perspective regarding moral justification. The realist theory regarding the status of moral facts, and other connected beliefs, would be part of the coherent system that provide a sound justification – and also evidence – for this approach in moral theory. For example, according to Brink, realism is consistent with coherentism if "the second-order beliefs we accept are *realist* second-order beliefs. They are realist beliefs because they are beliefs about our relation to a world that though causally dependent on us in some ways, is metaphysically or conceptually independent of our evidence about it. […] The result is a theory of the world and our place in it that identifies certain features of the world that we reliably detect and explains why this should be so"[44].

Defending coherentism implies being against the validity of the objectivism about justification thesis. Yet, the choice between realism and anti-realism is undetermined with regard to the establishment of coherentism as the best available theory of justification in ethics. Hence, even if coherentism can argue against the validity of objectivism about justification, the sceptical argument outlined in a form that is specifically at odds with coherentism, as recalls the no-contact with reality objection, is still valid.

The solution that a moderate account of moral justification can provide for coping with sceptical scenarios is through an indirect strategy. An <u>indirect strategy</u> for facing this challenge would be to demonstrate not that coherentism is a strong and indubitable form of justification as it would be required under an ideal, and strongly committing, paradigm of epistemic justification. Rather, I think that it is possible to show that foundationalism itself is not such a reliable form of justification. If it is possible to argue against the infallibility of foundationalist justification, then defending coherentism against no contact with reality objection would be extremely easier. Instead that forcing coherentism to fit the "ideal epistemic justification" framework requirements - namely the necessary correlation between justification and warrant -, the indirect strategy gives us sound reason for criticizing these same requirements as too demanding and unrealistic under the perspective of moral epistemology. Thanks to this indirect strategy, a moderate approach would claim two important things: i. that foundationalism itself is not such a reliable form of justification; ii. that coherentism is

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[44] *Ivi*, p. 127.

the most adequate approach for dealing with justification of moral principles under a moderate, nonideal, account.

1.3   Epistemological Scepticism

As I have said, foundationalism, at first glance, may seem the most suitable theory of justification for coping with the sceptical challenge. Yet, this common sense endorsement of foundationalism as "best answer" to scepticism is justifiable just in the case that foundationalism can really uphold two thesis:

−   the truth of realism;

−   objectivism about justification.

If these two positions are both true, then coherentism is false. Given that coherentism is a theory of justification that accounts for the kind of epistemic connections holding together an agent's beliefs, then the epistemic relation with the external world is never guaranteed. For this reason, a foundationalist account of justification that is based on non-inferential premises appears to be the only good option for coping with scepticism. Yet the only way in which foundationalism can grant that justification leads to objective indubitable truths is through a strong objective foundationalism. According to this version of foundationalism, every inferential justified belief must be inferred in a warranted way from foundational beliefs (that are self-justifying and therefore true). The only way for granting a warranted inference is through a deductive inference. Therefore, a strong objective foundationalism provides justifications made up by self-justifying, and therefore infallible, beliefs and other deductively derived beliefs. According to Brink this form of foundationalism is possible, but is not appealing, since "if our justified beliefs are restricted to infallible beliefs and their deductive consequences, we are unlikely to be justified in most of our beliefs. Certainly we will be justified in none of our beliefs about the existence and nature of the external world"[45].

The argument I have just presented for criticizing the position that foundationalism is the best answer to the sceptical challenge is not, theoretically speaking, strictly against the possibility of arguing in favour of foundationalism *per se*. Rather, it shows that a strong objective version of foundationalism, is not really attractive, given that very few beliefs would end up to be justified. This argument can then be paired with a

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[45] *Ivi*, p. 115.

second more stringent one that argues against the very possibility of having self-justifying beliefs.

We have shown that foundationalism can grant objective truth just if it renounces to the possibility of engaging in the justification of many fundamental issues concerning our life. Indeed, as I have already discussed in the first section of this chapter, every theory of justification has to deal with the possibility of irreducible scepticism. In this regard, foundationalism may try to overcome the sceptical charge with two moves:

i. By drastically reducing the amount of beliefs that we can claim being justified; since it provides a very demanding notion of justification according to which are justified only beliefs that are infallible justified.

ii. By claiming for the validity of objectivism about justification, foundationalism maintains that self-justified beliefs are also infallible. The truth of self-justifying beliefs is necessary, since self-justifying beliefs correspond to true warranted beliefs.

Therefore, iii. Foundationalism can cope with sceptical scenarios arguing in favour of some basic beliefs that are not solely self-justified, but infallible as well.

The way in which foundationalism tries to overcome the impasse of absolute scepticism is through the fundamental role played within the procedure of justification by self-justifying beliefs. However, there are good reasons for criticizing the epistemic validity of these self-justifying beliefs. Indeed, according to Brink, "one cannot be justified in holding a belief *p,* even if *p is in fact* infallible, independently of any beliefs whatsoever about why *p* should be true (e.g., independently of belief that *p* is infallible). The mere fact that *p* must be true does not justify one in holding *p*"[46]. The insight here is that, again, there is an epistemic gap between the procedure for justifying a belief regarding the world and the attempt to assess whether such belief about the world is true[47].

This critique provided by Brink recalls the already mentioned problem of the relationship that incurs between two aspects of justification: (a), the justification that concerns the good external reasons for holding a belief, and (b), the justification related

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[46] *Ivi*, p. 118. It is worth noting that Sayre-McCord (1996, pp. 154-156) mentions the same argument naming it as the *doxastic ascent*. However, Sayre-McCord affirms that foundationalism is able to criticize this argument, whereas a second argument, the one he labels as *epistemic ascent*, is the correct one for demonstrating that foundationalism itself is unable to provide non-inferential justified beliefs.

[47] Regarding the reliability of observational experience, I want to recall a distinction provided by Bonjour (1986, ch. 6, pp. 111-138). The author distinguishes between two ways of being inferential: i. a belief could be inferential in its origin, as is justified through an inferential deduction; ii. an observational belief is non-inferential in its origin, but its justification is inferential, as the criteria for determining if a factual observation is reliable depend on inferential arguments.

to the internal reasons for an agent being justified in belief something. If we consider (a) and (b) as two parts of a unique procedure of justification, then the self-justifying beliefs are self-justifying concerning just (a) perspective. This critique is perfectly compatible with the historical fact that usually foundationalist theories have provided few arguments regarding the way in which self-justifying moral principles or truths can be grasped by moral agents. Focusing just on the intrinsic value of moral truths *per se*, without connecting this issue to that of moral agents' reasons for being justified in holding such beliefs, entails important epistemic difficulties for every foundationalist theory.

Following Brink's critiques of foundationalism, we can see that if you consider justification as a procedure that takes into account both doxastic and propositional justifications, then it is impossible to have justifications that are completely non-inferential. Indeed, for me being justified in holding *p* (even if it is the case that *p* is a self-justifying belief and therefore compatible with a foundational approach) I have to hold other <u>second-order beliefs about what kind of belief is *p*</u> and why I have good reasons for considering *p* true. If Brink is right, as I think he is, then there is always an inferential side of justification that cannot be dismissed[48]. In this regard, it can be claimed that coherentism is a more adequate theory of justification than foundationalism, as coherentism gives us good reasons for considering justification (a) and (b) as part of the same whole structure of justification. It is impossible to have an exhaustive account of moral justification without one of the two. Given that the justification depends on the coherent and explicative connections among moral and nonmoral beliefs within a whole system of beliefs, it cannot be the case that a moral belief is justified *per se*, without any normative connection with agent's other moral beliefs and intuitions[49].

This argument has shown that the common sense attitude toward foundationalism in, at the end of the day, misleading. As a matter of fact, critics of coherentism sustain that coherentism is untenable, as it is unable to solve the sceptical challenge as, they say, a good foundational theory is able to do. The indirect strategy against these

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[48] Another argument that Brink provides against self-justifying beliefs is that self-justification can be described as an extreme case of circular reasoning in which the justificatory circle is the smallest imaginable. See Brink, 1989, p. 116. Moreover, for a strictly epistemic articulation and defense of a coherentist paradigm, see Lehrer, 1974.

[49] In the third chapter, where I will analyse deeply the concept of reflective equilibrium, this feature of coherentist moral justification will be fundamental.

criticism, then, hinges on an argument that shows that foundationalism itself is not so well-equipped for replying, once for all, to the possibility of sceptical scenarios. If foundationalism itself does not meet the demanding epistemic requirements that would be necessary for coping one for all with every sceptical challenge, then it is reasonable to ask why it should be preferred over coherentism. Hence, the indirect strategy aims to show that foundationalism is not more well-equipped than coherentism when they have to face sceptical scenarios. For this reason, it is worth to spend some time analysing how coherentism can face sceptical scenarios.

Coherentism is a theory of justification that maintains the validity of the procedure of justification, without claiming in favour of its irresistibility. Given that our access to the world is always mediated, coherentism strategy against radical scepticism is to reject the statement, that foundationalism necessarily should support, that justified beliefs must be true. Following this moderate approach, we can argue that the objectivism about justification overestimates the relevance of the connection between justification and truth. Recalling the distinction between a justified belief and a warranted belief, it should be now clear that for the objectivism about justification it cannot be the case that a justified belief is not at the same time also warranted. I have provided sound arguments against this claim, showing that even for foundational theories is extremely difficult, form the epistemic perspective, to bridge the gap between justification and warrant in a definitive way. Yet, I still need to show that a coherentist paradigm can face the no contact with reality objection. If we want to take seriously the sceptical challenge[50], then we need to prove that a coherent system of belief is not just a consistent system, as it provides evidential reasons for believing that the coherent system of beliefs is not completely detached from the factual world. Furthermore, a coherent procedure of justification has to give us discriminatory reasons in favour of some beliefs instead than others, in the case that both the subsets of beliefs are consistent with the whole system[51]. In order to solve these problems, coherent theories

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[50] I want to recall that according to Brink (1989, p.33) constructivism constitutes a "sceptical solution" to the sceptical challenge, as constructivism tries to argue that the same possibility of having sceptical scenarios is invalid.

[51] Recalling the example of the difference between astronomy and astrology, it is important noting that a sound epistemic procedure of justification should be able to provide reasons in favour of the fact that: i. astrology could be supported by a consistent system of beliefs, yet there are not evidential connections between these beliefs and the external world; ii. there are good reasons for preferring astronomy over astrology as a general theory that account for astronomical phenomena.

need to highlight the fundamental role played by second order beliefs within the procedure of justification[52]. According to this scheme, we can distinguish among:

− first-order beliefs about features of the world external to us;

− second-order beliefs that regard the relationship between the first order beliefs and the world.

As we have seen before in developing the argument against the possibility of having pure non-inferential justified beliefs, the second-order beliefs play a fundamental role within the procedure of justification. The second-order beliefs connect among them beliefs at different levels of generality and provide sound reasons for considering our first-order beliefs as reliable. Second-order beliefs include beliefs about different issues: as, for example, beliefs about ourselves as moral agents, beliefs about scientific theories, beliefs about our belief-formation mechanisms, and so on[53]. Second-order beliefs provide <u>explanatory reasons</u> in favour of the acceptance of first-order beliefs[54]. Of course, even the second-order beliefs must be justified and, again, the way in which they are justified is through their coherent connections with other second-order beliefs.

I have argued in favour of coherentism because I think that a moderate approach in moral epistemology that averts a necessary epistemic connection between justification and truth is the best choice. Moreover, the only good reason I can see for preferring foundationalism over coherentism is that foundationalism might result to be able to better coping with the sceptic challenge. However, I have already shown that foundationalism is not able to deal successfully with the sceptical challenge as its defenders argue. Yet, coherentism itself seems unable to cope with scepticism, given the

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[52] "We not only hold beliefs about tables and chairs, the sun and the stars; we also hold *beliefs about the technique of acquiring beliefs*". Blanshard, 1939, p. 285, italics in the original. See also M. Williams (1980, p. 248, emphasis added): "By 'epistemic beliefs' I mean beliefs about beliefs. Our epistemic beliefs include beliefs about techniques for acquiring and rejecting beliefs, beliefs about the conditions under which beliefs of certain kind are likely to be true, and so on. The importance of epistemic beliefs can be brought out if you look at beliefs based on observation. Philosophers who claim that knowledge needs foundation think that these foundations must include beliefs based on observation and this means that some observation beliefs must be intrinsically credible. A much more credible view is that our attitude toward beliefs based on <u>observation reflects some very general epistemic beliefs about the reliability of human observation</u>, the conditions under which perceptual error is likely and other beliefs of this kind".

[53] This description of second-order beliefs is deeply connected with the role played by the background theories in the justificatory procedure of the reflective equilibrium. I will provide a definition of the background theories in the third chapter when I will introduce the difference between narrow reflective equilibrium and wide reflective equilibrium. See *infra* section 3.2.1.

[54] For example, some second-order beliefs regarding scientific theories of universe are good reasons for supporting astronomy, instead that astrology, as coherent system of beliefs regarding the study of celestial objects.

possibility that all our beliefs are coherent among themselves, but still all of them false. As Brink perfectly points out:

"These sceptical possibilities are real, but they bear on our knowledge claims, not our justification claims. Sceptical possibilities make the truth of our knowledge claims (or at least those subject to sceptical doubt) contingent. If we are brains in vats or the playthings of Cartesian demons induced to have beliefs with which realist second-order beliefs cohere, then we cannot have knowledge, because knowledge implies true belief. But we can nonetheless have justified beliefs"[55].

Is a scenario in which our beliefs are justified, even if the sceptical threat is always at hand, an acceptable possibility from the epistemic perspective? By now it should be clear that every theory of justification has to face the possibility that a scenario as the one of the Cartesian demon could be true. However, taking epistemological scepticism seriously does not imply that we have to reject any attempt to build up a satisfactory theory of justification. This is exactly what coherentism tries to do. It takes the sceptical challenge seriously, whereas theories of justification that affirm that objectivism about justification is true reject every genuine sceptical scenario as false. Moreover, coherentism is a theory of justification that, being holistic, allows for readjustment and modification in order to resolve internal contradictions occurring among some beliefs within the coherent system. For these reasons, I consider coherentism as a much more flexible theory than foundationalism, as infinite readjustments are always possible. Coherent system is made up by explicatory relations among beliefs of different levels and when we have to face an internal inconsistency, it is possible to analyse the different first and second order beliefs for deciding which belief might be modified or erased in order to reach a new coherent equilibrium. This work in progress procedure of readjustment and mutual balancing among different beliefs is a never ending enterprise as well as an undetermined. We can provide sound epistemic methods for facing inconsistency; nevertheless the procedure is never predetermined by the theory, as the coherent system shows its validity just in the actual attempt to achieve coherence, not in a foundational argument that precedes every other development of the theory itself.

Of course, the fact that coherentism takes epistemological scepticism seriously implies that the attained coherence is always under scrutiny and that the "maximal coherence" goal is more a regulative ideal, than a realistic goal[56]. I hold that the fact that

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[55] Brink, 1989, p. 129.
[56] This feature will be fundamental when I will analyse reflective equilibrium; see *infra* sections 3.1 and 3.2.

the epistemic enterprise of reaching coherence is never solved once for all is a virtue of this paradigm, rather than a flaw. Indeed, I will argue in favour of a work in progress perspective regarding political justification, as the intrinsic revisability of publicly justified principles is a fundamental aspect of the nonideal approach I want to defend.

In the next chapters I will analyse the value of coherentism as the best theory available for accounting the issue of moral disagreement. For the moment, it worth noting that the flexibility of the coherent procedure of justification, through ceaseless readjustments and balancing acts opens up the theoretical possibility of managing moral disagreement. In order to understand this last statement is necessary to reintroduce the sceptical argument with whom coherentism seems to run afoul with. According to this argument,

i. If we are to answer sceptical doubts, justified beliefs must rule out sceptical scenarios.
ii. Hence, justified beliefs must be true.
iii. Purely inferential accounts of justification cannot ensure contact with reality.
iv. Hence, purely inferential accounts of justification cannot ensure that justified beliefs are true.
v. Coherentism is a purely inferential account of justification.

vi. Therefore, coherentism cannot answer sceptical doubts.

After a quite long survey, it should be now clear that the coherent indirect strategy involves to reject the sentence [i] in order, then, to reject sentence [ii]. Rejecting the fact that justified beliefs must be true, indeed, is the major consequences of the moderate epistemology account I am defending in this chapter[57]. However, the argument that can be defended by coherentism proceeds, firstly, from the rejection of the idea that: [i] if we are to answer skeptical doubts, justified beliefs must rule out skeptical scenarios.

A moderate epistemology, coupled with a coherentist account of the justificatory procedure, defends a fallibilist intuition with regard to the epistemic status of our knowledge. Indeed, if we assume that all our beliefs are inferential and that therefore the agent's perspective is *always* part of a sound account of the procedure of moral justification, then our account of objectivity should seriously take into consideration the role played by the deliberative performances of the agents. In this regard, a moderate account of epistemology does not argue against the possibility of having objective true moral statements. Nevertheless, this same account in aware of the intrinsic **subject-ive**

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[57] "We avoid scepticism by constructing a theory of justification without a guarantee of truth", Lehrer, 1974, p. 239.

aspect of our epistemic processes. Subject-ive is a term introduced by Peter Railton in order "to express the notion of that which is essential connected with the existence or experience of subjects, i.e., beings possessing minds and point of view, being capable of forming thoughts and intentions"[58]. The fact that our knowledge is intrinsically subject-ive – as implies doxastic states – does not mean that it cannot be still objective[59]. Yet, the "subjective-ity side" of the knowledge is the aspect of coherentism that is criticized by the non-contact with reality objection. Indeed, if our notion of objectivity is partly mind-dependent, as depends on the mutual explanatory support among different beliefs that are held by moral agents, then the possibility of being wrong is always an option at stake[60]. In this regard, the fundamental sceptical challenge I have in mind is an epistemic sceptical thesis, rather than an ontological one. The former thesis maintains that even if there are ethical truths, still we cannot know with absolute certainty what they are, given our imperfect epistemic abilities. On the other hand, the ontological sceptical thesis claims that the relevant point is not our ability to establish or not ethical truths, since they do not exist[61]. In my opinion, the sceptical challenge that is relevant is the epistemic one, as it criticizes the actual epistemic ability of moral agents to claim for the existence of ethical truths. What is relevant, therefore, is not whether these truths exist or not. Rather, the question concerns how much objectivity can be reached in moral reasoning, starting from the intrinsic epistemic imperfection ascribed to the whole category of moral agents. This kind of epistemic scepticism is relevant as it tells us not that our beliefs are false, but that they might be false. The sceptical challenge implies that if we want to take scepticism seriously, then we have to claim in favour of an evidence that is intrinsically fallible. Consequently, a scalar account of objectivity is the most adequate for dealing with the assessment of or moral knowledge. A moral theory could be objective, but this notion of objectivity somehow reflects and incorporates a

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[58] Railton, 1995, p. 263.

[59] "Beliefs are fundamentally subject-ive, given their jobs, but it must be kept in mind that the sense of 'subject-ive' is technical and stipulative. It is opposed not to 'objective', but to 'object-ive', that is, having to do essentially with nonsubject-ive entities – entities that lack a mind or point of view, entities that not a locus of experience or intention. Knowledge, for example, is by its nature subject-ive since it involves belief. But though it therefore cannot be object-ive, it might well be objective", *ivi*, p. 270.

[60] "Not only does a coherentist treat each belief as open to revision in light of others, she recognizes also that even a fully coherent and so wonderfully justified, set of beliefs might turn out to be false. Justification's link to truth, such as it is, is not provided by coherence itself, but instead by the evidential relations that bind beliefs together into coherent sets. Thus the theory makes good sense of how we can look back on our own earlier beliefs as having been justified and yet now justifiably thought wrong" Sayre-McCord (1996, p. 178).

[61] For a deeper analysis of this difference, see Feldman, 2002.

fallibilist account of our epistemic perspective[62]. A moral theory could be objective to the extent that its justified principles are at least fallibly (and less than infallibly) justified[63]. Therefore, a moderate account of epistemology replies to the sceptical challenges defending the possibility of having objective true and false statements and yet, this same model does not ruled out any sceptical possibility as intrinsically wrong. This epistemic modesty recognizes the fact that given the intrinsically subject-ive status of our epistemic strategies, our justification in holding beliefs does not guarantee truth. There are degrees of justification in holding a beliefs and the objective "certainty" we can reach is always mitigated by the recognition of the fact that we cannot reject every sceptical scenario as indubitably false.

This moderate approach, sustaining a fallibilist framework, establishes a procedure of justification that is intrinsically pluralistic and that allows revisions along the deliberative procedure itself. In this regard, this moderate approach is utterly nonideal, as refuses to recognize any special epistemic status to some seemingly basic, self-justified, beliefs which alleged validity depends on moral reasons that are completely detached from our doxastic system as moral agents. This epistemic modesty, coupled with a general fallibilist framework, is the most important feature of the moderate epistemic view when such view is applied to the moral domain. Indeed, this model is able to account for moral disagreement, while still refuting relativism as a correct description of the moral realm. In order to explain this insight thoroughly, in the next sections I shall introduce some strictly political issues that can be articulated and solved in a specific way, thanks to the moderate epistemic account I have defended in this first part of the chapter.

1.4   Political Realm: the Reasons in Favour of a Nonideal Justification

1.4.1   Metaphysical Austerity

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[62] Baron Reed (2002, p. 144) states that different forms of fallibilism yield two thesis:
"(FK1) *S* fallibly knows that *p* =df (1) *S* knows that *p* on the basis of justification *j* and yet (2) *S*'s belief that *p* on the basis of *j* could have been false.
(FK2) *S* fallibly knows that *p* =df (1) *S* knows that *p* on the basis of justification *j* even though (2) *j* does not entail that *S*'s belief that *p* is true".
[63] This notion of objectivity is strictly connected with an epistemic account of justification according to which we have an epistemic justification of a belief when we can provide a good argument that would make such a belief more, rather than less, rationally well supported or established.

"If Waldo holds a moral belief *p,* he must think that *p* is true and that contradictory moral beliefs are false. Belief *p* is a first-order belief. But Waldo can also hold a second-order belief (that is, a belief about his first-order beliefs) that some of his moral beliefs, possibly including *p,* are mistaken"[64].

This quote helps me to introduce a new argument, namely the determination of a correct procedure of justification within the realm of political philosophy. Until now I have provided different arguments in order to defend a moderate account of moral justification. According to this model, coherentism is the correct account of the structure of justification that can be defined as adequate for moral deliberation. Moreover, coherentism is consistent with a general fallibilist paradigm with regard to the objective epistemic status of the moral discourse. The quote by Brink show exactly this point: a coherentist account of moral justification is compatible with a fallible status of the moral evidence that support the justified beliefs. This <u>epistemic modesty</u> is extremely important when political matters are at stake. Firstly, this cautious epistemic account is able to explain why moral disagreement arises and, moreover, to define it as tractable. Secondly, this model highlights the subject-ive aspects of moral knowledge. These features are fundamental aspects of a paradigm of justification that is defined as nonideal.

I define this paradigm as <u>nonideal</u> in order to distinguish it from those paradigms, committed to a non-moderate epistemology, according to which moral discourse is objective and can be grounded thanks to a foundational argument that refers to moral truths. Very often, indeed, the attempt to defend the objectivity of moral discourse is coupled with an argument if favour of moral realism. Following this approach, an argument with regard to the semantic status of the moral discourse (viz. the claim that moral beliefs are propositional and that can be defined as true or false) is connected with an argument about the metaphysical status of moral facts (i.e. determining if moral facts exist and in the case they do, determining which kind of act they are) [65]. By contrast, the arguments that I developed in the previous sections were focused on epistemic issues, rather than on metaphysical analyses. For, I think that a nonideal paradigm in moral and political philosophy might be defined as an approach that "takes an austere approach to moral metaphysics yet attempts to remain faithful to moral

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[64] Brink, 1989, p. 94.
[65] A good example of this ideal attempt can be provided by Platonism in ethics, "which says we are equipped to apprehend ethical truths that hold independently of what we ourselves are like" (Darwall, Gibbard and Railton, 1192, p. 141).

phenomenology"[66]. On the one hand, being austere with regard to moral metaphysics implies eschewing a strictly metaphysical inquiry with regard to the determination of the ontological status of moral facts. On the other hand, yet, being faithful to moral phenomenology means that we are committed to the ordinary practice of moral discourse according to which moral beliefs have a propositional content and can be defined as objectively true or false[67].

The kind of nonideal paradigm I am outlining, then, is deeply committed to an epistemic analysis, more than to a metaphysical inquiry. Actually, this same metaphysical austerity is one of the fundamental reason for defining such an account as strictly nonideal. For, the "nonideality" of this account rests on the fact that it looks more for the practical side of political philosophy, rather than for the foundational one. It is important to highlight that there is nothing intrinsically wrong with the foundational inquiry both in moral and political philosophy. Yet, I believe that in order to deal with the fact of disagreement - a fact I will explain deeply later on – metaphysical austerity might be an advisable attitude.

Consistently with the arguments developed in the previous sections, this nonideal paradigm upholds a moderate epistemic view[68]. Such epistemic view defends coherentism as the best account of our justificatory procedure with regard to moral and political beliefs. Moreover, this moderate epistemology defends fallibilism as general paradigm and highlights the relevance of the doxastic presupposition for moral deliberation. Finally, it is relevant to add an important distinction, introduced by Dale Dorsey[69], about two different senses of objectivity:

a. an ontological thesis according to which there are objects or real properties out there to which ethical truths correspond;

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[66] Horgan and Timmons, 2006, p. 220.

[67] In this regard, Peter Railton (1995, p. 259) claims: "Perhaps, then, morality is different but moral discourse as such is not. And perhaps our willingness to talk in terms of moral properties and facts simply registers our readiness to apply the terms 'true' and 'false' to moral judgements. As such, it might be considered innocent of any significant metaphysical implications. Its real basis would be seen as lying in our discursive practices in morality, our tendencies to deliberate and disagree in distinctive ways - to make arguments, to insist upon consistency, to adduce evidence, and so on, Beyond this, no purported insight into the real composition of the world is claimed".

[68] Habermas (1996, p. xli) states that a serious analysis of the human way of reasoning should uphold a nonideal account: "Yet modernity, now aware of its contingencies, depends all the more on a procedural reason, that is, on a reason that puts itself on trial. The critique of reason is its own work: this double meaning, first displayed by Immanuel Kant, is due to the radically anti-Platonic insight that there is neither a higher nor a deeper reality to which we could appeal — we who find ourselves already situated in our linguistically structured forms of life".

[69] Dorsey, 2006, pp. 511-512.

b. an ordinary practice of morality objectivity that refutes the ontological disputes and merely claim "that every moral sentence has a determinate status, true or false, and this status is applicable to all interlocutors. Moral disputes, in principle, can be settled".

A nonideal approach of the kind I am outlining would defend the second meaning of objectivity as the most adequate for dealing with the justification of political matters. It is important to clarify that claiming so does not imply the refusal of the ontological thesis as irrelevant or misguiding. Rather, my point is that different fields of research require a differentiation with regard to the determination of fundamental goals. The ontological thesis is a fundamental topic with regard to the determination of the objective or non-objective status of any human discourse. Yet, I think that when we are dealing with political philosophy, rather than, for example, with the epistemic discourse on the appraisal of physical objects, the role played by objectivity it is not necessarily the same. The fact that I claim for a flexibility in the determination of epistemic categories as well as in the articulation of fundamental philosophical goals when dealing with different realms could be seen as a flaw of the whole argumentative structure. Again, I consider this attitude, a sort of sensibility with regard to the requirements and expectations that derive from different philosophical realms, as a positive feature of a nonideal approach in political philosophy.

To conclude, the nonideal approach I want to defend can be summarized through 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;

− it is possible to claim that beliefs and principles are objective, where this notion of objectivity hinges on the intrinsic normativity attached to the "epistemic correctness" criteria that are employed in the assessment of the validity of our moral practice of deliberation. In this regard, this notion of objectivity underdetermines the choice between different accounts of the metaphysical status of moral facts and therefore meets the requirement of metaphysical austerity.

1.4.2 Two Models of Liberalism

Political philosophy is a subset of moral theory in which moral principles are applied to a specific area of human interactions, namely the domain of political institutions. The main goal of political philosophy is to articulate, justify and support principles of justice that can shape the structure of a political community determining how we ought to live together. Being an intersubjective enterprise, political philosophy should address the issue of justification in a very serious way, as from an ideal point of view, political principles might be justifiable with the regard to all the citizens of a specific moral community. However, I introduced different epistemic reasons that help us understanding why it is so complicated for a political theory to theorize a convergence of all citizens on a specific conception of political justice. As a matter of fact, fallibilism as well as the doxastic presupposition provide us with sound reasons for taking disagreement seriously.

Liberalism is the approach in political philosophy that more than other has been able, historically, to account for and try to mitigate the fact of political disagreement. Indeed, the liberal theory has been articulated as a development of the doctrine of toleration that constitutes the pragmatic solution to the religious wars that hit Europe between 16th and 17th centuries. Hence, the fact of disagreement and the attempt to deal with it in a publicly justified way constitutes one of fundamental benchmarks of liberal paradigm.

Contemporary theories of liberalism claim that the first goal of political institutions is to provide a strong endorsement of civil and personal liberties as well as a basic structure of society that promotes equality among citizens[70]. Moreover, political institutions should respect a strong commitment toward a normative notion of political legitimacy[71]. According to this notion of legitimacy, no political regime is legitimate

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[70] Liberalism is a theory that has been developed starting from the political works of authors such as Hobbes, Locke, Rousseau, Kant. Regarding the definition of liberalism as a political theory whose pivotal values are freedom and equality, we can quote Kant from *On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'* ([1793], 1991, p. 74): "The civil state, regarded purely as a lawful state, is based on the following *a priori* principles:
1. The *freedom* of every member of society as a *human being*.
2. The *equality* of each with all the other as a *subject*.
3. The *independence* of each member of a commonwealth as a *citizen*".
[71] This strong commitment toward a normative notion of legitimacy is due to the fact that, within a liberal system, every coercion should be ideally justified in the name of safeguarding the freedom and the equality of citizens. In this regard, Kant's words are extremely clear: "No-one can compel me to be happy in accordance with his conception of the welfare of the others, for each may seek his happiness in

unless it can demonstrate its ability of obtaining assent by all who are affected by the laws of this regime. Therefore, the first goal for political liberalism is to provide theoretical support for a political framework that should be able to maintain justice and stability inside the society, gaining a consensus that is independent from the use of coercion[72]. In this regard, any attempt to justify liberalism has at least to deal with two close issues: i. the search for sound arguments in favour of the validity of specific principles of justice; ii. the concrete analysis of how such principles might be respected and supported by the citizens that are subjected to these principles themselves.

These two activities express the difference that obtains between the two forms of justification introduced by Scanlon. Indeed, providing a sound, may be top-down, argument for justifying political principles represents a justification that takes into consideration just the good and sufficient reasons that are available for supporting the principles. However, the principle of legitimation compels the general liberal theory to focus its analysis on the citizens doxastic perspective as well. As a matter of fact, it is not sufficient to provide sound arguments for supporting a principle of justice, since it is also fundamental to look at the actual possibility that every citizen might support such principle as justified with regard to the beliefs that she happens to hold in her doxastic system. A theory of justice justified independently from what citizens believe with regard to justice probably would not pass the legitimacy test. In this regard, liberalism risks falling into a dilemma. On the one hand, in fact, liberalism should provide a justification of its core principles that is not relativized to the actual consent of citizens, otherwise all the normative force of the argument would be lost. On the other hand, however, liberal theory should also take into consideration the political intuitions and beliefs held by citizens, as liberalism usually tries to adhere to an ideal of inclusiveness and therefore should meet citizens expectations[73].

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whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law - i.e. he must accord to others the same right as he enjoys himself' (Kant, [1793], 1991, p.74).

[72] In this regard, Rawls (1993, p. 137) claims that : "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy. […] Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification".

[73] Regarding this apparent dilemma, see Rawls (1993, p. 216) when he affirms that: "I now turn to what to many is a basic difficulty with the idea of public reason, one that makes it seems paradoxical. They ask: why should citizens in discussing and voting on the most fundamental political questions honor the limits of public reason? How can it be either reasonable or rational, when basic matters are at stake, for

The dilemma derives from the dialectic tension between individual reasons for supporting a political regime and political publicly justified arguments for justify the legitimacy of such regime. Indeed, the more liberalism tries to respect an ecumenical ideal (viz. the attempt to justify liberalism to as much people as possible), the more it is constrained to avoid reference to normatively committing arguments that can result to be incompatible with many personal beliefs held by citizens. I will analyse the issue of the dilemma of liberalism and propose a possible solution to it in the next chapter. Meanwhile, it is important to understand which is the theoretical connection between these issues and the coherentist method of justification. I hold that coherentism and the moderate epistemic view that I have paired with it provides us with a good method for answering to this question: how can liberalism maintain a balance between the claim that its principles should be preferred over others as they are better political principles and the commitment to respect the varied conceptions of life supported by citizens in the contemporary multicultural societies? This issue concerns the legitimacy of political power and the possibility that liberal democracies may find the correct way for justifying their coercive actions without falling into self-contradiction. Indeed, if liberalism imposes liberal principles of justice without looking for the possibility of justifying such principles with regard to the doxastic sets of beliefs held by citizens, then liberalism turns out to be, after all, an illiberal approach. In this regard, the issue of justification is a fundamental one, as within the political domain is relevant not just that a political principle might be justified, rather is fundamental the way in which the justification is produced and which arguments and intuitions are provided and discussed during the deliberation. Being an intersubjective enterprise, the procedure of justification of political principles should submit to some epistemic and practical constraints specific of the political domain. Liberalism, in fact, attempts to create an impartial point of view that manages to treat all equally. The difficulty then becomes to remove from the public deliberation any argument that can be defined as partisan, as it is supported by a specific group of interest and it is opposed by the rest of the citizens.

The fundamental issue at stake for theories of liberalism in the last twenty years has been the recognition of fundamental role played by disagreement within the deliberative procedure for justifying political principles. While between the seventies

citizens to appeal only to a public conception of justice and not to the whole truth as they see it? Surely, the most fundamental questions should be settled by appealing to the most important truths, yet these may far transcend public reason!".

and the nineties, the most relevant issue was to build up and justify sound distributive theories of justice for a political community[74], since the nineties the crucial issue has become pluralism. Rawls, for example, has described the growing disagreement and tension in contemporary, multicultural democracy as the "fact of pluralism"[75]. Disagreement regarding moral views is a permanent feature of our contemporary multicultural world. Starting from pluralism as a "fact" of contemporary multicultural societies, contemporary liberal theories try to justify their authority and legitimacy, notwithstanding a deep and persistent disagreement among citizens. In order to deal with the issue of irreducible pluralism, usually liberal theories have provided two different answers: a. the discontinuist/neutral answer[76] and b. the continuistic/comprehensive answer[77].

a.   The discontinuist/political answer maintains that liberalism cannot any more claim that a specific moral theory is the true one, deriving the principles of justice from such moral theory, as political consensus cannot be based on any particular moral doctrine that is not shared by everyone. In this regard, the discontinuist/neutral stance is close to the historic tradition of liberalism, given that liberal neutrality is a concept that has been developed together with liberalism itself, starting from the recognition of the pragmatic relevance of the principle of tolerance for solving the European wars of religion. However, the traditional neutral liberal approach has to face different challenges. First of all, many critics claim that a strictly political liberalism is not able to provide a sound and full justification of its normative principles. Secondly, political liberalism is described as too weak for dealing successfully with the moral disagreement of our

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[74] Rawls (1971), Nozick (1974), Walzer (1981), Dworkin (1981), Sen (1992).

[75] "Under the political and social conditions secured by the bask rights and liberties of free institutions, a diversity of conflicting and irreconcilable - and what's more, reasonable - comprehensive doctrines will come about and persist if such diversity does not already obtain", Rawls (1993, p. 36).

[76] Ackerman (1983), Larmore (1996, 2008), Rawls (1985, 1993).

[77] Dworkin (1988b, 2000) is the thinker that introduces this theoretical distinction; however other philosophers, as Galston (1980) and Raz (1986), may be counted as liberal continuists. Dworkin (1988b, p. 208) defines the two strategies in this way: "Both strategies try to find reasons that people who are engaged and committed in their private lives have for taking up the neutral and austere political perspective of liberalism. Both aim to show how people of diverse substantive ethical convictions can unite in liberal politics. The difference lies in the attitude each encourages people to take toward these convictions. Discontinuity, exemplified in the social contract tradition, asks them to regard the most profound and abstract of these – those Rawls describes as forming a comprehensive ethical view – not as abandoned or renounced but rather as bracketed or set aside in political occasions. […] The strategy of continuity assumes, on the contrary, that all one's ethical convictions are available in politics, that liberal politics follow not from setting some of these aside but on the contrary on from giving full effect to the most comprehensive and philosophical convictions among them. On this view, ethics and politics are intertwined so that some of the most far-reaching questions about the character of the good life are political questions too".

multicultural societies. Finally, a lot of thinkers argue against the possibility (practical or epistemic) of affirming a deep discontinuity between personal strong moral convictions and political principles.

b.   The <u>continuist/comprehensive solutions</u>, instead, maintain that liberalism should be developed in the terms of a comprehensive moral doctrine *tout court*, otherwise it would lack the necessary normative force. According to this perspective, sound principles of justice can only stem from moral ideals of good life that are justified through the reference to a specific moral comprehensive doctrine. In this regard, according to a continuist perspective, the right (determined by the principles of justice) and the good (determined by our personal comprehensive doctrines) can both be part of a coherent theory accounting for both.

These two strategies reply in completely opposite way to the dilemma of liberalism. On the one hand, the discontinuist/neutral model tries to achieve an agreement on political principles as broader as possible among citizens, thanks to a procedure of justification that averts any reference to values that are not strictly *political*. On the other hand, the constinuist/comprehensive paradigm evaluates as more relevant the normativity horn of the dilemma, to wit, the fact that a substantive theory of justice should provide justificatory arguments that appeal to the strong and more committing moral values available.

I believe that both these strategies show something true about political justification and yet, both of them are too extreme in their conclusions. The discontinuist/neutral approach is right in trying to be faithful toward the inclusiveness ideal. Still, a completely neutral account of political deliberation would dismiss many important reasons and arguments as non-neutral, losing therefore argumentative power and normative strength. By contrast, the continuist/comprehensive model correctly highlight the fact that is not reasonable to provide a neutral justification of political principles that is completely at odds with the comprehensive set of values held by citizens. However, a continuist/comprehensive practice of political deliberation seriously risks to became illiberal, as it would hinge on reasons and values that some citizens might consider as parochial.

In this work I defend a perspective about liberalism that, in the wake of Rawls' works, can be defined as *political liberalism*. This kind of liberalism stems from the discontinuist/neutral model, rather than from continuistic/comprehensive one. Indeed,

the term "political" means that this kind of liberalism provides a theory that deliberately forgoes many discussions that are connected to political issues, but not necessarily derived from them[78]. In this regard, a political liberalism is intrinsically and deliberately neutral with regard to many fundamental philosophical issues, e.g. the ontological status of moral fact; the existence of God; the intrinsic value attached to a specific conception of good and so on[79]. However, the political account of liberalism is not strictly coincident with the discontinuist/neutral view, as this latter view accepts disagreement as a given fact and it simply tries to provide a justification of a "political module" that can be accepted by any person, no matter which are her personal values and beliefs. By contrast, political liberalism is neutral with regard to many not strictly political aspects of moral deliberation, and yet it argues in favour of the possibility that every citizen might achieve a convergence among her comprehensive values[80] and the political ones. The recognition of the fact of pluralism as an intrinsic fact of contemporary multicultural democracies deeply modifies our way to articulate and justify a theory of justice. Still, a political account does not give up neither the possibility of providing a substantial justification of its tenets or the attempt to find a conciliation – not necessary, but extremely relevant – between political and non-political values.

Political liberalism is closer to the discontinuist/neutraul view, but it also agrees with the continuistic/comprehensive model that the relevance of the whole system of values endorsed by different citizens cannot be dismissed. In this regard, the moderate epistemic view that I have articulated provides us with a good support in order to develop a political model of justification that might be a sort of "middle way" between

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[78] Rawls, for example, claims that political theory should be independent form epistemological and metaphysical analyses. "Thus, to formulate such a conception, we apply the principle of toleration to philosophy itself: the public conception of justice is to be political, not metaphysical", Rawls, 1985, p. 223.

[79] "The state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it", Rawls, 1993, p. 193.

[80] "Assume first that reasonable persons affirm only reasonable comprehensive doctrines. Now we need a definition of such doctrines. They have three main features. One is that a reasonable doctrine is an exercise of theoretical reason: it covers the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner. It organizes and characterizes recognized values so that they are compatible with one another and express an intelligible view of the world. Each doctrine will do this in ways that distinguish it from other doctrines, for example, by giving certain values a particular primacy and weight In singling out which values to count as especially significant and how to balance them when they conflict, a reasonable comprehensive doctrine is also an exercise of practical reason. Both theoretical and practical reason (including as appropriate the rational) are used together in its formulation. Finally, a third feature is that while a reasonable comprehensive view is not necessarily fixed and unchanging, it normally belongs to, or draws upon, a tradition of thought and doctrine. Although stable over time, and not subject to sudden and unexplained changes, it tends to evolve slowly in the light of what, from its point of view, it sees as good and sufficient reasons", Rawls, 1993, p. 59

these two paradigms. Indeed, 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.* Fallibilism shows us that when we disagree with another person, or even when some of our beliefs are in contraposition with each other, it is possible that such inconsistency is due to our fallible performance in deliberating. Therefore, sustaining the validity of a fallibilist perspective allows us to stress the work in progress structure of the intersubjective enterprise of establishing a public justification of political issues. It is the confrontation with other people's beliefs that show us what it could be missing or went wrong in our deliberative processes and therefore pushes us to revise or amend some of our beliefs. Naturally, it is also possible that the confrontation produces nothing but a harsher disagreement and a dogmatic entrenchment on our own positions. Still, what is really relevant at this theoretical level is that coherentism is able to account for a possible accommodation of disagreement, while foundationalism is not. Indeed, if one holds a foundational account of justification, then 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"[81]. Indeed, if the justificatory structure hinges on the discovery of self-evident, infallible, moral truths, then the disagreement can never be defined as genuine, but solely as the outcome of a defective cognitive deliberation by some of the moral agents.

Coherentism, therefore, is much more adequate than foundationalism if we want to account for the existence of genuine disagreement among moral agents and yet do not reduce morality to a relativistic discourse. Coherentism does not just accept disagreement as a possible outcome of moral reasoning. Rather, coherentism supports a view on moral deliberation according to which it is possible to argue in favour of a practical accommodation of disagreement that ends up in assuming as regulative ideal the possibility of convergence. The possibility of overcoming disagreement in the light of the ideal of convergence is supported by the fallibilist insight according to which my belief about the validity of the evidence in favour of *p* is not necessarily in contrast with the actual falsity of such evidence. Consequently, coherentism is able to account both

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[81] Wright, 1995, p. 222.

for the possibility that two or more of my own beliefs were in disagreement between each other and for the fact that, in an interpersonal perspective, I disagree with another person about *p* being morally right or wrong. The way in which this accommodation of disagreement can be realized practically would be object of inquiry in the next chapters. For the moment, it was important to show that coherentism is a correct account of justification within the moral and political fields. A part from the strictly technical reasons for believing so, it is also true that coherentism is more adequate as general paradigm, as it better accounts for moral phenomenology. Indeed, moral phenomenology tells us that moral disagreement arises genuinely during moral deliberation. However, such disagreement might as well be accommodate either for just pragmatic reasons or thanks to more substantial arguments. Coherentism provides us with a sensible narration of how our moral deliberation works and it also yields good tools for trying to solve disagreement respecting the fact that such disagreement is a genuine one, rather that the contingent outcome of a defective cognitive appraisal.

My analysis in favour of a coherent theory of justification has been conducted for the sake of supporting a political version of liberalism that is able to respect the deep disagreement among citizens, while providing strong and sound reasons for publicly justifying principles of justice. The main issue at stake is how liberalism can be justified as a valid and worthwhile theory, maintaining in the meanwhile a neutral attitude toward the attempt to define a specific and victorious theory of moral good. Coherentism, as a model of justification that is intrinsically compatible with pluralism is extremely important for achieving this goal in many regards. First of all, coherentism shows that no justifications are possible without taking in consideration the agents' perspective. Secondly, the disagreement among people is described not just as the outcome of a lack of rationality (as foundationalism would describe it), rather it is considered the upshot of people holding different doxastic sets of beliefs. Thirdly, this method provides theoretical support for the possibility of reaching agreement about some aspects of our living in a political community, whereas we still strongly disagree about other fundamental issues. Finally, being a work in progress method, coherentism upholds the possibility of diachronic improvement – in ways that are no foreseeable now – of political theory.

1.5   Political Justification

1.5.1   Contextual and Systematic Justification

In the foregoing section of this chapter I linked the epistemic issue of providing a sound and legitimate account of moral justification with the general topic of defending a political version of liberalism. I believe that clarifying the epistemic features of the justificatory procedure is a necessary step in order to build up a robust theory of justification. However, a general theory of justice might be perfectly justifiable from a strictly epistemic perspective, but still being completely unsatisfactory from practical and normative standpoints. A concrete example of this theoretical discrepancy between strictly epistemic issues regarding the justification of specific moral beliefs and instead matters about the normative adequacy of a general theory is provided by many of the critiques addressed to strictly political liberalism. According to these critiques, the relevant matter at stake is not so much if political liberalism could build up a justified system of political principles, rather it is important to wonder whether such principles would ever be able to gain a deep support from citizens. According to these critiques political liberalism, even if justifiable, is not an adequate option, given its intrinsic weakness. Indeed, a political version of liberalism would always be too weak, since it refutes to ground itself in the reference to some self-evident moral truths. These critics question how liberalism, legitimated by a coherentist procedure of justification that averts to be anchored in an ultimate reference to infallible moral truths, can respond in a convincing way both to selfish individuals and to comprehensive visions (religious and non-religious) which do not accept compromises. It is from such doubts and fears that, spontaneously, is growing the stimulus for re-addressing the fundamental value of cultural and religious roots that have formed the historical and social environment in which liberalism itself has been developed. These cultural roots are thought to be the ethical core that underlies neutral, liberal principles[82]. In addition, critics of the political solution reduce this view to a strictly discontinuist/neutral one, arguing that if one gives up references to moral values in political discussions, then liberalism would not be able to cope, with the proper authority, with the more and more frequent challenges that illiberal fanaticisms are posing to democratic institutions. Political liberalism, with its

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[82] This kind of arguments, for example, have provided the theoretical framework for the rise of the long debate on the possibility of including or not any reference to Christian roots in the European Constitution.

attempt to create a public space for inclusive and *super partes* debate, is criticized inasmuch produces a philosophically unbearable "epistemic abstinence"[83]. The epistemic abstinence argument stresses the fact that strictly political values would be both theoretically and practically inadequate for facing religious fanatics and unreasonable individuals. In practice, the liberal openness to diversity would make it possible for the liberal theory to be accused of fragility and excessive hospitality, given that the ideal of neutrality would force liberal democracies to be ready for dialogue, and to be friendly towards those that really do not deserve, nor desire, to take part in a public and constructive dialogue. It is possible to argue that, according to these criticisms, political liberalism is endangered by its inability to become itself "illiberal", since this approach refuses to coerce – within certain limits – those who are not ready to give up, even within the public domain, the "infallibility" status of the truths they hold in their doxastic system and that therefore are against any form of open discussion with people that hold different and contrasting beliefs that their own.

Following this line of argument, many critics claim against the adequacy of political liberalism, as this approach will lack the necessary normative authority for determining an objectively valid theory of justice. Substantially, these critiques hold that for successfully counter illiberal positions, we have to assume – and demonstrate – that liberal principles are not only justified, but also that they stems from the normative reference to true values. Otherwise, these critics continue, liberalism will end up for being justified just for people that are already "liberal", erasing the possibility to convince people that are not already liberal about the validity of some liberal principles or concepts. According to these critiques, in order to avoid the epistemic abstinence, liberalism should be justified by top-down arguments that refers to some liberal ideals that are defined not just as intersubjectively justified, but as intrinsically true ideals. By contrast, the nonideal perspective I am defending claims that we can have top-down argumentations, but that those are always embedded within a broader framework in which the structure of moral reasoning is characterized as <u>bottom-up</u>. A bottom-up argument is developed starting from some relevant, but not ultimately justified facts that are considered as the point of departure of moral reasoning; namely our intuitions as moral agents and the normative relations between them and mid-level principles. A bottom-up procedure provides good arguments for justifying principles beginning with

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[83] I will further discuss the issue of epistemic abstinence in the next chapter. See *infra* section 2.3.1.

the actual and concrete practice of moral reasoning we experience as moral agents every day. In this regard, a justification that is bottom-up never guarantees the validity of the principles as starting point, rather the justification of these principles is reached at the end of a complex and revisable procedure that remains intrinsically work in progress.

I will defend the possibility of a sound and not too weak political liberalism in the next chapter, when I will present and broadly discuss Rawls' proposal in this regard. Meanwhile, I want to conclude this chapter adding few points to the discussion. I think that my previous claim that a nonideal perspective allows top-down arguments, yet only when they are included in a broader bottom-up perspective needs clarification. This argument is connected with one feature of coherentism that I have already presented, namely that a coherentist justification is made up with inferential arguments that are not always linear (otherwise the infinite regress charge would be irresolvable). Of course the mutual support among beliefs produces a justificatory procedure that is circular. Nevertheless, this circularity is not vicious and I will explain why it is so in the third chapter. For the moment, I just want to add an important specification regarding two different forms of justification: systematic and contextualist[84]. A <u>systematic</u> justification is a justification that satisfies the epistemological requirements that even justifying beliefs should be justified, providing therefore every argument needed for justifying every belief of the system. By contrast, a <u>contextualist</u> justification is partial, and therefore does not need to meet this epistemological requirement strictly. When we proceed with a contextualist justification, we take for granted the justification of some background beliefs, even if we do not engage ourselves in their actual justification[85]. Contextualist justification is extremely important, practically speaking, as allows us to develop our moral reasoning without requiring the justification of every single belief every time. Nevertheless, the epistemological requirement of the systematic view makes sense and therefore is necessary that every background belief, even if not actually justified during the contextualist justification, should result to be "justifiable" in an epistemic framework in which a justification is demanded for every belief.

Accepting the relevance and the epistemic validity of contextualist justifications implies that in our daily moral reasoning, most of our arguments will be developed

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[84] See Brink, 1989, pp. 123-25.
[85] Mark Timmons (1993, p. 369) states that: "The contextualist maintains the following two claims. 1) In ordinary contexts of doxastic justification, epistemically basic beliefs are not in need of justification {…}. 2) Beliefs that are basic in one context may, in a different context, require justification".

through top-down arguments starting from beliefs that are taken for granted. However, this contextualist approach is justified and supported in the light of a broader framework in which every belief results to be justifiable through a coherentist procedure. The relevant point here is that this division in two different kinds of justification means that the daily moral reasoning could support the wrong impression that all our moral justified principles are provided by top-down arguments starting from beliefs that are taken for granted as moral truths that do not need further justifications. However, it should be clear now that no beliefs are ultimate non-inferential truths that do not need justification (given that our considering a belief p as true, entails second-order belief about the kind of belief that p is). For this reason, contextualist justification is a fundamental part of our daily moral reasoning; yet this approach is justified in the light of a second perspective that takes the epistemological requirement seriously and therefore implies systematic justifications as well.

To conclude, we can say that contextualist justification very often implies just linear justifications, given that many background beliefs are taken for granted. By contrast, when systematic justification is brought into the picture, linear arguments are no more available, as any background belief can be justified just through the reference to the relation of mutual support shared with all the other beliefs of the system. As Brink perfectly points out:

"Coherentism meets this demand for systematic justification by claiming that one's belief p is fully or systematically justified insofar as p is part of a maximally coherent system of beliefs and p's coherence at least partially explains why one holds p. In this way, coherentism can explain and defend the importance we attach to linearity and the inadmissibility of circular reasoning in contextualist justification, while offering a nonlinear account of systematic justification, and so can distinguish the probative values of small and large circles in reasoning"[86].

1.5.2 Political Constituency

In order to conclude this chapter, I want to address one more topic: the political constituency issue. If we start from a definition of political justification according to which a sound justification must be able to persuade those addressed by the political institutions to accept certain political principles freely, then it follows that the definition of the political constituency is an extremely relevant matter. In this regard a

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[86] Brink, 1989, p. 124

contemporary liberal perspective about political justification starts from two assumptions[87]:

i. all political justifications must start with some assumptions about those to whom the justification is addressed[88];

ii. the fact of pluralism.

According to this liberal framework, political justification should be valid for all the people who are embedded within the political domain and, moreover, meet the epistemic and normative constraint of respecting the intrinsic fact of pluralism. For this reason, it is not enough if political liberalism describes itself as a theory that is valid just for people that are already liberal[89]. Indeed, given the contemporary pluralist societies in which we live, political liberalism has to find a normative way for justifying principles of justice that can obtain support from people that hold different comprehensive perspectives. In this regard, political liberalism needs a theory of justification that maintains normative validity, without becoming too demanding for the political constituency itself. Again, it could be claimed that for maintaining its action guiding prerogative (namely the fact that citizens are willing to follow the principles of justice), political liberalism should avert any reference to justificatory arguments that involve the reference to moral values that are partisan and that therefore cannot be made coherent with many beliefs hold by a subset of the political constituency.

Catriona McKinnon, in her book *Liberalism and the Defence of Political Constructivism*, claims that political justification should respect two constraints: the intelligibility constraint and the motivational adequacy constraint[90].

The <u>intelligibility constraint</u> requires that political justification be framed in terms that people are able to understand. Consequently, the political reasons that are provided should be intelligible, sound and yield evidence – when possible – for supporting political principles. Finally, politically justified reasons should be able to defeat other competing reasons[91].

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[87] For a deep analysis of the constituency theme, see McKinnon, 2002, chapter 1, pp. 1-28.

[88] It is worth noting that Ralws (1987, p.1) highlights the fundamental role played by political constituency when he states that: "The aims of political philosophy depend on the society it addresses".

[89] If political liberalism ends up to be justified just for already liberal people, then this theory will provide a sub-Humean version of motivational internalism, according to which a justified reason is motivationally adequate if and only if the agent already possesses an actual desire for accomplishing the act that is supported by that reason. See McKinnon, 2002, p. 17.

[90] *Ivi*, pp. 16-28.

[91] In this regard, Rawls (1993, p. 209) claims that: "Earlier we said that political liberalism holds that under reasonably favourable conditions that make a constitutional democracy possible, political

The <u>motivational adequacy constraint</u> instead requires that political reasons respect the fact of pluralism. In this regard, the justification of political principles should not be too demanding, imposing that all citizens should share the same perspective about fundamental political and moral issues.

Therefore, the challenge for liberal theory is to provide a theory of justification that reaches two fundamental goals with regard to citizens' beliefs: i. outline a theory of justice that meets the normative requirements of "acceptability" and therefore is supported by citizens for good reasons; ii. citizens can support political principles without necessarily abandoning their beliefs about a comprehensive doctrines of the good life.

The liberal ideal about constituency is to be inclusive and open to diversity as much as possible. Indeed, the liberal notion of constituency, given the fact of pluralism, includes diversity among the fundamental features of modern political constituencies. For this reason, political liberalism "searches for reasons which could become motivating for all, while minimising the diminishment of deep diversity in its ideal constituency of justification"[92]. In this regard, political liberalism argues in favour of a complex balance between philosophical and practical aspects of the political theory enterprise. The philosophical aspects regard the possibility of arguing in favour of a sound – may be the best possible – justification of principles of justice through the reference to valid schemes of justification. The practical side, instead, refers to the contemporary issue of the fact of pluralism and to the attempt to establish an agreement in spite of a genuine moral disagreement among individuals. Political principles need to be soundly justified (for meeting the philosophical/normative requirements of the theory), but the procedure of justification of these principles, in order to be motivational effective and inclusive toward the entire political constituency, should not dismiss the role played, within the political deliberation, by the comprehensive beliefs held by citizens in their doxastic sets

This work so far has just addressed issues about moral epistemology. I defended a coherentist perspective and I applied it to the framework of political philosophy. Then, in the light of this epistemological background, I assumed a nonideal stance with regard

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institutions satisfying the principles of a liberal conception of justice realize political values and ideals that normally outweigh whatever other values oppose them. The preceding corollaries of completeness strengthen its stability; allegiance based on chose political values is stronger, and so the likelihood that they will be outweighed by opposing values is that much less".

[92] McKinnon, 2002, p. 14.

to the adequate procedure for obtaining agreement among citizens on politicalalpoliticla issues. Finally, I highlighted that, within a perspective that is strictly political, every sound procedure of justification has to respect at least two constraints: the intelligibility constraints and the motivational adequacy constraints. In the next chapter I will outline Ralws' attempt to provide a political theory of this kind. While analysing the Rawlsian proposal, I will provide a detailed account of the epistemic framework that backs up Rawls' arguments, as I believe that it is not possible to provide an exhaustive account of the practice of public justification if some relevant epistemic matters remain overlooked.

Chapter 2 – The Dilemma of Liberalism and Public Consensus

"Equal right of each to be treated only with justification"
Adley Akers (in Gaus, 1996, p. 163)

"Public justification should be a never-ending commitment.
It would be sheer hubris to think that we have, or ever will have,
the whole political truth. We are always learning and confronting
new circumstances; we will always have progress to make"
Stephen Macedo (1990, p. 287)

"A conception of justice cannot be deduced from self-evident
premises or conditions on principles; instead, its justification is
a matter of the mutual support of many considerations, of everything
fitting together into one coherent view"
John Rawls (1971, p. 19)

2.0   Introduction

In the first chapter I distinguished between an ideal and a nonideal model of justification in ethics. According to this distinction, an ideal version of the procedure of justification implies at least one of these three features: i. a realistic account of moral facts; ii. a foundationalist epistemology; iii. a nonreductive metaphysics of moral facts. By contrast, I argued in favour of a moderate account of moral justification from the epistemological perspective. According to this moderate approach any foundational attempt to justify moral principles starting from basic, self-justified, beliefs is irremediably problematic. Starting from strictly epistemic arguments, I claimed that coherentism provides us with a better structure of justification as far as moral and political issues are concerned. In this regard, I defined my general approach as a moderate, nonideal, account of the procedure of justification in ethics. The nonideal model I am presenting therefore rejects the second feature of a strong model of justification that can be defined as "ideal", namely the foundational epistemology. My thesis is that foundationalism, meant as a thesis about the structure of justification, is

too demanding. I support a <u>doxastic presupposition</u>, according to which no moral principles can be justified by an argument that is completely detached from the doxastic systems held by moral agents. In this regard, even though I did not argue against realism as an ontological thesis in metaethics, it should be clear that I refuse any account of moral justification in which moral facts – even if existent in an autonomous world - are justified regardless of which are our doxastic beliefs about them.

Later on, I connected these epistemic arguments with the specific issue of justifying liberal political principles. Assuming a nonideal approach with regard to the justification of moral principles entails fundamental modifications with regard to the way in which political theory deals with disagreement. I believe that there are sound practical reasons, as well as epistemic, for upholding a moderate approach of justification within the political domain. A nonideal framework, meeting the fallibilist intuition that our knowledge is compatible with the possibility of error, develops a notion of moral deliberation that is ideally always open to revisions. This moderate approach, in order to deal in a correct way with the normative and practical issues of contemporary multicultural democracies, should be intrinsically pluralistic as well as revisable and work in progress. In my opinion, such moderate approach can be defined as Socratic, as according to the Socratic's method the deliberation should always begin with premises believed by the individuals engaged into the deliberative process. In this regard, being believed by the interlocutor is at least a necessary condition of premises acceptability[1]. Of course these conditions are extremely loose and general, but it should be considered that these are just conditions of acceptability for premises to be accepted as starting point of the deliberation. However, what is relevant for my analysis is the fact that, according to the Socratic's method, <u>doxastic coherence</u> in a fundamental criterion for assessing the deliberative performance of agents involved in the public discussion over political issues.

This "Socratic" attitude with regard to the procedure of justification in ethics and political theory is coherent with the analysis of the issue of the political constituency I analysed at the end of the first chapter. I showed that the normative issue of liberal

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[1] For a wider analysis of the Socratic method, see "Socratic Method" by Hugh H. Benson in Morrison (ed.), 2011, pp. 179-200. In this analysis, Benson claims that for Socratic deliberation being believed is both a necessary and sufficient condition of premises acceptability. However, I do not want to maintain such strong epistemic position, since I believe that the doxastic presupposition that I am defending requires just that being believed is a necessary condition in order to establish the acceptability of a premise.

legitimacy is strongly connected with the practical definition of the political constituency. Once that the political constituency is defined, political liberalism should respect two constraints: the intelligibility constraint and the motivational adequacy constraint. The moderate approach of justification I uphold is able to meet these two constraints, since it is well-aware of the actual disagreement among moral agents. Being intrinsically fallibilist, such an approach respects and deals with the fact of pluralism in a way that is unavailable for any foundational theory of justification. This sort of Socratic public deliberation model stresses the fact that every moral agent should be considered responsible of what she believes, as the doxastic side of deliberation is always part of the procedure of justification. For this reason, any theory of justice that provides a public justification of its principles has to take into consideration the individual's doxastic systems to whom the justification is addressed. In this regard, the procedure of public justification needs to be intelligible for all the individuals that belong to the constituency and, moreover, should be motivationally adequate in order to become part of the different doxastic systems of the individuals. A Socratic method of deliberation allows a work in progress development of the procedure that aims to achieve an agreement among different moral agents and for this reason is a suitable option for meeting the two normative constraints we are dealing with. Furthermore, this method begins with the actual beliefs held by moral agents in their doxastic systems, instead of claiming for an idealized agreement on some basic beliefs that are justified independently from what is believed by the agents. Thus, this method respects the fact of pluralism intrinsically as, thanks to the doxastic presupposition, any public deliberation necessarily includes within the deliberative process the beliefs that individuals hold in their personal doxastic sets.

The major goal of this second chapter is to analyse how this epistemic moderate framework can work when coupled with the attempt to justify principles of justice within the political domain. In the first section (2.1) therefore I connect my previous analysis with the specific difficulties we have to cope with when we try to develop a public procedure for justifying political principles and concepts to a multicultural constituency. After having outlined the general structure, I discuss the Rawlsian project for the justification of a strictly political liberalism (2.2). Then, I analyse some of the most important critiques to this model and I articulate them starting from the perspective of moral epistemology (2.3). Afterward, in the last section (2.4), I introduce

my own proposal of a justificatory paradigm that respects some moderate epistemic constraints and the fact of pluralism, while not losing normative force and motivational adequacy.

I have concluded the foregoing chapter dealing with the constituency issue, as this topic is the most relevant in order to grasp the theoretic connection between the liberal issue of legitimacy and the epistemic analysis of disagreement. I claimed that the liberal legitimacy is one of the core tenets of contemporary liberal theories. According to this principle, no political principles can be legitimate, if the individuals to whom they are addressed do not assess them as justified. Since for the moderate approach I am defending a principle is justified when is coherently part of the doxastic systems held by the citizens, then the definition of who are the members of the political constituency becomes a fundamental issue. The analysis of the political constituency topic allows me to define and cope with different fundamental issues: determining which kind of agreement we need or we are able to achieve in the political domain; showing how pluralism and disagreement are interconnected; dividing the practice of political justification in an ideal and a nonideal phase.

2.1   Political Liberalism: the Internal and the External Conception

In the first chapter I presented epistemic arguments for defending a fallibilist perspective with regard to moral epistemology. Now, I am going to analyse how this fallibilist framework works with regard to the issue of political disagreement and the attempt to justify a political paradigm to the members of the constituency. If one starts from the fallibilist intuition that an individual can be justified in holding a belief that is actually false[2], then the way in which moral disagreement is defined and managed is absolutely peculiar. I agree with Kai Nielsen when he affirms that the realization of the Socratic ideal is an utterly different enterprise in the contemporary disenchanted world than it was in less pluralistic and differentiated societies of the past[3]. Given the pluralistic societies in which we are living, the search for an agreement on political

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[2] Without talking of fallibilism as epistemic standpoint, Gerald Gaus (1996, 2011) claims for a justificatory liberalism that is aware of two features of moral agents deliberation: the bounded rationality and the epistemic akrasia.
[3] See Nielsen, 1991.

arguments that is grounded in the reference to an ultimate truth is an unrealistic enterprise. Even though an agreement on an ultimate truth would be the main goal of a an ideal theory of justification, I believe that, when dealing with nonideal aspects of our contextual reality, we should look for other epistemic standards of assessment of public deliberation. In this regard, the Socratic model of deliberation is useful, as it highlights important features of a nonideal paradigm. Firstly, it should be already clear that the doxastic aspects of moral deliberation should always be taken into account. Secondly, a model of deliberation developed in the light of the Socratic method stresses the role played by intersubjective process of giving and receiving reasons. For, avoiding the reference to a foundation grounded in an ultimate truth implies that the outcome of deliberation cannot be established at the beginning, rather it completely depends on the deliberative process itself. Thirdly, this deliberative process should be open to endless revisions, since our limited epistemic capacities are not able to meet every epistemic standard perfectly and therefore the possibility of error is never eliminated altogether. Thanks to these features, the Socratic model of deliberation is able to express the pluralistic features of contemporary political constituency and the epistemic intuition that our moral reasoning is intrinsically fallible. However, it is important to specify one more time that fallibilism does not imply scepticism. The fact that we, as moral agents and moral theorists, are aware of the epistemic difficulties of achieving a coincidence between doxastic justification and ultimate warranty of our knowledge does not imply that we are compelled to claim that no political values or principles are justifiable. Holding a fallibilist approach implies that one claims for the validity and justification of her moral and political beliefs, but along with the awareness that such justification is not conclusive. 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 correspond with the establishment of ultimate truths that are definitely undefeated, rather it is expressed by the pursuit of principles that moral agent 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 in political philosophy that is expression of a demythologized sense of Socratic philosophy[4].

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[4] My interpretation of a demythologized Socratic philosophy is completely different from the one

The first problem that this nonidealized approach has to face is to differentiate the normative notion of acceptability from the actual acceptance. Eschewing any reference to the establishment of moral truths can be a reasonable choice, given practical and epistemic reasons, nevertheless the procedure of justification should preserve its normative force. In this regard, Gerald Gaus is right when he claims that the actual assent thesis is not a good perspective of assessment with the regard to the legitimacy of political justification. According to Gaus, if we just look for the actual acceptance of political principles by citizens, then the theory of justice is nothing more than a justificatory populism[5]. Of course, this is not a plausible solution for a theory of political justification that wants to affirm and sustains a public deliberation that is normatively binding. Thus, we need to introduce some idealized conditions, in order to draw a line between actual acceptance and the normative relevant criteria of acceptability. A political principle requires to be accepted by the members of the constituency as legitimated in order to be normatively valid. However, the reason why the members of constituency accept the political principles as legitimated and the definition of the political constituency itself are two fundamental features of the procedure of justification. As Jonathan Quong points out in his *Liberalism without Perfection*, the first decision that should be taken when dealing with political liberalism is the definition of the political constituency. On the one hand, there is an <u>external conception of political liberalism</u> according to which the constituency works as an external constraint on the deliberation about the content of any liberal theory. Following this perspective, pluralism is described as a brute fact of reality that political deliberation should accommodate in the best way possible. Thus, even though the fact of pluralism is accepted as a fact of contemporary democracies, still the ideal justification might be able to overcome the differences and being accepted as valid by the widest constituency possible. On the other hand, there is the <u>internal conception of</u>

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provided by Jean Hampton in her "Should Political Philosophy be Done Without Metaphysics" (1989). Hampton maintains that a Socratic enterprise can never be accomplished if it does not seek for the establishment of truth. In this regard, a political account of liberalism that eschews any reference to the truth would fall into a Hobbesian system where the arguments provided for justification can be just instrumental and never substantially normative. By contrast, I believe that is not necessary to see the moral and political procedure of justification as an "all or nothing" enterprise. Even if political principles are not defined as ultimate, unassailable, true principle, still it is possible to argue in favor of their normativity. In this regard, the Socratic deliberation would be accomplished through the reference to the value of holistic internal coherence, rather that through a deductive top-down argument that begins with self-justified basic beliefs.

[5] Gaus, 1996, pp. 130-131.

<u>political liberalism</u> that is represented in the best way by Rawls' political liberalism. According to this internal model pluralism is a natural effect of political liberalism itself. In this regard, such pluralism is not something that must be accommodate, rather is a characteristic feature of any theory of justice that is intrinsically liberal. Pluralism is defined then as reasonable pluralism and is interpreted as an internal challenge within the structure of political public deliberation. Given this internal model of interpretation of the liberal deliberation, the constituency itself, according to Quong, should be circumscribed to an idealized constituency in which the members already share some liberal premises[6].

This distinction between external and internal conceptions of political liberalism provides a perspective by which analyse different, fundamental, topics connected with the general issue of political justification. Firstly, it is fundamental to discriminate between an idealized and not idealized conception of the political constituency. Secondly, determining which of the two models is the best one implies as well taking a stance with regard to the best procedure for dealing with disagreement (reasonable or unreasonable). Thirdly, this distinction helps to determine which kind of normative relation obtains between the concept of right and good.

In order to deeply analyse the external conception of political liberalism a specification must be provided, as it seems to me that there is an intrinsic tension with regard to the development of this model. <u>The external conception maintains that the constituency is an external constraint to the deliberation.</u> For this reason, such constituency cannot be constrained from the beginning by an idealization. Rather, this model tries to achieve agreement starting from the actual constituency. However, even if the constituency is a nonidealized one and therefore it seems harder to achieve an agreement, this approach develops a theory in which the liberal procedure of justification can overcome the differences and being accepted by all the citizens just thanks to its good and sound arguments. In this way, the external conception is both less demanding and more ambitious of the internal model. On the one hand is less demanding, since this model starts from a constituency of actual citizens, without requiring any shared beliefs among them. On the other hand, nevertheless, this approach is much more ambitious, as claims to be able to achieve an agreement starting from nothing but disagreement. By contrast, <u>the internal conception of political liberalism</u>

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[6] For a deep analysis of this issue, see Quong, 2011, ch. 5, pp. 135-160.

starts with a strong idealization regarding the political constituency and therefore is less ambitious from the beginning. However, through the argument for an idealized constituency, this model provides robust normative arguments for evaluating political liberalism as the most viable and coherent theory of justice within a context of reasonable pluralism[7].

In my opinion the most important difference between these two conceptions of political liberalism derives from a different perspective with regard to the definition of the major scope of a theory of justice. According to the external model the fundamental goal of political liberalism is to achieve a broad agreement on some specific political principles starting from a disagreement that, in our contemporary societies, is often deep and unleashed. In this regard, the procedure of justification of political liberalism is viewed as extremely powerful, since is able to overcome the brute fact of pluralism and to reach a binding consensus that ideally regards every member of the constituency. According to this view, the procedure of justification of political liberalism should be able to provide principles that are victoriously justified over all the others beliefs held by citizens[8]. If this hope is realistic or not it would be an issue to be analysed in the development of this chapter. With regard to the internal conception, by contrast, it is important to highlight its "reconciliatory aspects"[9]. For, even it is true that this model starts with an idealization, after all within this model the deliberation is employed to achieve an agreement given the fact pluralism, not in spite of it. In the next section I will discuss these two models in the light of the Rawlsian attempt to provide a strictly political justification of liberal's tenets.

2.2   The Socratic Attitude within Rawls' Theory

2.2.1   A Realistic Utopia

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[7] "The legitimacy of political principles does not depend on whether current liberal citizens do accept them, or whether the principles are congruent with their current beliefs. Instead principles are defined as legitimate if it is possible to present them in a way such that it could be endorsed by rational and reasonable citizens", Quong, 2011, p. 144.

[8] Gaus (1996, pp. 144-150) defines a justification as victorious as far as it meets three epistemic constraints: i. it is a justification that is undefeated; ii. it is a justification that respects high standards of proof; iii. it is a justification that satisfies the publicity conditions.

[9] "My aim in this work is to provide a general account of social morality that reconciles freedom and the demands of public order in a society in which individuals, exercising their reason about the best thing to do, deeply disagree", Gaus, 2011, p. 2.

I want to resume the analysis I have just carried out by contextualizing it in relation to the development of John Rawls' theory in the shift from TJ to *Political Liberalism*[10] (hereafter PL). Rawls claims that the main differences between these two texts are determined by the fact that in TJ he did not distinguish a moral doctrine of justice, with a general application, from a purely political conception of justice[11]. Starting from his works of the 1980's instead, Rawls has circumscribed the domain of the political to specific matters, avoiding to take a stance on strictly metaphysical or epistemic issues. This reduction in the scope of action of the Rawlsian theory of justice is one of the fundamental points of the analysis. The underlying rationale for this change is the fact that Rawls, in an act of self-criticism, admits that he has had to revise some of the central thesis of TJ. In fact, in that work, he did not properly separate the issue of giving procedural legitimacy to the principles of justice, from the attempts to ensure the stability of public consensus on these same principles. As a mater of fact, in the third part of TJ, *Ends*, the stability of a well-ordered society, defined by the principles of justice obtained in the original position, was derived almost automatically from the normativity of the procedure of construction of the principles themselves as well as from a specific doctrine of moral psychology. Basically, the main problem highlighted by Rawls is precisely the one discussed above: the idea that in TJ the stability and desirability of the principles of justice were obtained at the same moment thanks to the fact that the Rawls' theory of justice, in comparison with utilitarianism theories, has been presented as a comprehensive doctrine *tout court*. On the contrary, in PL Rawls starts his analysis with the acknowledgment of the fact of pluralism. Such pluralism is not just a brute fact of contemporary multicultural societies, rather is an outcome of the liberal procedure of deliberation itself[12]. This definition of pluralism as intrinsic to the <u>liberal epistemology</u> is a fundamental feature of my analysis, since it is coherent with the epistemic modest conception I am defending. If we defend a fallibilist perspective regarding our moral knowledge, then the fact of pluralism is not something that should be amended, rather it is a constituent feature of our moral reasoning. Moreover, if the principles of justice must be justified with regard to the doxastic

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[10] Rawls, 1993 (2nd edition 1996).

[11] See the *Introduction* in J. Rawls, 1993, pp. xiii-xxxiv.

[12] "Political liberalism *assumes* that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Political liberalism also supposes that a reasonable comprehensive doctrine does not reject the essentials of a democratic regime", Rawls, 1993, p. xvi (italics in the original).

system of moral agents, then it is not sufficient to provide a sound external justification of political principles apt to show that such principles are the best principles possible. A correct procedure of justification must demonstrate the ability of the political module to become part of the doxastic system of every member of the constituency to whom the political principles are addressed. In this regard, I consider Rawls much more a theorist of disagreement, than a theorist of agreement.

In PL then, the starting point of the deliberative enterprise is the acknowledgment of deep pluralism. Consequently, Rawls maintains the impossibility of providing an ultimate justification of political principles that proves to be always victoriously justified over the comprehensive doctrines held by citizens. Under this new paradigm, Rawls investigates the possibility of providing good arguments for justifying a theory of justice even within this deeply pluralistic political environment. According to this new model of deliberation, a full justification of the principles of justice does not entirely depend on the powerfulness and undefeatability of an argument provided theoretically. Rather, principles of justice can be described as victoriously justified if and only if every agent is able to make these principles coherent with her doxastic set of beliefs. In this regard, therefore, political liberalism requires a procedure of justification that looks not simply for a theoretical sound argument. Rather, any top-down justificatory argument should meet the doxastic constraint, namely being able to provide good reasons to moral agents in order for them to be motivated in including such political principles in their doxastic sets of beliefs.

Rawls defines his theory about global justice as a <u>realistic utopia</u>[13]. I think that this definition can be applied quite well to the entire body of his works starting from the papers of the 1980s[14]. In these papers his analysis begins to be focused on the issue of disagreement, more than on the definition of a theory of justice justifiable in itself and on which all people can agree. Rawls has realized that the issue of stability has to be treated differently than the strictly theoretical issue of providing good philosophical arguments for justifying a theory of justice. When the search for a stability for the right reasons[15] becomes a relevant issue, then the definition of political constituency turns out

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[13] Rawls uses the label "realistic utopia" in the *Law of People*: "Political philosophy is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition" (Rawls, 1999, p. 11).

[14] These papers have been republished together in Rawls, 1999.

[15] Rawls (1993, 1995) distinguishes between stability for the right reasons and *modus vivendi*. If the latter is the case, then "society's stability depends on a balance of forces in contingent and possibly fluctuating

to be extremely problematic. For example, Rawlsian "political turn" has been charged by many authors for its theoretical weakness[16]. According to these critiques, Rawls political liberalism lacks any theoretical and normative argumentative force, since this strictly political approach is just focused on achieving agreement among the actual citizens of multicultural liberal societies. In this regard, these authors believe that Rawls framework of justification is coincident with the externalist conception of political liberalism delineated by Quong. However, Rawls has been also accused to defend a transcendental theory of justice that is completely detached from the analysis of which are the actual beliefs and preferences of the members of the political constituency[17]. These two criticisms address respectively the two features of the external conception of political liberalism that I claimed being in tension between each other. On the one hand, the <u>actual consensus charge</u> is moved against the first characteristic of the external model, namely the theoretical decision to provide a justification of the political conception that should be accepted by the actual members of the political constituency, without requiring any initial idealization. On the other hand, the second charge is directed against the <u>too ambitious side</u> of the external conception. Indeed, this model claims to be able to justify the principles of justice in a way that is epistemic victoriously over all the other beliefs of the members of the constituency. I think that both these charges are correct as far as they concern the external conception of political liberalism. By contrast, the internal model can be charged with similar critiques, but its way of replying to them is extremely different and more interesting. I agree with Quong when he claims that the Rawlsian theory, at least from PL on, is better explained by the internal conception paradigm. In this regard, his theory can be fruitfully interpreted as a realistic utopia within a moderate epistemic framework of justification. On the one hand, his approach is slightly utopian, as it starts the procedure of justification with the assumption that the political constituency can be theoretical circumscribed to an idealized constituency of reasonable liberal citizens[18]. Of course, this assumption

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circumstances" (1995, p. 147). On the contrary, stability for the right reasons is reached when citizens support a theory of justice through the achievement of a reasonable overlapping consensus.

[16] See for example: Cohen G.A. (2003 and 2008), Dworkin (2000), Estlund (1998), Habermas (1995 and 1996), Hampton (1989), Pogge (1989), Raz (1989).

[17] Seev Sandel (1982), Galston (1996) and Sen (2009).

[18] For an analysis of the theoretical possibility of promoting utopian theories, see Nagel, 1989. Nagel states that a strictly utopian theory risks to be motivationally ineffective, as the agents would look at this theory as a unfeasible theory and therefore intrinsically not motivational. Nagel claims that the political institutions have to balance interpersonal and personal motivations, in order to be motivational adequate with regard to the individual perspective.

requires a justification and I will analyse this issue later on. On the other hand, this model is also strongly realistic, as the justificatory procedure is divided in different stages and the achievement of a sound justification is under scrutiny all the way down to the different stages. Moreover, the fact that the justification is viewed as legitimated at one stage does not imply that it would be necessary justified at the further stage. This realistic side is consistent with the fallibilist intuition that our moral knowledge cannot be defined as ultimately undefeatable and also with the Socratic insight regarding the doxastic responsibility of the moral agents for the principles and beliefs they end up to uphold.

2.2.2 Contextualism

So far, I have argued that the political turn in the Rawlsian theoretical paradigm shows us why Rawls is much more a theorist of disagreement, than a theorist of agreement. As a matter of fact, if we uphold a fallibilist perspective about moral justification, then pluralism is an intrinsic feature of our justificatory public structure of justification[19]. In this regard, disagreement is not something we can avoid or circumscribe as an irrelevant matters, rather is a stable feature of our moral and political lives. For this reason, Rawls assumes that a "method of avoidance" is a correct procedure in order to respect the deep disagreement among citizens. According to this method, the public paradigm of justification of political theory should avert any reference to a specific moral epistemology and a metaphysical analysis. Therefore, Rawls claims, the "method of avoidance"[20] should be applied both to metaphysics and epistemic theories. Nevertheless, Rawls argues as well that a theory of justice should respect the burdens of judgement and in my opinion the epistemic attitude that these burdens of judgments expresses is exactly a fallibilist perspective with regard to moral epistemology. In fact, recognizing the burdens of judgments implies the acceptance of the fact that even reasonable people can disagree among them[21]. Thus, disagreement is

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[19] As Rawls (1993, p. 58) states: "many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion. Some conflicting reasonable judgments (especially important are those belonging under peoples' comprehensive doctrines) may be true, others false; conceivably, all may be false".

[20] "The hope is that, by this method of avoidance, as we might call it, existing differences between contending political views can at least be moderated, even if not entirely removed, so that social cooperation on the basis of mutual respect can be maintained", Rawls, 1985, p. 231.

[21] Rawls outlines six sources of reasonable disagreement that can be defined as the burdens of reason. See Rawls, 1993, pp. 56-57.

not just the outcome of flawed procedure of reasoning or provoked by unreasonable people. On the contrary, disagreement is a realistic outcome even when reasonable people are deliberating regarding moral and political matters. Hence, disagreement is a feature of public deliberation we have to deal with in a positive attitude, regarding it as already an outcome of liberal procedure of deliberation, instead that viewing it as an irredeemable flaw of human beings way of reasoning.

This analysis of the burdens of judgment and of the intrinsic fallibilist framework in which PL has been developed helps me to introduce the next argument. As a matter of fact, this positive attitude toward disagreement is consistent with the "reconciliatory aspects" of the Rawlsian project developed from the papers of the early 1980s. In my opinion this reconciliatory attitude is represented perfectly by some features of political liberalism, namely the regulative ideal of inclusivity, the work in progress side of the political enterprise and the normative relevance of political context. Regarding contextualism, it is important to highlight the relevance of some Hegelian insights for the political turn within the development of Rawlsian theory of justice[22]. The fundamental Hegelian concept for grasping the contextual turn in the Rawlsian paradigm is that of *Sittlichkeit* (ethical life) that Hegel develops in his *Elements of the Philosophy of Rights*[23]. This concept is useful for understanding that when we have to deal with the production of a public procedure of justification the reference to the doxastic system of moral beliefs of every moral agent is not sufficient for granting a sound and intersubjective justification of moral or political principles. Rather, the public social context in which the public justification is produced is a normatively relevant feature[24]. According to Hegel, the social institutions own a substantive value with regard to the historic process through which they have been developed. First of all, Rawls shares with Hegel the idea that the political context of a society can represent a normative source for the procedure of justification of political principles[25]. According to

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[22] Neal (1990, p. 46, italics in the original) in this regard states "Thus one come to imagine a possibility of an 'Hegelian interpretation' of "Justice as Fairness: Political not Metaphysical", an interpretation that would make of it not a doctrine which 'steers a course between' Hobbes and Kant, but one that transcends both even as it retains each within itself. "Justice as Fairness: Political not Metaphysical" needs to be interpreted or rendered in such a way that its aim is not that of *balancing* Kant and Hobbes, but of *synthesizing* them. Hegel may be said to have attempted just such a project".
[23] Hegel [1821], 1991.
[24] "Hegel wants us to find our moral compass in the institutions and customs of our social world itself, as these institutions and customs have been made part of us as we grow up into them and develop habits of thought and action accordingly", Rawls, 2000, p. 333".
[25] For an analysis close to mine with regard to the Hegelian insights within Rawlsian paradigm, see Cohen, 1994.

Rawls, the fact that historically some values have been developed and it has been reached a broad stable agreement on their validity is a fundamental aspect of contemporary liberal democracy. In this regard, Rawls states:

"We collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent political conception of justice. These convictions are provisional fixed points that it seems any reasonable conception must account for. We start, then, by looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles. We hope to formulate these ideas and principles clearly enough to be combined into a political conception of justice congenial to our most firmly held convictions. We express this by saying that a political conception of justice, to be acceptable, must accord with our considered convictions, at all levels of generality, on due reflection, or in what I have called elsewhere "reflective equilibrium"[26].

According to this interpretation of the influence of the Hegelian perspective on the development of Rawlsian philosophy, what it is relevant for Rawls are the conciliatory aspects of the Hegelian social philosophy[27]. A fundamental difference between TJ and PL stems from the fact that in the latter Rawls has understood that there are facts of the political reality (as the fact of pluralism or the existence of unreasonable people) that cannot be amended or reduced to a theoretical irrelevant position. Therefore, a political theorist should try to deal with these facts and, without abandoning the attempt to provide a normative theory of justice, being aware of the practical and theoretic difficulties of this enterprise. The political turn in the Rawlsian theory does not imply a normative weakness or a refuge into relativism. Yet, Rawls in PL wants to build up a theory of justice starting from the "here and now" of the contemporary societies. However, "to become reconciled to our social world does not mean to become resigned to it. *Versöhnung* and not *Entsagung* — resignation. It is not as if the existing social world is the best among a number of unhappy alternatives. Rather, reconciliation means that we have come to see our social world as a form of life in political and social institutions that realizes our essence—that is, the basis of our dignity as persons who are free"[28].

To conclude, I hold that the underlying reason for the Rawls' interest in the concept of *Sittlichkeit* is due to the theoretical difficulties of granting the stability for the right reasons. Highlighting the normative-laden side of the public culture of liberal democracies is in fact relevant in order to investigate how principles of justice, already

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[26] Rawls, 1993, p. 8.
[27] For an exhaustive analysis of Hegel0's reconciliatory project, see Hardimon, 1996.
[28] Rawls, 2000, p. 331.

justified through a sound procedure, can obtain loyalty from the citizens. Rawls indeed is not saying that is not possible to have a procedure of justification that is independent from the context of the here and now. Nevertheless, he wants to demonstrate that specific principles of justice, that can be justified through a normative sound philosophical argument, can also be justified thanks to an another criterion, namely the perspective of being victoriously justified within the doxastic system of beliefs of the members of the actual political constituency. In this regard, it is important to focus not just on the soundness of the normative arguments provided for justifying the principles of justice, rather it is necessary to analyse the circumstances of justice under which citizens might embed moral and political beliefs within their coherent doxastic systems.

Hegel's social philosophy, whose primary object of inquiry can be identified with reconciliation[29], is fundamental for Rawls when he tries to solve the theoretical tensions between the two souls of the external conception of political liberalism we are discussing. I have claimed that the external conception is unable to solve such conflict between the actual constituency perspective of the model and the theoretical attempt to overcome any form of political disagreement through a victorious justification of political principles. In my opinion, Rawls political turn can be interpreted properly thanks to the reference to the difference between these two models. The external model would be a quite fair description of the procedure of justification employed in TJ. Indeed, in that work the justification of a theory of justice – without distinction between a comprehensive and strictly political account of such theory, hinges on a top-down argument that is developed taking into consideration the standpoints of the parties in original position. Then, thanks to the moral psychology developed in the third part of TJ, Rawls claims that even the actual citizens would agree on such principles of justice, as they are part of a sort of comprehensive moral doctrine that can be shared by every citizen. This model of justification, much more ambitious and idealized, maintains pluralism as an amendable fact that can be reduced to an irrelevant matter thanks to a good normative argument of justification[30]. By contrast, in PL the agreement on the

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[29] Ibid.

[30] "There is one further assumption to guarantee strict compliance. The parties are presumed to be capable of a sense of justice and this fact is public knowledge among them. This condition is to insure the integrity of the agreement made in the original position. It does not mean that in their deliberations the parties apply some particular conception of justice, for this would defeat the point of the motivation assumption. Rather, it means that the parties can rely on each other to understand and to act in accordance with whatever principles are finally agreed to. Once principles are acknowledged the parties can depend on one another to conform to them. In reaching an agreement, then, they know that their undertaking is

principles of justice depends on different stages of justification and still the disagreement is not at all resolved, since reasonable people can agree on some specific principles, although holding different comprehensive doctrines. Moreover, the procedure of justification addresses just the constituency of reasonable people that already agree on some liberal tenets like, for instance, the two model conceptions regarding citizens as free and equal and the notion of a well-ordered society as a fair system of cooperation. This agreement on some specific tenets of the liberal paradigm constitutes the criterion for establishing who might be embedded within the idealized political constituency. With regard to the internal conception of political liberalism, in fact, is not sufficient that the constituency is circumscribed by the criterion on reasonableness – as it happens for the external conception -, rather reasonable citizens must also agree on the model conceptions derived from the conception of an ideal liberal society[31]. Such agreement, in Rawls view, is granted by a contextual move. According to this way of reasoning, an agreement on a loose framework of liberal justice is granted from the beginning given the definition of the political constituency. In this regard, again, the Rawlsian structure of reasoning is both realistic and utopian. On the one hand, it is strictly realistic, as Rawls admits that "not everything, then, is constructed; we must have some material, as it were, from which to begin"[32]. Thus, Rawls is strongly aware that it is unrealistic to believe in a top down procedure of justification that is able to grant the necessary normativity and motivational adequacy without any connection with contextual culture of contemporary societies. This awareness of the indeterminacy provoked by a solely top down approach represents one of the starker difference between TJ and PL. As a matter of fact, in TJ the top down argument proposed in the original position, when coupled with the coherentist procedure of reflective equilibrium, was regarded as able to guarantee a stable agreement on the principles of justice by citizens. By contrast, in PL the original position argument is still available as a "device of representation"[33], but the normativity of the whole process of justification relies on the fact that the members of the political

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not in vain: their capacity for a sense of justice insures that the principles chosen will be respected", Rawls, 1971, p. 125.
[31] See Quong, 2011, p. 144.
[32] Rawls, 1993, p. 104.
[33] "As a device of representation the idea of the original position serves as a means of public reflection and self-clarification. It helps us work out what we now think, once we are able to take a clear and uncluttered view of what justice requires when society is conceived as a scheme of cooperation between free and equal citizens from one generation to the next", Rawls, 1993, p. 26.

constituency agree – here and now - on some specific features of liberal theory that are derived from the public culture of liberal democratic societies and that constitute the "society's political capital"[34].

2.2.3 Coherentism

Quong claims that the normative relation that obtains between the procedure of justification and some implicit ideas of our pubic culture generates some difficulties for the internal conception of political liberalism. The difficulties derive from the fact that is not at all clear why for political liberalism it is so fundamental to begin the public deliberation with some shared public ideas. One view claims that political liberalism requires as starting point some values shared in a public culture, since it is an interpretive enterprise, more than a justificatory one. According to this <u>interpretive view</u>, all the normative force would depend on the contextual validity of the actual public culture shared by citizens. Consequently, the only possibility for developing a liberal theory of justice would stem from the actual fact that the members of the constituency are already liberal reasonable citizens[35]. By contrast, the second interpretation claims that we begin with some shared ideas not because they are the best or because they contextually happen to be our ideas. Rather, this contextual turn should be interpreted in the light of the procedure of reflective equilibrium and the general coherent framework of justification. According to the <u>reflective equilibrium explanation</u>[36], the shared ideas of a public culture are not justified as they are our ideas. Consistently with the coherentist framework I have outlined in the first chapter, these shared ideas are part of the doxastic sets of moral and political beliefs held by citizens. Being part of the doxastic system does not imply to be necessary justified, for the fallibilist insight should be always take into consideration, even if just on background. However, I also claimed that no moral procedure of justification can be viewed as complete and exhaustive if such procedure does not demonstrate to be consistent with the doxastic systems of the agents that are involved in the procedure of justification. Thus, the reference to the shared ideas of a public culture should be interpreted as being

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[34] "The term 'capital' is appropriate and familiar in this connection because these virtues are built up slowly over time and depend not only on existing political and social institutions ([...]), but also on citizen's experience as a whole and their knowledge of the past", Rawls, 1987, p. 17.

[35] For a discussion in some length of this possibility, see "The Priority of Democracy to Philosophy" in Rorty, 1991, pp. 175-196.

[36] For the definition of these two explanations, see Quong, 2011, pp. 154-157.

part of the coherentist framework of justification that I claim to be the general structure of justification that supports the political liberalism enterprise.

The public culture of a liberal society is the here and now from which we begin our deliberation for justifying principles of justice. During this procedure, different insights might become regulative ideas for developing the procedure of justification. First of all, the fallibilist insight helps us to understand that is extremely unrealistic to think that a foundational account of moral justification can realize all the job for us, as the epistemic relation between justification and warrant can never be taken for granted. Second, the moderate perspective about justification provides us with good reasons for upholding a coherentist as the most adequate framework in order to account for the procedure of justification involved within the political domain. Third, the Hegelian intuition about the normative-laden side of the public culture it yields a theoretical framework in which the reference to a public liberal cultural is not reduced to be part of a descriptive account of political justification.

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. These ideas are consistent with the doxastic systems of the members of the constituency and for this reason are sound criteria for assessing the validity of the principles of justice that are under scrutiny. However, these same ideas are not taken for granted once for all, as they are subjected to the scrutiny of coherence as well. In fact, the normative procedure of justification of political principles is itself a good criterion for assessing the actual validity of the shared ideas of the public culture. In this regard, including within the deliberation some background ideals that constitutes "the society political capital" is a positive and normatively powerful instrument for reaching agreement, nevertheless these same background ideals can always be subjected to modification and revision, as the public attempt to shape a coherent normative framework of our political intuitions and principles is a work in progress enterprise.

If we accept the reflective equilibrium explanation of the relevance of the public culture, then we are also able to explain why the idealization of the political constituency is a correct move from the theoretical perspective. According to this view, the relevant standards of objectivity and justifiability are basically congruent with their defensibility within a public framework of thought. This framework of thought would provide us with some specific "fundamental organizing idea within which all ideas and

principles can be systematically connected and related"[37]. These **organizing ideas** are in some sense derived from the public culture of liberal democratic societies but on the other hand they are normatively justified through an argument that is independent from the actual beliefs held by citizens of those societies. Therefore, these underlying considerations, that Rawls identifies with the conception of society as a fair system of social cooperation and with the notion of citizens as free and equal persons, are both consistent with and autonomous from the public culture of liberal democratic societies[38]. Thus, political principles must be shaped in the light of respecting and being consistent with these organizing ideas. If such a coherentist deliberative process can be accomplished, then it is sensible to claim in favour of the possibility, at least theoretically meaningful, of achieving stability for the right reason. However, the actual assent of the political consistency over such underlying ideas is a loose constraint over the normative deliberation. The fact that actual citizens can agree upon these organizing ideas, and consequently on the principles of justice as well, is not a bond for the theory itself. The theory should be shaped in order to favouring such an agreement; nevertheless the normativity of the process cannot be determined by the reference to a relativistic and contextual consent from the citizens. The possibility for principles of justice to be victoriously justified over other beliefs held by citizens is the regulative ideal that shapes the political framework of the Rawlsian theory of justice. Shared ideas of a public liberal culture display the way that must be undertaken by a political deliberation for justifying political principles – through the underlying considerations -, but the same shared ideas can be modified and revised in the light of principles of justice justified through a sound procedure of political deliberation. As Quong points

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[37] Rawls, 1993, p. 8.

[38] In this regard it is worth noticing that in PL Rawls does not call these basic ideas "model conceptions" as he used to do in "Kantian Constructivism in Moral Theory" (Rawls, 1980). In PL the two ideas around which his political conception is built are referred to as "organizing ideas". Indeed, the "moral doctrine's model conceptions" (Rawls, 1980, p. 537) are derived from a correct procedure of construction already embedded into a political context; while the organizing ideas are more fundamental ideas strictly derived from a specific political tradition (Rawls, 1993, p. 14). In my opinion the difference in the terminology can be explained with the fact that in the Dewey Lectures, written in 1980, Rawls is developing the perspective of political constructivism that is still present in PL but in a mitigated way. In my opinion, in "Kantian Constructivism in Moral Theory" constructivism procedure was the prominent tool for justifying political principles, whereas in PL political constructivism is still relevant, but within a framework that is deeply coherentist. Of course, coherentism as a theory about the structure of justification and constructivism as a theory regarding the validity of practical objectivity and of a reasonable procedure of construction are consistent and quite often they have been coupled in a single theory of justice. However, I hold that in PL and even more in the paper Rawls wrote in order to reply to Habermas (Rawls, 1995) Rawls' appeal to constructivism becomes weaker and weaker in favour of a strictly coherentist account of justification.

out, this structure is lightly circular and consistent with the general coherentist framework: "Our considered convictions gain justificatory force if they fit within a coherent conception of justice, and the conception of justice gains justificatory force if it can explain our most important considered convictions"[39]. Consequently, the actual constituency is not a normative constraint for the deliberation itself. Rather, the organizing ideas are shaped in the light of an idealized constituency that is constituted by citizens that, besides being reasonable (a normative features that has been required by the external conception as well), are also the citizens that would dwell in a well-ordered society and that therefore accept the organizing ideas as justified within their doxastic system of beliefs. Thus, the internal conception of political liberalism averts the risk that a justified political principles can be refuted as illegitimated if the actual citizens of the political constituency do not recognizes it as valid. Again, the attempt to reconcile the theory to the here and now of the political domain does not coincide with a normative resignation.

"If some citizens do not accept say, the burdens of judgement, then they must decide for themselves whether this fact warrants rejecting political liberalism, or whether they find political liberalism compelling enough that this causes them to re-consider their view about the burdens of judgement. Each citizen must engage in his or her own process of reflective equilibrium and arrive at a considered view about the coherence of political liberalism. Political liberalism, in other words, is not flawed from the start if it begins with premises that actual citizens may not accept"[40].

2.3   Political Justification and its Critiques

In the previous section I analysed the Rawlsian political paradigm, that I claimed being well described by the expression "realistic utopia", dividing the analysis into two major areas of inquiry: contextualism and coherentism. In my opinion, these two categories help to depict a reliable framework of the Rawlsian structure of justification. I have outlined the Rawlsian paradigm in the light of the fundamental aim of this dissertation, to wit, introducing and defending a justificatory paradigm that respect the public justification ideal and that stems from a moderate epistemic paradigm. In this regard, I have claimed that coherentism is the best equipped model of justification for dealing with the public procedure for justifying political principles. Moreover, I stressed

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[39] Quong, 2011, p. 155.
[40] *Ivi*, p. 155-156.

that a coherentist procedure of justification is adequate, within the Rawlsian paradigm, if coupled with a contextual analysis that appeals to the normative value of some shared ideals that are reflected in the actual institutional practice.

I have described Ralws' paradigm in the light of coherentism and contextualism, averting any reference to constructivism. Notwithstanding the fact that Rawls has supported a version of political constructivism in his works, I hold that a valid account of his justificatory approach can be provided eschewing any reference to constructivism. Let me explain why. Rawls states that political constructivism[41] is part of the procedure of justification and that its relevance lies in the connection with the fact of reasonable pluralism and the possibility of an overlapping consensus on the fundamental political values[42]. However, already in PL the role played by political constructivism is mitigated with respect to the wider relevance it had in "Kantian Constructivism in Moral Theory"[43], a collection of three public lectures Rawls gave in 1980. In PL political constructivism determines the procedure of construction of political principles addressed by the original position argument. However, the original position itself in PL is defined as a "device of representation"[44], whereas in TJ such argument was the benchmark of the entire procedure of justification. With the political turn, the original position is still relevant, but in a different way: the procedure of construction of fair principles of justice under the veil of ignorance aims to model the two organizing ideas, of citizens as free and equal and of society as a fair system of cooperation, that are in some sense already internal to the public culture of liberal democracies. The attempt to model such underlying considerations is the first role played by the original position. Consequently, the justificatory force of such argument stems from its explanatory ability[45]. The original position, through the procedure of construction, shows us that it is possible to conceive a fair society and that such idealization derives somehow from already shared ideas of our public culture. Thus, even though political constructivism is

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[41] Rawls calls his constructivist approach "political", as he wants to differentiated it from the metaphysically involved comprehensive Kantian constructivism. "Political constructivism is a view about the structure and content of a political conception. It says that once, if ever, reflective equilibrium is attained, the principles of political justice (content) may be represented as the outcome of a certain procedure of construction (structure)", Rawls, 1993, pp. 89-90.

[42] See Rawls, 1993, p.90.

[43] Rawls, 1980.

[44] Rawls, 1993, p. 25.

[45] Concerning the epistemic explanatory force of an argument, it is worth mentioning that the same explanatory force will be addressed in the next chapter as one of the most important feature f the reflective equilibrium method. See *infra*, sections 3.1 and 3.2.

still normatively relevant within the Rawlsian paradigm in PL, I regard it as less fundamental than before. Moreover, Rawls himself admits that political constructivism relies on the idea of reflective equilibrium[46]. For, if we avert a foundational structure of justification, then the procedure of construction of political principles can be granted as valid if and only if it matches our considered judgments in reflective equilibrium. Thus, the normative force of constructivism requires to be assessed within a coherentist framework of reasoning[47]. This outcome is therefore consistent with my claim that an adequate articulation of the Rawlsian structure of justification can be provided through two fundamental epistemic categories: coherentism and contextualism.

2.3.1 Epistemic Abstinence

Before proceeding with the exposition of some proposals for arranging the Rawlsian paradigm in order to solve some difficulties concerning the structure of justification, it is worth introducing some critiques to the Rawlsian model. The main criticism to Rawls' political turn can be divided in two main families: continuist critics according to which Rawls political liberalism is extremely weak as far as the justificatory procedure is concerned, as a powerful justification requires more continuity between political conception and a theory about the good life and the discontinuist critics who considers political liberalism as too comprehensive, for even an agreement on a strictly political conception is viewed as unrealistic as far as it requires to institutionalize specific moral claims[48]. In this section I focus my attention on a paradigmatic example of continuist criticism: the argument of epistemic abstinence introduced by Joseph Raz. This argument is more interesting than others, with regard to the general aim of this dissertation, since it is directed against the epistemic status of the justificatory procedure defended by Rawls. According to this criticism, any procedure of justification of political principles that eschews reference to the concept of truth is hopelessly weak, as it lacks the necessary epistemic strength for guaranteeing a sound

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[46] *Ivi*, p. 95.

[47] In the next chapter I will show that it is possible to sustain a paradigm of political justification even though focusing just on the coherentist aspects of justification; eschewing any reference to constructivism. I want to show that is not necessary to uphold a constructivist perspective in order to defend a definite structure of justification for political liberalism. In this regard, my proposal is different from the Rawlsian one. Indeed, I hold that constructivism – even when outlined as simply political – is still a too committing theory that cannot be managed within the framework of a reasonable disagreement. For a well-developed criticism of the Rawlsian political constructivism, see Brink 1987 and 1989

[48] For a comprehensive survey of these criticisms, see Maffettone, 2010, ch. 7, pp. 158-188.

justification of its principle. For Raz and other authors[49], it is very unlikely that a political liberalism, avoiding any reference to a system of ultimate truths or deep values, might be able to provide normative arguments sufficient for motivating citizens and for distinguishing the political system from a Hobbesian *modus vivendi*. In this regard, the authors that charge political liberalism of epistemic abstinence do not see how political liberalism might account for the difference between a mere instrumental stability and the desirability of a political consensus backed by right reasons. According to these authors, the desirability of a theory of justice is necessary connected with the establishment of moral truth[50].

In order to better understand the value of the epistemic abstinence issue, I briefly outline the main arguments presented by Raz in his article "Facing Diversity: The Case of Epistemic Abstinence". Here, Raz articulates the fundamental assumptions around which Rawls develops his proposal of a strictly political liberalism. He describes them as:

1. limited applicability;
2. shallow foundation;
3. autonomy;
4. epistemic abstinence.

According to Raz, the limited applicability is determined by the Rawlsian focus on the context. Indeed, starting from "Kantian Constructivism in Moral Theory", Rawls ties up his justificatory procedure to the contextual circumstances of justice. In this regard, Rawls is promoting a theory of justice for a determined society (the democratic, liberal one), rather that a general theory valid universally. This first feature is connected with the shallow foundation, since as Raz summarizes: "the only definitive foundation is the rootedness in the here and now"[51]. This normative connection with a relevant, but contingent, context of applicability of the theory leaves the theory open to a criticism that I have already mentioned: namely the fact that this theory provides political values whose justification depends on the actual acceptance of a specific community, more than on a normative argument. Afterwards, Raz connects the shallow foundation with the autonomy of political philosophy that Rawls is looking for. According to Raz, these

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[49] As, for example, Jean Hampton (1989) or Patrick Neal (1990).
[50] In this regard, Raz (1990, p. 15) states: "Their achievement – [...] – makes the theory true, sound, valid, and so forth. This at least is what such a theory is committed to. There can be no justice without truth".
[51] Raz, 1990, p. 6.

two assumptions, that are taken together within the Rawlsian paradigm, provide the answer to the fact of pluralism. Indeed, the Rawlsian attempt is to build up a political paradigm whose fundamental elements are part of a common public culture. In this regard, the possibility that actual citizens can share a common public culture would allow to the political practice of justification to transcend pluralism[52].

Finally, Raz reaches the argument of epistemic abstinence. According to this argument, Rawls, that refutes to claim that his doctrine of justice is a "true" doctrine, incurs in an epistemic weakness, since a strictly political approach would lose the possibility of appealing to a normative argument for justifying its principles of justice. Moreover, Raz claims that the epistemic abstinence is directly proportional to the degree of autonomy of the theory itself. The more the theory of justice is freestanding with regard to moral convictions, the more the theory lacks the necessary epistemic force for granting normative efficacy to its principles of justice. According to Raz, it is theoretically impossible to find a way for grounding a political theory, that should be normatively binding, without referring to some values as true values. In this regard, Raz thinks that for preserving normative force, a political theory must accept the demanding side of a metaphysical foundation. According to Raz, it is a wrong choice to avert any reference to truth in order to better manage pragmatic issues. Moreover, this choice would lead the theory to a sort of strong conventionalism, according to which the justifiability of the principles of justice will necessary stem from the fact that they are contingently chosen by members of society[53]. The desirability of Rawlsian liberalism therefore would completely rely on its degree of popularity within a contextual society[54], rather than on the soundness of the procedure of justification itself. To conclude, it could be said that Raz, starting from his perfectionist perspective, does not succeed in finding that place, within Rawlsian project, in which political liberalism, avoiding any reference to truth, is however able to implement the right. In Raz view, the feasibility of a theory of justice should be derived all the way down from a normative argument that grounds the desirability of the theory itself in the fact that such theory can

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[52] Raz (*ivi*, p. 9) states: "The common culture matters to Rawls as a fact, regardless of truth. That is the meaning of the shallow foundations. They, and the autonomy of the doctrine of justice, allow the generation of a theory of justice which can form the basis of a consensus in the face of pluralism".
[53] Raz is so strongly convinced that the Rawlsian approach lacks any epistemological criterion for distinguish a good normative theory from a bad one that he asserts (1990, p. 17): "His epistemic abstinence means that his doctrine of justice should be accepted even if false".
[54] Raz, 1990, p. 19.

be defined as a true theory of justice[55]. Thus, Raz defends an approach in epistemology that I defined in the first chapter as too demanding, for it does not contemplate the possibility that a moral theory can be defined as valid and justified without being in the meanwhile described as a true theory.

2.3.2 Transcendence

After having introduced a continuist sort of criticism against Rawls theory of political liberalism, I want to discuss another kind of criticism, namely a charge of too strong transcendence pressed by Amartya Sen in his last book *The Idea of Justice*[56]. In this book, Sen blames Rawls' theory to be an expression of transcendental philosophy. According to Sen, the major flaw of all the transcendental approaches is to believe that from a notion of perfect justice it is possible to derive criteria of comparative justice. Sen describes Rawlsian approach as a normative theory that, in order to establish some general principles of justice, loses any contact with the contextual reality in which justice should be implemented. Any theory that starts with the definition of what is a "just society" is too transcendental, as the relevant issue is to analyse the actual instances of injustice and try to amend them. Sen regards Rawlsian political liberalism as a strongly ideal theory that does not take into consideration two fundamental and inescapable features of public deliberation, namely the unbridgeable gaps in information and the incompleteness of individual grading systems[57]. According to Sen, a feasible – and also desirable – theory of justice must be intrinsically nonideal and defined and defended through bottom-up arguments. In order to manage the contextual reality of our societies, we cannot start the analysis of justice trying to reconcile the reality with an ideal theory of justice that is determined by strictly theoretical arguments. Rather,

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[55] Jonathan Quong (2011, ch. 8, pp. 221-255) proposes an analysis of the epistemic abstinence argument close to mine, as he claims that Raz's critique would be well directed if and only if the fact of reasonable pluralism and the recognition of the burdens of judgement might be put aside as not stringent features of our contemporary societies. Naturally, given the strong theoretical connection I defended between a moderate paradigm of political justification and the recognition of the fundamental role played by epistemic fallibilism, I completely agree with Quong.

[56] Sen, 2009.

[57] "Thus, for reasons both of incomplete individual evaluations and of incomplete congruence between different individuals' assessments, persistent incompleteness may be a hardy feature of judgements of social justice. This can be problematic for the identification of a perfectly just society, and make transcendental conclusions difficult to derive. And yet, such incompleteness would not prevent making comparative judgements about justice in a great many cases – where there might be fair agreement on particular pairwise rankings – about how to enhance justice and reduce injustice", Sen, 2009, p. 105.

beginning with the analysis of actual cases of injustice, a nonideal theory of justice should try to build up a correct normative framework for dealing with such injustices.

Sen assesses Rawls' theory from a strongly different perspective than mine, as he maintains social choice theory to be the correct framework for political reasoning. In this regard, Sen highlights some important features that a nonideal theory of justice should take into consideration:[58]

− The first aim of justice should be <u>a comparative analysis</u> of the circumstances of justice, rather than a transcendental argument for outlining a just society.

− It is fundamental to acknowledge <u>the inescapable plurality of competing principles</u>.

− In order for the theory to be able to change with regard to the modification in the contextual reality, an important aim is to allow and facilitating as much <u>re-examinations</u> as required by changes in the circumstances.

− Given the fact that the ranking of individual preference, and consequently the interpersonal ranking as well[59], is always partial or at least indeterminate in some extent, any theory of justice has to deal with the fact of valid alternative interpretations of the same event or principle. For this reason, then, a nonideal theory of justice permits <u>partial resolutions</u>. Sometimes this partiality can be resolved through an increase of the amount of information available. Other times, instead, the partiality should be asserted as a definite feature of our public deliberation over specific matters. In this regard, there could be an agreement of general concept, but indeterminacy on the consequences of such principles[60].

− Finally, a nonideal theory is necessary <u>a work in progress enterprise</u>, as there is not the possibility of determining – in a conclusive way – the structure of a theory of justice from the beginning. Rather, every principle of justice should pass through the assessment of real circumstances of implementation of justice. In this process, an important role is played by public reasoning because such public deliberation, when coupled with the development of democratic institutions, is able to modify the behavioural parameters in the society.

In my opinion, Sen's criticism to the Rawlsian paradigm is misleading, as I consider Rawls' theory of justice closer to a nonideal theory – when this latter is defined by the features presented above – than to a classic transcendental model of ideal theory.

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[58] See Sen, 2009, pp. 106-11.
[59] The fundamental argument in this regard is the theorem of impossibility by Kenneth Arrow.
[60] See Gaus, 1996, pp. 151-158.

Probably, the different interpretation of the Rawls' proposal between me and Sen is due to our different theoretical starting points. While Sen's framework of reference is the rational choice theory, for me the relevant starting point for assessing a theory of justice is determining its procedure of justification[61]. Consequently, Sen focuses his main attentions on the possibility, for the theory of justice, to account for the indeterminacy in the interpersonal ranking of preferences and for the attempt to promote an evolution of social norms. Following Sen's structure, fairness is a feature of public social life that must be evaluated through comparative rankings that derive their validity from contextual circumstances, rather than from a theory that establishes some criteria that hold in any circumstance. By contrast, in Rawls' theory of justice the demand of fairness is a prelude to the whole system for the scrutiny of justice. In my opinion, Sen's criticisms of Rawls's theory are more valid and powerful if we look at TJ, more than at PL. For it is true that the original position argument is still normatively relevant in PL and that the constituency is an idealized one; however I do not see how the structure of justification defended in PL can be defined as transcendental. If it is assumed as valid the moderate interpretation of the epistemic background assumptions of PL that I am defending and these moderate framework is coupled with the structure of justification in different stages sustained by Rawls in his last essays, then almost all the requirements of justice introduced by Sen are realized in political liberalism as well. Of course, there are still main differences between these two models, as a procedure of justification shaped on Rawlsian insights does not regard the comparative model as the guiding one in political deliberation. However, both evaluative comparisons and social choice theory insights can be involved coherently within a nonideal approach for justifying a theory of justice modelled on the fundamental ideas developed in PL. I believe that both Sen and Rawls would be ready to agree on the fact that "we do not live in an 'all or nothing' world"[62] and that, for this reason, feasible theories of justice have to meet realistic constraints and develop a structure of public deliberation that is intrinsically nonideal.

2.3.3   Continuism VS Discontinuism

In the first chapter I introduced a fundamental distinction between two strategies: the continuist account of liberalism and the political one. According to this

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[61] "The proper domain of the political is circumscribed by the ideal of public justification", *ivi*, p.5.
[62] Sen, 2009, p. 398.

distinction, the continuist strategy derives the validity and normativity of political principles from the fact that the theory of justice is embedded in a wider comprehensive argument regarding the moral ideals of the good life. The right can be independent from the good but, still, the fundamental justification of the former depends on our comprehensive doctrine with regard to the latter. By contrast, the political view holds a discontinuist strategy according to which the justification of political principles, for being legitimated, does not require any reference to a specific conception of the good.

Ronald Dworkin, in his essay "Liberal Community"[63], argues in favour of liberal conception of the continuist strategy. According to Dworkin, his approach is still strictly liberal as the priority of the right over the good is assumed as a fundamental tenet. However, Dworkin maintains that the traditional liberalism focused too much attention to the issue of neutrality. The notion of neutrality has been defined theoretically after that its instrumental value was already acknowledged, since the neutrality of the state with regard to religious matters had been established as the best practical solution to the religious wars aroused in Europe around the 16th and 17th centuries. In this regard, the liberal theory itself was built in the light of the regulative ideal of neutrality of the state and the principle of toleration. Consequently, Dworkin continues, the liberal tradition has been developed through a discontinuist strategy, since the neutrality tenet was the bench mark of the entire procedure of justification. By contrast, Dworkin believes that the liberal principles of toleration and neutrality can be derived from a substantial argument that refers to the notion of the good life. In his "Equality and the Good Life"[64], Dworkin defends a continuist strategy for the justification of political principles. The validity and normativity of such principles stem from the intrinsic value attached to responsibility that every person has for the accomplishment of her ideal of the good life. According to this approach, the validity of the principles of justice cannot be assessed if detached from the analysis of the good life. Dworkin shares the Plato insight that the right can never be inconsistent with the realization of the ideal of the good. If a theory of justice requires us to sacrifice our possibility of living well – according to our substantial notion of good life -, then this theory of justice is incorrect. In Dworkin's framework, morality and ethics are strictly interconnected, as they support and explain each other. Every person has a responsibility to live an authentic life and the

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[63] Dworkin, 2000, pp. 211-236.
[64] *Ivi*, pp. 237-284.

normative category of "living well" applies both to individual morality and public ethics[65]. This paradigm is strictly continuist and the procedure of justification can be defined as monological, as the deliberation spins off intersubjective morality out of a subjective position regarding ethics[66]. According to this paradigm, when we deal with public and private morality, a correct and normatively valid interpretation of the notion of the good life provides us with sound arguments in favour of principles of justice that can be embedded in the doxastic system of beliefs of every moral agent. Consequently, the principles of justice can be defined not just as valid, rather they are made true by their consistency with the substantive value of living well. According to this model, the strictly political justification of liberalism that is defended by Rawls after his political turn is too weak and schizophrenic. The schizophrenic charge maintains that is both theoretically incorrect (as morality and ethics are necessary intertwined) and practically unreasonable (since it would have no motivational force at all) to demand that citizens accept as valid principles of justice that are not part of their system of beliefs regarding the good life. The charge of weakness follows directly from it. A theory of justice justified just through the reference to political arguments and that refuses to be characterized as "true" is unable to override our beliefs about the good life that are supported and valorised thanks to the commitment to a comprehensive moral doctrine.

2.3.4   The *Dilemmatic Character of Liberalism*

Political liberalism, as I have already explained shortly in the first chapter, faces an intrinsic tension within its theoretical framework. This tension does not simply regard the distinction between strictly political principles and moral comprehensive doctrines. Rather, the fundamental dualism within PL system is given by two aspects of the procedure of justification that seem to be inconsistent between each other: on the one hand there is the philosophical requirement of justifying political principle *via* a normative sound argument; on the other hand there is the practical constraint of

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[65] "Why do people take an interest in moral issues? If, as I believe, people want to live well and sense that living well includes respecting their moral responsibilities, then it is wholly natural that they mainly feel at least some impulse to do what they think they ought to do" (Dworkin, 2011, p. 58) and also "We might think, that is, that living well simply incorporates morality without that connection in any way affecting what morality requires. Or we might treat the content of morality as fixed at least in part by the in de pen dent character of ethical responsibility: we might suppose that just as our ethical responsibilities are partly fixed by our moral responsibilities to others, so the latter are fixed in part by what our ethical responsibilities are. On this second view, morality and ethics are integrated in the interpretive way we have been exploring over the last few chapters", (*ivi*, p. 202).

[66] The definition of Dworkin notion of deliberation as "monological" is due to Prof. David Rasmussen.

respecting the fact of pluralism. In order to develop a procedure of justification consistent with both these commitments, Rawls claims that the philosophical argument for justifying principles of justice is freestanding, as completely detached from any specific comprehensive doctrine. However, if the justification of political principles is freestanding, how is it possible that it achieves the necessary robustness[67]? **Robustness** is an epistemic notion according to which a "theory *T1* is robust vis-a-vis *T2* to the extent that changes in *T2* — including the total rejection of *T2* in favour of some competing theory *T2'* — do not weaken the justification of *T1*. Robustness is to be contrasted with sensitivity; to the extent that the justification of *T1* is affected by changes in *T2 T1* is sensitive to *T2*"[68]. The regulative ideal of PL is to provide a public justification of political principles that demonstrate how these principles can achieve robustness in relation to various metaphysical and epistemic theories. In this way, political liberalism would be justified through a procedure that is philosophically adequate, but still it would respect the fact of pluralism and the variety of comprehensive doctrines held by citizens. According to Gaus, it is sensible to claim that reasonable pluralism is a stable outcome of our contemporary democracies if and only if there is a theoretical possibility to argue that two individuals hold two different beliefs that are simultaneously justified and incompatible with each other. In this regard, political liberalism has to draw a line between personal and public justification. The category of **public justification** applies just to a specific range of matters and beliefs. In order to claim that a belief (or principle) is publicly justified, such belief must result robust enough to be justified regardless of the other comprehensive beliefs that different persons hold in their doxastic sets of beliefs. However, Gaus distinguishes between robustness and uncontroversiality as, given the fact of reasonable pluralism, public justification can result to be victoriously justified in our doxastic systems, but still without providing us with uncontroversial beliefs. Again, the moderate account of moral epistemology is the best equipped paradigm for dealing with this distinction. As Gaus states "the general idea of truth is highly contested today, as the notion of ethical truth has long been. Analyses of justified belief that do not presuppose the concept of truth are much more apt to achieve the robustness that justificatory liberalism seeks"[69]. Even

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[67] Both Gaus (1996) and D'Agstino (1992 and 1996) highlight the relevance of robustness as a fundamental feature of justificatory arguments.
[68] Gaus, 1996, p. 6.
[69] *Ivi*, p. 27.

though this account of the procedure of public justification can be epistemically sound and realistic, still from the perspective of achieving stability for the right reasons this same account can be problematic. Political liberalism has to overcome the dualism between the philosophical and realistic side of its structure of justification. On the one hand, the philosophical side requires the procedure of justification to provide a sound argument of justification that grants the normativity of the whole structure. On the other hand, the political turn has involved a major focus on the actual circumstances of justice and on the fact of pluralism. Given the fact of pluralism, the justification of political principles should avert any reference to a specific comprehensive doctrine. Consequently, the political theory should be strictly freestanding and therefore not sensitive to the different comprehensive doctrines held by citizens. Thus, the public justification would be consistent with different theories of truth or the good life and therefore political principles might obtain support from different moral perspectives. "Thus regardless of which doctrine is embraced or accepted as true—or indeed which one may someday be demonstrated true—political liberalism will be justified, and in this sense is robust"[70]. Nevertheless, the more the theory acquires political efficacy being robust in relation to as many as comprehensive doctrines possible, the more the theory loses philosophical depth. If the procedure of justification should 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 more strongly believe within the deliberative procedure, since these are strongly connected with different comprehensive doctrines, then it seems that the motivational force of the political principles is extremely reduced. In this regard, political liberalism seems to be counter-intuitive, as some of the most important beliefs for us - beliefs that are strongly upheld into our personal doxastic system of beliefs - cannot be engaged in the public deliberation over political principles. As Maffettone clearly points out, political liberalism faces a dilemma between stability for the right reasons and pluralism[71]. In this regard, liberal procedure of justification has

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[70] *Ivi*, p. 6.

[71] "Rawls actually does not think in terms of a coherent integration between a normative-philosophical justification and a factual legitimation. Rather he continues to work within the horizon of a philosophical theory of justice. Nevertheless, in order to settle the central dilemma between stability and pluralism, he must concede that a pure philosophical justification of liberal democracy is itself insufficient to guarantee the equilibrium between these opposing claims" (Maffettone, 2010, p. 22) and also "He is forced to admit that the mere philosophical justification of liberal democracy through a theory of justice as fairness – of

to find a way for dealing with an <u>inverse proportionality</u> that incurs between the "realistic sensitiveness" of the theory with regard to the actual circumstances of justice here and now and the philosophical attempt to produce a theory of justice that is normatively binding and motivationally powerful. Thus, it seems that political liberalism is arrived 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 reaffirming the validity of liberalism as a true – and philosophically powerfully justified – theory of justice. To conclude, it could be said that Rawls, in his development of a strictly political theory of liberalism, ends up for sustaining a framework of justification that is intrinsically dualistic, if not even dilemmatic[72].

This dualism is well expressed by Rawls himself at the end of his survey, within the *Lecture of the History of Moral Philosophy*[73], about Hegel philosophy of right claiming that for Hegel only two possibilities are available: either we look for continuity between individual morality and the public ethical life (expressed by the concept of *Sittlichkeit*); or we are left with individual atomism. These two solutions, in some sense, might express the intrinsic dualism of political liberalism that I am articulating. On the one hand, the continuist perspective would represent the philosophical expectation with regard to the validity of public justification. Even when connected with the normative value of a public culture, still this continuist account upholds a notion of justification in which political principles are not just robust, rather they should be defended as conclusively justified as consistent with a specific moral comprehensive theory. On the other hand, individual atomism focuses all the attention on the individual motivations and partisan interests. Following this perspective then, all the theoretical effort should be directed to the achievement of the wider consent possible. Thus, this second perspective would be closer to a Hobbesian system, than a normative one.

By contrast, the Rawlsian attempt to build up a strictly political liberalism without losing the normative side of the procedure of justification can be interpreted as a third

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the kind he himself presents in TJ – is insufficient for achieving the desired equilibrium between pluralistic normative claims and institutional stability" (Maffettone, 2010, p. 316).

[72] Again, Maffettone (2010, p. 282) is very helpful when he refers to the dilemma of public reason: "This dilemma consists in the limits of public reason in terms of justification. What remains unclear is the way in which the citizen is supposed to act when the duties connected with public reason are in conflict with the duties deriving from the preferred comprehensive doctrine".

[73] Rawls, 2000.

solution that tries to find a balances between the other two. As I explained in the first chapter, this political theory of justice is closer to a neutral/political account of liberalism, than a continuist one. However, one of the fundamental aim of the Rawlsian political liberalism is to show that even if liberalism refutes a continuist paradigm of justification – a paradigm in which political theory ends up to be coincident with a comprehensive doctrine that can be shared by all the members of society –, this it does not imply that political liberalism must be reduced to a strongly individualistic theory in which what does it matter are just the individual interests and personal motivations. In order to reply to Hegel, Rawls maintains that a third solution is possible, between comprehensive continuism and mere individualism. This approach claims for an objective public theory of justice that cannot either be reduced to the sum of individual interests or described as a comprehensive doctrine that should be upheld by every citizen as it overrides all the other beliefs citizens hold in their doxastic system of beliefs. In PL Rawls tries to embed the freestanding stage of the theory[74] – grounded on strictly philosophical arguments – within a justificatory structure that takes as relevant some facts of our contextual political life. In this regard, a strictly philosophical argument, which can be defined as top-down, is still present, but is part of a wider structure of justification that employs both a coherentist paradigm of justification and a contextual standpoint.

In my opinion, this structure of justification that is made up by different stages of justification and by both top-down and bottom-up arguments is a very well equipped theory of justification. First of all, this approach allows political liberalism to be sensitive both to pluralism and to stability for the right reasons constraints. Recognizing the <u>fact of pluralism</u> 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 <u>stability for the right reasons constraints</u> demands that liberal theories yield a normatively binding procedure of justification that grants the acceptability of political principles, more than their contextual acceptance. In this regard, is not sufficient to provide good philosophical arguments for justifying a principle; rather is also necessary that these philosophical arguments are accepted as victoriously justified within the doxastic system of the

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[74] "A political conception of justice is what I call freestanding when it is not presented as derived from, or as part of, any comprehensive doctrine. Such a conception of justice in order to be a moral conception must contain its own intrinsic normative and moral ideal", Rawls, 1993, p. xlii.

members of the constituency. Consequently, it is not sufficient that the priority of the right over the good is supported by theoretical arguments. For the priority of right should be justified in a way that is acceptable and therefore motivational adequate for the members of the constituency. For these reasons, this procedure of justification divided in different steps accounts for the diachronic side of morality and for the fact that political justification can be viewed as a work in progress enterprise. Second, this approach replies in a powerful way both to the charge of being too transcendental and to the risk of sustaining a procedure of justification that is strictly instrumental and therefore epistemically weak.

To conclude, I want to add few comments on the "third view" identified and defended by Rawls. This third view, as I discussed earlier, is closer to a neutral/political paradigm of political theory than to a continuist one. This feature of PL accounts for the political turn that Rawls has theorized after TJ. The "political" aspects of Rawlsian liberal theory are different and not always well explained. First of all, the liberal theory discussed in PL is political, as it requires a freestanding argument for justifying political principles of justice. This freestanding argument, although philosophically powerful and normatively binding, is not supported by any comprehensive doctrine; rather it is strictly political. Second, there is a second meaning in which Rawlsian theory is political, namely the fact the Rawls embeds the freestanding argument regarding the validity of the principles of justice into the context of the "here and now" of contemporary democracies. Therefore, the ideal side of the theory is not sufficient in itself for granting a sound justification of political liberalism. We need a different stage of analysis, a nonideal one, in which the principles of justice are assessed through the lens of real democratic multicultural societies. In this regard, I take political liberalism to be strictly "political" as it is extremely well aware of the real circumstances of justice and of the fact that a work in progress stage of the theory would be always required.

On the one hand, the third view outlined by Rawls in PL refused the atomistic individualism as unable to theorize the existence of an objective public perspective on justice. Still, it deduces from it the relevance of the motivational adequacy constraint for any theory of justice. On the other hand, Rawls shares with Hegel the insight that the public political culture is a relevant normative feature for our political normative deliberation. Nevertheless, he refuses to establish a continuist framework in which individual morality should necessary end up to coincide with the public ethics.

Therefore, the third way tries to build up and justify a theory of justice that is a realistic utopia. According to this model, the theory should be normatively valid and therefore desirable. However, the same theory must meet some feasibility constraints due to the circumstance of justice of the here and now. While in TJ the feasibility of the theory of justice was derived directly from the normative desirability of the theory itself, in PL this relation is not taken for granted, as the recognition of fact of pluralism involves an awareness regarding the difficulties of obtaining stability for the right reason. Consequently, in PL the actual feasibility of the theory of justice becomes a fundamental criterion in order to assess the desirability of the theory as well.

2. 4   Achieving Public Consensus

In the foregoing sections, I analysed the Rawlsian proposal and some of the main criticisms to such paradigm. Then, I focused my attention on some dualisms and difficulties that are inherent to the Rawlsian structure of justification. In this last section of this chapter my main goal is to provide a different interpretation of the Rawlsian paradigm: an interpretation that is consistent with the general framework I am defending and that might as well turn out to be a good solution to the dilemmatic tensions within the classic versions of political liberalism. There are three main theoretical bench marks that are fundamental for the development of public justification: normative justification; individual motivation and public political culture. However, the connection among these aspects with the procedure of justification itself is not always clear and involves problematic tension that must be resolved. Understand the way in which these three issues are intertwined and how they can be systematized in a coherent procedure of justification is the main goal of this last section of this chapter.

Within the paradigm of political liberalism, the relation between normative justification and individual motivation is intrinsically problematic. Given the fact that political account of liberalism should provide a justification of its principles that is completely independent from any specific comprehensive doctrine, then the motivational force of such procedure of justification is both enhanced and weakened. On the one hand, political liberalism is structured in such a way in order to be compatible with every comprehensive doctrine held by citizens and being therefore

respectful of the fact of pluralism. In this regard, the strictly political justification of political principles should enhance the possibility, for the theory itself, to be included within the different individuals' doxastic sets. On the other hand, the reference to solely political arguments for justifying the theory is viewed as a flaw, since it is difficult to see how a strictly political account of justice can became motivationally strong enough to trump comprehensive beliefs regarding the personal conception of the good. It is in order to solve this tension that the public culture becomes theoretical relevant. According to Rawls, it might be too utopian to presuppose that political ideals can override personal interests and comprehensive beliefs within the individual doxastic systems of beliefs. For this reason, Rawls attaches a motivational force to the fact that the members of a liberal society already share some ideals regarding a well-ordered society and about some features attached to the people that dwell such society. Nevertheless, which is the normative force attached to this contextual reference to a shared public culture? I am going to analyse this issue through the discussion of the normative validity of the overlapping consensus, as the determination of the justificatory role played by such concept it will help me to introduce my own solution for establishing and maintaining a fruitful relationship between normative justification, individual motivation and the reference to a public culture.

2.4.1 The Overlapping Consensus

The role played by the overlapping consensus within the Rawlsian structure of justification has been deeply criticized by Jürgen Habermas in his exchange with Rawls that it has been published in *The Journal of Philosophy* in 1995[75]. The debate between the two authors begins with an article by Habermas in which he states that he essentially shares Rawl's project, but he criticises the execution of the project. For the sake of brevity, I will simply list the three points on which Habermas focuses his criticism:

i.   The representation's mechanism of the original position;

ii.   the role played by the overlapping consensus;

iii. the relationship between private autonomy and political autonomy.

Habermas wonders whether the overlapping consensus plays a cognitive role in the justification or simply imposes itself as a necessary step in order to obtain a concrete stability. According to Habermas, is not at all clear if the role played by the overlapping

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[75] Habermas (1995) and Rawls (1995).

consensus is normative or simply descriptive. Habermas wants to show that, compared to its normative communicative procedure of deliberation, Rawl's political liberalism assumes, at the starting point, two very demanding burdens of proof:

- The reference to the intrinsic normativity of the principles of justice.
- The possibility to show that a public agreement over these principles can achieve a stable consensus for the right reasons.

According to Habermas, providing a justification starting from such committing – normatively speaking – assumptions is an enterprise deemed to fail. On the one hand, assuming the validity of these assumption compels the theory to begin with strong idealization that cannot be supported by theoretical arguments, given the post-metaphysical context in which this theory should be endorsed. On the other hand, if this assumptions are justified given an actual agreement by citizens, then all the justificatory force ends up depending on the actual acceptance by citizen.

By contrast, Habermas maintains that the paradigm of public deliberation that he defends does not presuppose any committing normative stance as well as any moral presuppositions. In this regard, it is worth noting that a post metaphysical model of reasoning, as the one defended by Habermas, is constrained to eschew certain metaphysical arguments not just in the political domain – as it is required in the strictly political paradigm introduced by Rawls – but in every deliberative reasoning[76]. Therefore, the normativity that Habermas defends is derived entirely from the constraints intrinsic to the use of rationality itself. The *discourse principle* assures that any substantive principle is already being justified through a deliberative discourse. In this regard, the *discourse principle* does not presuppose a moral theory of any kind[77]. The major difference between the Rawlsian and Habermasian paradigms is that in PL the initial credibility – and desirability *qua* feasibility – of the principles of justice hinges on a contextual reference to some shared ideals, whereas for Habermas all the normative force of the structure stems from the universal validity of the communicative

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[76] "In a pluralistic society, the theory of justice can expect to be accepted by citizens only if it limits itself to a conception that is postmetaphysical in the strict sense, that is, only if it avoids taking sides in the contest of competing forms of life and worldviews. In many theoretical questions, and all the more so in practical questions, the public use of reason does not lead to a rationally motivated agreement", Habermas, 1996, p. 60.

[77] "The discourse principle is only intended to explain the point of view from which norms of action can be *impartially justified*; I assume that the principle itself reflects those symmetrical relations of recognition built into communicatively structured forms of life in general", *ivi*, pp. 108-109.

action[78]. Within the Rawlsian paradigm the warranty of the citizens commitment toward principles of justice is derived from the fact that the principles of justice are already modelled on some specific conceptions of society and citizens that the members of the constituency share. In this regard, the whole structure of justification hinges on a coherentist paradigm. Indeed, principles of justice are ultimately justified if and only if they demonstrate to be consistent, in reflective equilibrium, with the doxastic sets of beliefs held by citizens. By contrast, Habermas framework does not begin with any shared conception. Rather, it is grounded into the rational practice of lawmaking and all the normativity force attached to the procedure of justification stems from the *discourse principles*. Habermas' framework is structured from the beginning as transcendental – in the Kantian meaning – as he establishes a set of norms that govern the process of raising and contesting validity claims. Following this model, the correct procedure of construction would refer to the norms, that people are committed to, by the mere fact that they are engaging in a practice of discourse[79]. Hence, the public justification first aim is to codify the normative infrastructure that is already present in the free give-and-take communicative activity. Therefore, the theoretic apparatus is heavier in Habermas' framework than in Rawlsian political liberalism. However, the major charge that Habermas addresses to Rawls is that his structure of public deliberation does not leave enough room for the actual practice of democracy. The justification of the principles would be carried out at the first level, which is purely theoretical, of the conceptual artifice of the original position, whereas the concrete overlapping consensus would address only the difficulties concerning stability and social unity[80]. Following this perspective, Habermas argues that a strict political liberalism, using the predicate "reasonable" in place of the predicate "true", could not prevent a breakdown between the question of the acceptability (of a norms, as previously justified) and the factual acceptance. If the second level of Rawls' theory of justice is really bound to the simple

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[78] For a very exhaustive analysis of the difference between the justificatory paradigms defended by Rawls and Habermas, see Hendrick, 2010.

[79] "For the justification of moral norms, the discourse principle takes the form of a universalization principle. To this extent, the moral principle functions as a rule of argumentation. Starting with the general presuppositions of argumentation as the reflective form of communicative action, one can attempt to elucidate this principle in a formal-pragmatic fashion", Habermas, 1996, p. 109.

[80] Habermas (1995, p. 121, italics in the original) states: "Because Rawls situates the 'question of stability' in the foreground, the overlapping consensus merely expresses the functional contribution that the theory of justice can make to the peaceful institutionalization of social cooperation; but in this the intrinsic value of a *justified* theory must already be presupposed. From this functionalist perspective, the question on whether the theory can meet with public agreement […] would lose an epistemic meaning essential to the theory itself".

quest for stability, then political liberalism loses the essential distinction between the preservation of the status quo, as a guarantor of mere stability, from the much deeper value of promoting normative and legitimated principles[81]. In this regard, the objectivity of political liberalism would rely on a reconstructive hermeneutic, rather than being dependent over a normative procedure of construction. Habermas claims that the epistemic weakness of the Rawlsian model is represented by his theoretical decision to substitute the term "reasonable" to the predicate "true". Indeed, for Habermas, the reasonable could be interpreted in two ways:

a. As a synonym for moral truth (there would be a mere lexical difference with truth).

b. As the ability to deal with different moral visions, in the awareness of the impossibility of establishing a certain truth. Reasonableness is the aspect of human reasoning that is conscious of the burdens of reason and that, therefore, aims to manage the dissent among people. According to this interpretation, reasonableness would be an epistemic tool for solving disagreement, rather than a normative commitment toward the possibility of establishing the validity of individual opinions.

In presenting these two different meanings of the terms "reasonable", Habermas wants to show that Rawls' project to promote an explicitly political, but still normatively powerful and motivational adequate, liberalism is condemned to failure. According to Habermas, Rawls' attempt to justify his theory of justice just through strictly political arguments would deprive his theory of the possibility of investigating the epistemic connotations of the term "reasonable". Thus, Rawls would fall into a kind of contradiction, as he expects to limit the doctrine to the political field by eliminating the epistemological questions, nevertheless such questions would still be implicitly present, as the normative status of reasonableness is not at all clear. Habermas maintains that without investigating the normative and epistemic features of reasonableness it is theoretical impossible to assume that "reasonable" principle of justice might trump "true" – according to the holder of the beliefs – beliefs that are justified through the reference to a comprehensive doctrine. Moreover, even if the epistemic strength of reasonableness is investigated and defended, still Habermas maintains that the decision

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[81] "The risk here is of Rawls confusing overlapping consensus as a normative device able to support moral stability, and overlapping consensus as an empirical fact able to support just social stability. In these terms, the overlapping consensus would oscillate between a 'cognitive role' and a mere 'instrumental role'", Maffettone, 2010, p. 182.

of establishing the limit of reasonable from the beginning is flawed. Given his communicative framework, Habermas believes that the only correct way for establishing the limit of reasonableness is through a political debate. Otherwise, all the structure of justification will end up for being monological, as the fundamental normative notions and procedures were established in advance, before that the actual practice of public political deliberation is carried through. "For Habermas, the limits of the political cannot be a priori decided either constitutionally or philosophically. They must instead be decided via an actual debate among real individuals"[82]. In this regard, the theory defended by Habermas is more modest, as it defines public reason as just procedural. Starting from an unconstrained disagreement – given the post-metaphysical context in which we are living – his theory of communicative action allows to reach a superior stage of impartiality through the *discourse principle*. In this superior stage, then, the principles justified are defined as truth-claims, where truth is defined as cognitive validity[83].

Habermas criticism of Rawls' procedure of justification on PL is twofold. On the one hand, as I said previously, Habermas defends a more modest approach, according to which the actual practice of the political deliberation in which citizens give and receive reasons should be unconstrained. In this regard, he is against the Rawlsian attempt to model the concept of reasonableness at the first, merely theoretical, level of the theory. Habermas maintains that if too many normative aspects of the theory are determined before the actual democratic procedure of exchanging reasons is realized, then the theory illegitimately favours the liberty of the moderns over the liberty of the ancients[84]. According to this interpretation of Rawls, all the normative structure of the theory of justice would be determined and justified in a theoretical stage of the theory in which the actual citizens of democratic society play no role. Then, these citizens will find themselves living in an institutionalized world in which they are subjected to norms that they have not contributed to justify[85]. On the other hand, Habermas theory is more

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[82] Maffettone, 2010, p. 188.

[83] *Ivi*, p. 184.

[84] It is worth noting that Habermas famously argues in favour of a co-originality thesis with regard to the relationship between the liberty of ancients and the liberty of the moderns. "The system of rights calls for the simultaneous and complementary realization of private and civic autonomy. From a normative standpoint, these two forms of autonomy are co-original and reciprocally presuppose each other, because one would remain incomplete without the other", Habermas, 1996, p. 314.

[85] "For the higher the veil of ignorance is raised and the more Rawls's citizens themselves take on real flesh and blood, the more deeply they find themselves subject to principles and norms that have been anticipated in theory and have already become institutionalized beyond their control. In this way, the

ambitious than the Rawlsian one, as he wants to demonstrate that through the communicative action it is possible to reach a stage of justification in which, thanks to an impartial point of view, some principles of justice are established and justified as true, not simply as the most reasonable principles on which different people can agree upon.

Now, it should be clear why Habermas criticizes the normative role played by the overlapping consensus in the Rawlsian paradigm. According to Habermas, a social contingent fact as the achievement of an overlapping consensus cannot be transformed in a normative relevant aspect of the justificatory procedure. Habermas maintains that it is theoretically wrong to ground the structure of justification on the possibility that an actual overlapping consensus is possible within our post-metaphysical societies. Even if a sort of overlapping consensus might be reached, however its achievement cannot be granted a-priori and certainly it cannot be used as the starting point of the whole procedure of justification. Consequently, the role played by the overlapping consensus it would be merely instrumental, as it would be directed to describe the fact that actual citizens do share some common ideals[86].

2.4.2   Three Different Stages of Justification

After having spent some time analysing Habermas' critiques to the Rawlsian model of justification, it is now time to focus on Rawls' reply. First of all, it is important to highlight that the Rawlsian procedure of justification, when explained properly (as Rawls indeed does in his "Reply to Habermas"), is more complicated than it might seem at a first glance. Indeed, the procedure of justification takes into consideration three different standpoints: the perspective of parties in the original position; the perspective of an idealized constituency of citizens and then the point of view of reasonable citizens here ad now.

Naturally, the justification that must be provided with regard to these different standpoints is different. For this reason, Rawls divided its structure of justification into different stages. Rawls first aim, when dealing with the procedure of justification, is to uncover public basis of justification. It is exactly this attempt that leads Habermas to

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theory deprives the citizens of too many of the insights that they would have to assimilate anew in each generation", Habermas, 1995, p. 128.

[86] In this regard, the normative validity of such consensus stems from the contingent fact that such consensus is realized in the contextual reality. Consequently, the overlapping consensus model would be extremely closed to a Hobbesian *modus vivendi*.

claim that Rawlsian procedure of justification is nothing more than a reconstructive "hermeneutic clarification of a contingent tradition"[87]. However, I am going to show that this "conciliatory" attitude that steers Rawls' procedure of justification does not necessary imply a relativistic perspective or a solely instrumental establishment of political principles. Rawls wants to develop a normative argument regarding the reasonable constraints that the members of the political constituency might accept as legitimate as they are consistent with the organizing ideas that are shared in the public culture of that society. According to a moderate account of political justification, it is not possible to provide normatively binding arguments of justice if these same arguments do not result acceptable in the light of the doxastic systems of beliefs of the members of the society to whom such principles are addressed. Consequently, Rawls believes that is necessary, in order to begin the procedure of justification, to establish a loose meta-consensus on some specific organizing ideas and general concepts. In this regard, the meta-consensus would be a sort of transcendental condition for granting the possibility of arguing in favour of a normative concept of public reason. Naturally, both the deliberative procedure of public reason and the underlying considerations are constantly under scrutiny, as even though they are justified or shared here and now, they are still always revisable. This structure of justification is coherent with the modest paradigm of justification that I outlined in the first chapter, as it has been laid out under a fallibilist framework and averts any reference to pure normative standpoints. To conclude, it could be said that Rawls, in contrast with Habermas, substitutes the rational universal constraints of communicative action with a public framework of justification in which moral and epistemic constraints are derived from a antecedent meta-consensus on some share ideals.

In order to better understand the Rawlsian's project I outlined briefly in the previous section it is worth to spend some time analysing the distinction between the three kinds of justification that constitutes the procedure of justification of PL. All these three different stages of justification are necessary for political liberalism in order to achieve the legitimacy of the principles of justice and the stability for the right reasons requested. These three kinds of justification are:

1. *Pro tanto* justification;
2. Full justification;

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[87] Habermas, 1995, p. 120.

3. Public justification[88].

1. The *pro tanto* justification constitutes the bottom level of the procedure, since it takes into account only values that are intrinsically political. Despite this epistemological limitation, justification *pro tanto* will still be structured in terms of a freestanding justification that is complete in its own way. At this level the procedure of justification hinges on a philosophical argument for justifying a specific procedure of construction of principles of justice. The *pro tanto* justification does not depend on any reference to the actual circumstances of justice, as it developed thanks to sound philosophical arguments. The *pro tanto* justification is expressed perfectly by an argument as the original position. According to this procedure, in fact, a procedure of construction is modelled in order to provide sound principles of justice that are justified through the reference to philosophically valid arguments that show how it is possible to achieve a fair agreement between the parties. Therefore, this first level of freestanding justification addresses the parties as the specific receiver of the arguments for justifying the validity of the principles of justice.

The Rawls' view, at this first level of justification, is certainly <u>discontinuous</u>, since the theory, through a procedure that brackets every value that is not strictly political, is able to achieve a neutral justificatory argument that is intersubjectively shared. Nevertheless, Rawls himself admits that it would be too demanding and illusory to believe that members of a real liberal society would be able to accept and justify a procedure that is so schizophrenic. Even if the device of representation of the original position builds up a reasonable structure of justification for some general principles of justice, still this justification, developed in strictly political terms, is completely detached from the comprehensive beliefs held by citizens in their doxastic systems. For this reason, at the level of *pro tanto* justification, the political values are destined to be trumped by the comprehensive doctrines held by citizens.

2. Thus, to avoid the impasse of a conflict between private comprehensive doctrines and the political values justified by a deliberative procedure related to a device of representation (the original position), Rawls introduces the second level of justification: the <u>full justification</u>. At this level, thus, "it is left to each citizen, individually or in association with others, to say how the claims of political justice are to be ordered, or weighed, against nonpolitical values. The political conception gives no guidance in such

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[88] See Rawls, 1995, pp. 142-146.

questions, since it does not say how nonpolitical values are to be counted. This guidance belongs to citizens' comprehensive doctrines"[89]. It is at this level that principles of justice already justified by a freestanding argument should demonstrate their ability to enter into the doxastic systems of beliefs of the members of the constituency of reasonable citizens here and now. In this regard, this second stage of justification is closer to a continuist perspective, as every single member of the constituency should find her personal way for maintaining the necessary coherence, within her doxastic system, between political and comprehensive doctrines. Rawls' hope is that the political values could be embedded within individual doxastic systems, without requiring to the individuals to abandon their comprehensive beliefs[90]. As the same Rawls claims[91]: "even though a political conception of justice is freestanding, that does not mean that it cannot be embedded in various ways into – [...] – the different doctrines citizens affirm". The fact that the theory of PL is defined as exclusively political does not necessarily mean that it can never be possible to establish a process of integration between comprehensive visions and political values. Rawls describes as feasible a procedure of justification in which political liberalism can be both discontinuously and continuously justified with regard to the doxastic systems of beliefs of the member of the political constituency. A freestanding argument, discontinuous with regard to the comprehensive doctrines held by citizens, is the right starting point for providing a sound and philosophically autonomous justification of the principles of justice. However, for political liberalism to enhance its desirability – through an argument that grants its feasibility – the procedure of justification should show that political liberalism in motivationally adequate, as it is reasonable to expect that citizens will be able to balance political values with non-political values.

3. Finally, <u>public justification</u>. This last stage of justification is accomplished thanks to the actions of the whole society and, in Rawls' view, it is the regulative idea behind the entire concept of political liberalism. The idea of public justification constitutes a fundamental feature of political liberalism in tandem with other three basic ideas:

i. A reasonable overlapping consensus;

ii. stability for the right reasons;

iii. legitimacy.

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[89] Rawls, 1995, p. 143.
[90] Quong (2011, p. 163) labels this requirement as 'congruence argument'.
[91] Rawls, 1995, p. 143.

Even this third stage, the higher stage, is related to a procedure of justification that never takes absolute connotations. Public reason is the deliberative stage where citizens, accepting the reasonable constraints, reasons together over the validity and the justification of a political conception. "This basic case of public justification is one in which the shared political conception is the common ground and all reasonable citizens taken collectively (but not acting as a corporate body) are in general and wide reflective equilibrium in affirming the political conception on the basis of their several reasonable comprehensive doctrines"[92]. There would be willingness, from everyone, to respect and consider every other person and the comprehensive doctrine that each holds as a reasonable way to contribute to the formation of a public culture[93]. At the stage of public justification, in fact, political principles would have been already embedded in the doxastic sets of citizens and for this reason committing the political deliberation just to freestanding arguments is not necessary anymore; since every citizens, ideally speaking, would be ready to commit herself to the practice of public reason.

Rawls judges this third stage as the best realization of the most complete justification that can be provided within a liberal society that wants to publicly deliberate over political matters although accepting and respecting the fact of pluralism. It could not be otherwise, given the fact that the third level of justification, again public and strictly political, requires an antecedent level where the principles of justice should have been able to demonstrate their ability in obtaining a stable support from the individual point of view of citizens. This support is obtained thanks to a coherentist procedure of justification in which political principles are balanced against the other beliefs that citizens strongly believe in their doxastic systems. Since, as Rawls states, "these doctrines represent what citizens regard as their deepest convictions, religious, philosophical and moral"[94] and given the fact of pluralism, it follows the recognition of the impossibility of gaining a wide – and publicly justified - consensus over a specific comprehensive version of a theory of justice.

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[92]Rawls, 1995, p. 144.
[93] This interpretation of the public justification stage is consistent with the last, and much more open to the various voices present in the public arena, version of the practice of public reason that Rawls introduces in his "The Idea of Public Reason Revisited" (1997).
[94] *Ivi*, p. 147.

2.4.3 Overlapping Consensus: Common and Alternative View

In the previous section I have outlined the three different stages of justification that Rawls develops in his exchange with Habermas. I believe that the whole Rawlsian proposal cannot be understood in all its force without correctly exposing these three stages of justification. Indeed, I hold that structuring the paradigm of public deliberation in different stages that refer to different justificatory goals is the partial solution that Rawls introduces in order to overcome the inner tension between the philosophical and practical aspects of his political liberalism. For example, the first deliberative level, the *pro tanto* justification, grants a justification of political liberalism that, though not fully morally neutral[95], can be described as a freestanding procedure of justification that can be judged as normatively correct by reasonable citizens. At this point, though, it is necessary to understand how political principles might result to be victoriously justified within the doxastic systems held by the members of the society. In order for the political module to be robust in relation to the different doxastic systems of the citizens, it is important to grant the possibility that actual citizens are motivated in supporting such political module even when they are reasoning starting from their actual sets of moral and political intuitions and values. For this reason, Rawls provides a second stage of justification where citizens should be able to join the political conception from their own personal and comprehensive perspectives. Therefore, the establishment of the public justification stage is constrained by the previous achievement of the two other stages. Indeed, a strictly public deliberation is possible if and only if every agent involved into the deliberation has found her way for embedding the political module within her doxastic set of beliefs and consequently the supposed schizophrenia of the justificatory process is avoided.

Many critics of Rawls' project, however, as I highlighted in the foregoing section of this chapter, maintain that this reconciliation is unrealistic, because the theory does not provide sufficient reasons to people for judging political principles as victoriously justified over the non-political values that are embedded in their different doxastic sets.

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[95] Rawls (1985, p. 224) claims that, although strictly political, political liberalism is still a moral conception. Of course this moral conception is thin and neutral in many concerns, as it is figured out for dealing with a specific subject: the establishment of fair political institutions and the development of a public deliberation among reasonable citizens. This specification is necessary, as it should be noted that the deliberative framework employed by Rawls cannot be neutral with respect to any model-conception possible, since it begins with some shared ideas that are extrapolated from the nonideal context, the "here and now". However, according to Rawls, this awareness does not affect the attempt to establish a public procedure for justifying a political conception of liberalism.

The right question here is if Rawls is able to articulate a justificatory structure in which a strategy of discontinuity on the one hand and a strategy of continuity on the other hand can be reconciled in a coherent and unified system[96]. The theoretical tool through which, according to Rawls, it is possible to achieve this reconciliation is the overlapping consensus. Many authors have focused their attention on the normative role played by the overlapping consensus. As I have already showed, while I was delineating Habermas' criticisms toward Rawls theory of justification, this normative role played by the overlapping consensus is not at all clear. The major charge against this justificatory procedure is that such procedure is nothing but a descriptive procedure in which ideals, already shared by a contingent constituency, are merely exposed. However, there are other authors that, although accepting the normative side of the overlapping consensus, wonder whether it is realistic to expect that every citizen would be able to make consistent a specific theory of justice with her comprehensive system of values. These two different interpretations of the role played by the overlapping consensus, according to Quong, led us to face a dilemma;

"This objection can be put in the form of a dilemma: (a) either the overlapping consensus is superfluous within political liberalism, since reasonable people will by definition endorse the (correct) political conception of justice, or (b) or the overlapping consensus is not superfluous, and people could (in the second justificatory stage) reject the political conception without being unreasonable. But if we embrace the second horn of this dilemma, this leads right back to the initial worry that people could veto the liberal conception of justice by claiming that it is not congruent with their illiberal comprehensive views"[97].

If we follow the first horn of the dilemma, the overlapping consensus is nothing more than a descriptive procedure that accounts for the fact that reasonable citizens might actually agree on some principles of justice. By contrast, assuming as true the second horn, we have to face the possibility that the actual disagreement among citizens with regard to the correct principles of justice would lead us to claim that the freestanding procedure of justification is not sufficient for granting that such theory of justice will result to be robust enough in relation to the different comprehensive doctrines held by citizens in the actual world. As a matter of fact, if the overlapping consensus is described as a an agreement that is achieved when there is an actual agreement of the

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[96] "The central aim of political liberalism, on the internal account, is to understand how liberal theory can be made internally coherent to see how the commitment to public justification can be realized under liberal conditions", Quong, 2011, p. 180.
[97] *Ivi*, p. 167.

members of the society – even if just reasonable members – over specific principles of justice, then the overlapping consensus itself becomes a very strict constraint for the accomplishment of such theory of justice. This dilemma accounts for the intrinsic <u>tension between desirability and feasibility</u> that I described previously when I accounted for the possible dilemmatic outcomes of a theory such as political liberalism[98]. As I said, thanks to the political turn Rawls gives up a theoretical perspective, defended in TJ, according to which a philosophical argument that establishes the desirability of a theory of justice might as well granting its feasibility. <u>In PL in fact, the feasibility aspects of a theory of justice are complementary reasons for granting its desirability</u>. However, it is still not possible to reduce the desirability of the theory – its strictly philosophic/normative side – to the feasibility of an overlapping consensus between specific principles of justice and the comprehensive doctrines held by citizens. Otherwise, the normative force of the theoretic argument would be constantly submitted to the contingent possibility that reasonable citizens are willing to embed the principles of justice within their systems of comprehensive values. According to this interpretation of the overlapping consensus, that Quong names "**common view**"[99], the theory of justice is the output of two procedures of justification. On the one hand there is the discontinuist and freestanding argument of the original position; on the other hand there is the continuist procedure of the overlapping consensus that tries to achieve coherence between the liberal principles of justice and the comprehensive doctrines held by citizens.

In my opinion, the common view interpretation of the overlapping consensus is not an unfair interpretation of this procedure as far as PL is concerned. Indeed, in PL Rawls does not distinguish specifically enough between the three levels of justification and this imprecision leads to a sort of confusion, since it seems correct to assume that political deliberation aims to demonstrate that political values are in some sense "superior" to non-political values. By contrast, I hold that the real goal of political deliberation, within a nonideal framework, is to demonstrate that even when citizens strongly believe that their comprehensive beliefs are true, still they have sound reasons for accepting some political constraints when engaged in a public discussion. In this

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[98] "Although such a model fares well in relation to the desideratum of motivational force, it has, really, the vices of its virtues. For it secures motivation by 'pragmatizing' and therefore does so at the expense of failing in relation to robustness and being forced to 'trade-off' inclusiveness and strength against one another", D'Agostino, 1992, p. 154.
[99] See Quong, 2011, p. 165.

regard, the inclusion of political principles within their doxastic sets of beliefs does not depend on the recognition of a substantial and or epistemic superiority of political principles over comprehensive ones. However, in order to grasp the real meaning of my proposal, it is important to previously understand the common view properly. According to this scheme, political values would be evaluated and compared with all the other values in a sort of competition for first place in the individual preferences scheme. During this process, reasonable citizens, by definition, would be able to meet the constraints imposed by reasonable pluralism and therefore they would be motivated in considering the right as always prevailing over good. It would therefore be right to defend the creation of an overlapping consensus between the political domain and the different comprehensive values held by citizens. Such overlapping consensus grants the feasibility of an agreement in which a political doctrine is made coherent with the comprehensive doctrines of citizens. Consequently, the domain of the political would be defined by the area of overlapping between the comprehensive beliefs and the political principles, (see image A).
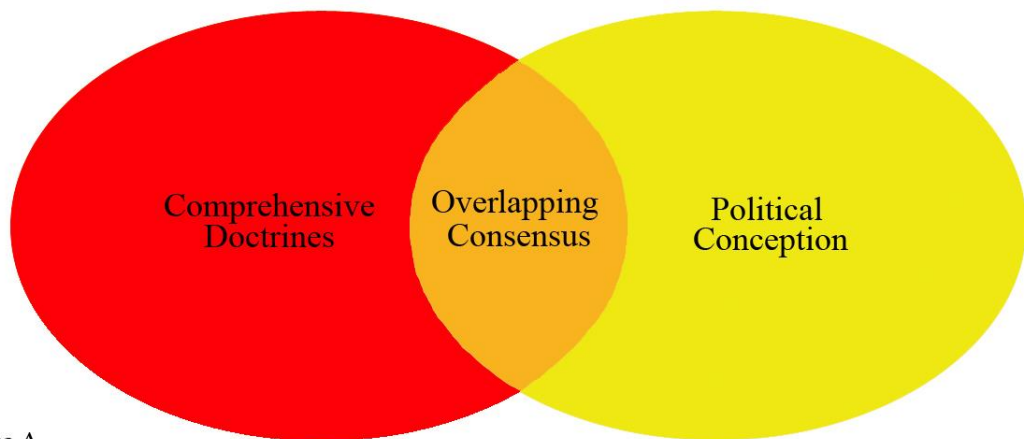

Image A

According to this scheme[100], the same political conception that has been justified through a freestanding argument (the *pro tanto* justification) can be defined, thanks to the overlapping consensus (full justification), as victoriously justified within the individual doxastic systems of the reasonable citizens. However, this scheme involves various difficulties. First of all, this scheme might be granted as valid if and only if the limitation to a constituency of solely reasonable members is already justified as a valid move within the justificatory structure. By contrast, if such delimitation of the relevant constituency to just reasonable citizens is not justified, then the overlapping consensus stage of justification is always endangered by the fact that it is unrealistic to believe that unreasonable people will agree on an overlapping consensus between political and personal comprehensive values. Second, if the overlapping consensus is achieved and therefore the full justification is accomplished, then it seems that the normative/deliberative role played by public reason is extremely reduced. As a matter of fact, if every reasonable citizen is able to establish an overlapping consensus between a political conception of justice and her comprehensive beliefs, then all the relevant features of a theory of justice are settled and just few, small, adjustments are required[101]. Third, there are good epistemic reasons – supported by the moderate perspective on justification and by the fallibilist general framework – for claiming against the possibility of achieving an agreement on a specific conception of justice strating from extremely different comprehensive perspectives. As Rawls pointed out already in TJ:

"Men disagree about which principles should define the basic terms of their association. Yet we may still say, despite this disagreement, that they each have a conception of justice. That is, they understand the need for, and they are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social

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[100] Quong (*ibid.*) introduces a scheme slightly different from mine. In his scheme the area of "overlapping" is made up by the political conception of justice, whereas the two arguments that overlap are the original position and the different comprehensive doctrines held by citizens. I do not think that this difference is extremely relevant. Quong was keen to show that within the procedure of the overlapping consensus a single, specific conception of justice can be justified with regard both to a freestanding and a continuist argument. By contrast, I want to focus my attention more on the fact that the overlapping consensus itself is the outcome of a coherentist procedure in which a political conception already justified is embedded within the doxastic system of every reasonable citizen. The area of overlap between the political beliefs and the comprehensive values would constitute the overlapping consensus, within the doxastic system of reasonable citizens, between political and non-political beliefs.

[101] This critique is close both to Habermas and Sen criticisms of Rawlsian structure of justification. On the one hand, Habermas maintains that Rawls' theory does not leave enough room for the actual practice of political deliberation. On the other hand, Sen presses against Rawls the charge of defending a theory that is intrinsically transcendental, as every relevant political issue would be resolved in an idealized structure, instead that in the actual context of politics that is inhabited by unreasonable as well as reasonable citizens.

cooperation. Thus it seems natural to think of the concept of justice as distinct from the various conceptions of justice and as being specified by the role which these different sets of principles, these different conceptions, have in common"[102].

This distinction between a concept and various conceptions of justice is extremely relevant when coupled with the issue of determining the normative role played by the overlapping consensus. As Gaus explains[103], a public justification of principles of justice it is possible. However, this justification, although being victorious, involves a **nested inconclusiveness** according to which different undefeated, yet unvictorious, interpretations of a victoriously justified principle are available. "In essence, it seems that victoriously justified liberal principles are cases of nested inconclusiveness. What is victoriously justified is a range of conceptions of, say, the fundamental liberal principle; within that range, as we shall see, it may be impossible to victoriously justify a particular interpretation" [104].

Therefore, even when principles of justice – that are part of a specific concept of justice – are correctly and victoriously justified, still different reasonable interpretations of such principles are available[105]. 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 ideals and background evaluative standards that constitute a victoriously justified <u>concept of justice</u>[106].

A theory of justification that highlights the epistemic relevance of nested inconclusiveness is a theory that is aware of the fallibilist framework in which a political theory should be justified. According to this framework, robustness does not coincide with uncontroversiality. In this regard, disagreement is not necessarily due to a lack of rationality or an unwillingness to be reasonable or to an incommensurability of values. Rather, "given the complexity of our belief systems, it is, other things equal, always plausible to conjecture that any given disagreement is an instance of

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[102] Rawls, 1971, p. 5.
[103] Gaus, 1996, ch. 11, pp. 179-194.
[104] *Ivi*, p. 166.
[105] In this regard, Gaus (1996, p. 180) distinguishes between nested inconclusive justifications and merely inconclusive justifications: "As I have stressed, a nested inconclusive justification appeals to a victoriously justified principle for which no victoriously justified specific interpretation is to be had. In contrast, a merely inconclusive proposal is one that is not put forward as an articulation of a victoriously justified principle, but stands, as it were, on its own".
[106] See *ivi*, p. 158.

inconclusive reasoning, resulting from the complexity of the issues and our inability to declare victory for our view"[107]. <u>Therefore, the first issue that a theory of political justification has to cope with is that of inconclusiveness</u>[108]. The concept of the overlapping consensus constitutes a fundamental step within the strategy for coping with the intrinsic nested inconclusiveness that derives from our public procedure of deliberation for determining a conception of justice on which people might agree stably. Given the moderate epistemic framework about moral and political justification I am defending, the solution to this problem is not to deny the existence of such nested inconclusiveness. Rather, this inconclusiveness is consistent with the moderate epistemic paradigm, as the indeterminacy is due to the epistemic relevance attached to the doxastic systems of the members of the constituency and to the fact that this epistemic approach provides a framework in which it is possible to have a reasonable disagreement between beliefs that are justified within the different doxastic systems held by moral agents. In this regard, reasonable pluralism implies that even if in my doxastic system a certain belief is soundly defeated, the same belief could be soundly undefeated within an another doxastic system[109].

How can we deal this nested inconclusiveness? We have two possibilities. On the one hand, we can decide to look for a stronger philosophical argument that establishes a conception of justice that should be both victorious and conclusively justified. On the other hand, we can accept the nested inconclusiveness as a natural fact of our political structure of justification. Then, we could divide our structure of justification in two fundamental stages: the ideal and nonideal part of the theory. The <u>ideal phase</u> of the justificatory procedure would be devoted to establish and justify a political concept of justice that can be victoriously justified in relation to the "idealized" sets of beliefs held by citizens that – for the sake of the ideal justificatory argument – are described as reasonable. By contrast, the <u>nonideal phase</u> will deal with the actual sets of beliefs held by citizens, without any process of idealization. In this phase, therefore, the deliberative process should face both nested inconclusiveness and a deep disagreement among people with regard to different, undefeated, interpretations of the concept of justice.

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[107] *Ivi*, pp. 155-156.
[108] *Ivi*, p. vii.
[109] It is worth noting that all this discussion regarding the nested inconclusiveness of a political theory of justice is consistent with one of the charge that Sen presses against Rawls, namely the charge of being too transcendental and for this reason not enough focused on the indeterminacy in the interpersonal ranking of preference. Through this argumentation that I am presenting, then, I hope to provide some good insights for understanding why I consider Rawls not a transcendental theorist at all.

Since at the nonideal stage the idealizations are undone, then the justificatory procedure should face unreasonable citizens as well as reasonable ones. In this regard, deliberative issues cannot be solved once for all and, more important, disagreement will be always a stable outcome of deliberation.

So far, I have articulated overlapping consensus as the justificatory strategy by which Rawls believes that it is possible to make consistent between each other a discontinuist justificatory argument and a continuist one. Nevertheless, I have also highlighted that the common view on overlapping consensus implies some difficulties that are extremely relevant both from the theoretical and pragmatic perspective. Among the others, there is the difficulty of establishing how the nested inconclusiveness of our public deliberation can be coped with. In this regard, I believe that the best strategy for dealing with nested inconclusiveness and the fact of disagreement is to divide the justificatory paradigm in two stages, the ideal and the nonideal one. In this regard, it is important to stress that, according to the common view on overlapping consensus, this distinction between an ideal and a nonideal stage is not required, as the stage of overlapping consensus will grant the coherence between the freestanding justification of the political module and the support that this very same module obtain from the different reasonable comprehensive doctrines.

Notwithstanding the popularity of this articulation of the overlapping consensus, I believe that Quong is correct in proposing an "**alternative view**" of overlapping consensus. According to this view, the subject of the overlapping consensus should not be the principles of justice. Rather, the overlapping consensus is a consensus over the fundamental organizing ideas of a liberal democracy – that in the Rawlsian paradigm, for example, would be the concept of a well-ordered society as a fair system of social cooperation and the concept of citizens as free and equal people. Such organizing ideas are laid out starting from a specific historic context – as they have been developed, although imperfectly, within the historic process that has originated the first liberal democracies. In this regard, Rawls takes as paradigmatic the example of toleration. The theoretical concept of toleration that is now part of our public political culture it has been historically introduced as an instrumental tool for solving the religious wars that flamed Europe between 16th and 17th centuries. The intrinsic value of the toleration does not derive its normativity from these historic facts. However, the same evolution of the theoretical concept would not have been possible if the historic facts where not

happened. The regulative ideal of a political conception of liberalism is to develop as much as possible normatively relevant provisional fixed points starting from the evaluation of the historical process that has conducted such provisional points to become characteristic features of liberal societies. These organizing ideas provide to the theory a loose normative framework[110] in which it is afterwards possible to build up a specific conception of justice that might be justified through the reference to a strictly freestanding argument. This theoretical and normative-laden framework is necessarily loose for at least two reasons. On the one hand, 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, as the fixed points are just provisionally justified. On the other hand, the loose framework in extremely useful for pragmatic reasons, as for dealing with disagreement it is relevant to have a theoretical framework that, although normative, is still flexible and that therefore allows work in progress solutions.

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, they motivate such individual to uphold a liberal theory of justice in order to "become" the kind of citizen that would live as free and equal in a well-ordered society. Again, this justificatory procedure in which a normative weight is attached to the historical democratic practice, as such practice reflects some fundamental normative ideas, is intrinsically coherentist. Indeed, the normativity attached to such background normative ideas is not expressed and justified at the beginning, through a top-down approach, rather hinges on a bottom-up argument that stresses the role they have been playing within the emerging democratic practice.

"The aim of political philosophy, when it presents itself in the public culture of a democratic society, is to articulate and to make explicit those shared notions and principles thought to be already latent in common sense; or, as is often the case, if common sense is hesitant and uncertain, and doesn't know what to think, to propose to it certain conceptions and principles congenial to its most essential convictions and historical traditions"[111].

In the next chapter I will come back on the discussion over the epistemic adequacy of such model of justification. Meanwhile, I want to provide few further comments with

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[110] Rawls talks about a "loose framework for deliberation" in his Dewey Lectures (1980, p. 560).
[111] Rawls, 1980, p. 518.

regard to the "alternative view" of the overlapping consensus. According to this view, achieving an overlapping consensus over some specific organizing ideas of liberalism is the starting point of the entire justificatory structure[112]. Thanks to the internal model of political liberalism we have discussed previously, we can claim that an idealized constituency of reasonable citizens is exactly the constituency in which the underlying considerations of a well-ordered society of free and equal people would result to be victoriously justified within the doxastic sets of beliefs of every member of such constituency. Therefore, the ideal stage of the theory of justification of political liberalism will start with an agreement – an overlapping consensus – on the validity of organizing ideas around which a loose normative framework might be built up. According to this internal conception, the defining feature of political liberalism is that of being a theory of justice that can be justified to a certain idealized constituency through an overlapping consensus. However, this agreement constitutes just the first stage of the ideal part of the theory itself. As a matter of fact, this agreement provides the normative tools for developing a freestanding argument – that Rawls articulates through the device of representation of the original position – for producing and justifying some general principles of justice. The freestanding argument, then, will be focused on the production and the justification of a specific concept of liberal justice. Afterwards, in the nonideal stage of the theory, it is again necessary to wonder whether a specific concept of justice might be victoriously justified, even when the doxastic sets of beliefs of the citizens have not undergone a filtering process in which the unreasonable beliefs have been eliminated. Naturally, 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[113]. The **liberalism-framework** 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 – by definition – 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 Archimedean points. All the different proposals within the optimal set are able to be

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[112] "I argue the overlapping consensus is thus not, despite how it is sometimes portrayed, a further test that a political conception of justice must pass in order to be fully justified. Instead, the consensus provides the initial common ground from which any attempt at public justification needs to proceed", Quong, 2011, p. 162.

[113] For a similar interpretation, see Maffettone, 2010, p. 217.

publicly justified vis-à-vis the doxastic systems of beliefs of the members of the idealized constituency. However, none of the different interpretation 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 **liberalism-picture**, even at the nonideal level, might be constrained by the normative frame while trying to establish an ethical and political institutionalized conception of justice. Even though at the nonideal level the idealized notion of constituency is not adequate anymore, and therefore the theoretical and practical tools that the theory of justice can employ for dealing with actual disagreement are different from those used in the ideal stage, still the justification can start from the reference to the loose normative framework in order to provide a sound argument for justifying a single interpretation among those present within the eligible set. It is not possible to establish in advance which form will take the picture, as many different pictures may be justifiable, however any possible solution will be constrained by the normative frame. This picture-frame metaphor, in my opinion, perfectly expresses the fact that within the nonideal phase the outcomes of the justificatory and deliberative processes are not established from the starting point, as it is not possible to be sure about the outcomes of the democratic practice of public reasoning. 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.

In my opinion, this articulation of the Rawlsian framework that divides it in two phases and that distinguishes among three different standpoints with regard to the political constituency is more adequate for dealing with the various challenges that have been presented in this chapter. The ideal phase starts with an analysis of the overlapping consensus that can be achieved with regard to the organizing ideas around which a loose framework of liberalism might be outlined. Concerning the establishment of an overlapping consensus, the correct standpoint to take into consideration – following the internal model of political liberalism – is that of an idealized constituency of reasonable members[114]. Then, the ideal phase provides a freestanding philosophical argument for

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[114] A similar view to mine, with regard to an idealized constituency, is provided by Gaus (2010, p. 26): "I will argue that a Member of the Public is an *idealization* of some actual individual; a Member of the Public deliberates well and judges only on the relevant and intelligible values, reasons, and concerns of

justifying a specific concept of justice. Here the justificatory argument addresses not even the members of the idealized constituency, rather the parties in the original position. The characterization of the parties and the device of representation of the original position itself already rely on the normative role played by the organizing ideas outlined in the overlapping consensus stage. For example, the procedural constraints that mark the deliberation in the original position are outlined in the light of some previous notion of fairness and of citizens as free and equal. The veil of ignorance is structured in that specific way in order to grant that every citizen reasons from the same sort of universalized perspective. Without a previous notion of fairness the same procedure of construction of the original position could not be determined.

Naturally, the parties' standpoint is the most abstract standpoint that is employed within the multi-stage procedure of justification. By contrast, within the nonideal phase, the idealization of first stage are abandoned in order to assess the validity of the political module in relation with the actual, unconstrained, sets of beliefs held by citizens here and now. The way in which an already justified concept of justice can result to be victoriously justified within the doxastic systems of beliefs of the members of an actual political constituency is the object of analysis of the nonideal theory. At this level of analysis, no outcomes can be established at the beginning as necessarily derived from the freestanding argument provided in the ideal phase. Rather, even if the normative validity of justificatory argument accomplished in the ideal phase is not dismissed completely, still the possibility of such concept of justice being embedded in the doxastic systems of the citizens should be granted in the light of a nonidealized context.

The nonideal phase of the theory is intrinsically work in progress and hinges on the possibility of developing a normative relevant process of public reasoning among citizens. I will outline my proposal with regard to the justificatory procedure within the nonideal phase in the next chapter, where I will connect this discussion about the justification of political principles with the strictly epistemic framework I developed in the first chapter. The fundamental concept that allows me to connect these two issues will be reflective equilibrium. Furthermore, I will introduce a new concept: "**reflective agreement**". Such concept, slightly different from reflective equilibrium, stresses the possibility of achieving a public agreement on a normative framework thanks to a

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the real agent she represents and always seeks to legislate impartially for all other Members of the Public. The moral rules (giving rise to imperatives) that a Member of the Public endorses are the ones that as a moral person she has sufficient reason to endorse".

public deliberative procedure. While reflective equilibrium can be viewed as a personal attempt, by different citizens, to justify principles of justice in the light of the other various beliefs they have; reflective agreement is more a work in progress public procedure for articulating rules of conduction that can be established and on which citizens can agree upon despite the fact of pluralism and of nested inconclusiveness.

2.4.4 An Upside Down Construction

"What we need in order to achieve a society where citizens can publicly reason with one another about matter of justice is to identify the deep, or fundamental, values or ideas that can serve as a common framework within which liberal citizens can reasonably conduct disputes about justice"[115]. According to Quong, any theory of justification that tries to build up a justification of liberalism starting from deep disagreement is condemned 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. In this regard, this internal conception of political liberalism emphasizes the distance - or at least makes it starker – between the Rawlsian and the Habermasian structure of justification. Indeed, the Rawlsian system, when divided in different stages of justification and in an ideal and nonideal phase, begins with an idealized circumstance in which some organizing ideas are justified in an overlapping consensus. Even if different members of society hold different comprehensive doctrines, they are able to achieve an overlapping consensus starting from their different standpoints. This consensus is possible and is not too demanding, as these members of the idealized society already share a reasonable commitment toward liberal ideals. According to Quong, it is misleading to depict political liberalism as a theory that is able to achieve a stable agreement on a specific conception of justice without presupposing that the political constituency, by definition, attaches deliberative priority to those ideals, as freedom, equality and fairness, that are part of the loose normative framework around which the conceptions of justice might be outlined. Then "the central aim of political liberalism, on the internal account, is to understand how liberal theory can be made internally coherent - to see how the commitment to public justification can be realized under liberal conditions"[116].

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[115] Quong, 2011, p. 185.
[116] Ivi, p. 180.

From the alternative view of the overlapping consensus it derives that the first goal of a procedure of justification of liberal theory is to demonstrate that political liberalism is a coherent and sound account of a political ideal. Thanks to the freestanding argument such theory is built up and the principles of justice are outlined out of a device of construction. However, this same construction is determined in light of a loose framework that stems from the reference to some organizing ideas that can be justified, in overlapping consensus, starting from the different comprehensive doctrines held by reasonable citizens. Even though connected with the contextual value of some shared ideas, this approach is not committed to a contingent relativism, as the overlapping consensus introduces a normative evaluation of ideas that can be reasonably shared by all those citizens who would live in a well-ordered society[117]. Afterward, the theory of justice has to cope with the nonidealized constituency of the actual citizens. Here, expecting an overlapping consensus over a specific conception of justice is an unrealistic hope, since a concept of justice can be victoriously justified, but still cannot result conclusively justified as well. Moreover, a political constituency that is not filtered by an idealization is composed both by reasonable and unreasonable citizens. In this regard, at the nonideal level should be now clear that the way in which the public deliberation addresses the unreasonable cannot be determined by a theoretical move, as it will depend on the actual circumstances of justice. For this reason, even the nonideal stage requires to be divided in different stages that aim to different goals in relation to what can be accomplished by a general political theory when any ideal abstractions in abandoned and the actual political constituency is faced.

Building a theory of justice starting from the mere fact of disagreement is not a reasonable utopia, it is an utopia *tout court*. For this reason, I do not believe that Habermas is correct when he claims that we can start from an unconstraint disagreement and then, thanks to the normatively binding communicative public deliberation, arguing in favour of an intersubjective construction of an impartial point of view. Alternatively, I hold that it is reasonable to start our procedure of justification investigating even the minimal raw ideas that we can have in common. Of course these ideas can be structured in a general framework just if we put into effect an idealization with regard both to the

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[117] I think that Anthony Laden (2003, p. 380) is right when he talks about "the citizen of faith": a citizen who sincerely wants to know whether a well-ordered society is a real possibility, since she already wishes to support it and therefore is ready to commit herself to respecting a liberal conception of justice and the practice of public reason.

definition of the members of the political constituency and of the coherent structure in which such organizing ideas are given. In this regard, the starting idealization concerning the status of reasonable citizen ascribed to every member of the political constituency is similar to the idealization employed by the theories of rationality when they assume that people are rational. Of course this assumption is a strong idealization, as usually people are not at all fully rational. However, having a criterion of rationality that should apply to every individual – even if just through an idealization - helps us in the assessment of the actual degree of rationality that can be ascribed to the individual when they are deliberating. In the same way, actual citizens are never fully reasonable and an overlapping consensus in never utterly achieved; still these organizing ideas are fundamental, as they constitute both a regulative ideal and a criterion of evaluation for the actual, nonidealized, public deliberation among citizens. However, these idealizations cannot be maintained in the nonideal phase. Still, when the political deliberation is at stake, these underlying considerations and the regulative ideal of reasonableness constitutes a common set of reasons and values that are valuable in order to develop a public reasoning[118]. In this regard, the major difference between a reasonable and an unconstrained disagreement is that the former is a sort of justificatory disagreement, while the latter is a foundational disagreement. Justificatory disagreement is a disagreement in which the people that disagree between each other still share some premises and the disagreement is due to the different view about what these premises entail[119]. By contrast, it is foundational that disagreement that stems from a disagreement that regards the more basic convictions, as different individuals hold doxastic sets that have very few beliefs in common. Naturally, this 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 the dispute might be solved.

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[118] "Public reason, and thus liberal legitimacy, would be impossible without a fundamental stock of ideas that citizens can draw on when they deliberate with one another regarding their disagreements about justice. Because the very idea of public reason presupposes disagreement about justice (disagreements that cannot be resolved by appealing to the general liberal principles), we must look to a higher level of abstraction to find the common ground that ensures our political principles can be legitimate - that ensures that they can be justified on grounds that all reasonable people could accept", Quong, 2011, p.190.

[119] "A justificatory framework acts like a filter. It ensures that any values or arguments used in debate will at least be mutually acceptable, but it does not guarantee that the participants will agree on the exact weight or ranking of those values or principles", *ivi*, p. 207.

Habermas defends a conception in which the starting point of the procedure of justification is unconstrained, while the outcome of the procedure itself is determined in advance thanks to the transcendental normativity intrinsic to the practice of communicative action expressed by the *discourse principle*. By contrast, the version of Rawlsian liberalism I am defending starts with an idealization of some specific contextual facts for, later on, in the nonideal phase of the theory, leaving room to the actual practise of public deliberation. In this regard, the structure of justification can be represented quite fairly by a second scheme (see image B). This scheme is depicted as an upside down pyramid in order to illustrate the anti-foundational character of political liberalism and to emphasize its unstable work in progress aspects[120]. The overlapping consensus represents the ground on which it is possible to build up the pyramid itself. Once that the overlapping consensus is achieved, then there is the stage of the freestanding justification of the principles of justice. This stage is represented by the tip of the pyramid, as the freestanding justification expressly asserts a strictly political theory, neutral and blind to differences. The freestanding argument is philosophically valid and normatively relevant, still needs to be embedded in a wider structure of justification in order to be able to grant stability for the right reasons. The ideal phase of the theory, represented by the overlapping consensus as "grounding" stage and by the *pro tanto* justification as the tip of the pyramid, aims to show that political liberalism is not an unstable theory under ideal conditions. Still, this stability is again challenged when we enter in the nonideal stage of the theory. As a matter fact, the stability under ideal conditions is not at all granted when the contingent facts are introduced into the picture. The pyramid, representing the procedure of justification, is deliberatively depicted as upside down, since the more we proceed into the nonideal world, the more the stability of the whole process is endangered. The nonideal phase of the theory is characterized by the full justification and public justification stages. After we have granted the validity of a specific concept of justice, we have to look at the actual possibility that this concept of justice might be victoriously justified in relation to the different doxastic systems of beliefs held by the actual members of the political society. Here, even though the loose normative framework of political liberalism provides us with some shared reasons for starting the public deliberation, still we have to face both a

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[120] For example, using a similar metaphor, Ernest Sosa (1980) describes the justificatory structure of foundationalism as a pyramid, whereas coherentism would be well represented by the image of a raft.

justificatory and a foundational disagreement and try to develop a public deliberative structure that is able to deal, in different ways, both with reasonable and unreasonable citizens.
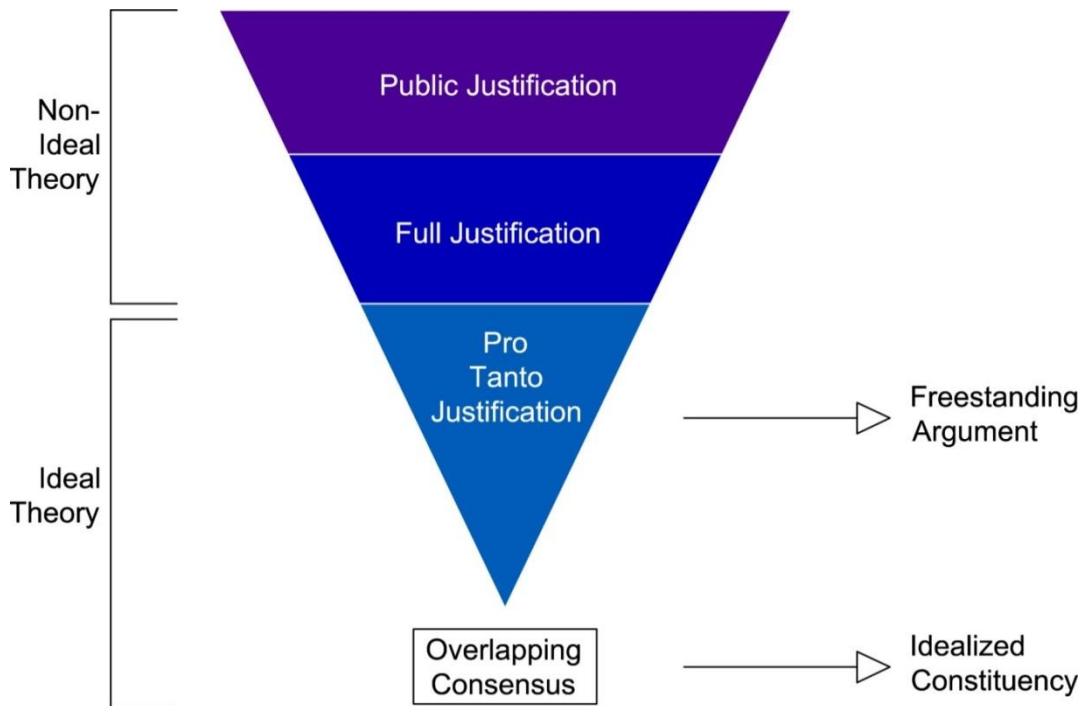
I have introduced this image in order to show that the real value of the proposal of political liberalism can be grasped in its complete force only if we highlight its development in different justificatory stages. Each stage has to deal with a specific agent's standpoint as well as a definite objective. Without explaining the different goals that every phase should realise, it is difficult to understand why both an ideal and a nonideal stage of the theory are needed. Once these distinctions have been illustrated, it should not be surprising anymore that political liberalism tries to find a balance between the strictly theoretical arguments that can philosophically support the theory of justice and, on the other hand, more practical evaluations concerning the actual practice of public deliberation. In sum, we can say that <u>political liberalism is a theory that constantly struggles for reaffirming its normative and practical validity</u>. Such intrinsic "instability" is a sensible outcome due both to the anti-foundational paradigm of justification – for this paradigm maintains the fundamental role played, within the procedure of justification, by the individuals' doxastic perspectives - and to the

fallibilist epistemic framework that describes the fact of pluralism as a legitimate outcome of the public procedure of reasoning. In this regard, the challenge against liberalism pressed by the unreasonable or illiberal citizens will never be defeated once and for all. However, the fundamental regulative ideal that should steer the political liberalism when dealing with the nonideal phase of political deliberation is the **openness to diversity**. As a matter of fact, the justification of political liberalism starts with a strong idealization thanks to which every member of the constituency is described as reasonable and able to achieve an overlapping consensus over some shared liberal ideas. However, in the passage to the nonideal phase, it is not sufficient that the theory looks for those members of the actual political constituency that "fit" the paradigm of reasonableness. Rather, liberal institutions and citizens are engaged in a political deliberation in which many citizens are unreasonable or illiberal. First, political liberalism must provide a nonideal account of how to deal with these citizens. Second, the aspirational side of liberalism itself looks for a work in progress enlargement of the consensus and for the possibility, through the actual historical process of public deliberation, to modify the doxastic systems of beliefs of citizens in order to extend the constituency of reasonable people to as much citizens as possible. In this regard, Rawls speaks properly of an "educative role of public reason"[121].

The upside down pyramid represents the structure of justification of political liberalism as I see it. It is not grounded in a top-down argument; rather it depends on the possibility that is reasonable to expect, in an idealized world, that every member of the political constituency can achieve, everyone in her personal way, an overlapping consensus in which some liberal ideals are embedded in her doxastic system of beliefs and therefore are made coherent with her comprehensive doctrine. Then, when we are dealing with the nonideal phase of the theory, the agreement that was reasonable within an idealized context is again under scrutiny, this time without the possibility of been granted in advance. In the nonideal phase, consequently, political liberalism should demonstrate to be able, thanks to its theoretical tools and its justificatory structure, to deal with an unconstrained reality. During the search for stability for the right reasons, political liberalism tries to achieve a full justification of its tenets and a stable establishment of public reason as the correct framework for political deliberation. This never ending search for stability is expressed by the intrinsic difficulties of an upside

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[121] Rawls, 1993, p. 236.

down pyramid to keep the balance and avoiding the collapse. In this regard, the upside down pyramid is the metaphorical expression of the concept of realist utopia that Rawls regards as the most adequate label for describing the political liberalism enterprise.

Chapter 3 – Reflective Agreement in Nonideal Theory

> "A conception of justice cannot be deduced from self-evident
> premises or conditions on principles; instead, its justification is
> a matter of the mutual support of many considerations, of everything
> fitting together into one coherent view"
> John Rawls (1971, p. 21)

> "They are much better at finding their way
> through the trees than at surveying
> whole forest.
> They complain that advocates of rules
> or principles or theories ignore
> the details and texture of real cases"
> Norman Daniels (1996, p. 336)

> "It is their status as judgments
> that makes them open to revision
> as the 'Socratic' process
> of seeking reflective equilibrium proceeds"
> Thomas Scanlon (2003, p. 149)

3.0   Introduction

I began this work with a chapter focused mainly on epistemic issues regarding the structure of justification of moral and political principles. So far, I have defended a coherentist view about justification, as this paradigm is compatible with a general moderate approach with regard to the general meaning of "justifying" a political principle or concept. In my opinion this moderate approach in moral epistemology, when coupled with a fallibilist view with regard to moral knowledge, expresses the best theory 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. In the second chapter, then, I focused my attention on the Rawlsian proposal for a strictly political theory of liberalism. The political turn in

the Rawlsian paradigm has been induced by the acknowledgment of the fact of pluralism. Again, I believe that the best epistemic way for accounting for the deep disagreement among citizens is to uphold a moderate view regarding the procedure of justification. If the justification of a political concept must take into account the doxastic systems of beliefs of the members of the political constituency, then disagreement is a sensible outcome of the justificatory procedure. Even when a specific concept of justice happens to be victoriously justified through a sound and normatively binding justification, still the way in which this concept is embedded within the doxastic system of beliefs of every member of the constituency cannot be determined in advance by the theory. Therefore, a concept of justice may be defended as victoriously justifiably, but not as conclusively justifiably as well. The <u>nested inconclusiveness</u> is a stable feature of our moral and political reasoning. However, this conclusion does not imply that the justification that can be provided within the field of political theory is hopelessly weak and unstable. Rather, in this chapter and in the next I want to argue in favour of a justificatory paradigm that, thanks to the moderate account of moral epistemology, is able both to respect the realistic ties of the here and now and to provide a theory that is validly justified.

In the previous chapter I introduced and discussed the issue of the dilemma of liberalism claiming that it is true that the philosophical and motivational aspects of political liberalism are in tension. The more political liberalism attempts to become ecumenical, the more the theory loses philosophical strength and relevance. Thus, it is important to focus the analysis on the attempt to solve disagreement, and yet this could not be the only goal of a political liberalism. For a liberalism that merely tries to tame disagreement is a liberalism that has lost one of its fundamental scope, to wit, the establishment of a normative framework of reasoning and evaluation with regard to political matters. Rawls' attempt to articulate a strictly political account of liberalism, neutral with regard both to metaphysical and epistemic theories[1], looks in this direction. However, 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 avoiding the liberal dilemma.

It might seem that my attempt to justify a specific epistemic conception of the procedure of justification mitigates the strictly political paradigm of the second Rawls.

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[1] See Rawls 1974 and 1985.

However, the moderate approach that I am defending does not require to take a stance with regard to the ontological status of moral facts. It is not necessary to establish if moral facts are independent reality or outcomes of a procedure of construction or even supervening facts over natural facts in order to defend a specific model of justification instead than another one. Of course, choosing a model of justification as the most adequate for dealing with the issue of establishing a political conception is an epistemic relevant issue and certainly is not a neutral decision. Nevertheless, given the fact that a decision must be taken, it is better to affirm and defend such conclusion, instead that assuming a model of reasoning without justifying it in order to eschew any epistemological debate. In this regard, I agree with Gaus when he claims that: "If public justification is the core of liberalism (as I believe it is), and because there is no such thing as an uncontentious theory of justification, an adequately articulated liberalism must clarify and defend its conception of justified belief—its epistemology"[2]. As a matter of fact, even Rawls upholds a specific paradigm with regard to the structure of justification, namely a coherentist view. He believes, as I do, that even if it turns out that our moral knowledge is actually grounded in some basic beliefs, still the way in which we can justify such beliefs depends on moral intuitions that we held in our doxastic systems. In the same way, even if from the epistemic perspective a perfectly justified belief should necessarily be coincident with a warranted belief, still our imperfect epistemic capacities do not allow us to assume this coincidence. The coherentist paradigm is the most reasonable with which we are left 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. As Rawls states:

"I note in passing that one's moral conception may turn out to be based on self-evident first principles. The procedure of reflective equilibrium does not, by itself, exclude this possibility, however unlikely it may be. For in the course of achieving this state, it is possible that first principles should be formulated that seem so compelling that they lead us to revise all previous and subsequent judgments inconsistent with them. Reflective equilibrium requires only that the agent makes these revisions with conviction and confidence, and continues to affirm these principles when it comes to accepting their consequences in practice"[3].

Rawls introduces a coherentist procedure of justification within his system through the concept of **reflective equilibrium** (hereafter RE). RE is a justificatory procedure

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[2] Gaus, 1996, p. 4.
[3] Rawls, 1974, p. 8.

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. Rawls defines the considered judgement in connection with the concept of competent judger: "I have defined, first, a class of competent judges and, second, a class of considered judgments. If competent judges are those people most likely to make correct decisions, then we should take care to abstract those judgments in which our moral capacities are most likely to be displayed without distortion"[4]. These judgements, then, represent the strong moral intuitions that every moral agent held in her doxastic system of belief. 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[5]. Consequently, if they are incoherent with our strong intuitions about justice all the process of justification is destined to fall down. Therefore, RE can be described as the procedure that, within the structure of justification, looks for the actual possibility that principles of justice, already supported by a sound philosophical and top-down argument, might be embedded within the doxastic sets of beliefs held by citizens. One of the goals of this chapter is to demonstrate that this procedure can be described as adequate, efficient and reasonable.

Rawls describes RE as a state "reached after a person has weighted various proposed conceptions and he has either revised his judgments to accord to one of them or held fast to his initial convictions" [6]. As this quotation explains very well, RE is a deliberative procedure in which the intuitions held by agents play a fundamental role within the process of justification. This fact should not sound strange, as in the previous two chapters I highlighted the relevance of the doxastic presupposition many times. In this chapter I want to discuss the evolution of the concept of RE within the Rawlsian

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[4] Rawls, 1951, p. 183. For a broad description of the different features that characterize considered judgments see *ivi* pp. 181-183.
[5] According to this articulation of the general aim of the practice of public justification, Steven Wall (2002, p. 387) claims that the proper and most fundamental function of public justification is a reconciliatory action: "Proponents of public justification principle can plausibly claim that the only way in which people in these societies can be reconciled to the political authority that constraints them is to make sure that each person, given his background moral beliefs, has a good reason to affirm, or at least not oppose, this political authority".
[6] Rawls, 1971, p. 48.

paradigm (3.1). Then, I introduce some further developments and discuss the main critiques to this procedure of justification (3.2). Afterwards, in the section (3.3), I focus my analysis of the possibility of developing a new concept, the ***reflective agreement***, in order to deal with the consensus that can be achieved within the nonideal phase of the theory. Finally, in the last section (3.4), I briefly analyse the issue of public reason and introduce the issue of open negotiation as valid practice when an agreement over a specific rule or principle is not available.

Although a discussion of RE cannot eschew an initial reference to the Rawlsian approach, my analysis extends the intrinsic meaning of the method beyond the strict possibility of choosing among different conceptions of justice. This method, in fact, helps me to broaden my articulation of a coherentist procedure of justification in political theory. I have already defended such coherentist paradigm in the first chapter, yet in this chapter I want to connect the defence of coherentism with the actual possibility of developing a justification of a specific political conception within the political domain. Naturally, the way in which a coherentist method works respectively in the ideal and nonideal phase is different, as both the justificatory arguments and the goals of the justification itself are different in these two stages. In order to stress the difference between the role played by the justificatory procedure in the two phases of the theory I will introduce the concept of reflective agreement, a coherent method of justification that is employed in the nonideal stage of the justificatory framework.

3.1   The History of RE

3.1.1   A General Description of RE

In the first chapter, I introduced a fundamental epistemic distinction between a principle being justified as "it is supported by good and sufficient reasons" (a) and "a person's being justified in holding a certain view" (b)[7]. This distinction is an important one for understanding the epistemic relevance of RE. Indeed, within TJ, it seems that the original position provides a top-down deductive argument for justifying the principles of justice without any reference to the actual beliefs held by the citizens. By contrast, does RE involve just a second form of justification? Does the fact that a person

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[7] Recall Scanlon distinction in his "Rawls on Justification", 2003.

achieves equilibrium among her considered judgments and principles of justice imply that this person has no reasons to abandon these principles? To understand in which sense RE is a method of justification, it is fundamental to ascertain whether RE implies justification only as in sense (b) or if this method is part of a wider justification, as in (a). On the one hand, the RE procedure grants legitimacy to principles of justice from the point of view of agents' reasons; hence, it is a procedure that fits the (b) model of justification. On the other hand, I have already claimed that, within a moderate paradigm of moral justification, it cannot be the case that the justification of a principle of justice is completely detached from the doxastic perspective of the agents. According to this view, then, RE would determine both the input and the output of the procedure of justification, since it would be impossible to have a sound justification of form (a) without implying at the same time a justification of kind (b).

This distinction between justification (a) and (b) is useful for emphasizing something unclear in the Rawlsian use of RE in TJ. Rawls writes that RE "is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation"[8]. According to this description, RE seems to be a second-order justification in which principles of justice that are already "justified" have to pass an individual test of acceptability[9]. Following this interpretation, many authors maintain that within TJ, the argument of original position assumes almost all of the relevance for granting the "justifiability" of the principles of justice. By contrast, I believe that, already in TJ, the theoretical weight of the original position partly depends on the value of the RE method, though the form of justification provided by the original position is a theoretically independent argument.

According to Rawls, RE is a procedure that accounts for the ordinary deliberation of individuals in moral reasoning. RE is introduced as a method for achieving an actual, but often unstable, equilibrium between our moral judgments and some general principles. According to a coherentist paradigm of justification, it cannot be the case that a principle of justice is justified if it does not cohere with our broad doxastic systems of beliefs. For this reason, again, the method of RE, when understood in a

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[8] Rawls, 1971, p. 20.
[9] "From the standpoint of moral philosophy, the best account of a person's sense of justice is not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium", Rawls, 1971, p. 46.

broad sense, implies that the justifications (a) and (b) are necessary to each other, as no full justification can be reached when one of the two aspects of the justificatory procedure is missing.

This articulation of RE as a strictly coherentist method is indeed consistent with the methodological analysis developed in the first chapter, where I defended a moderate epistemic view about moral justification. As a matter of fact, the method of RE is the actual expression of the regulative idea that constitute the coherentist framework, namely the fact that no principles or judgments are ever self-evident[10]. If RE is a method that provides a sound justification promoting a back-and-forth readjustment between general principles and specific judgments, then all of the "justified" principles remain subjected to a hypothetical revision. Therefore, <u>intrinsic revisability</u> appears to be the crucial methodological outcome of RE. Indeed, if one is ready to grant justificatory and explanatory force to a procedure that goes back and forth readjusting our principles in the light of our considered moral judgments and vice versa, then a fallibilist view with regard to the epistemic status of our moral beliefs is the most adequate to defend. Following the RE method, it should be said that in the everyday practice of moral reasoning, no principles or judgments are assumed by the agents as more than **provisional fixed points**[11].

As Rawls himself states in TJ[12], RE is actually a method that is not specific to the moral domain. On the contrary, the notion of RE that Rawls outlines in TJ is derived from an attempt to justify the rules of inductive logic advanced by Nelson Goodman in his classic *Fact, Fiction, and Forecast*[13]. In the third chapter of this work, "The New Riddle of Induction", Goodman revises the Humean problem of how one can account for the fact that a probable prediction is in any sense better justified than an improbable one. According to Goodman, to justify rules of inference in inductive logic, it is fundamental to maintain a relation between rules of induction and particular inductive

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[10] "I do not claim for the principles of justice proposed that they are necessary truths or derivable from such truths. A conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view", Rawls, 1971, p. 21.

[11] Rawls himself describes relevant judgments and beliefs as fixed points. He claims: "There are questions which we feel sure must be answered in a certain way. For example, we are confident that religious intolerance and racial discrimination are unjust. We think that we have examined these things with care and have reached what we believe is an impartial judgment not likely to be distorted by an excessive attention to our own interests. These convictions are **provisional fixed points** which we presume any conception of justice must fit" Rawls, 1971, pp. 19-20 (emphasis added).

[12] See Rawls, 1971, p. 20.

[13] Goodman, 1955.

inferences that have already been accepted as valid. This procedure stresses the fact that no rule of induction exists that is valid *per se*; rather, every new rule of induction must confront established usages of induction. This assertion is understandable as far as we uphold a fallibistic paradigm in epistemology. As a matter of fact, fallibilism helps us to understand to what extent inductive reasoning can yield justification. Induction maintains an intrinsic self-correcting nature, according to which a general rule can be adjusted in the light of new observation cases that are inconsistent with older cases. Thanks to a fallibilist perspective, induction may defend the idea that is reasonable to use past patterns as evidence for future cases. Indeed, "if anything will work to form accurate beliefs about unobserved things, induction will"[14].

According to Goodman, within the field of science, the possibility of distinguishing between a *law-like* **hypothesis** (a generalisation that involves probable prediction) and accidental statements[15] is given by a theory of confirmation in which regularity in past experience is not sufficient. As a matter of fact, past experience is a guarantor of regularity only until the present, and our rules of induction, to be sound, need some other support[16]. Such support is obtained through the achievement of an equilibrium between any rule of induction and a broad range of acceptable inferences[17]. In this regard, no prediction could be justified by referring only to a rule of inference as a logical principle grounded merely by syntactic meaning. Rather, every rule has to be shown to be compatible with what we take to be an acceptable instances of inferential reasoning. In this sense, the acceptability of rules of inference is constrained by the "confirmation" provided by what we believe to be good or correct examples of inferential reasoning. Still, the equilibrium that we achieve is intrinsically revisable, as all inferences that we initially think to be acceptable might end up to be revised in the light of an inconsistency with new generally accepted rules that we refuse to reject,

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[14] Feldman, 2002, p. 137.

[15] In order to explain this distinction, Goodman introduces a parallelism between an inference in which the existence of a piece of copper that conducts electricity improves the credibility of the assertion that other pieces of copper will conduct electricity (*law-like* statement) and a second inference in which the fact that a man in this room is a third son increases the credibility of a statement asserting that all of the other men in this room are third sons (accidental statement); see Goodman, 1955, p. 73.

[16] The famous example provided by Goodman is that of the predicate "grue". This predicate applies to all things that before a certain time *t* are green but after time *t* become blue. According to the example, every emerald analysed before time *t* appears to confirm both the general hypothesis that every emerald is "grue" and also one stating that every emerald is "green". How can a theory of induction account for the different degrees of probability that an emerald in the future will be "green" or "grue"? See *ivi*, pp. 72-75.

[17] "The process of justification is a delicate one of making mutual adjustments between rules and accepted inferences; and in the agreement achieved lies the only justification needed for either", *ivi*, p. 64.

since they are the rule that right now best account for a broad range of other acceptable inferences.

This kind of argument is obviously a circular one, as Goodman himself admits[18]. However, this circularity is a virtuous one because this method can actually increase our knowledge and prevent us from accidental inference. Nevertheless, Goodman has still to overcome the theoretical difficulty of sorting out the inferences of our daily reasoning, many of which appear to be biased or fallacious. How can one grant the validity of a rule of induction if the actual inductions that are in equilibrium with this rule are often misleading? Goodman argues that if one goes back and forth between potential principles (rules of induction) and practical inferences, then one becomes able to do away with vicious inconsistencies. This way of reasoning draws an important distinction between weak and strong forms of coherentism. The former, weak coherentism requires just that all beliefs are consistent with each other. By contrast, a strong notion of coherentism posits that it should be established a mutual implication among all the elements of the coherent system. Moreover, a strong coherentism produces a system in which some beliefs are assessed as more relevant. Such beliefs, which are sort of fixed points, are those beliefs that, more than others, provide support and explanation for the whole system of beliefs in equilibrium. Such a distinction between weak and strong coherentism will turn out to be fundamental for understanding the relevance of the RE argument in Rawls' system and also for clarifying the connection between RE and the issue of normativity.

3.1.2 RE in the Rawlsian Paradigm

In the first chapter I distinguished between a moderate view of justification in ethics according to which the primary purpose of justification in ethics is to provide sound reasons for an agent to choose among different moral theories or principles. As a matter of fact, this analysis of the method of RE is compatible with this view, since the method itself can be described as a good approximation of the moral practice of choosing among competing theories. Taking into account this feature of RE, in this section I articulate how this notion was developed by Rawls in the different phases of his work. This analysis is required, for a quite common confusion persists about the intrinsic value of the RE as a method of justification in ethics. Indeed, too often RE has

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[18] See *ivi*, p. 64.

been viewed just as a method for accommodating internal inconsistency (among different beliefs of a single agent) or moral disagreement (among different agents). By contrast, following Scanlon, I hold that a proper understanding of RE needs to take into account both the descriptive and the deliberative meanings of this method.

The descriptive interpretation maintains that RE accounts for ordinary experience in which we, as moral agents, have to choose among different conceptions of what is right. According to this interpretation, the substantial justification of different conceptions is already provided by other arguments (as, for example, the original position), and RE is just the method that every agent should adopt to fit this conception into her system of beliefs and values. In this regard, RE does not seem to be a method of justification at all, but simply the correct method to outline the moral sensibility of each agent and granting consistency between her considered judgments and a general theory of justice. On the contrary, the deliberative interpretation of RE highlights its justificatory role. The method does not just describe how to make moral choices consistent with other beliefs, rather plays a fundamental role into moral deliberation by discriminating between right and wrong decisions. According to this interpretation, the RE method provides a substantial argument that some moral judgments are most likely to be correct than others. As a matter of fact, the intrinsic connection between justifications of kinds (a) and (b) highlights the fact that in moral reasoning there is no possibility that agents can "get outside" of their beliefs and reach a strictly objective point of view. Therefore, the correct framework for granting the validity of our judgments must take into account our point of view as moral agents. As I will show in the next section, RE can be interpreted exactly as the method that supports this continuous readjustment between general principles and our specific judgments on moral and political matters[19].

In order to underline the substantive value of RE, it is necessary to clarify the procedure whereby RE discriminates among relevant and irrelevant judgments. In order to grant this "filtering" action, Rawls introduces the notion of considered moral judgments. These judgments are "those judgments in which our moral capacities are

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[19] According to this wider interpretation of the value in ethics of RE procedure that I am presenting, the RE deliberative process when coupled with a coherentist framework builds up a specific model for solving the *vexata quaestio* about the relationship between universal principles and a specific implementation of them.

most likely to be displayed without distortion"[20]. In this regard, considered moral judgments are exactly those judgments that are more likely to be correct and therefore able to avoid biased or fallacious reasoning. Following Goodman's argument, we can say that considered moral judgments play in the procedure of moral deliberation the same role that *law-like* statements play within the framework of inductive logic. This parallelism emphasises once again how relevant Goodman's theory of inductive logic has been for Rawls. However, important differences between the moral reasoning domain and that of inductive logic must be stressed as well. In fact, considered moral judgements are never fixed at an earlier stage like a set of data because they always depend on who holds the judgments. As Scanlon clearly points out: "in the case of empirical observations we may be convinced that something is the case without having any idea why it is. But moral judgments are not in general like this. Only very rarely is it clear to us that something is right, wrong, just, or unjust without our having some idea what makes it so"[21].

In the interpretation of RE that I am presenting here, the first relevant feature of RE is granted by the fact that this method accounts for the twofold meaning of "justifying" within the moral and political domain. Indeed, in moral reasoning the procedure of justification must account for both the subjective reasons of an agent (the coherence between general principles and considered moral judgments) and the normative ones (the procedure for determining a fair framework of deliberation in ethics). The main goal that RE achieves is to demonstrate that these two sides of justification should be taken together in a coherent and unitary system.

Now, to better understand the implications of RE for the general justificatory paradigm I have been outlining, I briefly examine the development that this concept has undergone within Rawlsian framework. In the 1951 article, "Outline for decision procedure in ethics"[22], Rawls advanced a strong parallelism between ethics and science in order to explain his notion of a "reasonable decision procedure"[23] in ethics. In the article, which is extremely dependent on a positivistic view of the scientific method, Rawls maintains that objectivity in science has to be intended as the property a proposition owns by virtue of being evidenced to be true by a reasonable and reliable

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[20] Rawls, 1971, p. 47.
[21] Scanlon, 2003, p. 149.
[22] Rawls, 1951.
[23] *Ivi*, p. 177.

method. Consequently, the gap between objectivity and subjectivity of moral knowledge is drawn depending on the reliability of a specific method for selecting evidence and granting justification. According to this interpretation of moral justification, the decision procedure for choosing among competing conceptions is conceived as follows:

1. identifying a set of considered judgments about justice that form the set of moral facts;

2. trying to formulate principles that would account for this set of moral facts;

3. demonstrating how these general principles are accepted as justified, starting from the idea that such principles are able to match our considered moral judgments.

Rawls maintains that this scheme would be a good approximation of how we usually deliberate in moral reasoning. In this regard, focusing on RE allows me to stress Ralws' attempt to be faithful toward moral phenomenology.

It is worth noting that here the criterion for justifying moral principles rely on the possibility of satisfying the correspondence with a set of preselected moral facts. This criterion seems to run afoul with the discussion about RE developed in the previous section. Indeed, I have stressed the fact that the method of RE hinges on a notion of justification that is not exhausted by the attempt to reach a correspondence between general principles and moral facts. This inconsistency might be explained by the fact that, due to important changes in the paradigm of epistemological confirmation theory after 1950[24], Rawls modifies his epistemic account and reduces the normative relevance attached to the procedure that attempt to establish pure moral facts. Indeed, in TJ, the normativity of principles of justice do not hinge on the fact that they accounts, and represent, independent moral facts. Rather, the principles of justice are assessed thanks to a criterion that calls for a coherent equilibrium with some relevant moral judgments held by moral agents "with their supporting reasons"[25]. In this regard, such moral judgments still constrain our moral deliberation, but in a way in which they do not need to be considered as evidential moral facts. Rather, these judgments constrain the whole deliberation because every moral justification should depend also on the reasons (justified) held by agents. Hence, we can observe an important shift in the paradigm: in

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[24] In this regard, I recall the relevance of the pragmatic conception of the scientific method espoused by Goodman (1955) or Quine (1951 and 1969).
[25] Rawls, 1971, p. 46.

TJ is a coherentist rather than a positivistic epistemic paradigm that is working as background[26].

First of all, the idea that principles of justice are not justified as far as they do not accommodate our moral intuitions about a just society perfectly expresses a coherentist framework of justification. Even if a good philosophical argument can be provided for justifying specific principles of justice, still the *full* justification of these principles depends on the actual possibility that they can be coherently embedded within our doxastic system of beliefs. Therefore, the role played by the philosophical argument is not mitigated in its theoretical force. However, this same argument is laid out starting from a coherentist perspective about the procedure of justification as a whole. Indeed, the same conceptions of justice that are compared in the original position must already have been determined by a procedure that depends, at least indirectly, on the RE method. Indeed, "the structure of the original position is itself justified by employing the method of reflective equilibrium"[27]. As a matter of fact, RE is the method that, along with the philosophical argument for outlining the principles of justice, determines which form of objectivity and normativity the ethical inquiry could claim for. The RE method accounts for the input and output outcomes of the original position[28].

Second, according to this practical and concrete approach, in moral reasoning we have to start from where we are, trying to justify normative principles that can cohere with our considered moral judgments in RE. The fact that there is not a privileged point of view for judging our situation is explained perfectly by RE, as this method achieves coherence thanks to a mutual adjustment between general principles and concrete judgments. Therefore, RE method in TJ shows that in moral reasoning no choice between correct and incorrect principles is possible without taking into consideration our engagement as competent judges and without our ordinary judgments as clues toward the right solution. A coherentist approach maintains that the validity conditions of an argument are those according to which agents make a practice of judging it. Hence, given the fact that moral agents are unable to assume an external point of view for assessing their various considered moral judgments, a coherentist approach should

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[26] For an analysis developed at some length of the differences between Rawls (1951) and Rawls (1971), see Delaney, 1977.
[27] Scanlon, 2003, p. 153.
[28] Indeed, as Jane English (1977, p. 97) perfectly points out: "The original position is a devise for unpacking our considered moral judgments in reflective equilibrium".

argue that a principle is recognised as justified if and only if it coheres with agents' other beliefs[29].

Third, if the possibility of achieving equilibrium among general principles and particular judgments is a criterion for assessing the intrinsic validity of principles of justice themselves, then the theory should be evaluated as a whole[30]. Indeed, according to the coherentist approach, the justification requires a relation of mutual support among all the elements of the doxastic web of beliefs and, consequently, every element of the system in part explains the others. Thus, a single part of the coherent system can be criticised, but this criticism, to demonstrate its intrinsic value, should be justified against the whole theory as a coherent system[31]. In this regard, the well-known metaphor of Neurath's boat is extremely useful. According to this image, "our ship of beliefs is at sea, requiring the ongoing replacement of whatever parts are defective to remain seaworthy"[32]. We can neither abandon the ship because one part needs replacement, nor continue on our sail without mending the defective part.

3. 2   Reflective Justification

3.2.1   Wide and Narrow RE

In the previous section, I argued that RE plays a fundamental role within the Rawlsian procedure for justifying political principles. Actually, my impression is that very often the pivotal role played by RE is unmentioned. By contrast, my interest in RE comes from the fact that analysing this topic allows me to account for the intuition that no good outline of the real meaning of "justification" in ethics could ever be developed if the theoretical difficulties posed by epistemological issues were not faced as well. Of

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[29] It seems to me that the connection between the argument of original position and RE could be understood exactly in these terms. Indeed, the original position's argument provides us with a sound deliberative model for choosing among different conceptions of justice. Still, the conditions of objec*tivity* for this model of choice are determined by the fact that actual actors are capable of considering such conditions as adequate. As Rawls (1971, p. 17) affirms: "Conceptions of justice are to be ranked by their acceptability to persons so circumstanced. Understood in this way the question of justification is settled by working out a problem of deliberation: we have to ascertain which principles it would be rational to adopt given the contractual situation".

[30] In this regard, Quine's holistic notion of confirmation might have influenced Rawls' development of the theory of justification in ethics.

[31] Many philosophers have criticized the coherentist approach for its "conservativistic" tendencies. I will discuss this charge in the next section.

[32] Kvanvig, 2009, p. 3.

course, ethical reasons for justification are different from those that are strictly epistemological. However, the ethical inquiry is based on the possibility of achieving a sound account of normativity. In this regard, what seems to me to be relevant about RE is that this method strongly maintains and tries to explain the relation between the way in which a principle is grounded as soundly justified and the fact that a moral agent is justified in holding such a principle. In the first chapter I defended coherentism as a general framework in moral epistemology. Now I want to outline the most important features of such a coherentist account of justification when actually applied to the justification of a theory of justice.

According to Norman Daniels, the author who, more than others, has tried to broaden the conceptual analysis around the Rawlsian concept of RE, a coherence theory is composed of almost the same features in both moral and scientific reasoning[33]. These features are:

- considered judgments;
- simplicity;
- methodological conservatism.

The value of our <u>intuitive judgments</u> derives from the fact that they are *ours*. Of course, this does not mean that all our judgments are meaningful and correct. Nevertheless, a sound coherentist theory of justification in ethics should recognise that no general principles can be acceptable if they are not able to achieve coherence with our stronger and more reliable intuitions. Indeed, one of the main goals of a coherentist approach in ethics is to avoid the well-known counter-intuitive outcomes of certain moral theories, such as utilitarianism. In this regard, it is stressed that RE imposes a condition of adequacy for all moral theories. This condition constraints the different theories to fit the considered moral judgments held by individuals. In this way, such a procedure tries to avoid every counter-intuitive outcome in the application of a general theory. However, such condition of adequacy implies some problems. In fact, a procedure of justification that begins from some relevant, given "facts" as are our moral intuitions, has to face charges about the risk of lacking any form of objectivity. For this reason, Daniels, thanks to a distinction provided by Rawls in his "Independence of Moral Theory"[34], promotes an important investigation about the differences between a **wide**

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[33] See Daniels, 1996, p. 25.
[34] Rawls, 1974.

reflective equilibrium (hereafter WRE) and a **narrow reflective equilibrium** (hereafter NRE). The latter is a procedure that only tries to achieve a balance among some general principles and our intuitions, whereas the former is a stronger form of equilibrium in which principles and intuitions also have to match some relevant background theories. This distinction is articulated in order to show that the coherence achieved by RE is not mere consistency. Indeed, if the value of coherence in ethics could be explained just by the fact that we are able to make our intuitions consistent with some general principles, then RE will be just a description of a procedure that looks for the management of internal inconsistency. However, as I have already shown, the real value of the RE method is explained by reference to a deliberative process rather than a purely descriptive activity. The method of RE is deliberative because it provides us with substantive reasons for accepting or refuting determined principles of justice and this procedure can be described as producing objective outcomes[35]. One problem arises here. For, without an actual implementation of the procedure itself, RE would not be able to demonstrate its validity as an autonomous form of justification. A theorist that defends RE must actually accept the burden of proof with regard to the statement that coherence is evidential and also normatively relevant. Indeed, coherence is able to demonstrate its validity as evidential proof for a valid deliberative practice, but it must already be achieved to accomplish this job. For this reason, it is important to understand that the justification of the procedure of RE as valid method *tout court* already hinges on the correct implementation of such method. Again, a coherentist procedure can be assessed in a correct way if and only if it is evaluated as a whole and when its diachronic side is taken into consideration as well.

A second relevant point I want to highlight is that the distinction between WRE and NRE accounts for the different epistemological weights attached to a strong form of coherentism in comparison with a weak one. A strong form of coherentism requires that all the elements of the coherent system are in a relation of mutual implication, as the consistency criterion – supported as sufficient criterion by weak coherentism - is not sufficient for granting the validity of the justificatory procedure in the light of the epistemic gap between justification and warrant. Moreover, Daniels' introduction of background theories in the picture accounts for the fact that RE, when viewed as a

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[35] In this regard, it is important to recall the distinction I have introduced in the first chapter between two senses of objectivity. The first sense of objectivity implies an ontological thesis, whereas the second sense is just involved with the ordinary practice of moral objectivity.

method that implies a strong form of coherentism, looks for harmony not solely with political principles, but with beliefs and principles that we defend and that are pertinent to domains other than the political one. This further argument emphasises the fact that strong coherentism avoids a fallacious form of circularity. For, even though every form of coherentism involves some circularity, thanks to Goodman's example of inductive logic, one can argue for a "virtuous" form of circularity in which the specific value of the single piece in equilibrium is justified through other arguments. Hence, the importance of WRE and its validity as justification are also provided by reference to other elements of the procedure that are themselves already justified:

a. general principles can derive their theoretical force from other arguments that must themselves be part of a coherentist model[36];

b. considered moral judgments are defined in this manner as they are filtered by correct procedures that attempt to avoid unreasonableness and lack of rationality;

c. background theories are "theories, or crucial beliefs, about the nature of persons, the role of morality or justice in society, and beliefs about procedural justice", according to Daniels' definition[37]. These theories are part of a core of deep theories about various philosophical issues and provide some relevant links between a theory of ethics and the value that such a theory should play for us as individuals within a whole system of beliefs. In this regard, the addition of background theories to the system has the goal to widen the justificatory circle as much as possible. In this regard, it is important to recall that even in the strictly epistemic analysis developed in the first chapter it has been discussed the fundamental role played by second-order beliefs within a coherentist procedure of justification. Indeed, second-order beliefs are the beliefs that should grant – of course always through a coherent argument – our epistemic relation with the external world. Hence, we can say that the background theories plays in Daniels's account the same epistemic role played by second-order beliefs in the coherentist theories of knowledge[38].

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[36] "More defensible is the method of wide reflective equilibrium, however, since it does not isolate itself from any knowledge or wisdom, no matter how far afield, but takes into account everything that may seem pertinent", Sosa, 1991, p. 262 (italics in the original).

[37] Daniels, 2009, p. 12.

[38] For the sake of completeness, I should refer to two articles by Margaret Holmgren (1987, and 1989) in which she provides a quite different account of the method of RE than mine. Discussing her analysis will led me too far away from the actual purposes of my analysis. Yet, it is important to acknowledge that, even though I support Daniels' general view on the method of RE – as I share his emphasis on the epistemic aspects of the method -, other relevant interpretations of the method have been articulated and soundly defended.

Taking into account all of these features, it seems that WRE could be precisely that form of strong coherentism that is able to avoid the charge of "begging the question of scepticism"[39]. Indeed, in the first chapter I have discussed this charge against any general form of coherentism, to wit, the no contact with reality objection. Again, what is relevant is not to show that a coherent form of justification, and consequently WRE as well, is able to grant that, necessarily, a justified belief is true. Rather, the sceptical challenge is taken into consideration so seriously by coherentism, that a definitive refutation of such sceptical scenarios is impossible. Still, a coherent system of justification, especially once that tries to embed in the coherent system as much considered beliefs and theoretical arguments as possible, it is probably the best attempt we can provide in order to contrast the sceptical challenge[40]. As in the case of inductive inference, there cannot be a definitive argument for granting the validity of induction as an epistemic procedure for yielding justification. Yet, our cognitive abilities does not provide us with a better option as reasoning pattern. According to this model, a system that achieves maximal explanatory coherence confers justification to beliefs that are part of the coherent system, as this system is determined by a process of cognition that is intrinsically normative and able of producing a self-correcting procedure[41]. Moreover, the validity of such account might be granted thanks to a different kind of argument, a sort of "pragmatic" analysis with regard to the epistemic status of our cognitive processes. For example, even though the existence of external objects cannot be granted once for all (in this regard the no-contact with reality objection is partly valid) still we can justify as correct the belief about their existence, within our coherent system of beliefs, thanks to an inference to the best explanation. On this view, the belief about the existence of external objects can be justified within our coherent system of beliefs as it

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[39] See Scanlon (2003) and Copp (1990).

[40] Keith Lehrer (1974, p. 202), for example, introduces as normative criterion for assessing the validity of a coherentist explanation a probabilistic principle: "If one seeks to guarantee of truth from justification, the expected value of believing some statements is at a maximum only if the probability of the statements is one".

[41] "One seems forced to choose between the picture of an elephant which rests on a tortoise (What supports the tortoise?) and the picture of a great Hegelian serpent of knowledge with its tail in its mouth (Where does it begin?). Neither will do. For empirical knowledge, like its sophisticated extension, science, is rational, not because it has a foundation but because it is a self-correcting enterprise which can put any claim in jeopardy, though not all at once", Sellars, 1956, p. 170 (for the page of the quotation I refer not to the first publication of "Empiricism and the Philosophy of Mind" in 1956, but the publication of the article in Sellars, W., *Science, Perception and Reality*, London: Routledge, 1963, pp. 127-196.

is assumed to be a better explanation of others beliefs we happen to hold, than other beliefs that refutes the existence of such external objects[42].

Naturally, this kind of indirect reply is not going to satisfy any critic that upholds a strong epistemic view according to which we need certainty in order to have knowledge[43]. In the same way, the indirect reply that WRE provides against moral scepticism might appear extremely weak as well. Still, I do believe that this reply it is the only one that it is available when it has been demonstrated that fallibilism is the epistemic paradigm within which our epistemic and moral reasoning must be embedded.

As a further point, I want to recall the already mentioned issue of circularity. Regarding this matter, the fundamental point is to understand how it is possible to have an increase in the force of justification through **a virtuous form of circularity**. My argument here is that not in every theoretical field will this circularity be a good outcome. Nevertheless, in ethics, if we get rid of any form of foundationalism, then we find ourselves as theorists, and also as moral agents, in exactly the same impasse at which has arrived Goodman for the theory of confirmation in inductive logic. Indeed, we need to accept that the starting point should be the place where we are. Thus, starting from what we have, from "our" evidence, implies a necessary reference to our ordinary judgments and to concrete examples of the moral process of deliberation. However, this reference to the ordinary competence of moral agents is not the only instrument an ethical theory possesses. Indeed, WRE tries to develop a procedure for justifying the choices among different conceptions of justice that depends also on some deep philosophical theories[44]. The reference to such deep and wide theories allows WRE to reveal some strengths and weaknesses of competing conceptions of justice. As I have already said, the introduction of background theories into the model of WRE grants the possibility of broadening the circle of justification beyond strict moral beliefs. This enlargement of the number of justified elements that must be in coherent equilibrium offers and increments the "evidential force" of the whole system. The difference between a descriptive account of our sense of justice and the attempt to produce

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[42] See Feldman (2002) and Lehrer (1974).
[43] For a deep analysis of the topic, see Feldman, 2002, ch. 7, pp. 130-156.
[44] Concerning this fundamental distinction, Daniels refutes the analogism between RE and the linguistic method because this similitude will reduce the WRE procedure to moral anthropology. See Daniels, 1996, pp. 66-80.

normative statements about what we have to do in our moral life lies in the this search for the largest possible justificatory circle.

This last, fundamental point is the perfect answer to those authors that charge the RE method with the argument that the justificatory procedure employed by this method is actually rigged. According to this argument, no justificatory force could be attributed to a coherentist argument for the justification of principles of justice because these principles, within the RE procedure, need only to match our considered moral judgments and therefore all the alleged justificatory weight of the coherentist procedure would lie on RE, and this procedure is not enough for guaranteeing objectivity. To answer this criticism, let us recall that the RE procedure is valid only if every single element that is going to be part of the hypothetical equilibrium is not just consistent with other elements, rather is mutually implicated by all the other elements of the system as a whole. Moreover, the different elements of the system very often are sustained by other theoretical justifications that are consistent, but independent from the coherentist procedure[45].

The method of WRE is able to provide us with a criterion for distinguishing between mere internal consistency and a stronger form of coherence in which there is an evidential relationship of mutual implication among beliefs, principles and background theories. While NRE is not able to avoid the charge that coherence ends up being nothing more than internal consistency, WRE instead claims for a strong form of coherence in which some elements that are part of the coherent system exhibit an epistemic priority over the others. Of course, such epistemic priority must itself be justified through an adequate procedure; otherwise, the whole RE risks failure in a sort of weak form of intuitionism[46]. Indeed, the epistemic priority of considered moral judgments is justified by the fact that they have already been "filtered". Moreover, their validity is always subordinate to a possible revision, even though it is true that some provisional fixed points are taken for granted. As Daniels affirms:

 "Since all considered judgments are revisable, the judgement 'It is wrong to inflict pain gratuitously on another person' is, too. However, we can also explain why it is so hard to imagine not accept it, so hard that some treat is as a necessary moral truth. To imagine revising such a provisional fixed point we must imagine a vastly altered wide

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[45] Fundamental examples of parts of the system sustained by independent theoretical reasons are the principles of the background theories that became part of a coherent system. Daniels (1996) provides as examples different background theories about the role of morality in society; about persons; about social relationship, etc.

[46] See Brandt (1979), Hare (1996) and Singer (1979).

reflective equilibrium that nevertheless is much more acceptable than our own. For instance, we have to image persons quite unlike the persons we know"[47].

As a matter of fact, starting from an anti-foundationalist approach, the RE procedure will never affirm that some judgments are fixed as they are self-evident moral truths. Nevertheless, WRE is a form of coherentism that implies some fixed points for which the initial credibility is guaranteed by other arguments besides coherence itself[48]. These fixed points are what Daniels calls "**Archimedean points**": beliefs that are not foundational, but still, are strongly evidential for the whole justificatory perspective[49]. Moreover, the same system of coherence is a further way of granting strong evidence in support of certain principles instead of others. Indeed, if our whole theory of justice has already passed through different stages of justification and has also demonstrated its ability to achieve coherence, then it is quite understandable that the same theory will legitimately refuse particular principles that might go against many of the fixed points of that theory. At the end of the day, a whole system of elements that are already justified and coherent with one another is more likely to be correct than a system in which many elements are inconsistent. For example, if we try to include in our WRE a sentence q that states: 'It is right to inflict pain gratuitously on another person', then it quite easy to understand that accepting this assertion will imply an overly strong distortion of many of our common fixed Archimedean points with regard to the meaning and value of the term "right". This outcome is strongly connected with the second feature of coherentism presented by Daniels: simplicity. The simplicity constraint implies the respect of the "law of least action". This law, indeed, perfectly explains why it would be so difficult, both from an intuitive perspective and from a theoretical point of view, to include the principle 'It is right to inflict pain gratuitously on another person' within our doxastic sets of beliefs. The procedure of RE, under the same conditions of achievable coherence, should prefer that option in which the law of least action is respected. This procedural implementation of the ideal of simplicity reflects the intuitive idea that the more changes are needed in an already coherent system, the less reliable is the new evidence that required so many changes in order to

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[47] Daniels, 1996, p. 28.
[48] It is worth noting that Daniels provides an account of RE that stresses more the epistemic tasks fulfilled by this method within the procedure for justifying a theory of justice, rather than the moral reasons. This account of the method of RE is indeed consistent with the analysis I have provided in the first chapter, where I have highlighted the fundamental role played by epistemic features within the nonideal attempt to justify a political theory.
[49] *Ivi*, pp. 47-65.

be embedded within the system. According to this interpretation, the difficulty of incorporating a principle about the right to inflict gratuitous pain on another into our conception of justice is also expressed by the fact that such principle will change dramatically our whole system of beliefs[50]. Therefore, the simplicity condition would be part of an argument for refusing this principle as an element of our theory of justice. Every already justified principle or belief has a sort of prejudicial-validity-status attached to it to the extent that it has been justified in WRE. Indeed, every justified sentence of our theory of justice provides "intersubjective checkpoints in the sense that if a moral view or theory could be shown to conflict with these sentences, this would generally be conceived as a decisive argument against the theory"[51].

The prejudicial validity attached to the beliefs and principles already embedded within WRE implies a sort of conservatory side for the procedure of justification. Indeed, methodological conservatism is the last feature of coherentism that I introduced at the beginning of this section as a fundamental aspect of RE method. Again, it is true that RE has a conservatory side; nevertheless, this feature does not imply a weakness of the procedure itself. I think that is extremely difficult to grasp the real value of the RE procedure because this method is always on a ridge. It appears to be a conservative procedure, but it also claims for the possibility of sustaining constant revisions of the partial equilibria achieved. Moreover, RE faces charges both of upholding relativism, for the justificatory procedure begins with our considered moral judgments, and of being a sort of hidden intuitionism, as some elements of the theory would own epistemological priority. Furthermore, RE is still sometimes described as a general procedure for justifying some moral and political principles, but it could also be interpreted as the status that every single agent achieves after an internal struggle to find equilibrium among contrasting personal beliefs. All of these elements appear to be quite in conflict with one another. My argument here is that the same RE procedure should be evaluated as a whole, respecting the intrinsic value of the coherentist approach[52]. Indeed, all criticisms are applicable to some elements of the method, but not to the

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[50] Concerning this point, I want to recall the fact that the distinction between the probabilities that all emeralds are "green" or "grue" is also conducted through the idea that the acceptance of the predicate "grue" would disconfirm too many other physical hypotheses that are taken for granted and whose abandonment would imply revising the whole theory on physical objects.

[51] Tersman, 1998, p. 95.

[52] Blanshard (1939, p. 286) for example, referring to the intrinsic epistemic aspects of a coherentist paradigm, claim: "The charge of conservativism is thus a mistake. It assumes that the system we must take as base is a system of first-order beliefs. But we have seen that when beliefs of the second-order are included, as they have every right to be, we have a system that provides for its own correction".

whole RE procedure. Concerning this aspect, indeed, it is worth noting that the charge of relativism could be faced only if the fact of starting from some moral "facts" as our considered moral judgments is understood under the perspective of the whole procedure with its independent stages of evaluation. Furthermore, the charge of conservatism, which sounds so sensible, at the end loses its force because RE is always both a procedure for achieving agreement and a method that reasonably accepts continual revisions and that argues for the fact that some non-moral theories play a substantial role within the procedure for constructing and justifying our moral beliefs[53]. To conclude, we can say that RE, if analyses as justificatory method and therefore evaluated as a whole, is able to reply in a quite satisfactory way to many criticisms that have been addressed against its validity. After all, as Rawls himself affirms, "The struggle for reflective equilibrium continues indefinitely"[54]. In this regard, it is important to understand that RE is a procedure that takes into account the diachronic side of morality[55]. For this reason, as I said, even though the burden of proof is on RE itself, this burden should not be understood as overly urgent, allowing to the procedure of RE to take place before determining if it is a valuable method or not.

I began this chapter claiming that RE is an adequate, efficient and reasonable method. Now, after the articulation of many issues, I hope that it is clearer why I have stated so. First, RE seems to me an <u>adequate</u> method because it tries to take into account some relevant aspects of our ordinary experience without losing the normative aspects that must characterise every account of moral deliberation. Second, the RE method is <u>efficient</u> because it is a concrete and plausible procedure for achieving agreement in ethics. Third, the RE procedure is an extremely <u>reasonable</u> method, as it looks for a form of agreement that is intersubjective, instead of appealing to foundational, self-evident beliefs. In this regard, RE method is consistent with the nonideal paradigm of political philosophy that I defend, since RE method hinges on the doxastic presupposition and, furthermore, although providing an objective justification of a political conception, it is always open to re-examinations and to the possibility of revising or improving our justificatory procedure. In this regard, I think that Scanlon is completely right when he affirms: "it seems to me that this method, properly

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[53] Actually, against the charge of conservatism, it is also worth noting that Rawls (1971) considered moral judgments to be much more revisable than he did in Rawls (1951).
[54] Rawls, 1993, p. 97.
[55] Concerning the value of the diachronic side of moral enterprise, see Bagnoli, 2002.

understood, is in fact the best way of making up one's mind about moral matters and about many other subjects. Indeed, it is the only defensible method: apparent alternatives to it are illusory"[56].

3.2.2 A Modest Account of Objectivity

"The fact that the method of RE could lead to a result that called into question the objectivity of our moral beliefs is not an objection to that method. It is, rather, a necessary consequence of the fact that this method does not 'beg the question against scepticism'"[57]. With this statement by Scanlon, I introduce the last issue of this section of the chapter: namely, the discussion about the possibility that RE method might produce objectively justified moral principles and beliefs. In this regard, it is important to recall the fundamental difference between NRE and WRE: while the latter is able to provide explanatory evidence for the principles that turn out to be supported by the coherentist method of deliberation, NRE is strictly connected with the mitigation of internal inconsistencies. If WRE supplies the broadest evidence achievable in a field such as morality and, moreover, is the guarantor of an important and endless procedure of critical scrutiny, then it should be possible to claim that this procedure is capable of producing an objective justification. However, which kind of objectivity is this? Again, it is important to recall a distinction between two meaning of moral objectivity:

i. a moral principle can be objective as far as it implies an ontological assumption according to which there are moral objects or properties to which moral truths correspond;

ii. a moral principle can also be defined as objective inasmuch the evidence in its favour has been obtained through a deliberative process that respects some correctness constraints that are determined in the light of the ordinary practice of morality.

These two senses of objectivity are different, we can define them as a **bold** and **moderate** notions of objectivity. According to the bold account, sustaining the objectivity of the moral discourse implies necessarily that moral realism is true[58]. By contrast, the moderate version focuses its attention on the epistemic practice of

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[56] Scanlon, 2003, p. 149.
[57] *Ivi*, p. 153.
[58] According to Railton (1995), moral realism implies something more than a Literal Truth thesis with regard to the objectivity of moral statements. In this regard, Railton provides an account of objectivity that can be viewed as close to mine, even though he also wants to argue in favour of moral realism. A statement on which, by contrast, I want to remain agnostic.

producing evidence for specific principles and proposition and it remains austere with regard to the metaphysical status of moral facts. These two accounts must be distinguished, but they are not incompatible. Indeed, they actually focus their attention on different aspects of what implies for a proposition to be "objective" and therefore we can have a theory of justification in ethics that meet both these objectivity requirements[59].

I uphold the second account of objectivity, namely the moderate one, for two slightly different reasons. First of all, this account of objectivity is compatible with my general epistemic view with regard to the procedure of justification of moral and political principles. Assuming as benchmarks a doxastic presupposition and a fallibilist paradigm impacts as well the way in which we look to the issue of objectivity. This moderate account of objectivity is still a robust account, as it grants the descriptive side of moral discourse, claiming that moral propositions can be described as true or false and that moral disputes, in principles, can be settled. This approach is coherent with the phenomenology of our ordinary moral practice. Yet, according to this moderate version, the fact that moral sentence might be defined as objectively true or false stems from a normativity implicit in the practice of correcting and revising our beliefs on morality in order to achieve a maximum coherent system, rather than on the connection with an ontological committing argument[60]. Therefore, a correlation with an ontological argument is not necessary for grating the objectivity of the moral discourse – at least in the moderate sense. Yet, the bold account of objectivity is not inconsistent with the moderate one. Indeed, the two accounts of objectivity refer to different reasons for claiming that a moral or political theory is objective. This means that the two versions of objectivity are not incompatible and that, therefore, it is possible to sustain a view according to which objectivity is granted by the correctness criteria of the moral deliberative practice and arguing in favour of either a realist or a non-realist account in moral ontology. Consequently, I think it is correct to claim that the moderate account of objectivity underdetermines choice between competing ontological thesis with regard to

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[59] A long debate has taken place with regard of the relationship between objectivity of the moral discourse and the statement – accepted by some authors, criticized by some others - that moral realism is true (see Brink (1989); Dworkin (1996); Enoch (2010); Horgan and Timmons (2006); Railton (1995); Wiggins (1995); Williams (1995); Wright (1995).

[60] "I doubted then that there was any distinctive understanding to be gained of the nature of morality or of moral judgements from allowing the emphases of the realist/antirealist debate to affect the way one should read the questions we need to debate about ethical knowledge, object*ivi*ty, etc.", Wiggins, 1995, p. 253.

the status of moral facts[61]. This last point is important for introducing the second reason why I support this model of objectivity in ethics. Since political philosophy – at least according to the general paradigm I uphold – must respect some neutrality constraints, then I think it is really important to propose an account of objectivity that can be faithful to moral phenomenology without necessarily requiring to take a stance on the ontological status of moral facts as well [62].

According to this moderate account of objectivity, the relevant issue at stake when we analyse the objectivity of moral discourse is the normativity intrinsic to the "epistemic correctness" criteria that are employed in the assessment of the validity of our moral practice of deliberation. Our moral deliberation is developed thanks to the idea that we, as moral agents, are able to describe our most strongly held moral commitments as true and justified through a correct deliberative procedure. In this regard, this kind of objectivity involves the idea that there is a right answer and the normativity attached to the "rightness" of this answer rests on the **correctness-apt deliberative procedure** we produce as moral agents.

"These contents have correctness conditions that are commonsensically seen as objective in the sense that the content of one's beliefs is not simply a matter of what one takes it to be - it is not a matter of idiosyncratic will, free stipulation, or spontaneous creation. […] The puzzle is *how* they might do this: how subjects might, by doing what they do, place themselves within a normative framework that sustains a distinction between what is correct and what is done"[63].

This account of objectivity highlights the practical side of our moral enterprise, to wit, the fact that our moral practice is able to produce moral evaluative judgments. Indeed, moral agents, starting from what they have, namely rough moral judgments, try to achieve a relevant goal: an agreement on some general, justified and objective principles of justice. During this productive procedure, there are normative constraints that play a relevant role, like for example the notion of considered moral judgments. Considered moral judgments, in fact, are doxastic moral beliefs that have been "purified" from deviating beliefs in order to meet an adequacy constraint. A parallelism can be provided between the productive activity of the ordinary moral evaluative practice and the explanatory activity of observational beliefs. In fact, the explanatory

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[61] On the same line, Brink's analysis about how a concept of the person underdetermines choice among competing moral theories, see Brink (1987) and (1989, appendix 4, pp. 303-321).
[62] "I have argued that the cognitivism of everyday moral inquiry, and hence the coherence theory's ability to maintain our ordinary understanding of moral inquiry and argument, essentially depends on the question of objectivity", Dorsey, 2006, p. 511.
[63] Railton, 1995, pp. 275-276.

activity of descriptive beliefs has an intrinsic normativity that stems from the epistemic activity of justifying such evidence as adequate. The explanatory evidence depends on the system of belief that the believer holds, and yet the correctness criteria for assessing such evidence can be defined as objective. Of course this normativity implies a circularity of mutual supports among beliefs. However, this circularity can be explained in the light of the general holistic view about the justification of the procedure of production of human knowledge. To conclude, the objectivity of morality can be granted thanks to the "durable satisfaction of the discourse's internal disciplinary constraints"[64], such as correctness criteria intrinsic to the moral evaluative discourse itself[65].

Concerning these aspects, I find quite interesting an argument suggested by Bagnoli, following the Kantian distinction between synthetic and analytic judgements[66]. Indeed, taking into account the deliberative interpretation of the RE method, it could be said that, to achieve a normatively forceful justification, RE needs to be a synthetic procedure rather than a strictly analytical one. According to this approach, WRE would be able to provide strong evidence for the validity of principles of justice that have met the WRE constraints. Moreover, the accomplishment of a valid WRE would guarantee the production of normative judgments. These judgments could be understood as elements of a synthetic production of practical knowledge. In fact, if RE is just descriptive and therefore analytic, then the procedure would lose all of its normative force. By contrast, morality requires a procedure that does not just describe our sense of morality after that this one has been filtered from the biased ideas. Rather, it is important to find a procedure for obtaining the *best* choice possible.

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[64] Wright, 1995, p. 219.

[65] Both Railton (1995) and Crispin Wright (1995), I think, support this analysis of the evaluative practice of morality as intrinsically normative. However, Railton believes that this normativity of the moral discourse should be coupled with a realist account of moral facts as supervenient on non-moral ones. By contrast, Wright maintains that the validity of the moral discourse can be granted thanks to a discourse-invariant analysis that attests the "superassertibility" of moral truths. Anyhow, what it is relevant for my analysis is that both the authors uphold a view about the practice of morality as able to provide objectivity thanks to the reference of some correctness criteria that belongs to the internal disciplinary constraints of the moral discourse. Moreover, the fact that this account of objectivity is supposedly compatible both with a realist account (Railton's) and a non-realist one (Wright's) is supporting my idea that the modest form of objectivity underdetermines the choice between realism and anti-realism in ethics.

[66] "Recall Kant's project: if morality is not chimerical, 'a phantasm in our brain', then it must be possible to show that practical reason has a synthetic use, that it can be applied to some objects. For a concept to have reality, it must be applicable. That is, it is not enough to say that such a concept is analytically coherent and intelligible; it must be given an application. In particular, to be objective practical reason must be shown to be applicable to us: the moral law is objective insofar as it is shown to be subjectively applicable", Bagnoli, 2001, p. 322.

3.3   Reflective Agreement

3.3.1   RE as a General Interpretative Paradigm

RE is an extremely valuable method as it allows us to depict a method of justification in ethics in which not just moral aspects are taken into consideration. RE is the perfect expression of a moderate view with regard to the procedure of justification, for the political conception is justified if and only if achieves coherence with all the other beliefs held by a moral agent in her doxastic system. Strong intuitions about past cases of moral conflict 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. As I have already claimed, one of the most important feature of RE method is the theoretically never ending revisability of the outcomes of the method itself. The procedure of mutual adjustment between general principles and strong intuitions held by moral agents can provide stable results and yet been intrinsically revisable. 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, as it claims for a fallibilist account of the justificatory procedure and consequently is benevolent toward the confrontation among different opinions and is always open to possible readjustments. Upholding a fallibilist view does not mean that the principles of justice are left without normative power, as their justification is ultimately not infallible. The normativity is maintained, since a specific concept of justice might be coherently embedded within the different doxastic sets held by citizens and therefore becomes victoriously justified from the justificatory perspective. Yet, the strong disagreement among citizens implies a nested inconclusiveness with regard to the interpretation of this concept of justice. The procedure in which every citizen achieves a RE among her beliefs and the "political module" is not established in advance, as it depends on the actual willingness of every citizen to engage herself into the procedure for reaching a stable WRE that is a factual precondition for realizing a public procedure of deliberation ruled by the normative ideal of public reason.

RE is both an individual and an unstable equilibrium that each agent should achieve during the process for justifying principles of justice and the coherentist

procedure that grants the legitimacy of the whole argument. In this regard, taking into account the Rawlsian argumentative structure as paradigmatic, it is important to highlight that RE could be interpreted as the background method that leads every stage of justification. This interpretation of the fundamental role played by RE is consistent with the articulation of the overlapping consensus that I defended in the foregoing chapter. Indeed, 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. In the overlapping consensus different members of the idealized constituency achieve a consensus over some specific liberal ideals starting from their different perspectives. In this regard, 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 overlapping consensus achieved constitutes the loose deliberative framework in which the device of representation of the original position is constitutes. 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 on these organizing ideas, the same construction of the original position device would be impossible, or at least normatively irrelevant. 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. 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 actually 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 engage themselves

in the practice of public deliberation demonstrate to accept, even implicitly, the organizing ideas of liberalism. Naturally, 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.

In my proposal, RE is fundamental, as this method is able to bridge the ideal and nonideal phases of the justificatory procedure. In order to understand this assumption, let's analyse the role that RE method plays in the different justificatory stages of the ideal phase of the theory.

– Following Quong, I have defended a notion of overlapping consensus according to which this consensus constitutes the input of the whole theory of justice. According to this interpretation, the overlapping consensus on the underlying ideas of political liberalism (i.e. the ideal of a well-ordered society as a fair system of cooperation and the idea of citizens as free and equal) is already the 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 convictions in RE. These Archimedean points are the raw material from 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 <u>General Wide Reflective Equilibrium</u> in which idealized members of the constituency agree on such ideas starting from their specific comprehensive doctrines[67]. 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

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[67] "Insofar as holism is plausible in the deliberation or reasoning of each of the parties, the moral beliefs of each will not function as rigidly axiomatized systems. Rather, there will be room for each of them potentially to revise most any aspect of his or her view, on the basis of what he or she takes to be good reasons. The idea of overlapping consensus suggests how, against the background of such holism, their joint effort at working towards moral agreement can proceed on the basis of any initial agreement whatsoever. Specifically, there is no need that the initial agreement pertain to what either takes to be foundational or basic. This appeal to holism and overlapping consensus makes a schematic case that joint moral reasoning is possible even in the face of deep moral disagreement. It reflects at least a bare possibility. When moral disagreement is deep, we want to know more about how the parties can reasonably approach agreement. Each will need to be willing to compromise: to revise his or her view in a way that he or she would not have been willing to do, but for some modicum of concern or respect that he or she has for the other party. And this compromise must go deep, in that it must extend to what each counts as right or wrong, or as worth seeking or avoiding for its own sake", Richardson, 2009, pp. 40-41.

reasonable citizen, starting from her specific doxastic set of beliefs, agrees on some liberal ideals that are outlined thanks to the reference to the actual history and development of liberal ideals themselves. In this regard, every citizen establishes a WRE between her doxastic system of beliefs – made up by background theories, moral intuitions, personal preferences, etc - and the organizing ideals of political liberalism[68].

–   After that an overlapping consensus among the reasonable members of an idealized constituency has been assumed, the freestanding argument for the construction of the general liberal principles can be exposed. The rationale for the construction of the original position argument is provided by the organizing ideas on which the overlapping consensus has already been established. Consequently, these Archimedean points constitutes the benchmarks around which developing the freestanding argument of justification. The procedure of justification here aims to provide a sound justification of general liberal principles, or even more minimally, of a specific concept of justice. These 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 notions of fairness. In this regard, RE method is again employed as an abduction argument according to which the general principles that are the outcomes of the device of representation of the original position are justified as they are the best explanatory principles that accounts for the Archimedean points shared in overlapping consensus[69]. The coherence here is viewed as a hint of "explanatory power", as 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 victorious justified within the doxastic systems of idealized moral agents is fundamental, as the coherence achieved is a reflection of the reasons why moral agents can support this political module. In this regard, coherence is a criterion of justification, not a justifying property[70]. The kind of RE that characterizes the *pro tanto* stage of the justificatory procedure is a strictly Political Reflective Equilibrium as the political module is determined thanks to a freestanding argument and the equilibrium reached with the Archimedean points relies

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[68] For a good analysis of "wide general reflective equilibrium", see Scanlon, 2003.

[69] In this regard, Gaus (1996, p. 108) states: "Second, I have argued that principles are to be justified in terms of their explanatory power vis-a-vis our other justified beliefs. Thus reflective equilibrium is based on an abductive hypothesis about the best possible explanation of our beliefs".

[70] For a deep analysis of these issues, see Sayre McCord, 1995.

on strictly political arguments that are completely discontinuous with regard to the comprehensive doctrines of the citizens[71]. With regard to the Political Reflective Equilibrium, it is worth recalling an argument developed by Samuel Scheffler in his article "The Appeal of Political Liberalism"[72]. In this work Scheffler claims that the true meaning of the *political* justificatory structure of PL is not that such procedure provides the justification for a political conception *tout court*. Rather, it can be argued that Rawls considers as truly legitimate a liberal conception of justice if and only if such conception provides a stage of justification that is strictly political. However, this strictly political justification could be a necessary condition, but not a sufficient one as well. Therefore, the political stage of justification can be embedded in a wider justificatory procedure in which not strictly political arguments can be assumed as relevant from the perspective of justification. "It might be less confusing and more illuminative to use the adjective 'political' to describe arguments for conceptions of justice rather than the conceptions themselves"[73]. This argument is consistent with the general framework I have been defending in this chapter. Indeed, I hold the validity of a freestanding, strictly political, argument for the construction of a political concept. However, I also do believe that the accomplishment of normative role played by the political justification hinges on the previous achievement of an overlapping consensus over the underlying ideals of a liberal theory of justice.

In introducing the distinction between a General Wide Reflective Equilibrium and the Political Reflective Equilibrium I have characterized just the first two stages of the complex procedure of justification of political liberalism that I have in mind. The part I have just discussed deals with the ideal phase of the theory. In this phase RE is both an 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 an useful tool for identifying the Archimedean fixed points that constitutes a loose liberal framework of reasoning. These organizing ideas, when justified in WRE, 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 which different, even though

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[71] The first author that has talked about a political reflective equilibrium has been Norman Daniels, 1996.
[72] Scheffler, 1994.
[73] *Ivi*, p. 13.

defined as reasonable *for the sake of the argument*, members of the constituency draw the line between the political and the comprehensive domain is a matter that can be resolved just with the 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[74]. The adequacy test requires that the theory that has been developed thanks to 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. However, given the fact that in this scheme a General Wide Reflective Equilibrium is antecedent to the freestanding argument for a Political Reflective Equilibrium, the agreement over the concept of justice produced by the freestanding argument is granted almost *de jure*. Since overlapping consensus grants that the 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. While relegated to the ideal stage, I hold that a justificatory paradigm developed in the wake of Rawls' theory can be soundly defended. However, the most dangerous problems arise exactly 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 a concrete overlapping consensus is achievable. According to Quong this is not a problem, as 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. In this regard, Quong maintains that the full justification is achieved when both the overlapping consensus and the *pro tanto* justification are accomplished. By contrast, the aim of this last part of this chapter is to

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[74] Ernest Sosa (1991), for example, distinguishes between a social version of RE and the classical view of RE as a method that applies to the ind*ivi*dual's set of beliefs.

articulate an analysis with regard to the nonideal phase of the political liberalism. According to this scheme, the full justification cannot be accomplished if the justificatory analysis is reduced to the ideal section of the framework. Rather, a fundamental role for a *political* theory of justice is to accommodate the disagreement in nonidealized circumstances. One of the major charges pressed against the political turn in the Rawlsian framework has been that such strictly political justificatory procedure requires from the citizens a schizophrenic attitude. 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 concept should be declared as trumping over all the comprehensive considerations they may have. Naturally, this twofold line of argument produces 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 optimal eligible proposal of public rules and principles[75]. The nonideal phase, instead, is devoted to the accomplishment of a *full justification* in which demonstrate the possibility that, even when the abstractions are undone, the political concept can still claim to be victoriously justified within the doxastic systems of beliefs of the actual members of society. For this reason, I think that Quong is wrong when he claims that full justification can be accomplished thanks to the pair of the overlapping consensus and the freestanding justification of the general liberal principles of justice. I will spend the next section discussing why I believe that it is not possible to argue that a full justification of a political module can be accomplished with reference to just procedures of justification that imply idealisation of some kind. In this regard, I think that Quong is wrong when he claims that:

"The alternative view I have offered does not present the freestanding argument – the move from the fundamental ideas to the general liberal principles – as a *pro tanto* justification which then depends on an overlapping consensus in order to achieve full or public justification. Because the freestanding arguments builds on certain fundamental

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[75] Gaus (2010, p. 323, italics in the original) defines the optimal eligible set in this term: "This allows us to identify a socially *optimal eligible* set of moral rules: no proposed rule in the set is ineligible in anyone's ranking, nor is it dominated by any other member of the set".

ideas that are already assumed to be subject of an overlapping consensus amongst reasonable people, the conclusions the free standing argument should be taken as fully justified to all reasonable people".[76]

I agree 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. The main goal of the nonideal phase is to guarantee the stability of the justification even when any abstraction or idealization is undone[77]. Hence, the full justification cannot be granted just with the reference both to the overlapping consensus and to the *pro tanto* argument. Rather, for achieving full justification we must introduce a new argument, less ideal, in which the overlapping consensus that has been achieved thanks to a constituency of just reasonable members can be viewed as feasible option even by a nonidealized constituency. Quong is right when he claims that political liberalism is not a theory that must demonstrate its validity to the unreasonable and illiberal people in the same extent to which it does with the reasonable citizens[78]. I agree that it is correct to develop an ideal stage of justification in which a concept of liberal justice is constructed and justified dealing just with the idealized possibility that all the members of the constituency would be reasonable citizens. The fact that actual members of the political constituency are not able to agree on the validity of this political general concept does not involve that this concept is less justified. Otherwise, the whole procedure of justification of political liberalism would collapse into a justificatory populism[79].

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[76] Quong, 2011, p. 186.

[77] "Related to this point, it must be the case that the deliberative conclusions are not overturned as the process of abstraction is undone and Members of the Public are again understood to be guided by their full set of evaluative standards. What was simply "freestanding" must, if it is to be fully justified, serve as a "module" that fits into each free and equal rational moral person's set of evaluative criteria. In the end, to publicly justify must be to justify in terms of all the relevant evaluative standards. We wish to structure common moral life on terms that everyone – considering all that she holds to be important and relevant – has sufficient reason to endorse", Gaus, 2010, p. 336.

[78] In this regard, Gaus (2011, p. 178) states that "in developing an account of liberalism, our first aim is to show that fundamental liberal principles are victoriously justified—that the case for them is conclusive. To accomplish this, we formulate a theory of liberalism. Our theory of liberalism can accomplish its task of showing that liberal principles are conclusively justified without showing itself to be conclusively justified. Our concern is the conclusive justification of substantive liberal political principles, not the conclusive justification of any specific philosophical theory of liberalism".

[79] See Gaus, 1996, pp. 230-233.

However, we still have to look for an actual agreement of citizens over a specific conception of justice. In this regard, the third stage of the theory is devoted to the concrete possibility of solving disagreement over political matters among citizens. When the abstraction is undone, it is not possible any more to assume that every member of the constituency is reasonable. This implies that not necessarily all the members of the constituency evaluate as victoriously justified, within their doxastic set of beliefs, these three considered judgments:

i. the idea of society as a fair system of cooperation;

ii. the description of citizens as free and equal;

iii. the burdens of judgments and the consequent articulation of reasonable disagreement as a natural feature of a democratic society.

The relevant point, when coping with the <u>nonideal phase of theory</u>, is to understand how an agreement can be reached when is not any more possible to assume the perfect rationality and reasonableness of the agents that are engaged in the political deliberation. In this regard, a liberal theory should derive a concrete norm of political conduct starting from an analysis about how democratic institutions could, ideally, be stable in the right way. Indeed, in the nonideal stage of the theory we are left with a political module 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[80]. However, if the political constituency is not any more necessarily reasonable, is it still possible to argue in favour of a public and shared agreement on this political module? Given the fact of disagreement, it is more adequate to develop a framework according to which the political module constitutes a public shared framework for organizing the political deliberation, more than an established – and justified - political conception on which the agreement can be taken for granted. The actual members of the political constituency are never fully rational and reasonable; indeed they often hold some unreasonable beliefs among their doxastic sets. Moreover, even if they are willing to accept the reasonableness constraints – epistemic and moral -,

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[80] In this regard, Valentini (2009, p. 339) correctly claims: "The point of a theory of justice is precisely to give us a conceptual framework from within which to criticise existing agents who do not conform with it. So long as, given our best account of human motivation, it is *reasonable* to expect compliance, the fact of actual non-compliance tells us nothing about the adequacy of the theory itself".

still the nested inconclusiveness is a reasonable outcome of our public deliberation over a political concept. Therefore, liberal theory, at the nonideal stage, must face two fundamental problems. On the one hand, liberalism should try to overcome the unreasonable disagreement, in order to achieve a stable legitimacy for its institutions. On the other hand, liberal institutions have to face inconclusiveness, since this latter is an expected outcome of deliberation even in case of a just reasonable constituency[81]. As a matter of fact, the abstraction argument works if the agreement is reached on a "thin" concept, rather than on a complicated and multilayered conception of justice. However, when the abstraction is abandoned, both the management of constituency and the determination of specific principles of justice become more complex.

The possibility, outlined by Rawls, is that the agreement, that in the overlapping consensus has been granted by the theoretical expedient of restricting the constituency to 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. It is not a contract theory model of justification, as the members of the constituency have already been living in an institutionalized context. Naturally, these institutions are imperfect and certainly a perfect model of democracy has not yet been accomplished. 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 still present in the contextual environment of contemporary liberal democracies. Probably they are not so well outlined and many citizens accept them without reflecting on such approbation. Still, the democratic institutions are more or less directly legitimated by the reference to such organizing ideals. For example, the liberal principle of legitimacy can be completely understood if and only if one assumes that the liberal ideal of equality among the members of the society has already been justified as a regulative ideal within a liberal society. Thanks to this ideal of equality, then, it is possible to understand the powerful argument according to which, in democracy, every citizen is owed justification for the laws that bind her. To conclude, therefore, we can say that **full justification** is the

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[81] Gaus (1996) describes the task of dealing with inconclusiveness as one of the most important to be accomplished by political institutions.

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. 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.

3.3.2 *Nonideal Reflective Agreement*

Before proceeding with the analysis, let me sum up the most important points of the foregoing section. I have claimed that RE is the most adequate method for dealing with the justification of a political conception under a moderate epistemic paradigm. Indeed, according to the nonideal framework I am defending, we need a procedure of justification that is intrinsically work in progress, allowing both a reflective attitude and a Socratic approach toward disagreement. Gaus claims that RE is an epistemic ideal that can never be achieved definitely. However, the same RE provides us with a good method for highlighting the internal inconsistencies in the doxastic sets of beliefs of moral agents and trying to solve them. "Though reflective equilibrium—and thus constructive interpretation of one's system of beliefs — will always be incomplete and approximate, it provides significant constraints on an eligible set of interpretations of any single rule or norm"[82]. RE method helps us to build up an optimal eligible set of political conceptions whose validity stems from the achievement of an overlapping consensus over a loose normative framework and on some Archimedean ideals. Any political conception is valid as far as it has been extrapolated from the eligible set of political conceptions. Naturally, the nested inconclusiveness implies that a conclusive agreement on a specific conception of justice is likely impossible to reach. Still, every option from the eligible set is a valid option.

In sum, the procedure of justification outlined so far can be described as follow:

− There is a first justificatory stage, the overlapping consensus, in which a wide reflective equilibrium is achieved by the reasonable members of an idealized constituency. Every reasonable citizen finds her personal way for justifying, in RE, some organizing liberal ideas in the light of her doxastic system of comprehensive beliefs. Consequently, the overlapping consensus yields a consensus on certain evaluative standards (determined by the organizing liberal ideals) and such common

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[82] Gaus, 1996, p. 115.

perspective can be articulated as being a deep part of everyone's doxastic system of beliefs, as its justification depends on the achievement of a wide reflective equilibrium.

−   Then, there is the stage of the *pro tanto* justification in which, thanks to a freestanding argument, a specific political module – that can be articulated in various ways (Rawls for example determines his political module through the articulation of an argument for determining and justifying two general principles of justice) – is laid down as normatively valid and intersubjectively justified.

−   Afterwards, the theory has to face the nonideal stage of the theory. Here, the citizens are aware of the full range of their evaluative standards, as the abstraction argument is abandoned. Therefore, the challenge for liberal theory is to find a way for obtaining that real citizens do not overturn the solutions reached through abstraction when their evaluation encloses the entire doxastic set of their beliefs. This justification depends on a contextual appeal to the value of some shared liberal ideals and on a deliberative practice that I call ***reflective agreement*** (hereafter RA).

"How do we get from general principles of public morality to the justification of an actual social morality?"[83]. This is the question to which I try to answer appealing to the RA method. I call it reflective agreement, instead that reflective equilibrium 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, RA is an agreement that the members of the political constituency reach on a loose normative framework starting from the actual circumstances of justice. This agreement depends on an actual public deliberation among citizens and not necessarily is achieved out of simply 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 feasible expectation in the nonideal stage of theory, I hold that an agreement can be reached – and this agreement is actually realized in the ongoing practice of liberal democracies.

Fred D'Agostino has introduced a well-known distinction between consensus and convergence[84]. According to this distinction, there is a *consensus* on a specific principle

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[83] Gaus, 2010, p. 42.
[84] See D'agostino, 1996, pp. 30-31

or conception if different agents have a common reason for agreeing on it[85]. Otherwise, we have *convergence* if the same conclusion is justified, by agents, for different and independent reasons[86]. According to D'Agostino, the notion of public justification provided by Rawls is a consensualist one, whereas Gauthier, for example, holds a convergentist model.

"According to Rawls, all of the parties to the project of public justification must be shown that beliefs which they already share-for example, about the concept of justice, the circumstances of justices, and the role of justice - justify a particular description of an 'initial situation' of choice, and therefore (subject to equilibration with considered judgments of justice), that conception of justice which parties can be expected to choose in this situation. […] On this account, (partial) antecedent consensus gives rise to or provides a basis for articulating a publicly justifiable conception of justice. According to Gauthier, each of the parties must be shown that there are principles of social interaction whose acceptance facilitates realization of that individual's (agent-relative) desires. […] On this account, there is convergence on a publicly justifiable conception of justice from very different starting-points (rather than agreement from a common stand-point)"[87].

The relevant point here is that, following Quong, I articulated the "antecedent consensus" that determines the structure of the freestanding political argument as a grounding overlapping consensus. Even if the agreement of the parties on the freestanding procedure is a consensus on a specific concept of justice for the same, strictly political reasons; this same agreements relies on the assumption that reasonable citizens can achieve an agreement on some underlying liberal ideals. The kind of justification provided by the overlapping consensus is actually a convergence on these organizing ideals starting from different perspectives. In this regard, the reasons for sustaining such ideas are different and not reconcilable under one single argument. The overlapping consensus is articulated in this way, as it expresses the normative liberal ideal according to which no regime is legitimate unless it is reasonable from every point of view[88]. When the test of reasonableness is imposed, it is possible to argue in favour of a convergence, from different perspectives, on the same political "module".

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[85] "If *A* and *B* are members of a community for which a regime *S* is publicly justified, then, on this reading, there must be some reason *r*, which *A* has and *B* has too, which is their common (consensual) reason in relation to the regime *S*", D'Agostino, 2009, pp. 7-8.

[86] "If *S* is reasonable from *A*'s point of view on account of *r(A)*, then it may well be that it is reasonable from *B*'s point of view on account of an *r(B)* which is distinct from *r(A)*", D'Agostino, 2009, p. 8.

[87] D'Agostino, 1992, footnote 7, pp. 160-161.

[88] Nagel (1987, p. 218, italics in the original) claims: "Defenses of political legitimacy are of two kinds: those which discover a possible convergence of rational support for certain institutions from the separate motivational standpoints of distinct ind*ivi*duals; and those which seek a *common standpoint* that everyone can occupy, which guarantees agreement on what is acceptable".

Moreover, the fact that the organizing ideals might be justified from different reasonable perspectives imply that such ideals constitute a normative framework from which evaluate the concrete situations. Indeed, these ideals might seems acceptable and justifiable from every – reasonable – point of view, it they fit, in WRE, the considered judgments that people hold in their doxastic sets of beliefs. In WRE it is possible to accomplish a justification of a normative framework in the light of the fact that such normative framework fits the beliefs that reasonable citizens share about which should be a just regime. "Rawls's regime might be alleged to fit the beliefs that individuals have about the kind of regime that is a reasonable one for them. It 'fits' those beliefs in the sense that it constitutes a situation about which those beliefs would be true"[89].

This 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[90]. 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. 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. Recalling the metaphor of liberalism-framework and liberalism-picture[91], 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.

The Archimedean points might be victoriously justified in the doxastic system of beliefs of every person that accept the reasonable constraints. However, few citizens are

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[89] D'Agostino, 1996, p. 31.
[90] "Someone who believes that she is Rational and Reasonable may be committed, by these beliefs, to acting in certain ways - for example, to limiting her Rational pursuit of her own interests in accordance with the demand, implicit in her belief that she is Reasonable, that she justify herself to others, or be prepared to, in certain kinds of situations. And this may give her a motive as well as a reason to conform to certain requirements", *ibid*.
[91] See above, 243.

actually fully rational and reasonable. Nevertheless, democratic regimes, although imperfect, are a quite stable default option for liberal societies. In this regard, I think that Sebastiano Maffettone 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 justification and legitimation[92].

"Liberal-democratic institutions, taken as a basis for legitimation, are a necessary premise of the contractual agreement – from which we derive normative implications. Otherwise different justifications, in a regime of pluralism, would never converge towards the potential unanimous consent that Rawls has in mind. Nevertheless, given that we want a social contract based on consent for the right reasons, justification originated by a reasonable comprehensive doctrine is necessary. Justifications, even if they vary, must all presume that free and equal citizens look for fair terms of cooperation among themselves under a regime of reciprocal respect. In such a way, we show how legitimation and justification complement one another in Rawls' general scheme of thought"[93].

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*[94], 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 the institutional practice. 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 "institutional practice of

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[92] This distinction is one of the fundamental argument presented by Maffettone is his introduction to Rawls. However, for specific references, see Maffettone, 2010, pp. 21-24; 222-228.

[93] *Ivi*, p. 24.

[94] It is worth noting that there are different ways for proclaiming one's disagreement with regard to the institutional decisions of the democratic regime in which it happens to live, such as conscientious objection and civil disobedience. Or, even, as definitive solution, the secession.

<u>legitimation</u>" is the best way for interpreting the contextual turn in the Rawlsian paradigm[95].

"Building on it, we can construct the thesis that the existence of a just basic structure cannot depend exclusively on a theoretical justification. It must depend also on a successful model of institutional interaction. Only this kind of legitimation permits the construction of a durable consent, even if the support of some theoretical justification was to be taken for granted. In practice, only a quasi-empirical notion of legitimation potentially unifies the structural pluralism of justifications under a coherent vision of justice"[96].

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[97]. Rather, it is possible to show to the citizens that when they accept a specific institutional process, they, maybe indirectly, are also accepting a loose normative framework and 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 some 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"[98] of democratic

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[95] In this regard, I want to recall the similitude I have introduced between Rawls contextualist move and the reconciliatory aspects of Hegel's social philosophy. See above, section 2.2.2.

[96] Maffettone, 2010, p. 23.

[97] It is worth mentioning that a large academic discussion is going on with regard to the possibility for political liberalism to reflexively justify its own structure of justification, namely if it possible to provide a public justification of the theory of public justification itself. See Cohen (2009), D'Agostino (1996 and 1998), Estlund (2008), Gaus (1996 and 2011), Wall (2002 and 2010). I think that this issue is extremely relevant and interesting. However, treating it will lead us too far away from the actual themes of his chapter. Let me just add that, according to D'Agostino (1996, p. 140), the point of view of "reasonable" people (obtained through an idealization) provides us with a normative standpoint for evaluating if public justification might actually be reflexively publicly justified.

[98] "The term 'capital' is appropriate and familiar in this connection because these virtues are built up slowly over time and depend not only on existing political and social institutions (themselves slowly built up), but also on citizen's experience as a whole and their knowledge of the past. Again, like capital, these

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[99]. On the one hand, legitimation provides us a sound, bottom-up, argument for upholding the validity of the loose normative framework of liberalism thanks "to fact that liberal democracy is, in our age, a (relatively) successful practice"[100]. In this regard, this form of justification is a contextual one, both because refers to the ongoing institutional practice and for it provides a justification that is contextual in its structure. On the other hand, the ideal stage of the theory yields a justificatory structure that, when appealed, can provide a systematic justification for the intrinsic normative value of the Archimedean points[101].

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 doxastic sets of beliefs of the same 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 afterward led citizens to agree on specific rules and principles to be institutionalized. In my opinion, <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

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are no guarantees that such arguments might be assessed as valid even by the members of the unconstrained constituency. 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 the actual institutional practice, should be able to motivate actual citizens to acknowledge the validity of the 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[102]. 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. Following again Quong, I have introduced this distinction in the foregoing chapter claiming that justificatory disagreement is a disagreement in which citizens still share some normative premises. 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 this agreement, in fact, the disagreement would be so intractable to endanger any normative commitment toward public deliberation. By contrast, if RA is obtained, then a public political deliberation, that respects some evaluative standards, can be accomplished,.

RA is an assent that depends on the internal consistency that every citizen might reach between her beliefs and the background beliefs regarding the normative meaning

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[102] Articulating the possibility of building up a negotiating agreement that is both efficient and that produces wise outcomes, Fisher, Ury and Patton (2011, pp. 10-11, emphasis added) argue that the negotiation takes place not just at the level of substances, but also at the level of determining the procedures for dealing with substances. "**This second negotiation is a game about a game – a 'meta-game'**. Each move you make within a negotiation is not only a move that deals with rent, salary, or other substantive question; it also helps structure the rules of the game you are playing. […] Whether consciously or not, you are negotiating procedural rules with every move you make , even if those moves appear exclusively concerned with substance".

of the institutional liberal practice. Indeed, the legitimacy of a liberal regime is not just an issue of procedural pedigree, rather hinges on a plausible interpretation of what justice requires. What reasonable people could accept as a legitimated 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. In this regard, I call this procedure **reflective agreement**, in order to highlight two features. On the one hand, this method looks for an agreement among citizens that cannot be defined more strictly as consensus or convergence, as the kind of agreement can vary from one social context to another and can never be determined once for all. On the other hand, this agreement is a reflective one, as depends more on a reflective attitude of every citizens, than on an intersubjective general agreement. Again, the fundamental justificatory role is played by the doxastic systems of beliefs held by citizens. The overlapping consensus argument provides us with an evaluative normative framework for assessing the validity of the different interpretations of the concept of justice – that Gaus calls the optimal eligible set – that is outlined by the freestanding argument. Then, this same evaluative standard should demonstrate to be able to endure as a victoriously justified standard even when the argument from abstraction is undone[103]. RA is not properly a defined method; it expresses a regulative ideal concerning how a deliberative structure can be built up in the nonideal phase of a theory of justice. The paradigm of RA delegates to each citizen the task of finding a consistent way for including some background beliefs about a normative framework of public deliberation within their doxastic systems of beliefs. For this reasons, it would be regulatively correct, before beginning the actual process of public political deliberation, to wonder how spread it might be a RA among citizens on some evaluative normative standards that would constraint the actual deliberative practice. RA's value can be acknowledged to the extent that the <u>multi-stages structure</u> of the procedure of justification is accepted as the most adequate. As a matter of fact, every different stage provides us with a specific feature of the justification and deals with a different articulation of the political constituency. In this regard, Quong is right when he talks about a "justificatory division

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[103] "How do we stay *there* once we achieve a well-ordered society? […] telling a plausible story about how we might get *there* from *here* make it more plausible that we could stay there once we got there, since getting there is generally harder than staying there. The story about how we might develop a wider and deeper overlapping consensus should make it seem more plausible that, if we were raised in a well-ordered society governed by a political conception of justice as fairness, we could maintain our commitments to *giving* priority to justice despite the fact of reasonable pluralism", Daniels, 1996, p. 151 (italics added).

of labour, or alternately, the buck-passing approach to truth"[104]. According to this interpretation, political liberalism provides the general framework of justification, yet some justificatory tasks are delegated to the actual citizens. Naturally, the results of this justificatory stage cannot be determined *ex ante*, as the actual willingness of the 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 educative role played by democratic institutions and by the example of good public deliberations that have been accomplished thanks to the recognition of the normative framework by the citizens engaged in the deliberation itself[105].

The possibility of increasing the number of citizens that accept, in RA, the normative framework of evaluative standards and that, consequently, are able to deliberate over political matters respecting 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 <u>democratic attitude</u> of citizens[106]. 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 feasible to expect every citizen to be reasonable. For this reason, it is possible that the set of citizens that are willing to achieve a RA might be empty or occupied by few, extremely reasonable, citizens. However, I also do believe that the actual, maybe not reflexively justified, acceptance of the democratic procedures by the citizens that live into the democratic societies is already a starting point from which it is possible to work on for developing a concrete RA on a normative framework of deliberation.

"Such an institutional framework not only promotes the instrumental exercise of freedom by citizens, it also educates them through participation and discussion into a perception of the dependency of their social relations and individual autonomy upon collective rules and arrangements – discouraging free-riding and other self-defeating

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[104] Quong, 2011, p. 232.

[105] "Thus, the account of justice as fairness connects the desire to realize a political ideal of citizenship with citizens two moral powers and their normal capacities, as these are educated to that ideal by the public culture and its historical traditions of interpretation. This illustrates the wide role of a political conception as educator", Rawls, 1993, pp. 85-86.

[106] "In a representative democracy, voting is not simply a way to select deliberative bodies but is an educative experience insofar as it encourages ordinary citizens to think in terms of justice and the common good. Responsive and deliberative procedures that require all citizens to register judgments, if not directly on issues, then on the representatives, encourage all to engage in public debate", Gaus, 1996, p. 236.

forms of self-interest. Moreover, by providing a forum for public discussion it enables preferences to be transformed and not just aggregated, allowing opposed interests to find acceptable compromises on shareable values which can offer new forms of individual expression to all. In these ways, it promotes a 'society with law', creating the common political culture without which no polity lasts for long"[107].

3.4   Reflective Deliberation[108]

3.4.1 Public Reason

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 and actual agreement among the citizens over a normative framework of deliberation, the public reason stage is dedicated to the concrete deliberation 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 already been 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 the reasons that citizens provide 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 mean by which the 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 of its principles and rules depends on an intersubjective agreement achieved by a public deliberation *via* public reason. When citizens share an agreement over a normative framework of deliberation thanks to the

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[107] Bellamy, 1999, pp. 187-188.
[108] D'Agostino (1992, p. 146) uses this label for referring to the model of public justification outlined by Rawls.

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[109].

The practice of public reason requires that citizens, when discussing publicly, respect the bounds of the normative framework of deliberation and therefore do not address other citizens with reasons that they cannot translate in "public reasons arguments" that can be understood even from a completely different comprehensive perspective. Indeed, the fallibilist account I have been defending shows us that there are good epistemic reasons for supporting a view according to which I am not inconsistent with my set of reasons 'R' even if I recognize that another agent is justified, in the light of her doxastic set, in supporting a set of reasons 'R1' that is completely inconsistent with my personal set 'R'. However, in order to establish a deliberative communication between two agents that hold extremely different set of reasons it is important to provide normative reasons in favour of establishing public reason as the standard of the public deliberation.

According to the democratic deliberation interpretation of public reason, the major task accomplished by public reason is to guarantee that political decisions in a democratic arena are obtained following a normative framework of discussion. Thanks to the ideal stage of the theory, we are able to justify, at least ideally, an <u>eligible set</u> of undefeated but unvictoriously justified conceptions of justice from which we can start our public deliberation over political matters[110]. In this regard, the legitimation of political decisions in part relies on the normative relevance attached to the public reason's constraints.

"A political decision can be publicly justified whenever each and every member of the relevant constituency is justified in endorsing the decision, even if each person believes the decision is justified for different, and even incompatible, reasons. This approach thus permits citizens to converge on a political decision for different non-public reasons without appeal to any shared or common reasons"[111].

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[109] Rawls introduces the concept of duty of civility in LP (1993, p. 217): "And since the exercise of political power itself must be legitimate, the ideal of citizenship imposes a moral, nor a legal, duty—the duty of civility- to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason. This duty also involves a willingness to listen to others and a fairmindedness in deciding when accommodations to their views should reasonably be made".

[110] "The content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one", Rawls, 1997, pp. 773-774.

[111] Quong, 2011, p. 258.

This articulation of public reason is coherent with the **proviso** introduced by Rawls in his last work on public reason "The Idea of Public Reason Revisited"[112]. According to the proviso, it is possible to introduce our personal doctrines and comprehensive beliefs within the public discussion, "provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support"[113]. Thanks to the proviso, citizens are not constrained to eschew any reference to their comprehensive beliefs when they are engaged in public reasoning. Again, 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 in contradiction among each other, doxastic sets of beliefs is a fundamental matter. A reasonable citizen recognizes 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 beliefs held by citizens are considered judgments that have been already been filtered by epistemic and moral constrains. Consequently, there is disagreement both for what concerns the different interpretations of the political concept of justice and for 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 we obtain quite wide spread RA over a mutually intelligible evaluative system, then we can grant that different citizens share evaluative standards, even though they do not hold shared reasons as well. Thus, I believe that the proviso

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[112] Rawls, 1997.
[113] *Ivi*, p. 776.

introduced by Rawls is correct and necessary, for different citizens could introduce their personal reasons within public deliberation to the extent that this move does not undermine the shared normative framework of reasoning[114]. 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, for being actually 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 in the meanwhile providing a normative framework for ruling the procedure of public reasoning, is to translate the justificatory problem in a more tractable deliberative one. 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. Then, the public deliberation will be focused on determining which of the conceptions of justice (or of a principle or of a background concept) that are part of the legible set might be justified as victoriously justified vis-à-vis the full and unconstrained perspectives of citizens. Hence, citizens will be engaged in public discussions in which, following some accepted rules of reasoning, they introduce different reasons for justifying different interpretations of the same concept – all of them includable within the eligible set

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[114] "One might say that public reason excludes sectarian reasons of every stripe, whether religious or secular. But public reason does not exclude all religious reasons from public debate and deliberation, any more than it excludes all 'secular' reasons. The crucial thing is that reasons be public. For people with religious worldviews – and that includes the vast majority of Americans – the values of freedom and human equality, fairness, concern for the poor and sick, and just treatment of others, are both public and religious values. These values have a dual aspect for many. They are part of our political culture and shared by reasonable fellow citizens from all faith and philosophical traditions, so they are 'public'. But they are also embedded within the differing religious and philosophical worldviews that citizens hold. What is crucial for proponents of public reason is that there should be a common, public rationale for laws that will be binding on all (and this is especially urgent where fundamental considerations of justice are at stake): when we seek to pass a law we should look for reasons and evidence that are good for our reasonable fellow citizens. In addition to public reasons for laws, there will also be religious reasons that are shared by some members of the political community", Macedo, 2008, p. 14.

though – and looking for an agreement that will determine one interpretation as the one that is publicly justified and therefore valid and normatively binding.

Political deliberation is a sort of large scale coordination among moral agents and its first aims it to grant the establishment of an agreement over a political conception of justice that has been victoriously justified through public reason[115].

"Even if public reason is inconclusive on many issues, this does not imply that public reason should be abandoned in favour of appeals to religious or otherwise non-public reasoning. Although it may not provide conclusive answers to every political question, the idea of public reason is still the right one for regulating our political deliberations. If the choice is between a model of public reason that is sometimes inconclusive, but grounds its decisions in reasons that are reasonably acceptable to these who are bound by them, and a model of perfectionist or non-public reasoning that is conclusive in all cases, but is based on premises and reasons that many people do not accept or even understand, we ought to choose the former. Public reason need not be as conclusive as a comprehensive doctrine in order to be preferable to it as a model of political discourse"[116].

Quong defends a broad version of public reason according to which we should apply public reason, when possible, to every political decision. According to the **broad view** of public reason, Rawls is wrong in claiming that solely matters of basic justice, as the determination of constitutional essential, should be regulated by public reason (**narrow view**)[117]. I hold that Rawls, aware of the deep disagreement among citizens, has argued in favour of a restricted application of public reason in order to avoid inconclusiveness. Following Rawls, if an overlapping consensus among reasonable citizens is reached, then a public justification of the basic structure of justice is available and it does not imply any nested inconclusiveness[118]. By contrast, if the overlapping consensus in described as the starting point of the whole procedure of justification and, moreover, is articulated as a consensus obtained within an idealized constituency, then the nested inconclusiveness is a feature of public deliberation that cannot be mitigated definitely, even when deliberation expressly refers to the justification of the constitutional essentials. Of course, a decision should be taken; otherwise will be impossible to establish a legitimated political regime. Still, disagreement reaches the same content of public reason and for this reason the practice of public reason should

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[115] See Gaus, 2010, p. 47.
[116] Quong, 2011, pp. 286-287.
[117] See *ivi*, pp. 273-289.
[118] However it is worth recalling that the same concept of public justification is a contested one, as every articulation of such concept implies taking a non-neutral stance with regard to the political framework we asses to be the most adequate. See D'Agostino, 1992.

intrinsically be opened to constant revisions. We can have constitutional principles that are required to be conclusively justified in order to respect the basic fact of accepting a democratic regime as legitimated. Still, when coping with different interpretations of the concept of justice that is part of the eligible set, the nested inconclusiveness is a reasonable outcome. Here public reason does not represent an ultimate tool for overcoming disagreement in a definite way. Rather, when citizens are engaged in the practice of democratic deliberation, public reason is a regulative ideal for developing a public discussion not completely free, but constrained by some normative criteria. It is not possible to grant the achievement of an agreement on any relevant political matter. Also, when an agreement is reached, still it is always revisable. Public reason is a fundamental deliberative tool for avoiding the risk of indeterminacy in public deliberation, but nor for solving inconclusiveness as well. According to this distinction, an **inconclusive justification** is an argument that, although justificatory correct, is not decisive all the way down, leaving room for different interpretations of the same justified inconclusive belief. By contrast, **indeterminacy** implies a situation in which no sound argument can be provided in order to justify either the acceptance or the rejection of a belief β. Therefore, the choice between the acceptance or rejection of the belief β is underdetermined in relation to the available justificatory evidence within the deliberative procedure[119].

Following this justificatory paradigm, public reason should be described as the adequate political standard of reasoning for the deliberation over every political matter. Some issues will be resolved finding an agreement among the different interpretations of justice held by citizens. Some other issues will not be solved once for all and probably a public negotiation will be required. Still, the fact that public reason cannot grant a definite resolution of all the political matters is not a good reason for circumscribing the use of public reason to the deliberation over some specific essential matters. I believe that the openness and intrinsic revisability of public reason are two extremely important features in order to cope with the contemporary multicultural society. Moreover, it should be recalled that public reason has a double meaning. On the one hand it represents the normative ground for achieving a public justification of a specific conception of justice. On the other hand, public reason should rule, as regulative ideal, every democratic deliberation over political matters. A perfect situation

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[119] This clear distinction is due to Gaus: 1996, pp. 151-154.

would be one in which reasonable citizens achieve a public justification over a specific conception of justice and therefore public reason can be described as the victoriously justified standard of political deliberation accepted in every reasonable doxastic system held by citizens. However, in the nonideal stage of theory, we cannot presuppose a constituency of solely reasonable citizens. For this reason, a public justification of a specific conception of justice is not a feasible option with regard to every member of the constituency. As a matter if fact, the daily democratic deliberation is not focused on the articulation of a general conception of justice; rather it looks for the justification of social rules, of "middle-level social-moral objects"[120]. Indeed, democratic deliberation is not an "all or nothing" practice. Different trade-offs are possible and the distinction between reasonable and unreasonable citizens is blurred in the nonideal stage. Consequently, public reason provides the general normative framework, still the outcomes of democratic deliberation cannot be determined in advance.

To conclude, I want to introduce again the up-side down pyramid scheme I have discussed in the previous chapter. The scheme is the same, but I add to it some features that I have presented in this chapter focused on the nonideal stage of the theory. In this regard, in the image C, the second part of the pyramid represents the nonideal phase of the theory that is divided in two parts: the RA and public reason stages. The last stage, the public reason one, is subdivided internally in two areas that are interconnected but that is important to distinguish theoretically, namely one focused on reaching public justification and the other determined by the practice of democratic deliberation.

The last point I want to highlight with regard to this scheme is that the up-side down structure of the pyramid accounts also for the fact that the structure of justification starts with a defined and restricted constituency and that, afterward, this same constituency is broadened to the extent that the idealizations are abandoned. In this regard, the wider part of the pyramid is reached at the end of the procedure, when every member of the society, reasonable or not, is in some sense part of the framework in which the democratic deliberation should be accomplished.

The thinnest part of the pyramid, its tip, leans on the overlapping consensus phase in which the political constituency is depicted as a strictly idealized constituency of reasonable citizens. The more the pyramid is enlarged, the more the political constituency abandons abstraction constraints until every member of the constituency is

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[120] Gaus, 2010, p. 113.

taken into consideration within the paradigm of justification, even those citizens that should be described as illiberal or unreasonable. Consequently, this figure schematically illustrates the whole justificatory paradigm that I have been defending in this dissertation. The achievements of the ideal stage of the theory, namely the justification of an eligible set of different interpretations of a concept of justice thanks to two different justificatory argument (*viz*. overlapping consensus and freestanding argument), are not taken for granted; rather they should pass the test of the nonidealized constituency as well. Here, the possibility of achieving an overlapping consensus over some liberal organizing ideas and Archimedean fixed points is discarded as unfeasible. For this reason, at this level I argue in favour of the possibility of granting an agreement over a justificatory framework and some evaluative standards thanks to the method of RA. Then, the last stage relies on the possibility that citizens might agree on the value of public reason as a public standard for political deliberation. Since RA is not so strictly committing as it can be overlapping consensus at the ideal level, I hold that at the stage of public reason might be possible to solve indeterminacy thanks to the fact that **fundamental justificatory issues can be translated in more tractable deliberative matters**[121]. Yet, the nested inconclusiveness will remain a stable feature of our political processes of deliberation. And, moreover, not always the practice of deliberation will provide solutions to conflicts. When this happens, open negotiation will remain as the only option available in order to avoid indeterminacy in the practice of political deliberation.

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[121] Farrelly introduces a quite similar view in his discussion over the flaws of a strictly ideal theory of justice, He affirms (2007, p. 859): "I believe a shift from ideal to non-ideal theory will also bring about a shift from first-order to 'second-order' theorizing. Second-order theories are theories that are primarily concerned with dealing with the claims of conflicting first-order theories".
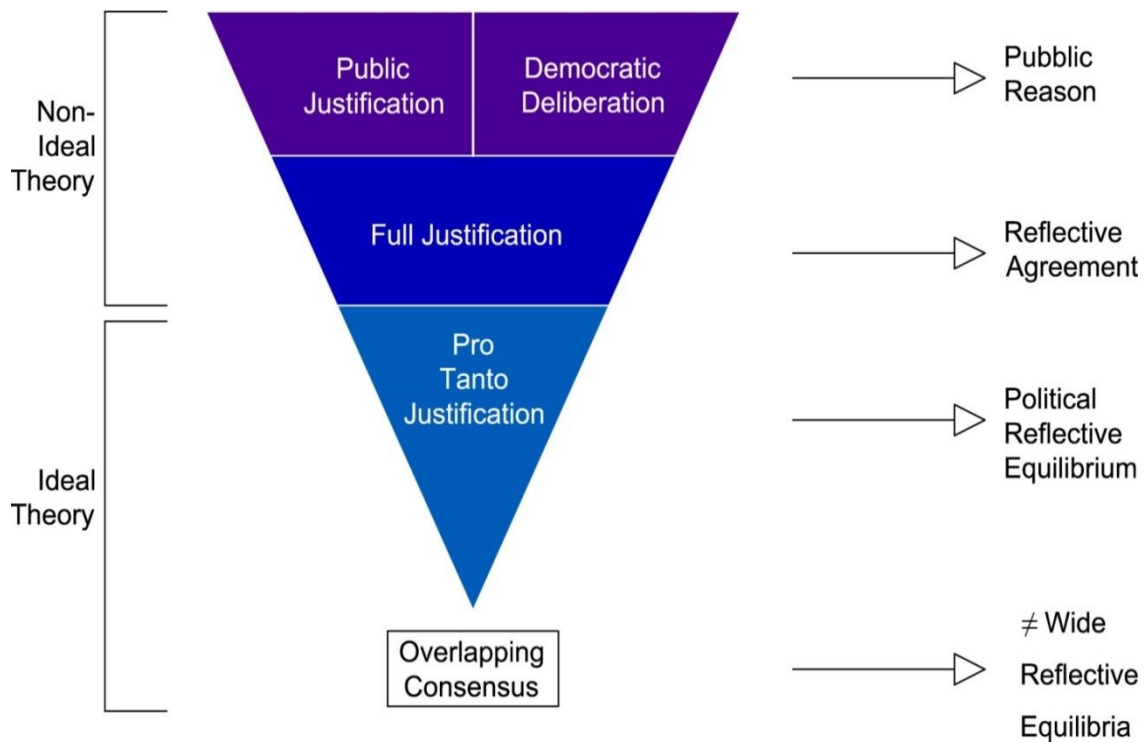
3.4.2 For an Open Negotiation

In the foregoing chapter I discussed some of the most well-known criticisms against the political theory of justice articulated by Rawls in LP. Among these criticisms I spent some times describing Sen's critiques against Rawls. Sen claims that the Rawlsian theory of justice is intrinsically transcendent and therefore not adequate for dealing with the real circumstances of justice. In order to show the main differences between his approach and the Rawlsian one, Sen specifies which are the most important features of a nonideal theory of justice[122]. I have already introduced the list of features that Sen describes as necessary for building up an adequate nonideal theory of justice. However, my main goal in this section of the chapter is to explain why I believe that the same features that Sen articulates in order to distinguish his theory of justice from a transcendental approaches might actually be used for describing a political theory of justice modelled on the wake of Rawlsian paradigm[123]. For it is true that a Rawlsian approach to the theory of justice starts from an idealized – and therefore transcendental

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[122] See above, section 2.3.2.
[123] In this regard, my interpretation of Rawlsian paradigm is consistent with the one provided by D'Agostino. Indeed, he claims (1992, p. 153) that "Rawls's approach is pragmatic rather than transcendental in character".

according to Sen's terminology – argument. Still, the idealized stage of the theory is embedded in a wider justificatory structure in which a nonideal phase of the theory has the ultimate authority in the determination of the actual possibility of implementing a normative concept to justice within a concrete political context.

Sen constantly highlights the fact that in the actual context of choice we have to face a plurality of competing principles and therefore it is impossible to provide a definitive justification of a specific conception of justice that would be able to overcome every disagreement. I completely agree with Sen in this regard. In fact, if we accept as valid a fallibilist paradigm of the epistemic justificatory enterprise, within the moral and political fields, then nested inconclusiveness is a sensible outcome of our deliberative public practice. Moreover, a broad view of public reason, demanding that we always respect the normative constraints of public reason, even when it is extremely probable that we, as actual citizens, would be unable to meet such standards[124], provides us with a normative framework that is loose and intrinsically revisable. Therefore, a broad view of public reason does not require that every matter on which citizens deliberate should be solved thanks to a conclusive agreement. Rather, work in progress and contextual solutions play a fundamental role in the nonideal stage of the theory. Consequently, the paradigm of justification of a theory of justice I am defending is consistent with many of Sen's requirements, such as the openness to constant re-examinations or the theoretical acceptability of partial resolutions. Finally, I also agree with Sen about the fact that the actual practice of deliberation might play an educative role thanks to the fact that the development of democratic institutions might produce a modification of the citizens' behavioural parameters[125].

In sum, I do believe that a theory of justice modelled in the light of Rawlsian insights and developed in multi-stage procedure might reconcile the idealistic and strictly normative side of a theory of justice with more contextual and work in progress aspects. According to this explanation of the main goals of a theory of justice, it should now be clear why I have deeply insisted on dividing the justificatory structure in an ideal and nonideal phase. On the one hand, the ideal stage deals with the strictly normative characterization of a theory of justice and in this regard starts with an idealization that involves both the moral and epistemic capacities of the members of the

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[124] Gaus (1996), for example, talks in this regard of bounded rationality and of cases of epistemic akrasia.
[125] See Sen, 2009, pp. 111-113.

constituency. On the other hand, <u>the nonideal phase</u> tries to grant the support to the concept of justice articulated in the ideal phase of the theory even when abstractions are abandoned. Naturally, the agreement in the nonideal phase cannot be granted or assumed in advance. Rather, it is only through the actual practice of public deliberation that it is possible to grant support to the political concept of justice and reach an actual agreement over a specific interpretation of this concept that can be employed in different circumstances and for dealing with different political matters.

Naturally, when the liberal theory has to cope with a nonidealized constituency, it is impossible to assume that every member of the political constituency would be reasonable. Therefore, a multi-stage theory of justice has to take into consideration the unreasonable members of the society as well. In this regard, *contra* Quong[126], I claim that a procedure of justification of a liberal conception of justice is not exhausted when has proved to be able to justify its normative framework to a reasonable constituency. Of course, the way in which we can deal with unreasonable people is completely different from the procedure of justification employed with regard to a constituency of just reasonable citizens. Still, in the nonideal stage of the theory we have to take into consideration illiberal and unreasonable citizens as well. Given the fact that we cannot anymore assume an initial idealization, I have introduced the concept of RA in order to provide a new normative argument for determining who are the citizens willing to act according to the loose regulative ideal of "being a reasonable citizen". The citizens that reach a RA about the validity of a justificatory framework are the actual members of the political constituency that are willing and/or able to achieve consistency between their personal doxastic beliefs and a normative evaluative set of standards with regard to the practice of public reasoning. By contrast, the citizens that do not reach a RA do not limit their public reasoning according to some normative constraints and therefore are members of the constituency that endangered the possibility of achieving a public justification of a specific conception of justice. Still, political deliberation is not an "all or nothing" practice. Indeed, when we are facing the nonideal stage of the theory, it is not necessary to establish in advance who are the reasonable citizens or even if we want

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[126] "Why restrict the constituency of justification to reasonable people? If we aspire to answer the grander question - why liberalism? - it seems suspiciously circular to focus on what people who already endorse certain liberal norms could accept. Once we realize, however, that political liberalism does not aspire to justify liberalism to the illiberal or unreasonable, but only to clarify what kinds of reasons liberals can offer to one another, the appeal to reasonable people no longer looks circular or superfluous", Quong, 2011, p. 6.

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 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". Yet, other citizens will reject any normative constraints, as they are unwilling to renounce to the strong commitment toward their personal comprehensive values. However, the practice of political deliberation addresses both reasonable and unreasonable individuals *qua* citizens. For this reason, I believe that the last stage of a theory of justice, public justification, according to the Rawlsian paradigm, should be sub-divided as follow:

− the citizens that, thanks to the establishment of a RA, have accepted the normative constraints that apply to the practice of public reasoning, can deliberate together in order achieve a <u>public justification</u> of specific mid-level rules and principles that are extrapolated from the different valid interpretations of the loose normative framework of justice around which democratic regimes have been built up.

− <u>democratic deliberation</u> addresses both reasonable and unreasonable citizens. In this regard, open negotiations are available some times as second best options in order to find a concrete trade-off among contrasting views and interests. Open negotiation can be extremely useful when coping with political relation of the vertical kind, namely negotiations in which actual claims by the citizens are addressed by the political institutions. Horizontal negotiations among citizens often turn out to be a strictly bargaining practice. By contrast, the negotiations among institutions and citizens can at least be ruled by the some procedural constraints enforced by the institutions[127].

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[127] For a deep analysis of the negotiation practice, see Bellamy, 1999. In this text, Bellamy defends the practice of **political negotiation of compromises** as the best solution for solving plural conflicts within liberal regimes. "*Negotiators* practise reciprocal accommodation as part of a search for conditions of mutual acceptability that reach towards a compromise that constructs a shareable good. Unlike traders, they seek a mutually satisfying solution rather than one that simply satisfies their own concerns. Instead of viewing a conflict as a battle to be won or lost, the parties see it as a collective problem to be solved. The aim is an integrative as opposed to a distributive compromise, with the interests and values of others being matters to be met rather than constraints to be overcome through minimal, tactical concessions. Thus negotiators adopt a more deliberative model of democracy than the instrumental account favoured by the trader […]. The negotiator contends that our preferences are largely shaped and ranked endogenously through the democratic process itself", *ivi*, p. 101 (italics in the original).

Defining a negotiation practice is a different task from the fundamental goal that has mainly concerned me in these central chapters of this work, to wit, the articulation of a structure of justification that might be both normatively valid and concretely feasible. Still, mentioning the issue of negotiation is helpful for highlighting, even more strongly, the intrinsically work in progress character of political liberalism. As a matter of fact, when dealing with an unconstrained political constituency, the validity of a concept of justice cannot be established just through the reference to sound normative arguments. Rather, it is necessary that the actual political practice, developed in the light of a loose normative framework, demonstrates its ability of facing challenges both from unreasonable citizens and from the concrete changes in the circumstance of justice. In this regard, Sen is completely right when he claims that a non-transcendental theory of justice – what I would label as a nonideal approach – must include within its paradigm of public deliberation constant re-examinations as well as inconclusive partial solutions.

I want to conclude this chapter with two brief considerations. The first one concerns a useful distinction among political and philosophical unreasonable citizens introduced by Erin Kelly and Lionel McPherson[128]. According to this distinction, there is a more stringent notion of unreasonable citizen that hinges on a philosophical definition of reasonableness. By contrast, a political notion of reasonableness is determined thanks to a narrower and strictly political standpoint and therefore includes within the category of politically reasonable citizens even individual that holds a philosophically unreasonable views[129]. A theory of justice that looks for a flexible justificatory paradigm with regard to the determination of who are the actual unreasonable citizens should provide a more inclusive version of justification, a "*wide public justification*, that is, a form of justification by agreement that aims to include as many people as would be consistent with the political values of democracy. This is likely to include significant numbers of unreasonable people"[130]. This more flexible articulation of the democratic arena is in my opinion an extremely positive feature, as allows liberalism to respect its regulative ideals of openness and inclusivity. Therefore, I believe that Kelly and McPherson are right when they claim that in the actual democratic practice we justify practices and views, extremely different and often incompatible among each other, thanks to a minimal constraint: the "compatibility

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[128] See Kelly and McPherson, 2001.
[129] *Ivi*, p. 39.
[130] *Ibid*. (Italics added).

requirement". According to the underlined compatibility requirement, the acceptability of different views stems from "their compatibility with the greatest range of equal basic rights and liberties for all"[131].

To conclude, I want to articulate one last insight concerning the "open negotiation" side of democratic deliberation. I hold 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 endangered 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[132]. 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

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[131] *Ivi*, p. 42.
[132] Quong (2011, pp. 292-301) is against the distinction between philosophical and political unreasonableness, as he hinges the whole justificatory procedure on the fact that an idealized constituency of reasonable people would achieve a stable overlapping consensus. I do not believe that the general framework proposed by Quong is wrong; however I have tried to embed the ideal stages of the justificatory procedure in a wider structure in which a nonideal phase is relevant as well. If we claim in favour of the normative relevance of the nonideal phase of the theory, then the way in which democratic deliberation copes with unreasonable citizens becomes a relevant political matter.

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. Rather than seeing partial and reviewable trades-off as irremediable weak solutions, as too close to a *modus vivendi*; we should interpret this proximity to a *modus vivendi* as an opportunity for liberalism itself[133]. As a matter of fact, Rawls himself has shown appreciation for the fact that liberalism is such a flexible theory that, historically, it has been able to develop a normative theory of tolerance out of an agreement that at the beginning was reached just thanks to a mere *modus vivendi*. The flexible and multi-stage structure of a liberal theory of justice allows for the possibility of establishing an initial *modus vivendi* and trying afterward, thanks to the educative 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. Hence, sometimes a liberal framework of reasoning should accept its limits and maintain that a trade-off obtained out of an open negotiation is better than nothing. Especially because there is always **a reasonable faith**, as Rawls would call it[134], in the possibility of developing a more stable and just agreement over a

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[133] "Whereas philosophical disagreement characteristically leads to attempts to philosophical resolution, there need be no drive to philosophical resolution in political arena. Political deliberation often can and should leave philosophically disagreement alone. Moreover, given the philosophical unreasonableness of some, there may be no rational grounds for attempting a resolution. Such is life in a just democratic society", Kelly and McPherson, 2001, p. 54.

[134] "These matters connect with the larger question of how political liberalism is possible. One step in showing how it is possible is to exhibit the possibility of an overlapping consensus in a society with a democratic tradition characterized by the fact of reasonable pluralism. In trying to do these things

loose normative framework for the establishment of a public practice of political reasoning.

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political philosophy assumes the role Kant gave to philosophy generally: the defense of reasonable faith. As I said then, in our case this becomes the defense of reasonable faith in the possibility of a just constitutional regime", Rawls, 1993, p. 172.

Chapter 4 - "The Justification of Human Rights and the Same-sex Marriage Case"

"Human rights constitute a realistic utopia
insofar as they no longer paint
deceptive images of a social utopia that
guarantees collective happiness but
anchor the ideal of a just society in
the institutions of constitutional states
themselves"
Jürgen Habermas (2010, p. 476)

"Perhaps ironically, in actual democracies
working toward a binding decision,
negotiations, even among cooperative antagonists,
may produce more self-understanding
and mutual understanding
than the processes of classic deliberation,
in which each party aims
a consensus on the common good"
Jane Mansbridge (2009, p. 32)

4.0   Introduction

In the previous chapter I introduced the concept of RA as the kind of agreement that can be achieved at the nonideal stage of the procedure of justification by actual citizens. RA is an agreement that citizens reach on a justificatory framework and on some normative constraints that, in part, derive their validity from the actual democratic environment in which such citizens happen to live. According to my scheme, RA is required as preliminary agreement, in order to guarantee the normative framework for an open and public discussion of public issues. Still, within the nonideal stage of the theory should be recognized that the public discussion begins with disagreement, instead that agreement. In this regard, the reference to the democratic context is an helpful instrument, as there are normative values attached to the actual

political practices that, once they have been exposed, might become extremely relevant for constraining the political debate within a loose normative framework.

The main goal of this last chapter is to adjudicate the adequacy of my proposal by coping with the justification of actual case studies. In this regard, I believe it is theoretical fruitful to distinguish between an ideal and a strictly 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"[1]. 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 is established and justified at the overlapping consensus stage. A public justification of liberal tenets cannot be achieved if there is not a wide agreement on the justification of human rights. Hence, the theory of human rights must be able to claim for a degree of universality and objectivity that guarantees a wide agreement on the recognition of the validity of human rights as fundamental evaluative standards within the political domain. People can argue and disagree on which rights should be included among the human rights set and new rights that are not now included 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

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[1] Bellamy, 1999, pp. 167.

of the theory of human rights is not granted in a way that place the justification of such concept 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 that underlying their defence are part of a conceptual framework that is consistent with extremely different conceptions of the good life.

"In particular, they must be able to sustain in a plausible manner their claim to be fundamental and universal conditions of a just social order that are capable of applying equally to all individuals. […] Human rights cannot themselves be based on any particular ethos or conception of the good"[2].

As second section of this chapter, I want to discuss 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[3], 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 now are 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. An important aspect would consist in determining if this reconceptualization can be pursued *via* deliberation or if negotiation is the only option available. When I refer to negotiation I mean a dialogic practice between parties that aim to find a compromise and that therefore are willing to cooperate and gain an advantage from the outcomes. According to Habermas – that calls such kind of negotiation bargain[4] –

"such compromises provide for an arrangement that (a) is more advantageous to all than no arrangement whatever, (b) excludes free riders who withdraw from cooperation, and (c) excludes exploited parties who contribute more to the cooperative effort than they gain from it. Bargaining processes are tailored for situations in which social power

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[2] *Ibidem*.

[3] The Universal Declaration of Human Rights states at the article 16: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. See on Unites Nation website:
http://www.un.org/en/documents/udhuman rights/index.shtml.

[4] "There remains the alternative of bargaining, that is, negotiation between success oriented parties who are willing to cooperate", Habermas, 1996, p. 165.

relations cannot be neutralized in the way rational discourses presuppose. The compromises achieved by such bargaining contain a negotiated agreement *(Vereinbarung)* that balances conflicting interests. Whereas a rationally motivated consensus (*Einverstandnis*) rests on reasons that convince all the parties *in the same way,* a compromise can be accepted by the different parties each for its own *different* reasons"[5].

In the next section (4.1) I will introduce the general issue of theories of justification of human rights confronting two different models: the natural-law approach and the political approach to human rights doctrine. Then, in (4.2) I will provide reasons for supporting the political view and, also, I will suggest some possible development for making such model more adequate and sound. In the section (4.3) I will articulate the same-sex marriage case exposing two fundamental reasons for arguing in favour of the extension to marry to same-sex couples. Finally, in (4.4) I will end this analysis introducing some general remarks about the possibility of arguing in favour of deliberative models of negotiations.

4.1   The *Lingua Franca* of Human Rights

4.1.1   General Remarks

The theoretical analysis of the concept of human rights is one on the broader issue in contemporary political theory debates. Ever since the 1948 *Universal Declaration of Human Rights* (UDHR), many theorists have tried to understand which rights must be included in the list and, also, to emphasize the normative connection between the institutionalized value of *Universal Declaration of Human Rights*, the moral side of these same rights, and the kind of justification that these rights call for. These different issues are normatively correlated, since in order to justify X, we need to know which is the real meaning of X, as well its function. For this reason, any attempt to justify human rights involves a discussion about what exactly a human right "is" and about the special role that this concept plays in contemporary social life.

As John Tasioulas has correctly pointed out, the discourse of human rights has acquired in recent times "the status of an ethical *lingua franca*"[6]. As a matter of fact, the practical recognition of the validity of the human rights doctrine is widely accepted than

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[5] *Ivi*, pp. 165-166.
[6] Tasioulas, 2004, p.1.

it has ever been. Human rights have become part of the currency of international relations, and most countries participate in the human rights system. Thanks to a paradigm that is intrinsically work in progress, we can say that the human rights project continues and has not failed. However, this positive attitude toward a general – and very sketchy – description of the value of human rights is not sufficient for building up an exhaustive account of the justification required at the political level.

In order to articulate this issue more specifically, let me begin distinguishing between two different aspects of human rights. As Habermas pointed out, "human rights are Janus-faced, looking simultaneously toward morality and the law"[7]. On the one hand, human rights can be justified deriving their intrinsic normativity from a moral argument referring to our reciprocal duties as moral agents. On the other hand, an exhaustive argument can be developed looking at the juridical nature of human rights as political entitlements. These two aspects of human rights can be reconciled; still it is important to be aware of this theoretical distinction. Indeed, in order to determine which is the best strategy for publicly justify human rights, it is necessary to have already established, at the metatheoretical level, which of the two paradigms of human rights we are going to deal with.

The justification of human rights can play a fundamental role within the political domain, as we are currently observing that the acceptance of human rights as an institutionalized international practice has been becoming wider and wider if not almost unanimously accepted in certain contexts. However, one can decide to focus her attention on the moral reasons that back up the determination of human rights instead that on the actual instantiation of human rights theory. Indeed, these two aspects of the theory of human rights are not necessarily consistent, as the institutional aspects of the social practice of human rights looks for different criteria than the strictly philosophical analysis of what does it mean for a right to be defined as a "human right". In this regard, it is important to distinguish between different issues that are often confused and erroneously conflated into one description of the matter:

i. It is relevant to stress the institutional implementation of the ideal of human rights and the fact that on its validity it has been reached a quite wide agreement among people that hold extremely different moral and political opinions and that live in completely different contexts.

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[7] Habermas, 1998, p. 91.

ii. Meanwhile, it is necessary to acknowledge the deep disagreement among people whether some particular rights should be included within the list of human rights or not and on the correct procedure for granting the implementation of a specific right.

iii. Another issue is determining the philosophical meaning of human rights and establishing the correct procedure for justifying their existence from the strictly theoretical perspective.

Following this distinction among different issues related to the human rights analysis, we could say that people are inclined to agree on a general – rough – idea of what human rights are and they are ready to affirm that these human rights should be defended and a correct institutional framework built up in order to institutionalize them. Meanwhile, however, people happen to disagree when the general issue about the validity of human rights validity is substituted with more specific issues, such as the determination of which right can aspire to be included within the list of human rights or which government policies are required in order to implement them. I believe that this tension between the wide agreement on the general concept and, instead, a quite strong disagreement on the specific features of human rights is due to the tension between two fundamental aspects of human rights I have already introduced, namely the institutionalized practice of human rights and the philosophical meaning of them. Indeed, the institutionalized practice of human rights has led the concept of human rights to become a *lingua franca* among people of different cultures and for this reason it is sensible to claim that, generally speaking, there is a wide recognition of the normative validity of human rights' ideal. Nevertheless, the normative power of human rights is justified by different people in different way, thanks to extremely different theories of the good or personal motivations. In this regard, recalling the conceptual framework employed in the previous chapter, we can say that, thanks to the international institutional framework of human rights, people has been sharing a general human rights ideal as a victoriously justified doctrine within the different doxastic systems they happen to hold. While there is disagreement on the definition of what really is "a human right" from the philosophical perspective or on the determination of which rights belong to the human rights list, a quite stable agreement has been reached with regard to the normative validity of the institutional practice of human rights. Therefore, I suggest that any satisfactory theory of human rights should refer to the **historical uniqueness of the practice of human rights**. Starting from 1948 this theory

has been developed both theoretically and as an ongoing global practice and these two aspects should be reconcile if one wants to grasp the real meaning of human rights.

A correct doctrine of human rights should provide a conceptual analysis of the meaning of the term "human right". However, my line of argument is that for actually understanding the meaning of human rights it is not possible to leave aside the analysis of the ongoing practice of human rights. The legitimation attached to the procedure that has conducted to the actual international paradigm of human rights as a *lingua franca* is a fundamental feature for the determination of human rights meaning itself. Consequently, any exhaustive theory of human rights should try to achieve consistency between the international practice of human rights (that depends on the normativity and the universality attributed to human rights as an ongoing practice) and the actual disagreement, on the definition and justification of human rights at the theoretical and metaphysical level, that is due to the intercultural moral diversity that characterizes contemporary democratic societies.

The analysis of the meaning of human rights could be divided into different issues: on the one hand, the discussion of the intrinsic logic structure of a right[8]; and, on the other hand, the analysis of the concrete role played by rights within the perspective of human rights as an international practice[9]. In this chapter I am dealing with the second line of inquiry according to which the term "right", involved within human rights framework, plays the role of a **high-priority norm**[10]. This emphasis on the practical use of rights, rather than on the logical meaning, allows us to better grasp the "moral relevance" of the debate over human rights. Moreover, the institutional role played by human rights constraints them to be *minimal – or at least modest – standards*. Hence, it is important to understand that a good account of the political meaning of human rights needs to maintain a balance between two different – although often confused – aspects: the moral and legal side of rights. Indeed, a human right can be described as normatively binding both as a shared norm of actual human moralities (justified through the reference to good moral reasons) and as a legal right recognizes both by national and

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[8] In this regard, see the analysis developed by Wesley Newcomb Hohfeld.

[9] "Finally, the model of constitution-making is understood in such a way that human rights are not pre-given moral truths to be *discovered* but rather are *constructions*. Unlike moral rights, it is rather clear that legal rights must not remain politically nonbinding. As individual, or 'subjective', rights, human rights have an inherently juridical nature and are conceptually oriented toward positive enactment by legislative bodies", Habermas, 1998, p. 95 (italics in the original).

[10] With regard to the special value of human rights Dworkin (1984) speaks of rights as trumps and Raz (1979) describes rights as exclusionary reasons.

international institutions. Still, even if one wants to stress the difference between the moral and legal aspect of human rights issue, the two sides should be taken together in order to outline a correct theory of human rights. In this regard, we can say that the "high priority of human rights needs support from a plausible connection with fundamental human interests or powerful normative considerations"[11].

These introductory remarks are useful in order to understand the different perspective from which the issue of human rights could be analysed. Indeed, the way in which human rights are described affects also the kind of justification that results to be adequate. In order to support their high priority, human rights require robust justifications. Finding a stable moral ground for human rights could be the best option from a theoretical perspective; all the same the necessity of taking into account also the perspective of the historical practice of human rights implies that the disagreement should be part of the picture. For this reason, I hold that the correct justification for human rights is a robust one, although not an irresistible one. In the next two sections I will analyse two models of justification of human rights doctrine: the <u>natural-law approach</u> and the <u>political view</u>[12].

4.1.2   Natural-law Approach

According to the natural-law approach, the justification of the high-priority of human rights stems from the recognition of the value of an intrinsic interest attached to every individual *qua* human being. In this regard, human rights are "natural rights", as they belong to human beings *by default*, independently from any institutional or historical context. The pivotal point of the argument is the definition of a normatively weighty interest that, in order to be protected, asks for human rights theory. Indeed, the normative bindingness of all the structure hinges on the shared agreement that people can reach in determining the intrinsically valuable human interest that human rights doctrine should protect. In this regard, the paradigm of natural rights does not necessarily require the formulation of a human rights positive law, since natural human rights, by definition, exist in every time and space in which exist human beings.

Natural rights are universal both because we possess them independently of our social relationships and because all human beings are entitled to claim human rights.

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[11] Nickel, 2010, p.5.
[12] Beitz is *The Idea of Human Rights* (2009) refers to these model as a "practical conception" of human rights.

Moreover, a naturalistic approach provides a weight critical standard for assessing contemporary positive laws on human rights, since according to this approach human rights are independent and pre-institutional. This pre-institutional side should be understood in a logical, rather than in a historical sense. Indeed, it is the structure of the argument for justifying the existence of these rights that attaches logical priority to these natural rights over every social construction[13].

In order to better understand the structure of this kind of argument, let me shortly outline the perspective of one of the most important exponent of naturalistic approach: James Griffin. In his *On Human Rights*[14], Griffin argues that human rights are useful for protecting **personhood**. This notion of personhood is an interpretation of the idea of human dignity and recalls the intrinsic relevance of normative agency shared by every human being. Such agency is characterized by three components: <u>autonomy</u> ("choose one's own path through life"[15]); <u>minimum provision</u> (one must have the resources, education, information and capabilities to choose and act effectively) and <u>liberty</u> ("others must also not forcibly stop one from pursuing what one sees as a worthwhile life"[16]). According to Griffin, the normative reference to personhood is not sufficient to ground human rights, as we need something more concrete for guaranteeing that the content of human rights will be determinate. This second goal is attained by practicalities that are "empirical information about [...] human nature and human societies"[17].

Griffin maintains that this foundation of human rights through the concept of personhood avoids the charge of being too comprehensive, since human rights, according to his interpretation, are rights not to anything that might promote the human good; rather they are necessary, and therefore normatively binding, since they grant the protection of one's status as a human being. This argument grounds human rights thanks to a top down argument, since it starts from the determination of an overarching interest, personhood, and derives the authority of human rights from that. According to this foundational approach, any ongoing practice of human rights should conform to a

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[13] One of the best example of the logical priority of natural root of human rights is provided by John Locke through his description of natural rights within the state of nature.
[14] Griffin, 2008.
[15] *Ivi*, p. 33.
[16] Ibidem.
[17] *Ivi*, p. 38.

given philosophical version of the natural meaning of human rights; in Griffin's case to the fact that human rights protect the fundamental interest of personhood.

After having briefly outlined one law-nature theory approach, I want to articulate this approach in a more formal way, since it could be useful delineate the central aspect of this approach, in order to grasp the fundamental differences with the political line of argument I will introduce in the next section. First, the <u>nature</u> of human rights in this kind of naturalistic approach is pre-institutional and depends on some features shared by all human beings. Second, the <u>justification</u> provided by these theorists is grounded on a specific definition of human nature. Third, the <u>content</u> of the list of human rights is neither derived from nor compared with the actual list of human rights in the UDHR. Indeed, this approach provides a critical point of view for assessing the actual list of human rights: the rights that are recognized by UDHR are justified if and only if they guarantee and protect the normatively weighty interest of human beings that is defined by the naturalistic theory. Finally, the <u>authority</u> of human rights is derived from the intrinsic normativity attached to a universal human interest like, for example, personhood[18].

As final remarks of this section on natural-law theories I want to explain which I believe being the pros e cons of this approach. On the one hand, this approach provides a justification that, starting from the intrinsic value of a human interest, is able to guarantee the normative side of human rights in an ultimate way. Moreover, this naturalistic perspective provides a strong critical standpoint, since any actual practice of human rights must be revised in the light of the grounding theory. These are optimum outcomes for a top down theory, since a philosophical foundation seems able to justify the universality and the normativity of human rights avoiding any reference to historical practices and contextual disagreement. On the other hand, this approach is less satisfactory when we try to make it consistent with the public political justification of the ongoing practice of human rights. As a matter of fact, the institutional practice of human rights has been established quite successfully even though it has been impossible to reach an agreement on the ultimate metaphysical definition of human rights. Naturally, a natural-law approach might be completely indifferent to this remark, as according to this approach human rights can be defined as a fundamental human value

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[18] As example of a different natual-law theory I wish to recall the capabilities approach developed by Martha Nussbaum (1997) and Amartya Sen (2004).

averting any reference to the actual practice of establishing and defending human rights. According to the natural-law theory, even within a context in which human rights are not respected by anyone, still the definition of human rights as a "natural" human value would be valid and indubitable. This position is respectable and extremely powerful from the strictly philosophical perspective. Yet, I believe that such an account of human rights overlooks some important features of the actual practice of justifying human rights. First of all, the epistemic analysis I have introduced in the first chapter of this dissertation is valid for the justification of human rights as well as for the general attempt to justify a political normative framework. Therefore, any public procedure of justification of human rights should take into account the fact of pluralism and the epistemic role played by the doxastic sets of beliefs of people. In this regard, there are good epistemic reasons for doubting that a stable agreement might be reached on a single procedure of justification of human rights doctrine starting from a single set of intrinsically normative natural values attached to the definition of human being in itself. Naturally, a natural-law theorist might reply that she does not care about the fact of pluralism and of the consequent rising of disagreement among people, as she is presenting us the "true" theory of human rights and it does not matter how many people would be able to agree on its validity[19]. This possible line of counterargument allows me to introduce the second feature of human rights practice I believe is underestimates by natural-law paradigm, namely the fact that what is fundamental about human rights is that people agree, quite widely, not on the definition of their specific nature or on the exact number of them; rather on the public role that human rights doctrine plays in the international politics context. This last point is related to the idea, that I will discuss in the next section, that what is fundamental about human rights is their **function**, "*as a common standard of achievement for all peoples and all nations*"[20], in the public arena. This political account of human rights charges the natural-law theory of being too idealistic and of narrowing too much the normative scope of the human rights enterprise[21].

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[19] According to Raz (2007, p. 6) in Griffin's account there is a collapse between the argument for grounding human rights and a specific and parochial ideal of a good life.

[20] See The Universal Declaration of Human Rights, http://www.un.org/en/documents/udhr/index.shtml.

[21] With regard to this difficulty, Charles Beitz (2009) describes the possibility of having first and second-order rights. The first-order rights are pure natural rights whose normativity does not depend on institutional contingencies. Whereas the second-order rights are derived from the normative content of first-order rights. This division would permit to enlarge the human rights list to include some rights that are already part of UDHR.

It is worth noting that the UDHR does not provide any reference to a naturalistic foundation of human rights[22]. This fact is extremely important in the light of the decision of maintaining a balance between the philosophical and concrete side of human rights practice. Indeed, this decision of avoiding any naturalistic foundation could be explained with the fact that even though human rights seem to be the most "universally shared" values in the international arena, however this agreement is just a general one. As a matter of fact, two people can share, more or less, the same intuitive notion of human rights even though they disagree about whether some particular rights must be included in the human rights list. A naturalistic based approach is not able to account for this discrepancy, given that in such theoretical framework any actual right should be derived in a direct way from the argument about the intrinsic normative interest that belongs to every human beings.

To conclude, we can say that the naturalistic perspective is extremely ambitious, philosophically speaking, as it works for providing a universal account of human rights that would be valid, and normatively binding, in any circumstance and for any agent. In this regard, this account highlights one side of the "uniqueness" of human rights, namely their universal validity as rights that protect fundamental interests attached to any person *qua* human being. However, it is debatable that this account of human rights that transcends from any actual practice for implementing such ideal would be able to grasp the whole meaning of human rights concept. If we accept as valid the twofold definition of human rights as both moral and legal concept, then it is reasonable to wonder whether the actual practice of establishing an international legal notion of human rights would not concurs in establishing the very meaning of human rights concept.

4.1.3 Political Views of Human Rights

A political account of human rights develops a bottom up arguments according to which any justification of human rights should start from the ongoing practice of human rights. In this regard, political theories take into account the second side of the "uniqueness" of human rights, namely the broad international agreement reached by the

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[22] The UDHR refers to the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family". Hence, it could be said that even within the UDHR there is a reference to the universal recognition of the human dignity. However, this reference does not purport to be foundational in the way that natural-law theory thinks that a specific value attached to the definition of human nature would be.

actual practice of human rights in our contemporary history. These theories, beginning from the legal and social diversity that distinguish contemporary societies (while naturalistic theories start from what is common in the nature of human beings), try to describe human rights as normative standards that could be object of agreement among members of different cultures. Given that this approach analyse the concept of human rights starting from the agreement on the historical practice, these theories are also defined as agreement theories[23].

Political versions of human rights doctrine are different one from another, nevertheless they share the same fundamental methodological commitment[24]. In their view, the international doctrine of human rights should be interpreted not as the legal implementation of an independent order of normative natural rights. Rather, the actual practice of human rights itself is the source of the normative authority of human rights doctrine. The meaning and the function of human rights is inherently connected to existing political realities. Consequently, it is impossible to provide a sound justification of human rights avoiding any reference to the institutional practice of human rights itself. As Laura Valentini summarizes, "while on the natural-law approach the function of human rights (and hence their justification) is practice-independent, on the political approach their function (and justification) is practice-dependent"[25].

According to this approach, human rights are international norms that help to protect all people everywhere from severe political, legal, and social abuses. Therefore, human rights are primary defined as international standards according to which the sovereignty of a state depends on its respect of them. Furthermore, human rights could be interpreted as goals for social development and, sometimes, as instruments of social criticism in global politics. In this regard, human rights are political norms that mainly assess how people should be treated by their governments and political institutions. This institutional interpretation of human rights accounts for the eminently "**public**" meaning of human rights. Indeed, as Thomas Pogge notes: "there is something especially hideous, outrageous, and intolerable about official disrespect, why official moral wrongs are worse than otherwise similar 'private' moral wrongs"[26].

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[23] See Beitz, 2009, ch. 4, pp. 73-95.
[24] See Rawls (1999b), Pogge (2002), Cohen (2004), Beitz (2001; 2009), Sangiovanni (2008), Raz (2010) and Valentini (2012).
[25] Valentini, 2010, pp. 181.
[26] Pogge, 2002, p. 65.

Following the political account of human rights, one could ask in which sense is "political" the primary meaning of human rights. On the one hand, the term political could refers to the context of application of such rights, namely the international arena in which UDHR is recognized as a valid normative standard of justice and to the political institutions that are evaluated through these standards of conduct. Following this interpretation of the political account of human rights, it might seems that, since human rights practice deals with contemporary problems and institutions, human rights are not transhistorical, but always contextual. On the other hand, the relevant meaning of political could account for the specific form of justification that human rights need: a strictly political one. Following this second meaning of political the framework becomes more complicated, since we have to deal with an approach according to which different institutional contexts constrain the content of the theory of human rights not just in the definition of the procedure of implementation of the doctrine, but also for the determination of the correct procedure of justification of such rights. This second option, the political justification one, maintains that the ongoing practice of human rights provides an autonomous source of normativity for the theory of human rights and consequently the procedure of justification must account for it[27].

According to the political approach, the practice-dependency of the human rights theory on the actual international institutionalized framework of human rights modifies not just the real meaning of the term "human rights", but also the way in which such rights could be understood as normatively binding. From a methodological perspective, the argument starts from the actual role played by X, in order to elaborate a correct conception of X[28]. "The interpretation, we say, constrains the content of the principles by telling us what the principles are for. First principles of justice therefore vary, at a fundamental level, with respect to the institutional context they are meant to regulate"[29].

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[27] In this regard, Sagiovanni (2008, p. 154) states: "The justification of human rights must take into account the particularly deep and pervasive nature of cultural and institutional pluralism among societies, demonstrating to those affected why they can have no reasonable objection to their enforcement. This justification, in turn, must be particularly stringent, since violations of human rights (as their functional role indicates) warrant forms of interference which will likely be immensely disruptive to the daily life of all within the target societies".

[28] It is worth noting that the structure of argument is extremely different from that of naturalistic theories. Such theories, indeed, start from the determination of an intrinsic value Y and after argue for the instrumental value of a right X that protect Y. The actual practice of implementation of X is irrelevant from the perspective of justification, given that the practical role of X must be revised in the light of the previous determined and already justified conception of Y.

[29] Sangiovanni, 2008, p. 164.

Political accounts of human rights argue in favour of grounding the normativity of human rights through the pragmatic analysis of the role played by human rights doctrine within specific contexts. For this reason, a practice-dependent account of human rights doctrine is a theory that needs a work in progress approach and a case-by-case analysis. These are exactly the features that provide the eminently "political" aspects of human rights doctrine. In this regard, the *universal* feature of human rights is given by the public recognition of being the only international standard that works as bond for state sovereignty[30]. According to Charles Beitz, the concept of human rights is not discovered through theory and applied to reality; rather is derived and continuously compared with the existing practice. "In the case of human rights, surely the most important consideration is that a doctrine of international human rights should be suited to the public political role it is expected to play. An understanding of this public role constraints the content of the doctrine"[31]. The uniqueness of human rights is given by the fact that such doctrine starts from the historical development of the actual practice, nevertheless trying to stress the normative strength and to widen its critical role. In this regard, human rights doctrine does not need a foundation, but rather a confirmation of its value as ongoing emergent practice.

The political account of human rights attempts to build up a paradigm in which the ideal and realistic insights could find a common theoretical benchmark[32]. These theories maintain that it is possible to root normativity in the history, without losing an evaluative commitment. In order to guarantee this critical task, the validity of human rights practice, that cannot only depend on theoretical arguments, is tied down by the actual willingness of citizens and institutions to understand such practice. Hence, the theories focused on actual agreement and practice-dependency, by using a work in

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[30] This interpretation of human rights has been developed by Rawls in *Law of People* (1999b), where he claims (pp. 79-80) that human rights are "a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy. In this way they reflect the two basic and historically profound changes in how the powers of sovereignty have been conceived since World War II. First, war is no longer an admissible means of government policy and is justified only in self-defense, or in grave cases of intervention to protect human rights. And second, a government's internal autonomy is now limited. […] Human rights set a necessary, though not sufficient, standard for the decency of domestic political and social institutions. In doing so they limit admissible domestic law of societies in good standing in a reasonably just Society of Peoples".

[31] Beitz, 2009, p. 105.

[32] In this regard, Valentini (2012, p. 180) distinguishes among three reasons why an account of human rights can be defined as "political": a. political are the institutions that are assessed through human rights criteria; b. the procedure of justification of human rights is defined as political, as it appeals to strictly public arguments; and c. this view is political as it looks to granting the feasibility with regard to the actual political circumstances.

progress approach, would promote opportunities for progressive improvement of human rights doctrine as a result of the negotiating dialogue between institutions, states and citizens[33]. In this regard, cases of successful enlargement of consensus about human rights (both for the number of rights and for the number of individual and also states that accept them) will represent the best presentation of the theory itself. Furthermore, this historical development of human rights doctrine would not be an outcome of an infallible theory, rather the result of political practice.

Charles Beitz, in *The Idea of Human Rights*, introduces different accounts of a political justification of human rights through the reference to diverse notions of agreement. One interpretation is the *common core idea*, according to which it is necessary to ground human rights on a minimal common core that can be shared by every culture. However, this interpretation, being strongly tied down by the contextual circumstances, risks to imply the exclusion a large part of contemporary human rights doctrine (e.g. religious toleration; legal equality for women), if such rights were not part of the common core on which extremely different worldview happen to agree on. Another possibility is provided by the *overlapping consensus idea* that involves a procedure of political justification that hinges on a public notion of human rights as political norms that can be justified by an wide array of different moral, philosophical and religious worldviews[34]. The positive feature of this account, in comparison with the common core idea, is that the normative value of human rights doctrine can be upheld by different comprehensive doctrines and therefore such consensus is not tied down by the search for an actual common core shared by any comprehensive view and it is therefore more respectful of the fact of pluralism.

Beitz defines these two models of justification as agreement conceptions. He maintains that these proposals are laudable and yet they miss a fundamental aspect of the role played by human rights within the international politics domain, namely the fact of being a normative criterion for assessing the validity of political practice and the actions perpetrated by institutions. Beitz wonders whether agreement conceptions would not lack a critical force if the human rights emerging practice depends on the

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[33] Beitz (2009, p. 93) speaks of "the aspiration of human rights to constitute a widely sharable public doctrine – perhaps as an element of a global "public reason".

[34] It is worth noting that Beitz (2009, p. 76) maintains that such overlapping consensus that can be reached with regard to human rights justification is different from the one introduced by Rawls, as the former involves not just reasonable comprehensive doctrines, but any actual existing doctrine, reasonable or not.

actual agreement that can be reached among the existing comprehensive doctrine. According to this criticism, agreements theories would not be able to overcome the tension between the partiality of the actual context in which human rights ideal should be implemented and the "uniqueness" of such an ideal. As Michael Freeman states: "there is a tension in contemporary philosophy between the concept of universal human rights and that of moral pluralism"[35]. Very often this tension has implied that the agreement theories on human rights has focused their attention on the attempt to reach an agreement on a quite wide array of human rights, regardless of the possibility of being more critical against the status quo.

In order to solve the tension between universality and pluralism[36], Beitz introduces a third solution: a *progressive convergence model*. This third form of agreement implies a procedure for achieving a progressive overlapping consensus through reinterpreting normative concepts of different cultures, maintaining the actual importance of human rights doctrine within the international arena[37]. The pivotal idea of this perspective is that human rights doctrine should be reachable from each comprehensive worldview. However, this convergence is not require to be achieved right now, starting from the actual array of different worldviews. Rather, it is a convergence that might be reached thanks to "the best available elaboration of the basic normative materials of these cultures for the circumstances of modern life"[38]. Beitz maintains that this model can avert paternalistic outcomes as well as a positive bias toward the status quo. The human rights emerging practice would maintain its normative and critical role and such practice itself would provide support for creating a political context in which new elaborations of ethical traditions might show that human rights doctrine is "reachable from"[39] deeply different worldviews.

According to Beitz's political conception, human rights are standards for institutions to which all citizens can agree, as far as the agreement is interpreted as

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[35] Freeman, 1994, p. 513.

[36] "Those attracted to agreement theories face a dilemma. On the one hand, human rights are supposed to provide reasons for action to members of every culture to which human rights apply. The idea of an agreement is a natural interpretation of this aspiration. On the other hand, taken as a whole, international human rights doctrine cannot be seen as actually shared among the world's main political moral cultures nor, therefore, as the object of an agreement. Moreover, the parts of human rights doctrine that fall outside such an agreement include some elements (e.g. freedom of religious practice, the right against discrimination on grounds of sex) one might regard as too important to be abandoned", Beitz, 2009, p. 88.

[37] As good examples of an agreement approaches based on progressive convergence, Beitz mentions Charles Taylor and Joshua Cohen.

[38] Beitz, 2009, p. 88.

[39] *Ibidem*, (emphasis added).

reachable thanks to a progressive convergence procedure that involves all different worldviews. However, it is true that for averting the charge of producing a circular argument, such justificatory approach should articulate the process by which a progressive convergence emerge as determined by reasons that are different from those focused in defining human rights and in justifying them thanks to the reference to the ongoing practice.

"Perhaps it is best to regard progressive convergence as a hypothesis about moral progress. We cannot know whether it will turn out true. The most we can do is to imagine as sympathetically as possible how various worldviews might evolve (or be 'freshly elaborated') in response to the range of social forces we understand, roughly, as those of modernization, including those associated with the growth of a global economy and culture. If through such a process of sympathetic imagination we can see how a progressive convergence on human rights might emerge, we might acquire a reason to hope for the success of a global human rights regime"[40].

The political account described by Beitz stresses both the normative role played by the international practice of human rights and the relevance of the normative criteria employed in the procedure of implementations of these rights (understood as public standards of legitimacy for state's sovereignty). According to Beitz, human rights have a distinctive identity as **normative standards**. Furthermore, such normativity is not derived from a moral argument that grounds human rights in the reference to a naturalistic account of human fundamental interests, rather it stems from the special role that human rights play as norms of global political life. However, Beitz is aware that if we look for a normatively binding notion of human rights it is not sufficient to observe that a political institutionalized doctrine recognizes a right to X. Rather, we need an argument for stating that it *should* do so. In order to achieve this further goal, therefore, it is required not just to sustain a political conception of human rights, but also to provide a public justification of the value of human rights. I will come back on this issue in the next section of this chapter. Meanwhile, in order to end up this part of the analysis, let me articulate the political account of human rights with reference to the same fours features that I have introduced for illustrating the naturalistic theories. First, the nature of human rights is determined by an intercultural agreement on an actual ongoing practice of human rights. Second, the justification is provided by a progressive convergence that, starting from the actual institutional role played by human rights, employs public arguments that can be shared by people that hold different worldviews

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[40] *Ivi*, pp. 94-95.

and conceptions of the good. Third, the content of the list of human rights depends on a back and forth procedure of readjustment between the actual list provided by the UDHR and the potential list of human rights (this procedure affirms the aspirational side of this perspective about human rights). Finally, the authority of human rights is derived both from the broad agreement that the ongoing practice of human rights has obtained historically and from the fact the actual practice is convergent with our strong intuitions of the value of the political conception of human rights.

This approach to human rights doctrine that focus its attention of the institutional framework aims to achieve an equilibrium between the actual practice of human rights and the theory that should endorse such practice. Nevertheless, it is a sensible to wonder whether the political view of human rights engages part of its procedure on first order moral reasoning, or if it is completely detached from strictly moral arguments. Recalling the institutional role played by human rights doctrine within the international context might be not sufficient in order to distinguish between acceptability and actual acceptance of human rights practice[41]. As matter of fact, political accounts of human rights are charged with the lack of critical assessment, since the normativity of internal elements is not guaranteed by the reference to a moral, practice-independent, argument. Habermas is aware of this difficulty when he speaks of the "Janus-faced" aspect of human rights. Indeed, there are first order moral reasons supporting human rights doctrine. Still, as Pogge has pointed out[42], the fundamental aspect of human rights is that they identify a violation of fundamental rights not in general, but the violation perpetrated by institutions of officials. The fundamental duty bearers, when we talk about human rights, are not the other fellow citizens, but political institutions.

Once we have determined the specific role played by human rights, namely the fact that "they define standards of conduct applicable to political arrangements"[43], then I think it is correct to highlight the political features of such a doctrine. Still, this political paradigm of human rights faces the same dilemma I have introduced when discussing the attempt of justifying a strictly political theory of justice. According to one horn of the liberal dilemma, if a procedure of justification tries to account for the pluralism of the

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[41] Habermas (1998, p. 87, italics in the original), in this regard, claims: "That is, law requires more than mere acceptance; besides demanding that its addressees give it de facto recognition, the law claims to *deserve* their recognition. Consequently, all the public justifications and constructions meant to redeem this claim to be worthy of recognition belong to the legitimation of a government organized in the form of law".

[42] Pogge, 2002.

[43] Valentini, 2012, p. 182.

contemporary societies, and therefore the adequacy of the justificatory procedure is delineated in the light of its feasibility, then the philosophical strength of the justification is weaken in order to provide strictly "public", and more shareable, arguments. On the other hand, following the second horn of the dilemma, if the first aim is to provide a normative binding theory of justice, then the justification will engage in first order moral reasoning. In this second scenario, the procedure of justification would provide strong moral arguments without caring of dealing with the fact of pluralism.

A political account of human rights risks to fall into the same dilemma. Justifying human rights simply as an ongoing practice is compatible with the fact of pluralism. However, this "contextual and strictly political" argument might not be able to provide an adequate criterion for critically assessing the status quo. By contrast, a public justification of human rights that refers to first order moral arguments claims for the universality of human rights from a strictly normative perspective but risks to produce a justification of human rights that can be assessed as paternalistic and sectarian by a portion of members of the international arena. It is true that human rights, even more than other values, might be defined as intrinsically universal. Still, granting their enjoyment universally depends on contextual conditions and political circumstances. Given this intrinsic tension between the universal normative aspects of a theory of human rights and the political good reasons for providing a public justification of such doctrine, I believe that focusing on the ongoing practice of human rights is a sensible attempt. Yet, I think that Valentini is right when she claims that even a political conception of human rights should involve a minimal level of first order moral reasoning. Naturally, in order to respect the "**public justifiability**"[44] of human rights doctrine, such reference to first order moral reasoning should be something on which people, that support extremely different worldviews, can agree on. In this regard, we can see that natural-law views on the justification of human rights provide an argument that begins from what we have common as human being, regardless of what we happen to believe within our doxastic system of beliefs. By contrast, political conceptions of human rights starts from the recognition of the actual disagreement among people and from the fact that an ongoing institutional practice for protecting human rights has been established. Then, the political approach can assumes two different position with regard to the attempt to justify human rights doctrine publicly. On the one hand, it might

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[44] See Valentini, 2012, pp. 185-187.

provide a justification that is public, as it refers to the possibility of achieving a progressive convergence on the value of the ongoing practice of human rights starting from extremely different comprehensive perspectives. On the other hand, a political account of human rights might decide to walk through a more winding road, to wit, trying to understand which are the moral underpinning values that inform the ongoing practices of human rights and looking for a justificatory argument of these values that might respect the public justifiability constraints.

4.2   Public Justification of Human Rights

"These rights embody fixed points in our judgments of what tolerable institution must be like"[45]. I decide to begin this section of this chapter with this quotation, since it explains the idea that human rights doctrine has built up a sort of **common public culture** within contemporary history. It is exactly this feature of human rights that a political account tries to highlight. I prefer this political version of the human rights doctrine for different reasons. First of all, the political version is able to account for the normativity that stems from the ongoing public practice. Second, this version pays attention to the contextual circumstances of applicability of such rights and therefore it is realistic with regard to the feasibility constraint. Third, the procedure of justification upheld by this account looks for a public argument that might be neutral with regard to the different conceptions of the good life and moral comprehensive doctrines held by different citizens in extremely vary societies. Finally, the political account allows for work in progress solutions and even for negotiations with regard to the concrete application of the human rights doctrine.

There are normative difficulties concerning a political justification of human rights. Still, I have claimed that the natural-law approach is less adequate for dealing with a pluralistic environment as the international politics one. As a matter of fact, even if a naturalistic account of human rights could supposedly gain an indisputable normative force from a justification that appeals solely to first order moral reasoning, I believe it is at the level of metatheory that these kind of approaches are wrong. Indeed, human rights meaning is not contingently related with its implementation as a political practice.

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[45] Scanlon, 2003, p. 117.

Rather, there is an explicatory correlation between the actual practice of human rights as we know it and the determination of the actual meaning of it. If we agree with Pogge[46] – and with Habermas[47] – that for having a violation of human rights we need not simply the disclaim of a moral duty, but a violation of a right that involves a role played by a political institution within the procedure that has conducted to the supposed infringement; then it logically follows that for defining human rights is not enough to provide a moral argument that defines which particularly fundamental human interests are at stake when we talk about human rights. Rather, it is intrinsically part of a comprehensive definition of what "human rights" means the reflection about institutional features of such concept.

According to Habermas, human rights are a legal concept, and therefore a practice-dependent analysis is required for defining them. Still, the legal aspects of human rights that define who are the duty bearers and which are the fundamental human interests that when infringed leads to a human rights violation do not exhaust the whole normative meaning of human rights. Indeed, the institutional and political meaning of human rights hinges on "the moral promise of equal respect for everybody"[48]. Following this line of argument, then, the moral requirement of equal respect for everybody would be translated in legal term through the normative concept of human dignity. "The idea of human dignity is the conceptual hinge that connects the *morality* of equal respect for everyone with positive *law* and democratic lawmaking in such a way that their interplay could give rise to a political order founded upon human rights"[49].

I have vindicated the political account of human rights as a more adequate and correct model, even at the metatheoretical level, in order to account for the very concept of human rights. Nevertheless, I agree with Habermas and Valentini, among others[50], that it is impossible to grasp the real meaning of the concept of human rights without presupposing that the actual practice of establishing and defending human rights stems from a concern for human dignity. Indeed, even the *Universal Declaration of Human Rights* begins with a preamble that states: "Whereas recognition of the inherent dignity

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[46] "A human right to X is tantamount to declaring that every society [and comparable social system] ought to be so organized that all its members enjoy secure access to X", Pogge, 2000, p. 52.
[47] "Consequently, the understanding of human rights must jettison the metaphysical assumption of an individual who would exist prior to all socialization and would, as it were, come into the world already equipped with innate rights", Habermas, 1998, p. 97.
[48] Habermas, 2010, p. 470.
[49] *Ivi*, p. 469 (italics in the original).
[50] See Habermas (2010), Valentini (2012), Donnelly (1999).

and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"[51]. This normative reference to moral values that underpin the human rights practice seems in contrast with the political account of human rights I have introduced and defended. However, I want to show that this contrast is merely apparent. In order to understand this argument, let me recall Rawls' reply to a similar difficulty with regard to the determination of a strictly political theory of justice. According to Rawls, political philosophy is part of moral philosophy but is defined by its peculiar goals and content[52]. For this reason, when we are trying to justify political principles, we can introduce first order moral concepts, but the justificatory framework in which they are embedded is strictly political. In the same way, I believe that a view that claims that the whole normative meaning of human rights stems from the ongoing practice is irremediably weak, as it lacks the ability of criticizing the status quo in the light of independent normative criteria. Yet, the solution is not, on the other hand, to reduce the analysis about human rights to the first order moral reasoning that establishes which are the fundamental human interests that belong to every person *qua* human beings. The moral concern for human dignity underpins the formulation of human rights and provides us with a normative criterion for assessing the ongoing practice. Still, the full meaning of human rights can be grasped solely taking into consideration both the human dignity value and the ongoing practice for establishing an institutional framework in which such value is cashed out[53].

In the previous section I claimed that human rights doctrine can be defined as political not just as its definitions stems from the analysis of the ongoing political practice. Rather, a fundamental "political" aspect of human rights practice is that it requires a public justification of such doctrine. Indeed, if a public justification is required within the domestic context with regard to the principles of justice, even more necessary would be a public justification of the practice of human rights in the contexts of a deeply pluralistic international arena. Therefore, I now want to assess if the requirement of **public justifiability** can be met by a paradigm of human rights that maintains the reference both to the institutional practice of human rights and to the normative value attached to human dignity as underpinning ideal. First of all, it is

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[51] UDHR, UN, preamble.
[52] See Rawls, 1993, p. 135.
[53] "Human rights circumscribe precisely that part (and only that part) of morality which can be translated into the medium of coercive law and become political reality in the robust shape of effective civil rights", Habermas, 2010, p. 470.

important to specify that this kind of justification, to be public, should not involve arguments that derive their validity from a specific and partisan – according to the plural context of worldviews in the international arena – doctrine of values or the good life. Therefore, the argument that stems from the recognition of the value of human dignity could not be foundational if interpreted as a first order moral reasoning that introduces completely practice-independent concepts. In line with this justificatory constraint, I hold that there is an intrinsic aspect we think of when referring to <u>human dignity</u> that is practice-dependent in the same exact way in which the determination of human rights concept is in part determined by the reference to an institutional framework. Following Habermas and Valentini, in fact, I hold that a definitory feature of human dignity is practice-dependent. Habermas has claimed that human dignity is that very concept that has filled the gap between the moral duty to equally respect every person and the legal concept of human rights[54]. Valentini, more technically, has highlighted that the value of human dignity requires "appropriate acknowledgement of human agency and its value"[55]. Then, this acknowledgment implies a mutual recognition of self-respect. This procedure of mutual recognition should be realized both by horizontal relationship among different persons and by a vertical relation between political institutions and citizens.

Since political institutions have a fundamental impact on our life[56], 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. This account is consistent with the definition of human rights I have defended. Indeed, the fact that human rights express a peculiar human interest that should be protected against institutional actions or wrong political

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[54] "Thus the legal recognition claimed by citizens reaches beyond the reciprocal moral recognition of responsible subjects; it has the concrete meaning of the respect demanded for a status that is deserved, and as such it is infused with the connotations of the 'dignity' that was associated in the past with membership in socially respected corporate bodies. At the same time, however, the universalized dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition. As such a form of social dignity, human dignity also requires anchoring in a social status, that is, membership in an organized community in space and time. But in this case, the status must be an equal one for everybody", Habermas, 2010, p. 472.

[55] Valentini, 2012, p. 188.

[56] In this regard, it is extremely interesting the genealogical analysis provided by Habermas (2010) for explaining the historical development of the legal concept of human rights. "First, the cumulative experiences of violated dignity constitute a source of moral motivations for entering into the historically unprecedented constitution making practices that arose at the end of the eighteenth century. Second, the status generating notion of social recognition of the dignity of others provides a conceptual bridge between the moral idea of the equal respect for all and the legal form of human rights", p. 470.

practices is in line with an account of human dignity that refers to the need of human agency to be acknowledged by political institutions as well as by other fellow human beings. 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.

"We can make sense of our thinking of these abuses in terms of human-rights violations precisely by virtue of their specific dignity undermining character. Human-rights violations represent a lack of *public* recognition of one's status as an inherently valuable being, and this is why they are particularly harmful to human dignity"[57].

Following this definition of human dignity that logically implies a practice-dependent aspect, it is now possible to assess if a public justification argument might be construed for justifying human rights. First of all, it is important to highlight that this definition of human dignity is helpful for understanding why the public justifiability of human rights doctrine is so important. Once that the fact of pluralism has been accepted as a characterizing aspect of contemporary societies, there are good normative reasons – and not just pragmatic reasons that look for stability – for claiming in favour of public justification. For the underlying principle of acknowledging human dignity requires that even the justification of human rights is provided through arguments that can be understood and accepted by people that hold extremely different worldviews. Let see how this public justification might be reached.

As I have already noted, very often different persons share a general idea of what human rights should be, even though they disagree on the concrete list of human rights or on the procedure for guaranteeing their observance[58]. This shared notion of human rights, although is an extremely rough intuition, it seem to be backed by an argument according to which the universality of human rights depends on the fact that such rights are "claimable" by everyone (especially as general concept), rather than on the fact that a single defined conception of human rights is supported by everyone. Theoretically speaking, it seem to me possible to claim that every person might share a rough intuition about the importance of the **universal claimability** of human rights. The

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[57] Valentini, 2012, p. 189, (italics in the original).

[58] Regarding this discussion, I think is important to recall the Rawlsian remark of the fact that very often there is a widespread agreement on the concept, but a plurality of interpretations of that concept. "Thus it seems natural to think of the concept of justice as distinct from the various conceptions of justice and as being specified by the role which these different sets of principles, these different conceptions, have in common". Rawls, 1993, p. 5.

universal claimability of human rights reflects the "Janus-faced" structure of human rights, as the vindication of human rights expresses both a legal issue and a moral concern with regard to the recognition of equal dignity *qua* human beings[59].

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 for determining which conception of X is the most adequate for playing the role of public conception of X, we need to find the conception that best embodies the ideal of X as it can be extrapolated from the institutional practice and with reference to the doxastic set of beliefs held by individuals. Again, 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. Unlike the agreement approaches that maintain that the human rights practice is legitimate because an actual empirical convergence of worldviews on the validity of such practice could be reached, I claim that we should assess if the actual international practice that aims to the protection of human rights might be justified referring to the justificatory structure I have defended in the previous chapters. According to this model, at the nonideal level the practice of public justification cannot provide a conclusive justificatory argument in favour of a specific interpretation of a concept of justice. Indeed, there are epistemic reasons (i.e. nested inconclusiveness, doxastic presupposition) that suggest to focus the public justification on evaluative standards and on eligible set of valid alternatives rather than on the attempt to conclusively justify a particular conception of justice. I hold that the justification of the human rights practice is compatible with this paradigm. Indeed, a political account of human rights requires a

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[59] Beitz (2003) argues for a justificatory structure of human rights in which it is possible to argue both for the strong connection between human rights and human dignity and for the fact that human rights practice must be a global concern. According to Beitz these two ideas must be taken together, in order to outline a correct and definitive account of human rights. Thus, we can see that the philosophical side of the description of the meaning of human rights might be an independent argument, but still should be understood within a context in which the concrete practice of human rights is the starting point of the whole argument. At page 46, Beitz concludes: "We begin with the observation that there is an international practice of human rights, and we ask some distinctively theoretical questions : What kinds of things are these human rights, why should we believe in them, and what follows if we do? But whereas present practice is the beginning, it need not be the end; in fact, it would be surprising if a critical theory of human rights did not argue for revisions in the practice - conceivably substantial ones. If so, however, one should expect this to be the conclusion of an argument that takes seriously the aspirations of the practice as we have it. To dismiss the practice because it doesn't conform to a received philosophical construction seems to me dogmatic in the most unconstructive way".

justification that refers to two different arguments. One the one hand, it appeal to the **legitimazing value** that is attached to the established international practice of human rights. In this regard, it is important to recall Maffettone's idea that the normative analysis of institutional political practices is able to grant a bottom-up legitimation of such practices thanks to the contextual support that such practice has received by citizens and by the reference to the work in progress democratic process that attempts to improve such practices in the light of new circumstances and rising challenges[60]. On the other hand, human rights are justified as fundamental interests that should be protected by political institutions and such intrinsic value attached to the concept of human rights stems from the concern for human dignity.

It is important to recall that public justifiability is a standard that a political account of human rights should meet in order to cope with the dilemma of liberalism. In order to be respectful of the intrinsic pluralism of contemporary multicultural societies and, at the same time, guaranteeing normative force to the justificatory procedure, the justification of human rights should appeal to arguments that could be endorsed by people that hold different comprehensive doctrines and worldviews. Thus, even the reference to human dignity as a value that informs human rights practice should respect the public justifiability constraint.

The legal aspects of human rights doctrine are expressed by the historical development of the ongoing international practice and they are justifiable through the legitimation argument that maintains that the historical development of a public culture of human rights plays a normative role. This bottom-up legitimatory procedure is consistent with the *progressive convergence* model introduced by Beitz. For according to this model it is reasonable to hope in a progressive convergence of different worldviews on the validity of the human rights ongoing practice[61]. This model maintains that in the light of a contextual establishment of public culture that endorses the validity of human rights practice, then it is reasonable to argue in favour of the emerging of a progressive reinterpretation of worldviews that would imply a public convergence on the value and authority of the concept of human rights. The moral aspects of human rights, instead, is related to the public recognition of the normativity attached to the requirement of respecting human dignity. The problem with this second

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[60] See above, section 3.3.
[61] It is worth noting that while analysing the possibility of achieving such progressive convergence, Beitz (2009, p. 120) speaks of an "aspirational view of human rights".

aspect of the justification of human rights is that referring to the moral concept of human dignity could be extremely problematic, as the justification risks to be dismissed by a part of the audience as "partisan". Disagreement arises with regard to the moral determination of what "human dignity" really means and about which are the correct political practices for addressing such issue. However, since the practice of human rights has already been established, the burden of the justification does not entirely lie on the moral argument that refers to human dignity. Rather, the procedure of justification begins referring to the procedure that has led to the establishment of an international practice of human rights. Then, it is reasonable to wonder which are the normative values that have been underpinning such practice. Where a naturalistic view grounds all the discussion about the validity of human rights on the determination of the specific set of human interests that they are supposed to protect; the political account of human rights highlights the relevance of human dignity, since such concept has already informed the actual development of the human rights practice.

A similar procedure is articulated by Rawls in PL when he claims that the political procedure for justifying a liberal theory of justice hinges on two values, namely equality and freedom. Still, the justification provided by Rawls does not involve a top-down argument that grounds the whole justificatory procedure on the moral assumptions that freedom and equality are two fundamental values. Rather, the public justification of liberalism shows how the very same history of liberal tradition has been developed – sometimes even implicitly and, of course, not always – in the light of these two underpinning values. In the same way, we can think of human dignity as articulated through a **thin definition** that does not involves many first order moral reasoning aspects. According to this model, people should not agree publicly on a specific and **thick** definition of human dignity. Rather, it is sufficient that they, starting from their different perspectives, recognize the intrinsic normativity attached to the ongoing practice of human rights and accept the reference to human dignity as valid in such context.

With regard to the ideal part of the theory – namely a section of the theory in which some idealizations are involved – I hold that the agreement on a general concept of human dignity can be reached in WRE by an international constituency of reasonable citizens. This WRE reflects the fact that reasonable people, once they have assessed the pro and cons of the ongoing practice of human rights, might realize that the thin

principle of human dignity that informs such procedure is consistent with their considered moral judgements about what should be required from a theory of human rights. According to this interpretation, reaching an overlapping consensus – through the justificatory instrument of WRE – on the value of a general concept of human rights is a fundamental aspect of the procedure for establishing a liberal account of international politics. Moreover, when in the second chapter, following Quong, I described the overlapping consensus as an agreement over some general organizing ideas that build up a loose normative framework through which is later on possible to produce a public deliberation on specific matters; I had in mind the possibility of including among the general organizing ideas the political concept of human rights. Indeed, the fact that human rights are such a general and well spread doctrine, that is also supported by an established international practice, makes it reasonable to claim in favour of the possibility that people that hold different comprehensive doctrines can adhere to such ideal and justify it in WRE – respecting therefore the public justifiability constraint.

Notwithstanding the validity of ideal procedure for justifying the human rights doctrine, it is fundamental to acknowledge that the disagreement rises not so much at the general level of conferring some normative validity to the general concept of human rights. Rather, disagreement across people and cultures rises when we try to specify the general requirement of respecting human rights into a determined lists of human rights to be defended and we assess actual institutions through the lens of a specific interpretation of such general concept of human rights. Recalling the terminology I have been using in the previous chapters, the disagreement on the contextual interpretation of the general concept of human rights is due to the fact that the public justification reached with regard to such concept does not provide us as well with an argument for determining the "best" interpretations of such concept. Instead, the agreement on a general concept of human rights provides the theory with a loose normative framework and an eligible set of valid interpretations that would be extremely useful – both from the normative and the pragmatic perspective – when the theory will be applied and will have to cope with disagreement among people about what are their expectations about human rights practice and about which is the best interpretation of the values that informs such practice.

This account of the justification of human rights doctrine is also consistent with the articulation of RA that I have introduced as important tool for coping with disagreement

within the nonideal part of the theory. Indeed, when actual citizens fight against each other for establishing a public interpretation of a concept or for determining a strategy for implementing a political principles, the conflict concerns the possibility of imposing one partisan interpretation as victorious over the others available. The goal that can be accomplished through the previous achievement of RA is that the conflict and disagreement might be restrained within a loose normative framework that does not allow disagreement to become foundational[62], questioning even the general public criteria that are usually taken for granted. Naturally, RA does not provide us with an ultimate solution. Rather, RA is an agreement that constraints the public discussion to respect the criteria imposed by a loose normative framework. Which would be the outcome of the public discussion is unknown. Notwithstanding the fact that some people would be bothered by the fact that such proposal does not provide a determinate solution for solving concrete cases of public disagreement, this work in progress and open-to-different-solutions framework is extremely liberal as **passes the buck[63]** on the deep questions to the actual citizens and to the public discussion that they should yield in order to solve public conflicts. In the second part of this chapter, I will show the fundamental role that RA can play in the nonideal analysis of a concrete case of disagreement with regard to the possibility of extending a specific human right to a category of people that has until now been excluded from the enjoyment of such right.

4.3   The Same-sex Marriage Case

4.3.1   *Two Arguments in Favour of Same-sex Couples Marriage*

In the last two decades an important legal and political issue has provoked harsh public battle and has shown that the **majority discriminatory power** is one of the relevant features at stake when institutions try to extend a right to previously misrecognized minority. The case I want to discuss is the attempt to extend the right to marry to same-sex couples. I take this case as emblematic for different reasons. First of all, such case could be analysed referring both to the legal and the moral aspects that

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[62] See above, section 2.4.3.

[63] Quong (2010, ch. 8, pp. 221-255) has introduced this notion of "passing the buck" when he refers to political liberalism strategy of refuting to define its own theory of justice as "true", leaving space to the critical ability of every citizen to evaluate how political values integrate into the wider comprehensive doctrine she held in her doxastic system of beliefs.

constitutes the concept of right. Second, dealing with a concrete case helps me to show that even when people widely agree on the value of a specific right, in this specific instance on the validity of the right to marry, still they disagree on the correct interpretation of the concept they agree on (i.e. provide a unique and ultimate definition of "marriage") and on the most correct procedure for implementing such right. Third, it is relevant to bring out that even when there are extremely sound reasons for supporting a revision of the actual practice, still political circumstances and weak motivation by a majority of people to engage themselves in a public deliberation on such matter can lead to a refutation of revising the practice and therefore in reaffirming the previous status quo.

The same-sex marriage case can be faced from a strictly <u>legal perspective</u>. Such modality is expressly investigated by those authors that refer to the USA legal system, as the USA Constitution as been articulated so as to reflect and cope with the Tocqueville insight about the tyranny of the majority[64]. According to this line of argument, it should be assessed if the extension of the right to marry involves a judicial review that can be determine by the Court regardless of the majority opinion[65]. The underlying idea is that even when the majority is not ready for accepting a revision of the status quo that will favour a group that until now has suffered an unequal treatment, still the right choice is to modify the legal system in order to be loyal to the democratic principles of equality and fairness[66]. The strictly legal arguments in favour of the extension of the right to marry to the same-sex couples stems from the recognition of the **right to marry as a fundamental right**. Once that such right has been defined as fundamental, then the legal issues is reframed within the equal protection paradigm[67].

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[64] See the *Federalist Papers* [1787-1788].

[65] Gerstmann (2004, ch. 2, pp. 14-47) exposes the three different standards of scrutiny that USA Supreme Court should meet in different case. "In attempting to protect legal equality, federal courts have focused much of their energy in dividing people into 'classes' that receive different levels of constitutional protection against governmental discrimination. 'Suspected Classes' are protected by '**strict scrutiny**', 'quasi-suspected classes' are protected by '**intermediate scrutiny**', and others, such as gays and lesbian are protected by the lowest level of scrutiny", (i.e. '**rational basis scrutiny**'), pp. xi, emphasis added.
In this regard, Kory Schaff (2004) provides arguments for sustaining that sexual orientation is a category that meet the criteria of suspect classification that the Court has established in order to determine which standards of scrutiny should be employed in the different cases.

[66] The legal issues of judicial review with regard to the right to marry has started in USA with the *Baehr* case (1991–1999) decided by Hawaii Supreme Court. Then, two other famous cases are the *Brause v. Bureau of Vital Statistics (*1998) addressed by Alaska Supreme Court and *Baker v. State of Vermont* (2000) decided by Vermont Supreme Court.

[67] The judicial review about the case of same-sex marriage has been trying to reframe the issue in term of the principle of equal protection that rules the allocation of a bundle of rights, instead of referring to the

Thus, acknowledging the right to marry as a fundamental one – a decision that is line with the *Universal Declaration of Human Rights* – implies many positive aspects. First of all, assuming this perspective avoids to have the same-sex couples' requests labelled as "special rights request". Second, determining the right to marry as a fundamental constrains the Court to assesses it through a more compelling standard. Third, referring to this right as fundamental allows to frame the same-sex couples' claim in term of due equality instead of protection of difference. "The virtue of fundamental rights doctrine is that it promotes judicial protection of certain specific freedoms for unpopular groups and individuals while allowing democratic decision making for vast majority of issues"[68]. Indeed, such approach maintains that the right to marry is such a fundamental right that the principle of equality should be respected in spite of what the majority of people in the country might think about the case. This argument, therefore, hinges on the normative idea that even in democracy it is important to limit the political bargain, especially when the infringement of fundamental rights is at stake. According to this view, once that the democratic principles of equality and fairness has been established by a constitution, the Court duty is to enforce rights even when they are unpopular. Naturally, there are limits to the Court power and they should vary with regard to the prominence of the rights at stake. Indeed, there are cases in which the battle about the possible extension of a right to new groups or to new circumstances can be determined by the public deliberation and by the normal process of determining decisions through the political debate. Other times, instead, the rights at stake are so fundamental, that it is possible to prompt for a judicial decisions that challenge the traditional unequal treatment of minorities. "Civil rights, legal equality, and human dignity cannot be legitimately revoked by the majority; they exist as inalienable human rights not subjected to community approval"[69].

This tension between judicial decisions and the public opinion is perfectly expressed in the same-sex marriage case. Indeed, there are sound legal reasons,

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principle of substantive due process that is led by the ideal of establishing a zone of protected privacy. See Gerstmann, 2004.

[68] Gerstmann (2004, p. 141) provides us with a set of criteria for determining if a right is a fundamental one: "to determine whether a right is fundamental, the Court should consider whether it squares with precedent; whether it is inherently connected to other rights, whether government exercises monopoly power over it; and whether it runs afoul of the political question doctrine".

[69] Snyder, 2006, p. 7.

appealing to the principle of genuine legal equality[70], according to which it is correct to extend the right to marry to same-sex couples[71]. Yet, legal litigation is still going on[72] and not so many countries have recognized the right to marry to same-sex couples equating such couples to opposite-sex couples. This difficulties in implementing and enforcing a correct legal principle are due to the public opinion resistance to modify traditional aspects of our societies that have been supported by the majority for centuries[73]. In this context, it is clear that legal litigation can push the social movement forward, challenging majority traditions and benefits through the legal process. I think that this "destabilizing" – for established social and political categories – role played by legal litigation is extremely important. Yet, many thinkers highlight the difficulties are usually encountered when Court decisions are running afoul of majority opinion. The Court should rule in the light of what is required by the law. Still, the public opinion cannot be dismissed as biased and irrelevant. Rather, it is important to promote a fruitful exchange of reasons and explanations among Court organisms, politicians and citizens; as both citizens and political organisms should be placed in the position of understanding the rationale of Court decision and therefore avoiding to suffer such decision as a paternalistic imposition. Moreover, the Court has a weak implementation capacity and therefore the legal litigation is not sufficient for achieving a stable solution of hard cases. The legal litigation is a fundamental aspect of a wider process for granting equality and full citizenship to any member of a society, but judicial review should go along with a political dialogic process that involves both citizens and political institutions and educational procedures designed to support social transformations and a wider acceptance of minorities. Indeed, law is not an independent variable for assessing

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[70] In the case of USA Constitution this legal argument grounded in the protection of equality hinges on the Fourteenth Amendment that states the Equal Protection Clause. Regarding this feature of the Fourteenth Amendment Cass Sunstein (1994b, pp. 272-273) claims that it provides us with an **anticaste principle**: "The motivating idea behind an anticaste principle, broadly speaking Rawlsian in character, is that without very good reasons, social and legal structures ought not to turn differences that are irrelevant from the moral point of view into social disadvantages. They certainly should not be permitted to do so if the disadvantage is systemic. A difference is morally irrelevant if it has no relationship to individual entitlement or desert. Race and sex are certainly a morally irrelevant characteristic in this sense".
[71] According to Snyder (2006) the extension of the civil right to marry to everybody it a matter of principle, as marriage is a civil right that must be extended to all people.
[72] See for example the legal battle that arises in California after the California Supreme Courts has ruled in the *In re Marriage Cases* (2008) that same-sex couples have a constitutional right to marry. In order to contrast such decision, a ballot propositions was presented, the Proposition 8, that states that "only marriage between a man and a woman is valid or recognized in California". Such proposition was voted by the majority of California's citizens in the November 2008 state elections.
[73] For a specific analysis on the impact of public opinion on the possibility that state recognizes same-sex marriage, see Lewis and Seong Soo Oh (2008) and Lewis and Gossett (2008).

social changes and improvements with regard to the actual implementation of the ideals of fairness and equality. Rather, the efficacy of rights depends on social, cultural and institutional circumstances[74]. For example, it has been observed that the political system, following harsh majority opposition, can push for backlash actions[75] against the Court decisions, as political institutions and politicians see the Court decision as a threat against the status quo and the traditional "meaning" of relevant political concepts[76].

I have claimed that there are extremely compelling legal reasons for supporting the request of extending the right to marry to same-sex couples. The legal line of argument is fundamental, as the political meaning of rights hinges on a legal account of them. However, I want to 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[77]. Indeed, marriage has a social meaning, and it is especially the revision of such social and moral meanings what scares and troubles the majority. Beyond the legal act of ruling on a specific case, the fundamental issue at stake, when a minority claims an extension of a right in order to be allowed to enjoy it or to obtain protection from the state against majority unfair protection of the status quo, is the fight in favour or against reframing the social meaning of fundamental moral and political concepts. According to this line of argument, the strictly legal analysis of these hard cases is not enough, as an exhaustive account of these public issues should involve an analysis of the symbolic and indirect aspects of the litigation.

Same-sex marriage case perfectly expresses the fundamental role played by the **symbolic aspects** in the political deliberation over the matter. In fact, same-sex couples' request challenges the traditional view on family and in the case that their claim were

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[74] For an exhaustive analysis on the value of legal litigation as booster for social and political progresses, see Dupuis (2002) and Goldberg and Hiller (2002).

[75] As good example of backlash see "The Defence of Marriae Act" (DOMA) a federal law enacted on 1996 and voted by the two houses of Congress by a large majority and that denied federal benefits to marriage people of the same-sex, as after such act no states or political subdivision were obliged to recognize a same-sex marriage from another state.

[76] Cass Sustein is extremely aware of such difficulties in implementing Court decisions. For this reasons, he argues in favor of judicial minimalism; an approach of legal review that focuses more on determining the single case at stake, instead of making decisions with broad effect on a wide range of cases. Judicial minimalism claims that is fundamental to leave space to public discussion and that, therefore, Court should leave as much as possible as undecided, determining what is right but not also establishing why is right. See Sunstein 1995 and 1996.

[77] For a good development of the argument that defends the validity of same-sex marriage thanks to political arguments that hinge on the recognition of the political principle of equality, see Wellington (1995) and Wedgwood (1999). "So the law excluding same-sex couples from marriage are, prima facie, a violation of the principle of equality, and hence an unjust form of discrimination. So long as there is not a sufficient evidence that allowing same-sex marriages would have uncontroversially harmful effects, the refusal to allow such marriages must be presumed to be seriously unjust", Wedgwood, 1999, p. 241.

accepted as valid, then the public meaning of marriage will drastically being modified, running afoul of the morality of the majority. This modification of traditional interpretations of publicly relevant concepts or practices is such a fundamental issue as it involves an enlargement of the number of the members of the *polis* that obtain a symbolic recognition as full citizens. 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". Even when the distribution of material goods is not at stake, the struggle for determining who has the power of revising the symbolic meaning of fundamental political concepts could be extremely hard[78]. As a matter of fact, the public recognition of identity differences by the political institutions involves a re-articulation of the public space in a more equal and less sectarian space. The same-sex marriage case is a perfect example of such dynamic. Indeed, in the case that the same-sex marriage were accepted and legalized, then such decision would involve a radical revision of the concept of "marriage" and consequently an enlargement in the set of alternatives that constitutes the "normality"[79] as symbolically recognized within the public context of public space.

Majority members interpret such kind of claims purported by a minority, as the same-sex couples' request, as unjustified aggressions against the public space itself, without ever noticing (or perhaps refusing to note) that the status quo is already culturally mediated by stereotypes regarding who belongs to the *polis* by full right and who, instead, is not directly entitled to it. Since members of the majority usually fail to recognize the **double standards** tendencies provoked by the symbolic appraisal of the public space, they often interpret minorities requests as unjustified pressures for obtaining special rights or undue privileges. Hence, a fundamental aspect for solving such dynamics is to find the correct way for showing to the members of the majority,

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[78] For a broad articulation of the distribution of public spaces in democracy, see Liveriero, 2010.

[79] It is worth noting that many criticisms against the legal recognition of same-sex marriage involves an argument that refers to the idea that a legal recognition would involve a sort of stamp-of approval for same-sex couples that it would be against the neutrality constrain that works as standard for political institutions. Naturally, this kind of argument is affected by a double standard, as nobody has never been bothered by the fact that institutions were supporting the legal right to marry for opposite-sex couples. See Schaff (2004).

who feel that they are members of the *polis* by default, that there are both political and legal good reasons for reframing public space in a way that might offset the disadvantages historically suffered by minorities. In order to establish a more inclusive and fair public space it is necessary to establish a normative dialog among citizens, both members of the majority and of the minorities, and political and legal institutions, as "first class" citizens (who belongs to the majority by default) acceptance of new identities and group within the range of the "normal" alternatives is not effortlessly. Therefore, it is important to insist upon the attempt to establish a correct dialogic procedure that could highlight the intrinsic normative reasons that back up the legal and political corrective procedures.

This survey on the symbolic meaning of public space has been helpful for understanding 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. At this point, should be clear that the legitimation of same-sex couples' request does not solely stems from legal reason (e.g. the appeal to the Fourteenth Amendment for USA legal system), rather hinges on good political reasons as well. Indeed, the democratic ideal of full citizenship reflects the attempts of meeting the standard of respecting human rights as concrete instantiation of the moral principle of human dignity. In order for human dignity to be respected, every person should be included within the public space as a full a member. Majority's arguments in this case claim that right now, in contemporary democracies, same-sex couples are free to practice, even publicly, their favourite form of intimacy and that therefore they are not discriminated. However, as Galeotti has perfectly pointed out in a paper on this issue[80], full membership does not simply require to be "tolerated" within the public space as second-class citizens. Rather, full membership calls for a full enjoyment of civil rights as long as such enjoyment has been historically granted by default to the majority of citizen. 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

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[80] Galeotti, 2008.

equal dignity is recognized in the public space[81]. 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**. Indeed, even in the section focused on the articulation of the political meaning of human rights, I dwelled on the fact that a specific feature of the recognition of human dignity is determined by the political recognition of such dignity. According to this argument, respecting human dignity all the way down requires not just private correct relations among human beings; rather it is necessary to build up a normatively correct political and institutional framework. Consequently, the determination of the costs of access to the public space as "full citizen" is a fundamental aspect of the attempt to respect human dignity. If for some members of the society the access to the public space is more costly, as they have to hidden some of their peculiar characteristics, or to renounce to the full enjoyment of some rights, then the ideal of equal recognition of human dignity is dismissed.

"Majority cannot take away the liberty for others to marry while retaining it for themselves"[82].

I have highlighted the fundamental role played by the symbolic recognition of minorities as full member of the *polis* showing that the legal recognition of specific rights is often not enough for granting actual equality. Consequently, I hold that addressing the same-sex marriage case through the second-best option of providing a system of legal recognition of partnerships outside marriage is not enough[83]. Even though the legal partnership or civil unions institution will provide to same-sex couples the same amount of rights and advantages granted by marriage; still this solution will completely dismisses the symbolic aspects of the issue[84]. Indeed, such solution would avert any re-interpretation of the concept of marriage, reaffirming the status quo and the traditional morality as an undisputable feature of our society. Furthermore, the majority

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[81] Some arguments against the extension of the rights to marry to same-sex couples claim that same-sex couples are claiming for the recognition of a special rights that would infringe the liberal ideal of neutrality.

[82] Gerstmann, 2004, p. 172.

[83] Some theorists claim in favour of granting to same-sex couples the right to the legal recognition of partnership instead that the right to marry in the light of a **"slippery slope" argument** . According to this argument, le legalization of same-sex marriage will lead to allow polygamy, incestuous marriages and child marriages as well. Analysing this issue will led me too far away from the purposes of this chapter. For a deep analysis of this issue, I refer to Eskridge (1996) and March (2010).

[84] Here, in highlighting the relevance of symbolic recognition, I follow Galeotti (2008). However, her arguments are developed within the normative framework of tolerance as recognition, while here I am dealing with this issue from the perspective of the justification of same-sex marriage as a fundamental right.

would preserve its positional power and same-sex couples would have to accept legal partnership as the "best" solution, as they cannot dare to ask for a full equality that implies – as necessary step – the recognition of the legitimacy of same-sex couples marriage.

"None of the options currently available to same-sex couples - 'commitment ceremonies' with sympathetic clergymen, private contracts, or 'registered domestic partnership'- has a social meaning of this kind; none of this options has is a familiar and widely understood as marriage. As a result, these options will be less effective than marriage for couples who want to affirm their commitment in a way that community will readily understand. […] In effect, they need to be able to *say that they are married*. Suppose that same-sex unions had a different name - as it might be, 'quarriage'. There will presumably be many fewer same-sex quarriages than opposite-sex marriages; so the term 'quarriage' would be much less familiar and widely understood than the term 'marriage', and for this reason 'quarriage' would be less effective at fulfilling this serious desire than marriage" [85].

To conclude, it is important to re-state that the extension of the right to marry to same sex-couples can be backed up by the reference to two fundamental arguments. First of all, there are sound legal arguments that, following the "fundamental right" strategy, show that law should enforce rights whose enjoyment grants equal treatment before the law for every citizen. Second, the legitimation of same-sex marriage can be defended appealing to the democratic ideals of equality and respect for human dignity. Indeed, once that the fundamental role played by symbolic recognition has been made explicit, then there are sound reasons for justifying the legitimation of same-sex marriage as the only fair way for granting equal opportunity to same-sex couples to pursue their ideal of the good life and, meanwhile, to become full members of the society sharing with the established majority the public space as fellow – and equal – citizens.

4.3.2 Symbolic Public Space and Concept Negotiation

In the previous section I investigated the possibility of justifying the extension of the right to marry to same-sex couples referring to two specific lines of argument. The first hinges on the legal practice of judicial review, while the second derives its validity from the reference to the democratic ideal of fairness and recognition of equal dignity of human beings. I am persuaded by the validity of such arguments, still it is true that the extension of the right to marry to same-sex couples is still extremely criticized and the countries that are trying to support such extension are facing a very harsh public debate

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[85] Wedgwood, 1999, p. 241, italics in the original.

on the matter[86]. These contextual difficulties can be explained by the reference to the epistemic arguments I have introduced in order to explain why the justificatory procedure should be different with regard to the ideal and nonideal circumstances. Naturally, the debate and conflict that are relate to same-sex marriage case regard the nonideal realm. Even if I have claimed, following Rawls, that it is possible to argue in favour of a bottom-up justificatory procedure that refers to the legitimacy recognized to the democratic process itself, yet it is hard to sustain that every citizen is aware of normative constraints she should abide by when the ideal conditions are abandoned. In this regard, I have introduceds a new concept, **reflect agreement**, in order to transfer to the nonideal context some elements discussed within the ideal paradigm. On the one hand, overlapping consensus is an agreement over some organizing ideas that constitutes the correct pre-condition to the ideal procedure of justification of a liberal and strictly political theory of justice. On the other hand, RA illustrates the attempt to grant a loose normative framework within which embedding the public, nonideal, deliberation over concrete political matters. As a matter of fact, western liberal democracies, even with many flaws and inconsistencies, have already been established and people stably live and exchange reasons among each other within this institutional context. Consequently, contemporary conflicts arise with regard to the new interpretations or modification of already established Constitutions and system of rights, rather than on the possibility of justifying a throughout deliberation over every grounding aspect involved in establishing a theory of justice. Therefore, RA stresses the fact that citizens, that already conduct a life within a democratic society, should be able to recognize the validity of a set of principles and regulative ideals in order to consistently enjoy the right to be a citizen. 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

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[86] While I am working on this case, both France and United Kingdom government are trying to pass a law for extending the right to marry to same-sex couples.

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[87]. 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[88].

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**[89] dialogue is established among citizens (horizontal relation) and among all citizens and institutions (vertical relation)[90]. However, 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

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[87] "The *shared belief* that is produced, or even just reinforced, between speaker and hearer by the intersubjective recognition of validity claim raised in a speech act implies a tacit acceptance of obligations relevant for action; to this extent, such acceptance creates a new social facts", Habermas, 1996, p. 147 (italics in the original).

[88] For a broad analysis of these issues, see Galeotti, 2002 and 2010.

[89] See Moodod, 2010, p. 10.

[90] Kymlicka (2007, p. 96), in this regard, speaks about a process of **citisenisation**: "The task for all liberal democracies has been to turn this catalogue of uncivil relations into relationships of liberal-democratic citizenship, in terms of both the vertical relationship between the members of minorities and the state, and the horizontal relationships amongst the members of different groups".

political framework they contextually support. Same-sex marriage case, again, is a perfect example of such lack of consistency between the legitimation recognized to the democratic system and the individual refutation of abide by the normative framework that informs such democratic system. Extending the right to marry to same-sex couples is seen by the vast part of the majority as a quasi-obscene request, as it involves a radical modification of the interpretation of one of the historically established dogma of the traditional morality, namely the definition of marriage as a moral and legal bound between a man and woman in order to constitute a family and – very often – procreate. The troubles provoked by the request of modifying this model, in order to make it more inclusive, expresses the negative aspects of a coherentist paradigm of reasoning. Indeed, even though I have highlighted the fundamental revisionary energy that is intrinsic to a justificatory model that is coherentist instead that foundational, it is also true that coherentism might produce as a side effect, especially at the individual level, a general positive bias toward the status quo. In this regard, citizens that belong to the majority – in the case of the example we are dealing with, heterosexual citizens – should be correctly motivated, by justice-driven reasons and not just for pragmatic and political calculus, to revise some important aspects of the background theories they hold in their doxastic sets of beliefs. Some people view this request of modifying some aspects of their background theories as an illegitimate claim and are ready to face it, re-stating the intrinsic validity of their own interpretation/determination of the issue at stake. Of course this tendency of restating the validity of the status quo is more dangerous, and at the same time more likely to happen, when the majority's monopoly of the public space is put under pressure by a minority claim that is recognized as legitimate by a legal or political institution.

At the nonideal level, when the idealization is undue, it is fundamental that citizens can agree on a loose general normative framework that will allow a fair procedure for, later on, addressing concrete cases and conflicts respecting some normative constraints. This role, in my picture, is played by RA. I defined this latter as the agreement that actual citizens reach, sometimes even implicitly, on some organizing ideas around which the notion of a liberal democracy has been built up. Naturally, the agreement on such organizing ideas does not provide an ultimate solution to the conflicts or a definitive articulation of the victorious interpretation of the fundamental political concepts. Rather, RA is a shared agreement on a loose framework and therefore actual

disagreement will still arise with regard to the concrete interpretation of such organizing ideas. Yet, RA plays an extremely relevant role, for it is impossible to believe that citizens could be motivated to revise their background theories if they do not recognize a normative commitment toward some democratic ideals. Without achieving a minimal agreement on some normative standards or general procedural principles, it is impossible to argue in favour of a public dialogue among citizens and institutions. Even without hoping to reach – at the nonideal level – the ideal conditions depicted by deliberative democracy models, it is however important to assess the existence of shared evaluative standards that can be employed both by the citizens and by political institutions. According to this model, **legal review** can be interpreted as one of the method that promotes a re-interpretation of the organizing ideas in order to cope with contextual modifications of political circumstances and new claims by the ongoing political society[91]. Since such organizing ideas establishes a loose normative framework, they should be interpreted in order to be applied to concrete cases. Not necessarily the interpretation should always be the same. Again, as I claimed in the previous chapters, the nested inconclusiveness is a stable feature of our moral and political reasoning. Therefore, we should look for a stable agreement, that I call RA, among citizens, over a general normative framework that encloses an eligible set of political conceptions, or more specifically, of available interpretations of the general concepts and ideas. Besides an agreement over general organizing ideas, RA should focus as well on determining an evaluative normative standard that could work as a filter for assessing the validity of the political procedures. According to this picture, when people maintain that it is correct to refer to human rights doctrine both as a political concept that can be publicly justifies and as one of the normative benchmarks of contemporary liberal democracies, then arguing in favour of establishing a RA on

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[91] I believe that Rawls (1993, p. 238) holds a similar view, with regard to the public role played by the Supreme Court in USA, when he states: "One idea of an amendment is to adjust basic constitutional values to changing political and social circumstances, or to incorporate into the constitution a broader and more inclusive understanding of those values".

Moreover, Cass Sunstein (1996) has developed an interesting theory coupling both political theory and legal review practice. According to Sunstein, a viable strategy for avoiding indeterminacy is to look for an **incomplete theorized agreement**. "*Participants in legal controversies try to produce incompletely theorized agreements on particular outcomes*. They agree on the result and on relatively narrow or low-level explanations for it. They need not agree on fundamental principle. They do not offer larger or more abstract explanations than are necessary to decide the case. When they disagree on an abstraction, they move to a level of greater particularity. The distinctive feature of this account is that it emphasizes agreement on (relative) particulars rather than on (relative) abstractions. This is an important source of social stability and an important way for diverse people to demonstrate mutual respect, in law especially but also in liberal democracy as a whole", Sunstein, 1995, pp. 1735-1736, italics in the original.

such organizing ideas is not a too idealistic commitment. Naturally, assuming RA as a starting point does not imply that conflicts and disagreements can be avert. RA simply guarantees that political conflicts might be managed through the reference to shared normative evaluative standards and appealing to the same organizing ideas, even when such ideas are interpreted in different ways[92]. For example, one thing is to deal with citizens that do not recognize the validity of same-sex couples' claim on marriage, as they argue that homosexuality is immoral and that therefore any public recognition of such practice should be banned for moral reasons. Another thing is to debate about this issue when both the proponents and the opponents share a commitment toward some normative standards – such as reciprocal respect, recognition of equality before the law and requirement of restrain oneself from stating political arguments that are grounded in one's own specific comprehensive doctrines. Again, starting the political deliberation from an already achieved RA would guarantee that citizens and political institutions will accepts reasonable constraints as valid and legitimate. Of course, this adherence to a RA model is work in progress, as citizens sometimes agree on it implicitly; other times instead they dismiss it, since revising their background theories on specific concepts seems to them too costly. 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[93]. In this regard, a correct deliberative procedure

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[92] "Because of their abstract character, basic rights need to be spelled out in concrete terms in each particular case. In the process, lawmakers and judges often arrive at different results in different cultural contexts; today this is apparent, for example, in the regulation of controversial ethical issues, such as assisted suicide, abortion, and genetic enhancement. It is also uncontroversial that, because of this need for interpretation, universal legal concepts facilitate negotiated compromises. Thus, appealing to the concept of human dignity undoubtedly made it easier to reach an overlapping consensus, for example during the founding of the United Nations, and more generally when negotiating human rights agreements and international legal conventions, and when adjudicating international legal disputes between parties from different cultures", Habermas, 2010, p. 467.

[93] As a perfect example of the fundamental role that legal institutions can play in the deliberative process, see Rawls (1993, pp. 231-239) and his description of the USA Supreme Court as the best exemplification available of the ideal of public reason. "To say that *the* court is the exemplar of public reason also means that it is the task of the justices to try to develop and express in their reasoned opinions the best interpretation of the constitution they can, using their knowledge of what the constitution and constitutional precedents require. Here the best interpretation is the one that best fits the relevant body of those constitutional materials, and justifies it in terms of the public conception of justice or a reasonable

would involve a "**concept negotiation**"[94] 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 hold 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[95].

To recapitulate the arguments advanced in this section, let me briefly articulate the most common arguments pushed against the extension of the right to marry to same-sex couples[96]. I will introduce such arguments and show that all of them would be inconsistent with the organizing ideas and the evaluative standards that supposedly would be justified in a RA stage of the public procedure for the justification of a political normative framework.

a. The first argument against the extension of the right to marry to same-sex couples hinges on the claim that the concept of <u>marriage has a definitive and not negotiable definition.</u> According to this argument, it is logically inappropriate to ask for an extension of the right to marry to same-sex couples as, by definition, marriage is the legal and symbolic recognition of a long-term union between a man and a woman. According to this reply against same-sex couples, a descriptive argument implements a normative idea about the right definition of marriage. This argument is extremely appealing for the members of the majority, since it refers to the supposedly superiority of majority's standards with regard to the determination of fundamental political concepts. However, I have already sustained that there are sound reasons, that appeal to

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variant thereof. In doing this it is *expected that the justices may* and do appeal to the political values of the public conception whenever the constitution itself expressly or implicitly invokes those values, as it does, for example, in a bill of rights *guaranteeing the* free exercise of religion or the equal protection of the laws. The court's role here is part of the publicity of reason and is an aspect of the wide, or educative, role of public reason" (p. 236, italics in the original).

[94] I use here a concept introduced by Roberto Casati (2011) in his attempt to describe the first role played by philosophy into the society, namely that of producing and ruling the historic and contextual procedure of "concept negotiation". "My position with regard to the general role of philosophy is that philosophy, as a theory, does not look for the truth of the world directly; rather explores the various alternatives that allow us to reframe the world in ways that are fruitful from the negotiation perspective", Casati, p. 158 (translation from Italian by the author).

[95] "Fair bargain, then, does not destroy the discourse principle but rather indirectly presupposes it", Habermas, 1996, p. 167. Habermas uses the term "bargain" for referring to a public deliberative practice that I define here as negotiation. I think that, a part from a different terminology, my position on negotiation is quite close to the bargain notion presented by Habermas.

[96] For a deep analysis of this arguments, see Eskridge (1996), Gerstmann (2004) and Galeotti (2008).

the symbolic meaning of public space, according to which it is against the liberal and democratic ideal of recognition of equal human dignity to allow the majority to determined who are first-order citizens referring solely to historically established standards, since such standards reflect the positional power enjoyed by the majority itself. In this regard, Snyder claims that: "tradition does not justify continued injustice"[97].

b. A second argument, on the same line of the previous one, refers to <u>the religious roots of marriage</u>, therefore claiming that a same-sex marriage is not an option at stake, since it is against the natural and intrinsic meaning of marriage as established by the dominant morality. This kind of argument can be faced referring to the fact that legitimated political decisions – and interpretation of fundamental social and political concepts – cannot refer to partisan comprehensive doctrines or traditions, even when such doctrines or traditions were backed up by the majority of citizens.

c. A further objection against same-sex marriage refers to the idea the extending such right to same-sex couples will involve a <u>stamp-of-approval</u> toward the homosexual practice by the government. However, such argument is hostage of a double standards, as it implies that since heterosexual marriages are socially acceptable by default, then the legal recognitions of such unions does not involves any positive approval of such practice, while recognizing same-sex marriage will involve something more, a non-neutral moral approval of such unions. However, same-sex couples are not claiming for special rights, rather they are asking for the equal opportunity to profit from legal and economic benefits – and to enjoy the symbolic meaning - that derive from marriage as much as it happens for opposite-sex couples.

d. Another argument against the legitimation of same-sex marriages describes <u>the right to marry as an instrumental right focused primarily in the procreation</u>. According to this line of argument, procreation would be a fundamental definitory feature of marriage legal practice. Again, even this argument involves a double standard, as many opposite-sex couples get married and do not have children. Think, for example, of opposite-sex couples that get married at an old age or people that are infertile. Since opposite-sex couples do not need either to show the ability or the intention to procreate in order to get married, it does not seem right to describe procreation as a condition sine qua for justifying marriage when at stake are the right to marry of same-sex couples.

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[97] Snyder, 2006, p. 100.

e. Finally, a less compelling argument involves a strictly pragmatic analysis according to which same-sex couples movements are wrong in working on a <u>target too far</u>. Following this pragmatic analysis, some people propose that same-sex couples work for obtaining the recognition of same-sex civil unions, averting the more complicated issue – and extremely more destabilizing for the majority's "normal" standards – of modifying the marriage practice[98]. I agree that from a strictly pragmatic perspective this strategy might be more efficient. Yet, I believe that there are extremely compelling reasons of justice for refuting such argument. Indeed, civil unions would be shaped in the light of the legal benefits that married couples enjoy from the legal institution of marriage. If this is the case, and at the end civil union will end for being a "civil copy" of the marriage, why should same-sex couples just ask for the recognition of their union as a partnership instead that as a legal marriage? I hold that it is not just relevant to assess what one party can obtain thanks to a political strategy. Rather, it is also important to focus on the underpinning reasons and justifications that have led to the legal decision. Here, I believe that there are important normative reasons against the pragmatically "less ambitious" solution of looking for the recognition of civil unions, instead that of same-sex marriage. First of all, accepting the civil unions solution will have a very important symbolic meaning, as it will re-state the fact that homosexuality is not part of the set of normal alternatives within the public space. Second, recognizing same-sex couples marriage will potentiate the inclusive process, making same-sex couples able to enjoy the legal rights that belong to first-order citizens *by default*.

To sum up this analysis on same-sex marriage case, I want to stress that political debates and conflicts should be assessed following two normatively distinct, though complementary, perspectives:

− a <u>normative analysis</u> that describe and frame the issue at stake in the light of the normative ideals and evaluative standards around which liberal democracies have been established and legitimated;

− and a more <u>dialogical and contextual perspective</u> that focuses on the actual practice of negotiation that involves political institutions and citizens.

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[98] Another extremely important issue connected to this one is the fact that the legal recognition of same-sex couples marriage will involve extending to same-sex couples the right of adoptions. I do not want to discuss this issue here, as it will led us to far. However, for an analysis of this issue developed on the same line I would support, see Galeotti, 2008.

Whether public actions proceed top-down (decisions by institutions) or bottom up (*via* citizens' requests), it is important to draw a line between these two perspectives. As a matter of fact, even when negotiations occur correctly, **according to justice-oriented reasons**, the outcomes are not always entirely satisfactory (and vice versa). In this regard, it is important to distinguish between the potential outcomes of a negotiation and the reasons that underlie it. Indeed, what should be considered as most relevant are precisely the underpinning reasons of justice that drives institutions and citizens in the attempt to reframe the political domain in a more equal and fair public space. The relevant justice-driven reasons, for being legitimate, should be derived from the normative framework justified at the RA stage. According to this account, promoting negotiations supported by good reasons and by a fair dialogical dimension not only allows justice to develop, but fosters the stability of the *polis* as well. In this regard, the negotiating process, even when is conducted in nonideal conditions, if reflects a previous shared agreement on some organizing ideas and a convergence on evaluative standards, can produce political solutions that can be consistent with the democratic and liberal ideals. Once that it has been shown that it is possible to reach satisfying solutions about public and political issues even when ideal conditions are not attained, it is then possible to promote a work in progress deliberative process in which negotiations are allowed. Such deliberative process, if correctly cashed out, might be able to grant a positive attitude toward public debates by citizens instead of exacerbating the reasons of conflicts. Furthermore, examples of historical good political negotiations (e.g. the abortion case) will potentiate the educative role that political institutions can play, since such good examples will show that two debating parties can at least share the terms of the negotiations and that such starting point is fundamental in order to achieve a reasonable compromise. In this regard, if political and legal institutions work properly with citizens in favour of a correct dialogic procedure, then they can look for an open negotiation in which the correct outcomes are not granted, but in which it would be reached the highest degree of mutual recognition available among citizens that are debating against each other.

"In sum, the aim of a good compromise is to integrate the various interests and ideals in play, and to reach solutions that are mutually acceptable and embody equal concern and respect for those involved. The art of compromising is negotiation. By engaging with others, individuals and groups are led to take an enlarged view of a situation. Instead of seeking to get as much of their own way as they can, in the manner of traders, negotiators try and accommodate others as far as possible. Whereas trimmers seek a

lowest common denominator, negotiators strive for collective agreements embodying the highest degree of mutual recognition attainable. That goal arises out of a deliberative process through which all parties moderate and in part transform their preferences by placing them in the context of the claims and needs of the rest of the community. Such negotiations have to be carried out in a spirit of reciprocity, within which each acknowledges an obligation to participate on an equal basis with others in the framing of joint decisions. Demands that are incompatible with such conditions go beyond what can be legitimately compromised with"[99].

To conclude, I want to bring out the fact that not necessarily consensus should be the goal of political discussion. Indeed, within the multicultural context of contemporary societies, very often achieving a compromise that is acceptable for all the opponents is the only solution available. Since most of the theories of justice have tried to argue in favour of reaching a stable consensus, *via* some kind of idealizations, then every form of compromise has been viewed as irremediably weak and normatively irrelevant as it is described as nothing more than a trade-off among clashing different interests. Notwithstanding this general negative account of public deliberation frameworks that open up the practice to include negotiations, there are authors, as Richard Bellamy and Jane Mansbridge[100], that have investigated the normative potentiality of such procedures. Mansbridge identifies a specific form of negotiation, the **deliberative negotiation**[101], that is able to produce sensible outcomes – both from the normative and the pragmatic perspective – even in a nonidealized political context. This analysis is in line with the various arguments I have discussed along this work. As a matter of fact, there are both epistemic (i.e. the difficulties of arguing in favour of foundationalism; fallibilism, the emergence of nested inconclusiveness, etc.) and historic/contextual reasons (i.e. the fact of pluralism, historical legitimation of democratic systems; disagreement in interpreting the Constitutions) that support the idea that very often, during political deliberations, a full consensus is a target too far. For this reason, it is important to articulate a nonideal stage of the theory of justice in which it could be possible to include negotiation procedures within the picture as well. Such procedures, even though not perfectly adherent to an ideal deliberative model, are able to reflect a commitment toward some normative ideas. This commitment is

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[99] Bellamy, 1999, p. 111.

[100] See Bellamy (1999) and Mansbridge (2009).

[101] "These forms are ideally based on mutual justification, mutual respect, and a search for both fair terms of interaction and fair outcomes. […] Deliberative form of negotiation not only can approach the deliberative criteria for legitimacy, they are also efficient", Mansbridge, 2009, p. 39.

expressed in my model by the achievement of a quite stable – even though always revisable and open to new instances from reality – RA that exposes the normative core that both citizens and institutions recognize at the grounding bottom of democratic procedures. Once that such normative core is backed up by a wide majority – although perhaps not by the same majority every time and not for any issues steadily –, then I hold that it is sensible to argue in favour of a deliberative model of negotiations. Furthermore, the more these deliberative negotiations among citizens and among citizens and political institutions obtain good results, the more it is possible to foster an attitude of reciprocity among citizens and gain loyalty toward the democratic procedures from the citizens themselves. Indeed, as Bellamy clearly points out, "individuals are more likely to accept the legitimacy of decisions they disagree with if they feel they have been to some degree involved in making them, that their interests have been explicitly consulted and that there are opportunities for re-opening the debate in the future"[102].

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 negotiations that, at the end of day, would also promote democratic values.

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[102] Bellamy, 1999, pp. 179-180.

Conclusion

In this doctoral dissertation I defended a specific view on the practice of political justification, arguing that the only way available to political liberalism for solving the dilemma of liberalism is to divide the justificatory procedure in an ideal and nonideal stage. The first theoretical task was to specify in which sense a theory of justification is ideal or nonideal. I distanced myself from Rawls on this matter, 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. Indeed, the focal point of my analysis has been that both ideal and nonideal theory fulfil normative tasks and that they are mutually supporting each other within a justificatory paradigm that is intrinsically coherentist.

In the first chapter I specified the epistemic constraints that bind nonideal theorizing. In this regard, I introduced different epistemic arguments in favour of a doxastic presupposition and, moreover, I described fallibilism as the best account of the epistemological status of our knowledge. An epistemic account that claims for the validity both of a doxastic presupposition and of fallibilism can be defined as a moderate epistemic view. Moreover, I argued in favour of coherentism as general justificatory framework, showing that under the fallibilist perspective, this theory of justification is the most adequate. Indeed, holding a fallibilist approach implies that one claims for the validity and justification of her moral and political beliefs, but along with the awareness that such justification is not irresistible. In this regard, I claimed that the epistemic regulative ideal of a nonideal model of deliberation does not sit well with a theory of justification – as foundationalism – that looks for the establishment of at least one basic belief that should be self-evident and therefore once and for all undefeated. Rather, fallibilism is consistent with a theory of justification, as coherentism, that pursuits principles that moral agents would be best justified in believing. As last point of the first chapter, then, I connected the strictly epistemic discussion about a moderate epistemic view with the more specific issue of justifying a liberal theory of justice within pluralist multicultural societies and I highlighted the theoretical significance of the procedure for determining the political constituency to which public justification should be referred.

In the second chapter I addressed issues that specifically concern the political philosophy debate. Here I discussed Rawls' proposal for a strictly political liberalism. Even though I defended such model against different critiques; I also showed that Rawls' paradigm is not able to definitely solving the dilemma of liberalism. Therefore, referring to different arguments introduced by Jonathan Quong and Gerald Gaus, I introduced my own interpretation of Rawls paradigm, claiming that this version of his paradigm, bringing out the fundamental distinction between the normative tasks accomplished on the one hand by the ideal phase and on the other hand by the nonideal phase of the theory, is more adequate for dealing with the actual circumstances of justice.

In the third chapter, the most important of the dissertation, I displayed the nonideal stage of the theory and I introduced the concept of **reflective agreement**. It is possible to establish a parallelism between the role played by RE in the ideal theory and the method of RA in nonideal theory. Admittedly, the fact that RA deals with the unconstrained set of beliefs of actual citizens implies that the achievements of this method cannot be exhaustive and comprehensive as it was for the outcomes of RE at the ideal level. Therefore, I argued that while in the ideal stage of the theory, the validity and normative force of the freestanding political argument were grounded on the overlapping consensus – where the method of RE were employed –, at the nonideal level we have to call into question the possibility of actually achieving a sort of "nonideal overlapping consensus". RA is the method that should fulfil this task. In this regard, I described RA as a an agreement on a **justificatory framework**. The idea is that actual citizens, when called to deliberate on political matters, are 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. Hence, at the nonideal level, the goal that RA should accomplish is that of <u>translating a justificatory problem in a more tractable deliberative one</u>.

Finally, in the fourth chapter, I addressed two case studies: the attempt to publicly justify human rights concept and the still open debate about the possibility to extend the right to marry to same-sex couples. The articulation of these two case studies has allowed me to show the role played by coherentism as a general justificatory paradigm and to describe the application of RA method in a more precise way. After having

discussed these two cases studies, in the last chapter I also briefly introduced the issue of **open negotiations**. Indeed, showing the possibility of open up the paradigm of justification to include deliberative models of negotiation is the last goal that I set for this dissertation. I did not develop this issue completely. However, the theoretical findings of the last chapter suggest a possible direction for an extension of this issue in a future research. It would be interesting to extend the research about the deliberative models of public negotiation within nonideal theory.

The main theoretical conclusion of this doctoral thesis is that, in order to eschew dilemmatic outcomes, a liberal theory of justice should address the issue of public justification dividing the normative tasks between an ideal and a nonideal stage. 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. In order to accomplish this job, ideal theory provides normative arguments that begin with strong idealizations with regard both to the epistemic and moral capacities of the actors and to favorable social conditions. 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 ideal and nonideal theory mutually support each other and it is not possible to achieve a full justification of a political paradigm if one of the two stage is missing. Again, as I said in the introduction of this work, the ideal and the nonideal theory are like a frame and the picture that is contained within it. And we are, as citizens, the actors that are supposed to work together in order to paint the picture.

Bibliography

Ackerman, B., (1983), "What is Neutral about Neutrality?", *Ethics*, 93, pp. 372-390.

Alston, W., (1976), "Has Foundationalism Been Refuted?", *Philosophical Studies*, 29, pp. 287-305.

Amin, A. (2002), "Ethnicity And The Multicultural City. Living with Diversity", Report for the Department of Transport, Local Government and the Regions and the ESRC Cities Initiative.

Audi, R., (1993), *The Structure of Justification*, New York: Cambridge University Press.

Bagnoli, C. (2001), "Rawls on the Objectivity of Practical Reason", *Croatian Journal of Philosophy*, 3, pp. 307-331.

— (2002), "Moral Constructivism: a Phenomenological Argument", *Topoi*, 1-2, pp. 125-138.

Barry, B. (1995), "John Rawls and the Search for Stability"; *Ethics*, 105, pp. 874-915.

Beitz, C. (2001), "Human Rights as a Common Concern", *American Political Science Review*, 95, pp. 269-282 .

— (2003), "What Human Rights Mean", *Daedalus*, 132, pp. 36-46.

— (2009), *The Idea of Human Rights*, Oxford: Oxford University Press.

Bellamy, R. (1999), *Liberalism and Pluralism: Toward a Politics of Compromise*, London & New York: Routledge.

Bellamy, R. and Hollis, M.(1998), "Consensus, Neutrality and Compromise", Critical Review of International Social and Political Philosophy, 1, pp. 54-78.

Benhabib, S. (2007), "Another Universalism: On the Unity of Human Rights", Proceedings and Addresses of the American Philosophical Association, 8, pp. 7-32-

Benson, H. (2011), "Socratic Method" in *The Cambridge Companion to Socrates*, ed. by D. Morrison, pp. 179-200

Berlin, I. (1969), *Four essays on Liberty*, Oxford: Oxford University Press.

— (1991), *The Crooked Timber of Humanity. Chapters in the History of Ideas*, London: Murray.

Biale, E. (2010), "Urban Recognition, Multiculturalism, and Respect for Persons. The Case of San Salvario", *Notizie di Politeia*, 99, pp. 79-96.

Bickford, S. (2000), "Constructing Inequality: City Spaces and the architecture of Citizenship", *Political Theory*, 28, pp. 355-376.

Blanshard, B. (1939), *The Nature of Thought,* vol. 2, London: Allen & Unwin.

Bonjour, L. (1976), "The Coherence Theory of Empirical Knowledge", *Philosophical Studies*, 30, pp. 281-312.

— (1978), "Can Empirical Knowledge Have a Foundation?", *American Philosophical Quarterly*, 15, pp. 1-13.

— (1980), "Externalist Theories of Empirical Knowledge", *Midwest Studies in Philosophy*, 5, pp. 53-73.

— (1986), *The Structure of Empirical Knowledge*, Cambridge (Mass.): Harvard University Press.

Brandt, R. (1979), "Science as a Basis for Moral Theory", in Sinnott-Armstrong & Timmons (eds), *Moral Knowledge? New Readings in Moral Epistemology*, New York – Oxford: Oxford University Press, 1996, pp. 200-214.

Brink, D.O. (1987), "Rawlsian Constructivism in Moral Theory", *Canadian Journal of Philosophy*, 17, pp. 71-90.

— (1989), *Moral realism and the foundations of ethics*, New York: Cambridge University Press.

Broome, J. And Parfit, D. (1997), "Reasons and Motivation", *Proceedings of the Aristotelian Society*, 71 pp. 99 -146.

Buchanan, A., (2004), "Political Liberalism and Social Epistemology", *Philosophy and Public Affairs*, 32, pp. 95-130.

— (2005), "Equality and Human Rights", *Politics, Philosophy and Economics*, 4, pp. 69-90.

Cabulea May, S. (2005), "Principled Compromise and the Abortion Controversy", Philosophy & Public Affairs, 33, pp. 317-348.

Casati, R. (2011), *Prima lezione di filosofia*, Bari: Editori Laterza.

Cohen, B. (1967), "An Ethical Dilemma", *Mind*, 76, pp. 250-259.

Cohen, G.A. (2003), "Facts and Principles", *Philosophy and Public Affairs*, 31, pp. 211-245.

— (2008), *Rescuing Justice and Equality*, Cambridge (Mass.): Harvard University Press.

Cohen, J. (1994), "A More Democratic Liberalism", *Michigan Law Review*, 92, pp. 1503-1546.

— (2004), "Minimalism About Human Rights: The Best We Can Hope For?", *Journal of Political Philosophy*, 12, pp.190-213.

— (2006), "Is there a Human Right to Democracy?", in Sypnowich C., ed., *The Egalitarian Conscience: Essays in Honour of G.A. Cohen*, New York: Oxford University Press, pp. 226-248.

— (2008), "Rethinking Human Rights, Democracy and Sovereignty in the Age of Globalization", *Political Theory*, 36, pp. 578-606.

— (2009), "Truth and Public Reason", *Philosophy & Public Affairs*, 37, pp. 1-42.

Copp, D. (1984), "Considered Judgments and Moral Justification: Conservatism in Moral Theory" in Copp and Zimmerman (1984).

— (1984), Copp, D., and Zimmerman, D. (eds.), *Morality, Reason, and Truth*, Totowa, N.J.: Rowman & Littlefield.

— (1990), "Justification and Explanation in Ethics", *Ethics,* 100, pp. 237-258.

D'Agostino, F. (1992), "The Idea and the Ideal of Public Justification", *Social Theory and Practice*, 18, pp. 143-164.

— (1996), *Free Public Reason: Making It Up as We Go*, Oxford: Oxford University Press.

— (2009), "Public Justification", *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/archives/spr2009/entries/justification-public/.

D'Agostino, F. and Gerald G. (1998), "Public Reason: Why, What and Can (and Should) it Be?" In *PublicReason*, edited by F. D'Agostino and G. Gaus, Aldershot: Ashgate, 1998, pp. xi–xxiii.

Dancy, J. (ed.) (2000), *Normativity*, Oxford: Blackwell.

— (2004), *Ethics Without Principles*, New York: Oxford University Press.

Dancy, J., Sosa, E., Steup, M. (eds.) (2010), *A Companion to Epistemology*, Oxford: Blackwell.

Daniels, N. (ed.), (1975), *Reading Rawls*, Oxford: Blackwell.

— (1996), *Justice and Justification. The Reflective Equilibrium in Theory and Practice,* Cambridge-New York: Cambridge University Press.

— (2009), "Reflective equilibrium", *Stanford Encyclopedia of Philosophy*, pp. 1-27, http://plato.stanford.edu/archives/spr2009/entries/reflective-equilibrium/.

Darwall, S., Gibbard, A. and Railton P. (1992), "Toward Fin de siecle Ethics: Some Trends", *The Philosophical Review*, 101, pp. 115-189.

Dauer, F.W. (1974), "In Defense of the Coherence Theory of Truth", *The Journal of Philosophy*, 71, pp. 791-811.

Delaney, C.F. (1976), "Rawls on Method", *Canadian Journal of Philosophy*: Supplementary Volume 3 (ed. by K. Nielsen and R. Shiner), pp. 153-161 .

— (1994), *The Liberalism-Communitarianism Debate*, London: Rowman & Littlefield Publishers.

De Paul, M. (1986), "Reflective Equilibrium and foundationalism", *American Philosophical Quarterly*, 23, pp. 59-69.

— (1987), "Two conceptions of Coherence Methods in Ethics" *Mind*, 96, pp. 463-481.

— (1993), *Balance and Refinement: beyond coherence methods of moral inquiry*, London: Routledge.

Descartes, R. [1642], *Meditations on First Philosophy* (Heffernan (ed.), London: Univeristy of Notre Dame Press, 1992).

Dorsey, D. (2006), "A Coherence Theory of Truth in Ethics", *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 127, pp. 493-523.

Dupuis, M. (2002), *Same-Sex Marriage, Legal Mobilization, & the Politics of Rights*, New York: Peter Lang Publishing.

Dworkin, R. (1977), *Taking Rights Seriously*, Cambridge (Mass.): Harvard University Press.

— (1984), "Rights as Trumps", in Waldron J., ed., *Theories of Rights*, New York: Oxford University Press, pp. 153-67.

— (1988), *Law's Empire*, Cambridge, Mass.: Harvard University Press.

— (1988b), "Foundations of Liberal Equality", in Darwall (ed.), *Equal Freedom*, 1995, Cambridge (Mass.): The University of Michigan Press, pp. 190-306.

— (1996), "Objectivity and Truth: You'd Better Believe It", *Philosophy & Public Affairs*, 25, pp. 87-139.

— (2000), *Sovereign Virtue*, Cambridge (Mass.): Harvard University Press.

— (2011), *Justice for Hedgehogs*, Cambridge (Mass.): Belknap Press of Harvard University Press.

Dworkin R. and Maffettone S. (2008). *I fondamenti del liberalism*, Bari: Laterza,

Ebertz, R.P. (1993), "Is Reflective Equilibrium a Coherentist Model?", *Canadian Journal of Philosophy*, 23, pp. 193-214.

Elster, J. (1986), "The Market and the Forum: Three Varieties of Political Theory", in Elster J. and Hylland A. (eds.), *Foundations of Social Choice Theory*, pp. 104-32. Cambridge: Cambridge University Press, 1986.

Engel, M. (1992), "Personal and Doxastic Justification in Epistemology", *Philosophical Studies*, 67, pp. 133-150.

English, J. (1977), "Justice Between Generations", *Philosophical Studies*, 31, pp. 91-104.

Enoch, D. (2010), "How Objectivity Matters", in Shafer-Landau R. (ed.), *Oxford Studies in Metaethics*, Vol. 5, New York: Oxford University Press, pp. 111-152.

Estlund, D. (1998), "The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth", *Ethics*, 108, pp. 252-275.

— (2008), *Democratic Authority. A Philosophical Framework*, Princeton: Princeton University Press.

Eskridge, W.M. (1996), *The Case for Same-Sex Marriage. From Sexual Liberty to Civilized Commitment*, New York: The Free Press.

Farrelly, C. (2007), "Justice in Ideal Theory: A Refutation", P*olitical Studies*, 55, pp. 844–864.

Feldman, R.(1981), "Fallibilism and Knowing that One Knows", *The Philosophical Review*, 90, pp. 266-282.

— (2001), "Skeptical Problems, Contextualist Solutions", *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 103, pp. 61-85.

— (2002), *Epistemology*, Upper Saddle River: Prentice Hall.

Fisher, R., Ury W. and Patton B. (for the 3rd edition), (2011), *Getting to yes: negotiating agreement without giving in*, New York: Penguin Books.

Forst, R. (1999), "The Basic Right to Justification: Toward a Constructivist Conception of Human Rights", *Constellation*, 6, 1, pp. 35-60.

Freeman, S. (1990), "Reason and Agreement in Social Contract View", *Philosophy & Public Affairs*, 19, pp. 122-157.

— (1994), "The Philosophical Foundations of Human Rights", *Human Rights Quarterly*, 16, 3, pp. 491-514.

–– (ed.), (2003), *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press.

–– (2007a), "The Burdens of Public Justification: Constructivism, Contractualism, and Publicity", *Politics, Philosophy & Economics*, 6, pp. 5-43.

–– (2007b), *Rawls*, New York: Routledge.

Galeotti, A.E. (1993), "Citizenship and Equality: The Place for Toleration", *Political Theory*, 21, pp. 585-605.

–– (2002), *Toleration as Recognition*, Cambridge: Cambridge University Press.

–– (2007), "Relativism, Universalism and Applied Ethics: The Case of Female Circumcision", Constellations, 14, p. 91-111.

–– (2008), "Toleration as Recognition: The case for Same Sex Marriage", in Creppell I., Hardin R., and Macedo, S., (eds.), *Toleration on Trial*, Plymouth: Lexington Books, p. 111-134.

–– (2010a), *La politica del rispetto*, Bari: Laterza.

–– (2010b), "Respect as recognition: some political implications", in Seymour, M. (ed.), *The Plural states of recognition*, Basingstoke: Palgrave-Macmillan, p. 78-97.

–– (2010c), "Multicultural Claims and Equal Respect", *Philosophy & Social Criticism*, 36; p. 441-450.

–– (2011a), "Equal Respect. A fundamental principle of liberal democracy", *Nordic studies in education*, 31, p. 127-138.

–– (2011b), "The place of conscientious objection in a liberal democracy", in Calder, G. and Ceva E., (eds.), *Diversity in Europe. Dilemmas of differential treatment in theory and practice*, Abingdon: Routledge, p. 17-31.

Galston, W.A. (1980), *Justice and the Human Good*, Chicago: University of Chicago Press.

–– (1982), "Moral Personality and Liberal Theory: John Rawls' 'Dewey Lectures'", *Political Theory*, 10, pp. 492-519.

–– (1996), *Value Pluralism and Political Liberalism*, Report from the Institute for Philosophy and Public Policy, University of Maryland, College Park, 16, URL: http://www.puaf.umd.edu/IPPP/galston.htm.

Gauss, G. F. (1995), "The Rational, the Reasonable and Justification", *Journal of Political Philosophy*, 3, pp. 234-258.

— (1996), *Justificatory Liberalism: An essay on Epistemology and Political Theory*, New York: Oxford University Press.

— (1999), "Reasonable Pluralism and the Domain of the Political: How the Weaknesses of John Rawls's Political Liberalism Can Be Overcome by a Justificatory Liberalism", *Inquiry*, 42, pp. 259-284.

— (2011), *The Order of Public Reason*, New York: Cambridge University Press.

Gaus, G. and Vallier K. (2009), "The Roles of Religious Conviction in a Publicly Justified Polity", *Philosophy & Social Criticism*, 35, pp. 51-76.

Gerstmann, E. (2004), *Same-Sex Marriage and the Constitution*, New York: Cambridge University Press.

Gettier, E. (1963), "Is Justified True Belief Knowledge?", *Analysis*, 23, pp. 121-123.

Ginsburg, R.B. (1979), "Sexual Equality Under the Fourteenth and Equal Rights Amendments", *Washington University Law Review*, 1, pp. 161-178.

Goldberg-Hiller, J. (2002), *The Limits to Union. Same-Sex Marriage and the Politics of Civil Rights*, Ann Arbor: The University of Michigan Press.

Goldman, A. (1967) "A Causal Theory of Knowing", reprinted in Pappas and Swain (1978).

— (1976), "Discrimination and Perceptual Knowledge", reprinted in Pappas and Swain (1978).

— (1979), "What Is Justified Belief?", in Pappas (1979).

Goodman, N. (1955), *Fact, Fiction, and Forecast*, 3rd edition 1983, Cambridge (Mass.): Harvard University Press.

Griffin, J. (2008), *On Human Rights*, Oxford: Oxford University Press.

Gutmann, A. and Thompson, D. (1996), *Democracy and Disagreement*, Cambridge (Mass.):Harvard University Press.

Habermas, J. (1995), "Reconciliation Through the Public use of Reason: Remarks on John Rawls's Political Liberalism", *The Journal of Philosophy*, 92, pp. 109-131.

— (1996), *Between Facts and Norms*: *Contribution to a Discourse Theory of Law and Democracy*, New Baskerville: MIT Press.

— (1998), with Rehg, W., "Remarks on Legitimation through Human Rights", *The Modern Schoolman*, 75, pp. 87-100.

— (2006), "Religion in the Public Sphere", *European Journal of Philosophy*, 14, pp. 1-25.

— (2010), "The Concept of Human Dignity and the Realistic Utopia of Human Rights", *Metaphilosophy*, 41, pp. 464-480.

Hamilton, A., Madison, J. and Jay, J. [1787-1788], *Federalist Papers*.

Hampton, J., (1989), "Should Political Philosophy be Done Without Metaphysics", *Ethics*, 99, pp. 791-814.

— (1998), *The Authority of Reason*, New York: Cambridge University Press.

Hardimon, M. O. (1992), "The Project of Reconcilation: Hegel's Social Philosophy", *Philosophy & Public Affairs*, 21, pp. 165-195.

Hare, R.M. (1996), "Foundationalism and Coherentism in Ethics", in Sinnott-Armstrong, Timmons (eds.), *Moral Knowledge? New Readings in Moral Epistemology*, Oxford: Oxford University Press, 1996, pp. 190-199.

Harman, G. (1965), "Inference to the Best Explanation", *Philosophical Review*, 74, pp. 88-95.

Hendrick, T. (2010), *Rawls and Habermas: reason, pluralism, and the claims of political philosophy*, Stanford: Stanford University Press.

Hegel, G.W.F. [1821], *Elements of the Philosophy of Rights* (Cambridge: Cambridge University Press, 1991).

Hobbes, T. [1651], *Leviathan* (Curley, H. (ed.), Indianapolis:Hackett Publishing Company, 1994).

Holmgrem, M. (1987), "Wide Reflective Equilibrium and Objective Moral Truth", *Metaphilosophy*, 18, pp. 108-124.

— (1989), "The Wide and the Narrow Reflective Equilibrium", *Canadian Journal of Philosophy*, 19, pp. 43-60.

Horgan, T. and Timmons, M. (2006), "Morality Without Moral Facts", in Dreier J (ed.), *Contemporary Debates in Moral Theory*, Oxford: Blackwell, pp. 220-238.

Hume, D. [1739], *A Treatise of Human Nature* (Oxford: Oxford University Press, 2007)

Kant, I. [1785], *Groundwork of the Metaphysic of Morals* (Cambridge: Cambridge University Press, 1997).

— [1788], *Critique of Practical Reason* (Gregor, M. (ed.), Cambridge: Cambridge University Press, 1997).

— (1991), *Kant's Political Writings*, Ress H. (ed.), Cambridge: Cambridge University Press.

Kelly, E. and McPherson, L. (2001), "On Tolerating the Unreasonable", *Journal of*

Political Philosophy, 3, pp. 23-43.

Kim, J. (1984), "Concepts of Supervenience", *Philosophy and Phenomenological Research*, 45, pp. 153-176.

Koppelman, A. (1998), "Same-Sex Marriage, Choice of Law, and Public Policy", *Texas Law Review*, 76, pp. 921-1001.

Kramer, L. (1997), "Same-Sex Marriage, Conflict of Laws, and the Unconstitutional Public Policy Exception", *The Yale Law Journal*, 106, pp. 1965-2008.

Krasnoff, L. (1998), "Consensus, Stability and Normativity in Rawls's *Political Liberalism*", *Journal of Philosophy*, 95, pp. 269-292.

Kukathas, C. (1998), "Liberalism and Multiculturalism. The Politics of Indifference", *Political Theory*, 26, pp. 686-699.

Kvanvig, J. (2009), "Coherentist Theories of Epistemic Justification", *Stanford Encyclopedia of Philosophy*, pp. 1-28, http://plato.stanford.edu/archives/spr2009/entries/justep-coherence/.

Kymlicka, W. (2002), *Contemporary Political Philosophy*, Oxford: Oxford University Press.

— (2007), *Multicultural Odysseys*, Oxford: Oxford University Press.

Laden, A.S. (2003), "The House that Jack Built: Thirty Years of Reading Rawls", *Ethics*, 113, pp. 367-390.

Larmore, C. (1990), "Political Liberalism", *Political Theory*, 18, pp. 339-360.

— (1996), *The Morals of Modernity*, Cambridge: Cambridge University Press.

— (2008), *The Autonomy of Morality*, Cambridge University Press, New York.

Lehrer, K. (1974), *Knowledge*, Oxford: Oxford University Press.

Lewis, G.B., and Seong Soo Oh (2008), "Public Opinion and State Action on Same-Sex Marriage", *State & Local Government Review*, 40, pp. 42-53.

Lewis, G.B., and Gossett, C.W. (2008), "Changing Public Opinion on Same-Sex Marriage: The Case of California", *Politics and Policy*, 36, pp. 4-30.

Little, D. (1984), "Reflective Equilibrium and Justification", *Southern Journal of Philosophy*, 22, pp. 337-388.

Liveriero, F. (2010), "Diverse Distributions of Public Space – A Public Good for Whom?", *Notizie di Politeia*, 99, pp. 7-22.

Locke, J. [1689], *Two Treatises of Government* (Laslett, P. (ed.), Cambridge: Cambridge University Press, 1997).

— [1700], *An Essay Concerning Human Understanding* (Nidditch, P.H. (ed.), Oxford: Oxford University Press, 1975)

Macedo, S. (1990), "The Politics of Justification", *Political Theory*, 18, pp. 280-304.

— (2008), "Public Reason, Democracy, and Political Community: The Critics Revisited", Princeton University, URL:

http://www.creum.umontreal.ca/IMG/doc/MacedoMontrealNeutralityConference_425.oc.

Maffettone, S. (2004), "Political liberalism: Reasonableness and Democratic Practice", *Philosophy and Social Criticism*, 30, pp. 541-577.

— (2010), *Ralws. An Introduction*, Oxford: Polity Press.

Mansbridge, J. (2009), "Deliberative and Non-deliberative Negotiations", Harvard Kennedy School – Faculty Research Working Papers Series, URL:

http://web.hks.harvard.edu/publications/workingpapers/citation.aspx?PubId=6574.

March, A. F. (2010),"What Lies Beyond Same-Sex Marriage? Marriage, Reproductive Freedom and Future Persons in Liberal Public Justification", *Journal of Applied Philosophy*, 27, pp. 39-58.

McCarthy, T., 1994, "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue", *Ethics*, 105, pp. 44-63.

McKinnon, C. (2002), *Liberalism and the Defence of Political Constructivism*, New York: Palgrave MacMillan.

Mill, J. S. [1859], *On Liberty* (Indianapolis: Hackett Publishing Company, 1979).

— [1863], *Utilitarianism* (Indianapolis: Hackett Publishing Company, 1979).

Moodod, T. (2010), "Moderate Secularism, Religion as Identity and Respect for Religion", *The Political Quarterly*, 81, pp. 4-14.

Moore, G. E. (1903), *Principia Ethica*, Cambridge: Cambridge University Press.

Morrison, R. (2011), (ed.), *The Cambridge Companion to Socrates*, New York: Cambridge University Press.

Nagel, T. (1986), *The View From Nowhere*, New York: Oxford University Press.

— (1987), "Moral Conflict and Political Legitimacy", *Philosophy and Public Affairs*, 16, pp. 215-240.

— (1989), "What Makes a Political Theory Utopian?", *Social Research*, 56, pp. 903-920.

— (1991), *Equality and Partiality*, Oxford: Oxford University Press.

— (2005), "The Problem of Global Justice", *Philosophy and Public Affairs*, 33, pp. 113-147.

Nickel, J. (2010), "Human Rights", *Stanford Enclyclopedia of Philosophy*, http://plato.stanford.edu/archives/fall2010/entries/rights-human/.

Neal, P. (1990), "Justice as Fairness: Political or Metaphysical?", *Political Theory*, 18, pp. 24-50.

Nielsen, K. (1982a), "Considered Judgments Again", *Human Studies*, 5, pp. 109-118.

— (1982b), "Grounding rights and a method of reflective equilibrium", *Inquiry: An Interdisciplinary Journal of Philosophy*, 25, pp. 277-306.

— (1989), "Reflective Equilibrium and the Transformation of Philosophy", *Metaphilosophy*, 20, pp. 235-246.

— (1991), "Rawls and the Socratic Ideal", *Analyse and Kritik*, 13, pp. 67-93.

— (1994), "Methods of Ethics: Wide Reflective Equilibrium and a Kind of Consequentialism", *Journal Of Social Philosophy*, 25, pp. 57-72.

— (1998), " Is Global Justice Impossible?", *Res Publica*, 2, pp. 131-166.

— (1999), "Moral Point of View Theories", Crítica: Revista Hispanoamericana de Filosofía, 31, pp. 105-116.

Nozick, (1974), *Anarchy, State and Utopia*, New York: Basic Books.

Nussbaum, M. (1997), "Capabilities and Human Rights", *Fordham Law Review*, 66, pp. 273-300.

Ottonelli, V. (2012), *I principi procedurali della democrazia*, Bologna: Il Mulino.

Pappas, G., and Swain, M. (1978), *Essays on Knowledge and Justification*, Ithaca, N.Y.: Cornell University Press.

Pappas, G. (1979), (ed.), *Justification and Knowledge*, Boston: Reidel.

— (2009), "Internalist vs. Externalist Conceptions of Epistemic Justification", *Stanford Encyclopedia of Philosophy*, pp. 1-38, http://plato.stanford.edu/archives/spr2009/entries/justep-intext/.

Parekh, B. (2004), "Redistribution or recognition? A misguided debate", in S. May, T. Modood and J. Squires (eds.), *Ethnicity, Nationalism and Minority Rights*, Cambridge: Cambridge University Press, pp. 199-213.

Parfit, D. (1971), "Personal Identity", *The Philosophical Review*, 80, pp. 3-27.

— (1982), "Personal Identity and Rationality", *Synthese*, 53, pp. 227-241.

Phillips, M. (1985), "Reflections on the Transition from Ideal to Non-Ideal Theory", *Noûs*, 19, pp. 551-570.

Pogge T. (1989), *Realizing Rawls*, Itacha & London: Cornell University Press.

— (2000), 'The International Significance of Human Rights', *The Journal of Ethics*, 4, pp. 45–69.

— (2002), *World Poverty and Human Rights*, Cambridge: Polity Press.

Price, T.L. (2000), "Debate: Epistemological Restraint-Revisited", *Journal of Political Philosophy*, 8, pp. 401-407.

Putnam, H. (1981), *Reason, Truth, and History*, Cambridge: Cambridge University Press.

Quine, W.V. (1951), "Two Dogmas of Empiricism", *The Philosophical Review*, 60, pp. 20–43.

— (1969), "Epistemology Naturalized", in *Ontological Relativity and Other Essays*, New York: Columbia University Press, pp. 69–90.

— (1979), "On the Nature of Moral Values", *Critical Inquiry*, 5, pp. 471-480.

Quong, J. (2004a), "The Rights of Unreasonable Citizens", *Journal of Political Philosophy*, 12, pp. 314-335.

— (2004b), "The Scope of Public Reason", *Political Studies*, 52, pp. 233-250.

— (2005), "Disagreement, Asymmetry and Liberal Legitimacy", *Politics, Philosophy & Economics*, 4, pp. 301-330.

— (2007), "Political Liberalism Without Skepticism", *Ratio*, 20, pp. 320-340.

— (2011), *Liberalism without Perfection*, New York: Oxford University Press.

Railton, P. (1986), "Moral Realism", Philosophical Review, 95, pp. 163-207.

— (1995), "Subject-Ive And Objective", *Ratio*, 8, pp. 259-276.

— (2006), "Moral Factualism", in *Contemporary Debates in Moral Theory*, ed. by Dreier J., Oxford: Blackwell, pp. 201-219.

— (2011), *Toward a Unified Account of Rationality in Belief, Desire, and Action*, manuscript.

Rasmussen, D.M. (1990), *Reading Habermas*, Cambridge (Mass): Basil Blackwell.

— (1996), "Jurisprudence and Validity", *Cardozo law review*, 17, pp. 1059-1082.

— (2004), "Defending Reasonability. The Centrality of Reasonability in the Later Rawls", *Philosophy & Social Criticism*, 30, pp. 525-540.

— (2012), "The Emerging Domain of the Political", *Philosophy and Social Criticism*, 38, pp. 457–466.

Rawls, J. (1951), "Outline of a Decision Procedure for Ethics", *The Philosophical Review*, 60 pp. 177-97.

— (1971) *A Theory of Justice*, Cambridge (Mass.): Harvard University Press, [1999 revised edition].

— (1974), "The Independence of Moral Theory", *Proceedings and Addresses of the American Philosophical Association*, 47, pp. 5-22.

— (1980), "Kantian Constructivism and Moral Theory, *The Journal of Philosophy,* 77, pp. 515-572.

— (1985), "Justice as Fairness: Political not Metaphysical", *Philosophy and Public Affairs*, 14, pp. 223-251.

— (1987), "The Idea of an Overlapping Consensus", *Oxford Journal of Legal Studies*, 7, pp. 1- 25.

— (1993), *Political Liberalism*, New York: Columbia University Press, [2nd edition 1996].

— (1995), "Political Liberalism: Reply to Habermas", *The Journal of Philosophy*, 92, pp. 132-180.

— (1997), "The Idea of Public Reason Revisited", *The University of Chicago Law Review*, 64, pp. 765-807.

— (1999a), *Collected Papers*, ed. by S. Freeman, Cambridge (Mass.): Cambridge University Press.

— (1999b), *Law of People*, Cambridge (Mass.): Harvard University Press.

— (2000), *Lectures on the History of Moral Philosophy*, ed. B. Herman, Cambridge (Mass.): Harvard University Press.

Raz, J. (1982), "The Claims of Reflective Equilibrium" *Inquiry*, 25, pp. 307-330.

— (1985), "Authority and Justification", *Philosophy and Public Affairs*, 14, pp. 3-29.

— (1986), *The Morality of Freedom*, Oxford: Clarendon Press.

— (1990), "Facing Diversity: The Case of Epistemic Abstinence", *Philosophy and Public Affairs*, 19, pp. 3-46.

— (2010), "Human Rights Without Foundations", in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law*, Oxford: Oxford University Press, pp. 321–38.

Reed, B. (2002), "How to Think About Fallibilism", *Philosophical Studies*, 107, pp. 143-157.

Reid, T. [1788], *Essays on the Active Powers of the Human Mind* (Cambridge (Mass.): The M.I.T. Press Edition, 1969).

Reidy, D. (2007), "Reciprocity and Reasonable Disagreement: from Liberal to Democratic Legitimacy", *Philosophical Studies*, 132, pp. 243-291.

Richardson, H. S. (2009), "Moral Reasoning", *Stanford Encyclopedia of Philosophy*, pp. 1-48, http://plato.stanford.edu/archives/spr2009/entries/reasoning-moral/.

Rorty, R. (1991), *Objectivity, Relativism and Truth*, Cambridge: Cambridge University Press.

Rousseau, J-J. [1762], *The Social Contract and The First and Second Discourse*, (Dunn, S. (ed.), New York: Yale University, 2002).

Ruppert, E.S. (2006), "Rights to Public Space: Regulatory Reconfigurations of Liberty", *Urban Geography*, 27, pp. 271–292.

Sala, R. (2010), "Toleration and Respect in a Multicultural Society. An Overview", *Notizie di Politeia*, 99, pp. 22-43.

— (2012), *La verità sospesa. Ragionevolezza e irragionevolezza nella filosofia politica di John Rawls*, Napoli: Liguori Editore.

Sandel, M. (1982), *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press.

— (1989), "Moral Argument and Liberal Toleration: Abortion and Homosexuality", *California Law Review*, 77, pp. 521-538.

Sangiovanni, A. (2008) "Justice and the Priority of Politics to Morality", *Journal of Political Philosophy*, 16, 2, pp. 137-64.

Sayre-McCord, G. (1985), "Coherence and Models for Moral Theorizing", *Pacific Philosophical Quarterly*, 6, pp. 170-190.

— (1996), "Coherentist Epistemology and Moral Theory", in Sinnott-Armstrong & Timmons (eds.), *Moral Knowledge? New Readings in Moral Epistemology*, Oxford: Oxford University Press, 1996, pp. 137-189.

Scanlon, T.M. (1998), *What We Owe Each Other*, Cambridge (Mass.): Harvard

University Press.

— (2003a), "Rawls on Justification", in Freeman (ed.), pp. 139-167.

— (2003b), "Human Rights as Neutral Concern", in *The difficulty of Tolerance*, New York: Cambridge University Press, pp. 113-123.

Schaff, K. (2004), "Equal Protection and Same-Sex Marriage", *Journal of Social Philosophy*, 35, pp. 133–147.

Scheffler, S. (1994), "The Appeal of Political Liberalism", *Ethics*, 105, pp. 4-22.

Sellars, W. (1956), "Empiricism and the Philosophy of Mind", *Minnesota Studies in the Philosophy of Science* 1, pp. 253-329.

— (1973), "Givenness and Explanatory Coherence", *Journal of Philosophy* 70, pp. 612-624.

— (1979), "More on Givenness and Explanatory Coherence", in Pappas (ed.), *Justification And Knowledge*, Dordrecht: Reidel, 1979, pp. 169-182.

Sen, A. (1992), *Inequality Reexamined*, Cambridge (Mass.): Harvard University Press.

— (2004), "Elements of a Theory of Human Rights", *Philosophy and Public Affairs*, 32, pp. 315-356.

— (2009), *The Idea of Justice*, Cambridge (Mass.): The Belknap Press of Harvard University Press.

Sen, A. and Williams B. (eds.) (1982), Utilitarianism and Beyond, Cambridge: Cambridge University Press.

Sibley, W.M. (1953), "The Rational Versus the Reasonable", *The Philosophical Review*, 62, pp. 554-560.

Simmons, A.J. (1999), "Justification and Legitimacy", *Ethics*, 109, pp. 739-771.

— (2010), "Ideal and Nonideal Theory", *Philosophy and Public Affairs* 38, pp. 5-36.

Sidgwick, H. (1907), *The Methods of Morals*, VII ed., Chicago: University of Chicago.

Singer, P. (1979), "Sidgwick and reflective equilibrium", *The Monist*, 63, pp. 490-517.

Snyder, R. C. (2006), *Gay Marriage and Democracy. Equality for All*, Lanham: Rowman & Littlefield Publishers.

Sosa, E. (1980), "The Raft and the Pyramid: Coherence versus Foundations in the Theory of Knowledge", *Midwest Studies In Philosophy*, 5, pp. 3–26.

— (1991), "Equilibrium in coherence?", in his *Knowledge in Perspective*, Cambridge: Cambridge University Press, pp. 257-269.

Soysal, Y.N. (1997), "Changing parameters of citizenship and claims-making: Organized Islam in European public sphere", *Theory and Society*, 26, pp. 509-527.

Sparrow, R. (2007), "'Barbarians at the gates': the Moral Costs of Political Community", in I. Primoratz (ed.), *Politics and Morality*, New York: Palgrave Macmillan.

Stein, E. (1994), "Rationality and Reflective Equilibrium", *Synthese*, 99, pp. 137-172.

Stich, S. (1988), "Reflective Equilibrium, Analytic Epistemology and the Problem of Cognitive Diversity", *Synthese*, 74, pp. 391-413.

Sturgeon, N.L. (2006), "Moral Explanations Defended", in Dreier J. (ed.), *Contemporary Debates in Moral Theory*, Oxford: Blackwell, pp. 241-262.

Sunstein, C. (1994a), "Homosexuality and the Constitution", *Indian Law Journal*, 70, pp. 1-28.

— (1994b), "Same-sex Relations and the Law", *Metaphilosophy*, 25, pp. 262-284.

— (1995), "Incompletely Theorized Agreements", *Harvard Law Review*, 108, pp. 1733-1772.

— (1996), *Legal Reasoning and Political Conflict*, New York: Oxford University Press.

— (2005), "Moral Heuristics", *Behavioral And Brain Sciences*, 28, pp. 531–573.

Sunstein, C., and Ullmann-Margalit E. (1999), "Second-Order Decisions", Ethics, 110, pp. 5-31.

Talisse, R. (2008a), "Social Epistemology and the Politics of Omission", *Episteme*, 5, pp. 106-128.

— (2008b),"Toward a Social Epistemic Comprehensive Liberalism", *Episteme: A Journal of Social Epistemology*, 5, pp. 106-128.

— (2009), *Democracy and Moral Conflict*, Cambridge: Cambridge University Press.

Tasioulas, J. (2004), "The Moral Reality of Human Rights", UNESCO Poverty Project, http://www.c3mundos.org/files/Tasioulas%20%282004%29%20The%20Moral%2 0Reality%20of%20Human%20Rights.pdf.

— (2010), "Taking Rights out of Human Rights", *Ethics*, 120, pp. 647-678.

Taylor, C. (1992), *Multiculturalism and The Politics of Recognition*, Princeton: Princeton University Press.

— (1994), "The Politics of Recognition", in A. Gutman (ed.), *Multiculturalism, Examing the Politics of Recognition*, Princeton: Princeton University Press, 1994, pp. 25-74.

Tersman, F. (1992), "Coherence and Disagreement", *Philosophical Studies*, 65, pp. 305-317.

— (1993), *Reflective Equilibrium. An Essay in Moral Epistemology*, Stochkolm: Almqvist & Wiksel International.

— (1998), "Quine on Ethics", *Theoria*, 64, pp. 84-98.

Testino, C. (2012), *Ragioni pubbliche e giustificazione*, Genova: Il Melangolo.

The Universal Declaration of Human Rights, (1948), United Nations (UN) – UDHR. NewYork: UN.   http://www.un.org/en/documents/udhr/index.shtml.

Timmons, M. (1987), "Foundationalism and the Structure of Ethical Justification", *Ethics*, 97, pp. 595-609.

— (1991), "On the Epistemic Status of Considered Moral Judgments", *Southern Journal of Philosophy*, 29, pp. 97-129.

— (1993), "Moral Justification in Context", *The Monist*, 76, pp. 360-378.

— (1996), "Outline of a Contextualist Moral Epistemolgy", in W. Sinnott-Armstrong & M. Timmons (eds.), *Moral Knowledge? New Readings in Moral Epistemology*. Oxford University Press, pp. 293-325.

Tully, J. (2000), "Struggles over Recognition and Distribution", *Constellations*, 7, 2000, pp. 469-82.

Turri, J. (2010), "On the Relationship between Propositional and Doxastic Justification, *Philosophy and Phenomenological Research*, 80, pp. 312-326.

Valentini, L. (2009), "On the Apparent Dilemma of Ideal Theory", *The Journal of Political Philosophy*, 17, pp. 332–355.

— (2012), "In what Sense Are Human Rights Political? A Preliminary Exploration", *Political Studies*, 60, pp. 180-194.

Van der Burg, W., and Van Willigenburg, T., (eds.), (1998), *Reflective Equilibrium: Essays in Honour of Robert Heeger*, Dordrecht: Kluwer Academic Publishers.

Van de Putte, A. (1995), "Rawls' Political Liberalism. Foundations and Principles", *Ethical Perspectives*, 2, pp. 107-129.

Wall, S. (2002), "Is Public Justification Self-Defeating?", *American Philosophical Quarterly*, 39, pp. 385-394.

— (2010), "On Justificatory Liberalism", *Politics, Philosophy & Economics*, 9, pp. 123-149.

Walzer, M. (1983), *Sphere of Justice. A Defence of Pluralism and Equality*, New York, London: Basic Books.

— 1984, "Liberalism and the Art of Separation", *Political Theory*, 12, pp. 315-330.

— (1997), "The Politics of Difference: Statehood and Toleration in a Multicultural World", *Ratio Juris*, 10, pp. 165–176.

Wedgwood, R. (1999), "The Fundamental Argument for Same-Sex Marriage", *The Journal of Political Philosophy*, 7, pp. 225-242.

— (2007), *The Nature of Normativity*, New York: Oxford University Press.

Weinstock, D. (1994), "A Neutral Conception of Resonableness?", *Pacific Philosophical Quarterly*, 75, pp. 165-185.

Wellington, A.A. (1995), "Why Liberalism Should Support Same Sex Marriage", *Journal of Social Philosophy*, 26, pp. 5-32.

Wiggins, D. (1995), "Objective And Subjective In Ethics, With Two Postscripts About Truth", *Ratio*, 8, pp. 243-258.

Williams, B. (1981), "Internal and External Reasons", in *Moral Luck*, Cambridge: Cambridge University Press, pp. 101-113.

— (1995), "Truth in Ethics", *Ratio*, 8, pp. 227-242.

— (2002), *Truth and Truthfulness: An Essay in Genealogy*, Princeton: Princeton University Press.

Williams, M. (1980), "Coherence, Justification, and Truth", *Review of Metaphysics*, 34, pp. 243-272.

Williams, R. (2011), "Same-Sex Marriage and Equality", *Ethical Theory and Moral Practice*, 14, pp. 589-595.

White, M. (1986), "Normative Ethics, Normative Epistemology, and Quine's Holism," in *The Philosophy of W. V. Quine*, Hahn and Schilpp (eds.), LaSalle: Open Court, 1986, pp. 649-662.

Wright, C. (1995), "Truth in Ethics", *Ratio*, 8, pp. 209-226.