

Valeria Resta

RELIGION IN THE PUBLIC SPHERE: NEW THEORETICAL PERSPECTIVES FOR MUSLIM-MAJORITY COUNTRIES

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The underlying idea is that implementing forms of "civilized" politics is desirable as well as feasible. And, as far as the Italian political system is concerned, it is also urgently needed, since the system appears to be poorly prepared to deal with the challenges emerging in many policy areas: from welfare state reform to the governance of immigration, from the selection criteria in education and in public administration to the regulation of ethically sensitive issues.

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Keywords

Conscientious Engagement, Legitimacy, Liberalism, Modus Vivendi, Religion

Abstract

RELIGION IN THE PUBLIC SPHERE New Theoretical Perspectives for Muslim-Majority Countries

The major merit of liberal politics is the formulation that the abidance to any system of rule shall have some rationale rendering any possible coercion a consented one. For this reason, the process of public justification is the most salient, and discussed upon indeed, activity of our political self-determination as citizens of democratic countries and has, accordingly, to follow an ethic of citizenship. The standard approach of political liberalism prescribes to abide to the concept of reasonableness according to which religious arguments shall be taken off the public justification. However, recent processes of liberalization or, at best, democratization in Muslim-majority countries of the MENA region show that the exclusion of religion from the public sphere is not feasible, nor potentially apt to trigger abidance to a system of law so formed. The present paper exposes the methodological and logical flaws contained in the standard moral political theory, but also those implied in a retreat from ethics as well. In light of this, the final section of the paper will invite to consider the merits of the ideal of conscientious engagement.

RELIGION IN THE PUBLIC SPHERE: NEW THEORETICAL PERSPECTIVES FOR MUSLIM-MAJORITY COUNTRIES

VALERIA RESTA

1. INTRODUCTION

As strange or in cognitive dissonance with our liberal convictions as westernconsolidated democracies' citizens, more or less recent political developments in Muslim-majority countries of the Middle East and North Africa (MENA), show that political liberalization in that region is often accompanied by a greater role of religion in the public sphere¹. Indeed, it is a fact that each and every time a dictator of the area indicted elections (even though fake elections, to be true), Islamic parties attained impressive results. This acknowledgement pushed Nader Hashemi to write in 2009 that "in societies where religion is a marker of identity, the road to liberal democracy, whatever other twists and turns it makes, cannot avoid passing through the gates of religious politics" (2009, 9). Such claim seems to be confirmed by the events that followed the Arab Uprisings. Remarkably, where free and fair democratic elections took place, namely in Tunisia and Egypt, Islamist parties gained the majority of seats inside the Parliament and were entrusted with the governmental responsibility to lead the political transition within their countries. In Tunisia, which at the time of writing appears as the only country of the region to have undertaken a democratic way, the new democratic asset concedes greater role to religion than the previous authoritarian rule. The 2014 Constitution, differently from the lip service to the faithfulness of the teaching of Islam paid by the 1959 Constitution, committedly asserts the Arab-Islamic matrix of the Tunisian identity and paves the way for the reaffirmation of Islam in the public sphere².

Tunisia's overture to religion in parallel with its democratization process furnishes new insights to the discussion upon the role of religion in the public sphere. This

¹ This statement indeed exemplifies a much more articulated phenomenon. For a detailed account see Lust 2014.

² Not only the new constitution maintains the confessional clause and the provision that non-Muslims cannot candidate for the presidency of the Republic, but article 6 erodes the principle of state neutrality, at the base of current liberal democracies, by asserting that "the State is the guardian of religion". Further, the prohibition of constituting political parties on a religious base, provided by article 8 of the previous constitution trips out the new provisions concerning the freedom of association and the right to form political parties. See Article 35 of the 2014 Tunisian Constitution.

debate delves not only with the legitimacy of the structures of such kind of political regimes but also, and more importantly, with what the ethic of citizenship entails. The two aspects are deeply entangled inasmuch as the legitimation of the political structures in liberal democracies depends on the procedures for their adoption, namely citizens' participation - as free and equal - in the shared practice of democratic self-determination (Dahl 1971; Morlino 2011; Rawls 1993; Sartori 1987). Out of it, the debate primarily revolves around the admissibility of religious arguments in the political debate and, only secondly, on the legitimacy of a system of rule so grounded. In this sense, the liberal principle of legitimacy imposes to answer the basic question of how, and according to which principles, people ought to behave when exercising the power that democracy allocates on them - and, more precisely, which of their countless motivation count as a political argumentation to sustain or contrast a given law or a political constitution. These questions are far from trivial. Nor are they restricted to transitional settings or new democracies in pre-modern areas of the world. Indeed, much of the current debate on the topic concerns western consolidated democracies and is mainly pursued by western scholars. Nonetheless, when coming to transitional countries or new democracies in the MENA region, the answers we give to the aforementioned question have larger political implications. While nobody would question the democratic leverage of the U.S. if its citizens and MPs publicly oppose abortion on religious grounds (von Benda-Beckmann et al. 2013; Ferree et al. 2004), doubts are instead casted upon the credibility of the democratizing efforts in Muslim-majority countries pushed forward by religious parties - like the Tunisian Ennadha or the Egyptian Freedom and Justice Party (FJP)- precisely because they draw and justify their conception of democracy from Islamic teachings. Our mental reservations - to not say complete mistrust- disregard the dignity of such efforts and are also at the base of disastrous choices of foreign policy. US and EU's reluctance to provide financial help to Tunisia or ambivalence (if not relief) toward the 2011 military coup in Egypt, which posed an end to the FJP-led democratic experiment, are just two examples of the actual implications of this debate in the political and material development of the MENA.

Indeed, western skepticism toward democratizing processes "passing through the gates of religious politics" reflects a consolidated, yet disputed, position according to which religion collides with the development of a stable and just society and regards Islam as incompatible with democracy (Kedourie 1992; Huntington 1996). While I will not embark on this latter issue – for which a complete literature has seen the light (see for instance: Kalyvas 2000; Stepan and Robertson 2003; Tessler 2003, 2010)-, in this paper I will discuss the puzzling issues stemming from the former prescription. As will be further exposed, the separation of religion from politics is the result of socio-historical conditions that are unique to XVII century Europe (see section III) and has no inherent affinity with democracy. Moreover, as shown in section IV, this religious restraint is deemed to pose undue burdens on religious citizens thus jeopardizing the principles of equality and freedom it intends to preserve. Confronting with this paradox, the answers given by the political theory varies but most of them flow into a retreat from normativity. This is for

instance the case of the realist modus vivendi and Habermas' hermeneutical reading exposed in the V section. The concluding section will bring the reader back to the necessity of a moral political theory and the merits of the ideal of conscientious engagement.

2. THE STANDARD APPROACH

At the heart of democracy lies the acknowledgment of individuals as free and equal and it can rightly be defined as a "project" (Sartori 1987, 16) aimed at protecting and enhancing those values. In this sense, the substance of democracy cannot be separated from its form. Hence, if democracy substantively means the power of the people, procedurally it entails a set of institutions and practices enabling people's political self-determination. So formulated, democracy cannot be disentangled from another project, that of political pluralism, inasmuch as this latter, moving from the same acknowledgement of individuals in the same position of freedom and equality, is a reflection about the terms of such political selfdetermination. Departing from Kant's categorical imperative, it poses the people, in a position of freedom and equality, at the bulk of the legitimation process in order to respect people's intellectual faculty. In this way, political liberalism puts forward a shift of power legitimation from mere acceptance to reasons for consent. A justification so conceived is at the same time rationalized consent and public process for accountability (Chambers 2010) and applies to both the content and the process of justification. Hence, political liberalism spells out not only a political conception of justice for a constitutional democratic regime, but also, and before that, draws the burdens of a public justification thus making it a theory "about what makes political action - and in particular the enforcement and maintenance of a social and political order - morally legitimate" (Waldron 1987, 140).

A justification that renders the political action and the political institutions morally legitimate is therefore one that honours the moral and the political prerogatives liberalism ascribes to individuals. On the one hand, borrowing Enlightenment's optimism "in the human ability to make sense of the world, to grasp its regularities and fundamental principles, to predict its future, and to manipulate its powers for the benefit of mankind" (ibid., 134), individuals are deemed to have the moral powers for a sense of justice and a conception of the good. On the other hand, drawing from a constitutional democratic culture, and by means of their moral prerequisites, individuals are also deemed to be free and equal. However, these same prerequisites are at the base of what Rawls defines the fact of reasonable pluralism - namely the presence in modern democratic societies of a plurality of conflicting reasonable comprehensive doctrines resulting from the work of human reason under free institutions - which makes the construction of a legitimate stable and just society quite puzzling (Rawls 1997; Rawls 1993): citizens are called to abide to a set rules stemming from their just reasons while relying on different, and often irreconcilable, religious philosophical and moral doctrines.

The standard approach of political liberalism gets rid of such differences by mean of the criterion of reciprocity according to which "our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions [...] are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons" (Rawls 1997, 771), or, "appeal to reasons or principles that can be shared by fellow citizens" (Gutmann and Thompson, 55). In this way, any process of justification proceeds from what all parties to the discussion hold in common. This is what liberals define the public reason. It is at the same time content and procedure of political justification. It expresses the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another on the basis that everyone can reasonably accepts. It provides substantive principles of justice for the basic structure and guidelines for inquiry citizens have to rely on. Its content is merely political and based on values that others can reasonably accept. So conceived, public reason underpins the moral duty of civility which prescribes citizens to rely only on "the political values they think belong to the most reasonable understanding of the public conception and its political values of justice and public reason" (Rawls 1993, 236).

This prescription has two main implications. On the one hand, it upholds a constitutional separation between church and state in democratic regimes. On the other hand, it works out an ethic of citizenship which prevents individuals to adduce their religious motivations into the public sphere. Arguments relying on religious and other comprehensive doctrines out to be excluded from the public political discussion unless "in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support" (Rawls 1997, 784). This requirement is the notorious proviso that will be discussed later. Yet, as we will see, this position, also known as the doctrine of religious restraint, is not immune to criticism. First, the assumption that a democratic setting presupposes the separation between state and church is empirically unfounded. Secondly, the ethic of citizenship stemming from this liberal reading is deemed to pose undue burdens on believers that undermine the vey principles of freedom and equality at the heart of political liberalism.

3. THE METHODOLOGICAL FLAW OF THE STANDARD APPROACH

As saw from the previous section, political liberalism is a moral theory about the proper conception of justice and the proper terms of cooperation *given* a democratic setting. Instead of being the point of arrival of a justificatory liberalism, democracy is the point of departure of such a reflection. Hence, the standard approach highly resents of how democracy is understood. Acknowledged this, the doctrine of religious restraint proves to be biased by a particular reading of the historical events occurred in Modern Europe which poses secularization as a precon-

dition for democracy (Audi 2011; Huntington 1996). As this section will show, this argumentation is empirically inconsistent and even noxious for the breakdown of some undemocratic orders still present in the MENA region.

The factual separation of State and Church as precondition for democracy is challenged by two figures. To begin with, the history of the relations between State and Church in Western Europe shows indeed a great variety of arrangements that are sustainable with the development of democracy but very few cases can be described as a mere separation. Indeed, five EU democracies have established churches, others have an official religion and some have special relations with one religion sanctioned by the Constitution – which, this latter, even if not formally infringing on the principle of separation between state and Church openly violates the principles of neutrality and impartiality underneath this separation (Audi 2011). Further, a survey of the worldwide relationships between State and Religion across the different regimes – from consolidated democracies to close dictatorship – shows indeed that "secularism and the separation of church and state have no inherent affinity with democracy, and indeed can be closely related to nondemocratic forms" (Stepan 2000, 43). Rather, in Muslim majority countries where opposition to the regime has been framed in religious terms, religiously friendly institutions serve the scope of democracy (Driessen 2014)

However, let's relax the connotation of institutional secularization and assume that it was in place at the inception of democracy. After all, it is undeniable that Modern Europe witnessed some kind of separation between religion and politics inasmuch as European sovereigns ceased to justify their power on religious grounds. Moreover, it also equally undeniable that during that period individuals started to think of religion as a private matter. In this case, the claim that democracy needs secularization suffers from what Stepan has called the "fallacy of unique founding conditions" (2000), that is the belief that "the unique constellation of specific conditions that were present at the birth of such phenomena [...] must be present in all cases if they are to thrive. The fallacy, of course, is to confuse the conditions associated with the invention of something with the possibility of its replication, or more accurately, its reformulation under different conditions" (ibid., 44).

In Europe, as Preuss recalls, it is with the Protestant reformation that the term "unjust law" appeared for the first time³. This was the result of appointing individual conscience as the major source of truth in contrast with the unchallenged truths of the Catholic Church embodied in sovereign's laws. This opposition brought to the Wars of Religion that tore the Western Europe apart. At that time then, the major concern of political philosophers was to find a device allowing Europeans to conduct a peaceful existence. While at the beginning it was thought that religious pluralism was negatively correlated with peace and stability, John Locke challenged this assumption by formulating his principle of toleration. Following the example of God, "who sent out His soldiers to the subduing of nations, and gathering them into His Church, not armed with the sword, or other instruments of force, but prepared with the Gospel of peace and with the exemplary holiness of their conversation" (Locke 1689, 5-6), people should refrain from im-

³ See: Ulrich K. Preuss, Law as a Source of Pluralism?, Paper presented at the "Istanbul Seminars", Istanbul, 14-20 May 2014.

posing on other their religious truths or the orthodoxy of their faith. It is this argument, presented as "the characteristic mark of the true Church" (ibid.), that grounded the process of secularization in 17th century Western Europe. The division between State and Church was a device that allowed Europe to overcome its "existential dilemma" (Hashemi 2014, 443) and, ultimately, posing an end to a situation of warfare.

The European example shows that democracy is the product of modernity intended as "the breakdown of all traditional legitimations of political order, and with it the opening up of different possibilities in the construction of a new order" (Eisenstadt 2000, 5). This process articulated itself through two different phases. The first, that can be thought as a par destruens, is the contention of the unquestioned legitimacy of the *pouvoir constitué*, which in Europe happened to be brought about by the Protestant reformation. The second, the par construens, is the remaking of a new political order which entrusts individuals, as free and equal, with the pouvoir constituante - which, in the European case, was the result of the Enlightenment and the French Revolution. In this sense, the challenge to the primacy of religion occurred in the 16th Century was a challenge to an authoritarian power who legitimated itself through religion and the division of State from Church was a way to recompose the turmoil crated by the fragmentation of the order so subverted. Out of it, the above-illustrated variety of relationships between state and church present in Europe reflects the degree wherewith the ruler used religion to justify its authoritative power and the degree of intolerance such coercive power brought about on a more or less religiously homogenous society. The more the religious legitimation and the intolerance against other doctrines, the more the need for a retreat of religion from the political public sphere.

In light of this, it will be easier to see why the Middle East didn't feel the need for secularization and why democracy is passing through the gate of a greater role of religion in the public sphere. On the one hand, as Hashemi notes

Muslim societies and empires historically did not face the same allconsuming wars of religion and debates over religious toleration and political order [...] nor inner political dynamic emerged within the Middle East that would necessitate the development of intellectual or moral arguments in favor of religion– state separation as a way out of an existentialist political dilemma in the same way these arguments developed and were so critical to the rise of secularism in Europe during the 17th century. (2010, 332)

On the other hand, all the dictators that flew, or whose authority has been seriously challenged during the Arab Uprisings, relied on a secular legitimation and imposed on their population a top-down secularization (Migdal 1988). In these contexts then, the challenge to the incumbent dictator has passed and is passing through a challenge to its secular ideology and the reaffirmation of religion (N. Hashemi 2014; Nader Hashemi 2009; Lust 2011). Yet, as it emerges, the rationale is by no mean different from the one underpinning the birth of secularization and, eventually, the birth of democracy in modern Europe: namely the instrumental use of an ideology – be it religious or secular- to challenge an unaccountable power. This religiously-shaped Muslim modernity (Eisenstadt 2000; Hashemi 2010) has not, however, to result in the inutility for Muslim societies to think seriously about the place and the role of religion in the public sphere, especially if these are interested – as they are – in constructing a political system where freedom, equality and human rights prevail. Rather, it has the sole scope of illuminating the puzzling normative implications of the doctrine of the religious restraint. How the concomitant processes of socio-political rethinking and self-determination can be pursued if justificatory liberalism imposes Muslims to leave off the public discussion arguments based on religion - which is at the same a marker of identity (Hashemi 2009) and a tool for political emancipation?

4. LOGICAL FLAWS OF THE STANDARD APPROACH

Beyond the methodological fallacy underneath the pretension of separating state from church and taking religious arguments off the political debate, the standard approach is also deemed to present internal flaws. On the one hand, the alleged lack of a clear conceptualization is deemed to deprive it of prescriptive power. On the other hand, the proviso is deemed to be in contradiction with the core values of political liberalism itself. While these two main arguments are in partial contradiction with each other, they nonetheless shed lights into the inner shortcomings of the standard approach.

A first line of critiques targets precisely the fuzziness of the conceptions informing the mainstream justification model. A case in point is the confusion related to the acceptation of reasonableness and to the term "reasonable". As noted, this is the central feature of mainstream liberal justification in that it is the moral political standard which satisfies the criterion of reciprocity, thus upholding public reason and political legitimacy. Yet, "the idea of the reasonable, is so frustratingly difficult to define" (J. W. Boettcher 2004, 597) because it refers to different subjects and assumes different acceptations across the mainstream understanding of public justification liberalism. Reasonableness is at once the principle and the key condition for the exercise of legitimate power (Rawls 1980; Rawls 1993); it is one of citizens' moral power (Rawls 1993) and a feature of their comprehensive doctrines (Rawls 1993), arguments (Rawls 1997; Audi 2000), law and conception of justice (Rawls 1980). For a sample:

Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those *norms* they view as reasonable for everyone to accept and therefore as justifiable to them; and they are ready to discuss the fair terms that other propose. The reasonable is an element of the idea of *society* as a system

of fair cooperation and that its fair terms be reasonable for all to accept is part of the idea of reciprocity (Rawls 1993, 49–50. Emphasis added).

And again:

Hence the idea of political legitimacy based on the criterion of reciprocity says: Our *exercise of political power* is proper only when we sincerely believe that the reasons we would offer for our political actions-were we to state them as government officials - are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons. This criterion applies on two levels: one is to the constitutional structure itself, the other is to particular statutes and laws enacted in accordance with that structure. To be reasonable, *political conceptions* must justify only constitutions that satisfy this principle (Rawls 1997, 771. Emphasis added).

Relying on criterion of reciprocity, reasonableness is a relational concept whose meaning depends on what we think constitutes fairness, i.e. accessibility and adequacy, towards our fellow citizens. Yet, no adequate and stable interpretation has been formulated thus far rendering the concept extremely slippery (Weithman 2002).

Partially as consequence of this concept under-specification (Sartori 1970), a second critique concerns the feasibility of the standard approach (Eberle 2009, Habermas 2006, Wolterstroff 1997). How can citizens distinguish between reasonable and non-reasonable arguments in support of their preferred laws or constitutional order? Audi has partially tried to answer this question by adding to the criterion of rationality (present in Rawls' position) that of citizens' adequate information (Audi 2000, 78). But when can we assert that citizens are adequately informed? The standard approach is epistemologically silent. Unaware of this structural flaw, in recent years lot of scholars across Muslim-majority countries embarked themselves in the search of elements of reasonableness within the Islamic tradition able to satisfy the proviso and to ground a liberal conception of justice in the same guise as the Christian principle of toleration upholds political liberalism (Fadel 2008, Sadri 2000). However, notwithstanding the accuracy of these works, these are of little. Indeed, ordinary citizens don't know all the hermeneutical devices pointed out by these works, nor are they aware about the different doctrines available to them. Hence, in light of the proviso, individuals lacking this knowledge ought simply to refrain from offering their religion-driven arguments in public justification.

The exclusion of religion from the public debate is at the heart of the most decisive and convincing criticism moved against the standard approach, namely its subversion of founding liberal values. Firstly, the proviso is deemed to infringe on

the principle of equality in that it imposes undue burdens to believers in two respects: that of argument formulation and that of argument delivery. On the one hand, in their public reasoning believers are required to embark on an effort that is not required to other citizens (Wolterstorff 1997; Habermas 2006) - who nonetheless hold other, yet different, comprehensive doctrines – which is deemed to pose on them "undue mental and psychological burden" (Habermas 2006, 9). On the other hand, they are deemed to refrain from advancing their arguments if these are based on religious claims alone. As Eberle puts it: "granted that she [the citizen, ndr] has done her level best to retreat to a common ground, what does respect for her compatriots require her to do when the ground she shares with her compatriots is insufficient to resolve their disagreement?" (Eberle 2002, 301). This unbalance is all the more embarrassing if moving from Rawls' acknowledgment of religion as a comprehensive reasonable doctrine, on the same footing of political liberalism, for its being the "inevitable outcome of human reason" (1993, 37). Secondly, the proviso is deemed to infringe also on citizens' freedom (Eberle 2002; Habermas 2006; Wolterstorff 1997) inasmuch as it inhibits believers to conduct a pious life. For Wolterstroff the proviso jeopardizes believers' existence in that (1938), "it belongs to *religion convictions* of a good many religious people in our society that they ought to base their decision concerning fundamental issues of justice on their religious convictions [...] Their religion is not, for them, about something other than their social and political existence" (1997, 105. Emphasis in original). A similar pervasiveness of religion on citizens' lives is also, more or less implicitly, found in Rawls who nonetheless avoids to openly face the issue. Even though he is extremely cautious in circumscribing the breadth and the scope of political liberalism to the realm of politics and conceives it as a freestanding doctrine that doesn't need to assess the truth and the validity of other comprehensive doctrines, he concedes that the overlapping consensus stemming from the public reason requires to be embedded on citizens' comprehensive doctrines in order to generate "the deepest and most reasonable basis of social unity available to us in a modern democracy" conducive to "stability for the right reason". Yet, this act of embeddedness is cautiously left off the threshold of political justification to minimize the implications of political liberalism that for Macedo (1990) go far beyond the sphere of politics – or maybe it's just politics that goes far beyond itself.

In any case, the twine of political liberalism and other comprehensive doctrines, first and foremost religious ones, seems to suggest that the principle of respects (and with it the values of freedom and equality) utterly crumbles against the principle of religious restraint thus producing a serious short-circuit of public justification liberalism.

5. A RETREAT FROM NORMATIVITY?

As saw from the previous paragraph, there seems to be a trade-off between the two faces of liberalism (Gray 2000), namely toleration and the pursuit of a stable and just society. There is the impression that any attempt at honoring the respect we owe to others while pursuing the building of a stable and just society in terms that all can accept is bound for failure and that the only available option is a retreat from normativity.

The rejection of the proviso is at the base of Habermas' (2006) proposal to suspend any normative expectation on citizens until a process of complementary learning process has been undergone. In particular, he proposes a more realistic vision of public reason rejecting secularization as ground for citizens' relations among each other. He does so by departing from the awareness that people holding different comprehensive doctrines have cognitive dissonances. In such circumstance, the criterion of reciprocity posed by liberalism lacks the basis for its application. What is needed, according to Habermas, is the development of some epistemic attitudes within each opposing side of the civil society so as to come up with the cognitive preconditions for the public use of reason. Only when this translation has been achieved, can an ethics of citizenship be developed and required from the members of the polity. As Habermas put it, "required epistemic attitudes are the expression of a given mentality and cannot, like motives, be made the substance of normative expectations and political appeals" (Habermas 2006, 13). While his argumentation can normatively ground the entrance of religious reasons into the public sphere, as will be shown in the next section, it nonetheless opens the door for a veritable retreat from normativity embodied in realism's modus vivendi.

Moving from the acknowledgement of fact of irreconcilable pluralism and permanent conflict (Burelli 2017), political theory is witnessing a 'realist turn' that deliberately gets rid of the conundrum of balancing the principle respect with individuals' freedom and equality. It is so because the target of the critiques raised by realists to political liberalism is exactly the liberal moralism from which such trade-off originates (Gaus 2003; Galston 2010; Williams 2005). This latter is deemed to lack descriptive adequacy and, partially as result of this, of turning out to be practically irrelevant. On the one hand, the centrality of individuals as free and equal is deemed to obscure the complexities and the dynamics at stake in politics, like the ubiquity of relations of powers or the determinant role of the many and different political institutions which concur to the formation of a polity. On the other hand, no real criteria are provided to guide citizens' conduct in their political agency – a concept, this latter, that is totally missing (Horton 2010). Building on these shortcomings, some scholars propose the theory of modus vivendi as alternative to liberal pluralism. So as initially formulated in Rawls, the modus vivendi is a "treaty between two states whose national aims and interests put them at odds" (1993, 147). In his mind, it is a watered-down, and therefore different, version of the overlapping consensus because: i) it lacks a conception of justice which is also moral; ii) it lacks a conception of society and of citizens as persons as well as principles of justice; and, iii) it is highly unstable, for such a treaty largely relies on the balance of powers between the two states (ibid.). Yet, from the perspective of political realism, while the overlapping consensus is deemed to be simply utopian to achieve, modus vivendi, by contrast, is a daily-observable solution that allows citizens to coexist together and, for the very reason of enabling them to conduct a worthwhile existence, is the source of legitimation of the upheld political power. In Gaus' expanded and articulated conceptualization:

Agreement X is a modus vivendi between agents A and B if and only if:

- 1) X promotes the interests, values and goals etc. of both A and B;
- 2) X gives neither A nor B everything they would like;
- The distribution of gains of the compromise (how close X is to A or B's maximum reasonable expectation) crucially depends on the relative power of A and B;
- 4) For both A and B, the continued conformity by each to X depends on its continued evaluation that X is the best deal it can get, or at least that the effort to get a better is not worth the cost. (2003, 59)

As it appears, what Rawls regarded as weaknesses of modus vivendi becomes here the strengths of an alternative political theory. To begin with, the departure from a moral conception of justice and the absence of an ethic of citizenship allows proponents of the modus vivendi to impose no apparent limit on the kind of reasons citizens can offer in endorsing a given political order. As Horton explicitly puts it, "to count as a modus vivendi an arrangement has to be broadly 'acceptable' or 'agreeable' to those who are party to it, even if only reluctantly and for diverse reasons" (Horton 2010, 439). By so doing, the modus vivendi has the merit of acknowledging the crucial role, played by "passions and emotions in securing allegiance to democratic values" (Mouffe 2000, 10) and, out it, fully guarantees individuals' freedom and equality within the process of legitimation. Moreover, the instability pinpointed by Rawls is deemed to render modus vivendi a plastic, and therefore realistic, political theory in three regards. First, it has the merit of sticking with reality in that it addresses the importance of power relations in politics. Second, it depicts modus vivendi and ongoing process requiring the continued commitment of its adherents. Finally, lacking any exclusive political connotation, modus vivendi is regarded as a solution applicable to the different contexts of social organization. However, despite these strengths, modus vivendi theory exhibits

major weaknesses ascribable to its caution in undertaking the path of ideals for not re-proposing the same blanks contested to political liberalism. Indeed, if it is true that modus vivendi is at once content - namely peace and security - and form namely acceptance-, these *definiens* are nonetheless poorly defined (Horton 2010). As far as the form is concerned, if we consider together the notion of acceptance and that of power unbalance across the parties of a modus vivendi (Gaus' points 3 and 4), then modus vivendi theory is really problematic. After all, political science has thought us that the costs of voice, i.e. the claim against the status quo, depends on a credible exit strategy and that this latter derives from the relative power (or source of) of the parties involved (Hirschman 1972; Przeworski 1991). Indeed, the argument is often pushed as far as to ascribe the birth of constitutional democracy to an equilibrium of forces (Weingast 1997). Yet, while modus vivendi acknowledges this important aspect of the political life, it would legitimate solutions wherein the weaker party accepts a given status quo for the very reason that, obviously, the costs of getting a new deal are too high precisely as a result of its power disadvantage. Further, coming to the aspect of content, admitted and not granted that citizens really consider peace and security as ultimate political good (Rossi 2010, Zuolo 2017), these are by no mean defined. They are deemed to be a question of degree (Horton 2010) whose terminus a quo is totally missing, because of the rejection of ideals, and apt to legitimate the harsher autocracies on heart whenever Gaus' four conditions are met.

Leaving aside the intriguing question of what means to theorize in realistic terms – how can we theorize missing any bounding definition or at least any ideal?-, this paragraph seems to suggest that the risks deriving from a retreat from normativity are by no means as deleterious as the logic flows within "high-liberalism" (Galston 2010). The following paragraph will therefore come back to the 'ought' language to investigate the why and how the liberal conundrum shall be addressed.

6. TOWARDS A CONSCIENTIOUS ENGAGEMENT

While not being yet a workable political theory for the reasons just illustrated, modus vivendi has the merit of grasping the ever-changing common ground available to citizens that can, in a probable future, lead to the emergence of an overlapping consensus (Rossi 2010). In a similar vein, answering to the realist objection of conservativism, Flanders has put forward the argument of the mutability of public reason precisely to denote how the notion of reasonableness allows for the introduction of different kinds of citizens' argumentations depending on the historical moment. By shedding the light on the importance of social roots in public political culture and by distinguishing between the ideal and the fact of public reason, Flanders posits that changes in the historical and social conditions reflects themselves in what can actually be seen as an acceptable argument to legitimate the political power (Flanders 2012). Indeed, also Ralws acknowledged the importance of the historical and social conditions for the determination of the public reason. In considering the civil fights pursued through religious arguments as such (that is without respecting the proviso) by the abolitionists and by the civil rights movement led by Martin Luther King, he allows for an inclusive view of public reason. In his words:

the abolitionists and the leaders of the civil rights movement did not go against the ideal of public reason; or rather, they did not provided they thought, or on reflection would have thought (as certainly could have thought), that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized. To be sure, people do not normally distinguish between comprehensive and public reasons; nor do they normally affirm the idea of public reason, as we have expressed it. Yet people can be brought to recognize these distinctions in particular cases. The abolitionists could say, for example, that they supported political values of freedom and equality for all, but that given the comprehensive doctrines they held and the doctrines current in their day, it was necessary to invoke the comprehensive grounds on which those values were widely seen to rest. Given the historical conditions, it was not unreasonable of them to act as they did for the sake of the ideal of public reason itself. In this case, the ideal of public reason allows the inclusive view (Rawls 1993, 251).

As emerges, the mutability of public reason warns that it may be the case that people have different conceptions of reasonableness across time and space and that what can be justified solely on religious grounds might nonetheless serve the scope of a democratic liberal order⁴. This line of reasoning has been picked by Muslim thinkers to justify the public role of religion and even to formulate an autochthonous, and alternative, political conception of justice (see for instance: Bahlul 2003). However, these theoretical efforts, like Rawls' inclusive view, do not help in any way for adjudicating the admissibility of religion in the public sphere in that such decision is based on an ex-post evaluation: how can one know whether her or his actuality presents the necessary historical conditions that justify the recourse to comprehensive reasons as such? After all, Tolstoj's Marshall Kutuzov and Napoleon thought us that nobody is more ignorant about his actuality than the one living it. It is only afterwards that we elaborate a unified sense to the many

⁴ On this latter point Eberle distinguishes between justificatory liberalism and mere liberalism. See: Eberle 2008, p. 295-296

intervenient accidents and unintended consequences of our actions. In these proposals, there is the lack of one of the two extremes characterizing the necessity relationship, which, this latter, is at the base of any normative pronouncement. For the same reason, Habermas' claim to suspend any normative expectation until cognitive preconditions are given is no more apt to guide citizens' conduct. How can we self-evaluate our cognitive achievements? There seems to be no other option but a retreat from normativity.

However, moral political liberalism might not be discharged. The very fact of our existence in a social context imposes us to coordinate our actions with those of our fellows. Especially when engaging a political action, and, *a fortiori*, when pretending, in so doing, to move from, or establish, a democratic political order where the substance of democracy is the democratic procedure itself, namely the way whereby the decisions affecting the collectivity are taken. Hence, an ethics of citizenship, understood as the settlement of morality-driven focal points, is just worthy. Coming back to our problem, what kind of ethics should guide our political self-determination as free and equal citizens when bearing different comprehensive doctrines in constant flux? For the reasons examined in these pages, I see as more appropriate to depart from the standard approach's duty of civility and opt instead for the ideal of conscientious engagement (Eberle 2002). This consists in:

at least six constraints on the reasons she employs in political decision making and advocacy.

(1) She will pursue a high degree of rational justification for the claim that a favored coercive policy is morally appropriate.

(2) She will withhold support from a given coercive policy if she can't acquire a sufficiently high degree of rational justification for the claim that that policy is morally appropriate.

(3) She will attempt to communicate to her compatriots her reasons for coercing them.

(4) She will pursue public justification for her favored coercive policies.

(5) She will listen to her compatriots' evaluation of her reasons for her favored coercive policies with the intention of learning from them about the moral (im)propriety of those policies.

(6) She will not support any policy on the basis of a rationale that denies the dignity of her compatriots. (Eberle 2002, 104)

The bulk of this proposal for an "epistemic ethics of citizenship" relies on the assumption that, out of the respect for the dignity of their compatriots, citizens are required to "arrive at conclusion of *conscience* in a *conscious* manner" (Eberle 2002, 105. Emphasis in original) while being committed "to engaging their compatriot" (ibid. 106. Emphasis in original). As Macedo (1995) would say, conscientious engagement is precisely based on a "public and candid" justification. While no kind of reason is excluded a *priori* from the process of political self-determination, our use of the political power is proper when the reasons we present to our fellows result from this conscientious hermeneutical process. Out of this, Eberle's proposal seems to go in the right direction. First, far from relieving citizens from self-criticism (Anderson 2013), conscientious engagement stresses the social and aggregative dimension of the process of justification entailed by the acknowledgement of the mutability of public reason. By so doing, citizens are only relieved from the onerous obligation of a lonely search of elements of reasonableness within their comprehensive doctrines in the phase of reason formulation and can overtly engage in the public deliberation. This by no means betrays an excess of permissiveness (idib.) for not all reasons are apt to infuse legitimacy to our preferred laws. But this withholding is not the result of undue burden to believers (Boettcher 2005), rather it is the result of a hermeneutical process having only principled rules citizens conscientiously abide with.

The second important merit is that of reducing the risks of jeopardizing citizens' existence as believers. The choice of the term "reduce" instead of "eliminate" is to denote that in some cases public deliberation can arrive at decision contrasting with the preservation of citizens as pious persons. For Harbour, substituting the principle of respect with the ideal of conscientious engagement deprives believers from the right to object a given law on the basis of respect and tolerance (2010). Yet, the very notion of respect is at the base of conscientious engagement's concern for dignity. Moreover, within the deliberative process believers have the chance to understand the reasons of such dissonance and to process it - and, hopefully, to appease it (Eberle 2009). Rightly enough, this point has been regarded as too naïf, for constraint 5 presupposes that citizens see themselves as fallible and regard their compatriots as source of enlightenment – something that cannot be really assumed for the "born-again" evangelical Christian (Anderson 2013). Still, I see more feasible for a born-again evangelic Christian to put in question his own interpretation of the holy scriptures and regard its fellows as bearer of acceptable rationales out of their Christian teachings, than discerning, alone, elements of reasonableness from his comprehensive doctrines.

Thirdly, conscientious engagement really honors the dignity of free and equal human being by acknowledging on them a real *pouvoir constituante*. Here, the act of political self-determination is not limited to the identification of an overlapping consensus of a set of reasonable arguments – which closely resembles as a set theory logical operation- but also embraces the process of arguments formulation.

The last strength of a conscientious engagement is that the dimensions of engagement and respect of others' dignity can be extended also to the phase that Habermas tends to insulate form any normative prescription out of the claim that epistemic attitudes cannot be liable to normative expectations (2006). To do so, he

posits, believers ought to process their cognitive dissonance from within their religious traditions and seculars ought to embark on a "self-reflective transcending of a secularists self-understanding of modernity" (ibid., 15). Only in this way shall citizens develop a reciprocity of expectations that can form the substance of the duty of civility. Yet, this formulation misses the central aspect that "religious traditions are not born with an inherent democratic and secular conception of politics. These ideas must be socially constructed" (Hashemi 2009, 26-27). Is this social construction to be immune from normativity? Of course we cannot enter into the dogmatic processing, nor into the theological elaboration for supporting a given conception of politics which are crucial in shaping the relationship between religion and democracy (Kalyvas 1996). However, given the "multivocality of religious traditions", namely the presence in religious traditions of both elements of intolerance and overture to which religion recurs depending on the historical and social context (Stepan 2000), it would be wise to encourage conscientious engagement at all levels of public discussion (March 2013) - including those related to the questions of identity which in many social contexts, like post-Ben Ali Tunisia- have a huge impact on the political sphere.

True enough, conscientious engagement is still poorly defined. Much more work need to be done in order to substantiate the conception of dignity (maybe in terms of preventing others' loss of freedom and equality, qua others) and to further specify the epistemic properties of our legitimate argument (Eberle 2008). Puzzlingly, while there is an actual need for such specification, there is also the risk that the rigidity implied in this process will curtail one of conscientious' engagement assets that is precisely its portability. It's a highly risky process susceptible of ending up with the discovery of a series of evocative stances, rather than a proper moral theory of politics. But it's a risk worth taking for, at moment of writing, this proposal - which is in tune with a growing feeling upon the necessity of working out hermeneutical and epistemic theories for public discussion - seems to outweigh those presented thus far suggesting that engaging in contentious engagement might open unexpected possibilities to exit from the liberal short-circuit and the realist laissezfaire. And, in so doing, we can probably arrive at recognizing the dignity of the various processes of democratic self-determination that, for their -obviously- different historical and social conditions, do not retrace that of 17th century Europe.

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