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Il liberalismo tra realismo e populismo

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Scholar-made Law? The strange
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Salvatore Carrubba

Editoriale

Questo numero di “Biblioteca della Libertà” si colloca in modo particolare e significativo nella ormai lunga teoria delle edizioni che l’hanno preceduta: esso infatti ci riporta all’identità e alle funzioni stesse di questa rivista, ossia l’analisi della natura, delle sfide e del ruolo che il liberalismo si trova costantemente a ridefinire, affrontare e svolgere.

Nell’attuale fase storica, il liberalismo si trova in una curiosa, e ambivalente, posizione: da un lato, osserva, con preoccupazione, la crisi dello storico antagonista, il socialismo tradizionale, apparentemente incapace in tutt’Europa di mantenere quel mix virtuoso tra capacità di governo e aneliti egualitaristi che ne aveva consentito un sostanziale predominio; dall’altro, tuttavia, si accorge di essere a sua volta sfidato dalle stesse minacce che corrodono la credibilità del socialismo. Mi riferisco al populismo (apparentemente) dilagante, basato su una miscela di elementi che mettono in discussione i fondamenti stessi della propria tradizione: i meccanismi della democrazia rappresentativa, il funzionamento dei mercati, la libertà di circolazione di persone, merci, soldi e idee, la fiducia in un dibattito pubblico aperto, trasparente e reciprocamente rispettoso.

Resto profondamente convinto che il liberalismo abbia più frecce al proprio arco, solo che si dimostri capace, in parte, di rimettersi in discussione e, in parte, di riaffermare la validità di molti dei suoi elementi fondanti. I saggi pubblicati in questo numero lo dimostrano, riportandoci al centro di alcuni dei temi e dei conflitti sui quali si è definita in questi ultimi trecento anni l’identità liberale: in particolare, il rapporto tra realismo, idealità e moralità in politica e le minacce rappresentate per l’ordine democratico-liberale dall’insorgere dei movimenti populisti, che l’elezione di Donald Trump ha dimostrato essere un fenomeno non esclusivamente

europeo. I saggi contenuti confermano che il liberalismo, dinnanzi a questa sfide, è tutt'altro che afasico. Discorso diverso sarà verificare se le risposte di cui dispone saranno capaci di influenzare l'opinione pubblica in termini convincenti e risolutori.

Qui, la sfida si giocherà sull'assetto futuro dell'informazione: non a caso, tra due campioni del moderno populismo, Grillo e Trump, emerge (almeno) un punto di frigeroso consenso, ossia la diffidenza e l'ostilità verso l'attuale sistema dell'informazione, messo in crisi (oltre che dagli errori di editori e giornalisti) dall'avanzata dei nuovi canali che hanno scardinato anche in questo ambito la fiducia negli intermediari professionali: un fenomeno dilagante, che colpisce giornalisti non meno che politici ed esperti di vario genere (compresi quelli sanitari), tutti vittime dell'illusione generalizzata che la formazione delle decisioni pubbliche non passi, prima, da un dibattito aperto, pluralista e trasparente e, poi, da una conciliazione dei differenti interessi in gioco, ma s'identifichi con una non meglio definita volontà popolare, naturalmente eticamente ineccepibile e individuata attraverso meccanismi di partecipazione virtuale. Rispetto ad analoghe, terrificanti esperienze passate, in più, questa volta c'è la pervasività delle piattaforme tecnologiche, ormai governate dall'algoritmo, che rischia così di diventare l'autentico artefice delle decisioni collettive.

Sembrano questioni angoscianti, ma possiamo consolarci che non sono temi nuovi (come conferma l'analogia con la mobilitazione del Terrore e l'esperienza dei Soviet); basti pensare al titolo di un saggio di un maestro del pensiero liberale contemporaneo, Nicola Matteucci, che già nel 1972 poneva appunto il tema del "liberalismo in un mondo in trasformazione" e anticipava aspetti coi quali dobbiamo ancora fare i conti: «Con (la) drastica distinzione fra i principi e la realtà, fra i valori e la storia, fra il vero e il certo non vogliamo però dare l'impressione di svalutare quelle storiche istituzioni "rappresentative" e quelle secolari tecniche costituzionali che sono state la massima creazione del liberalismo e contraddistinguono la "civiltà" dell'Occidente. Queste istituzioni, più o meno imperfette, restano pur sempre le "mura" della città libera, sono gli "argini", che devono resistere alla piena impetuosa del potere o, meglio, al potere nello stato puro e primordiale. Ma sono la filosofia o la teoria liberale che ci hanno spinto e insegnato a costruire quelle mura e quegli argini e, insieme, che hanno preparato gli animi a difenderle, per garantire nella città l'ordine politico liberale: senza quegli animi, le mura restano – alla lunga – disarmate. Se non dobbiamo confondere la "forma" (lo Stato liberale) con la "sostanza" (il liberalismo), non dobbiamo però dimenticare l'importanza delle mura e degli argini: essi debbono non soltanto essere conservati, ma anche e soprattutto riedificati a seconda della nuova e diversa

natura del “nemico” della libertà. Ma non ci si deve neppure cullare nell’illusione che esistano delle linee Maginot invincibili».

Matteucci richiama al dovere dei liberali di non dare nulla per scontato, tanto meno le conquiste che i loro antesignani hanno reso possibili, contribuendo a costruire la civiltà della libertà, del rispetto e del progresso. Non è la prima volta che essa viene rimessa in discussione; ai liberali (ancorché privi di polizze autorevoli: *Non praevalebunt*), spetta la responsabilità di alimentare un dibattito capace di riaffermare i principi non meno che di contrastare rassegnazione, conformismo, intolleranza e violenza (comprese quelle verbali).

Marco Biasi
and Giovanni Tuzet

**From Judge-made Law to
Scholar-made Law?
The strange case of
Employment-at-Will in the US***

1. INTRODUCTION

This paper addresses a puzzling issue for legal theory: the story of a rule that was “invented” by an obscure American scholar and yet was largely accepted by the legal community as the law in matter of termination of the employment relationship.

Horace Wood was the scholar and his rule is known as “Employment-at-Will” (or “Wood’s rule”). According to this rule, an indefinite duration contract is presumed to be “terminable at will” (without notice) by either the employee or the employer. The problem with this rule is that the Common Law tradition had a rather different rule, namely the rule of dismissal with notice.

In the following we basically address three questions about that rule: *how* Employment-at-Will became the law in the US; *why* it so became; *whether* the shift from the Common Law rule to Wood’s rule was legitimate from a legal point of view.

To answer the first question we will retrace the story of the rule’s “invention”, acceptance and use. To answer the second one we will point out that the promotion of some values and liberties (free trade and employment in a market economy) was the ultimate reason for the rule’s acceptance. To answer the third one, which is not an explanatory but a normative question, a theory of legal sources is needed together with a normative account of judicial law-making (which is beyond the reach of the present contribution).

* Every part of this paper has been discussed among the coauthors, who share the views expressed in it; however, Marco Biasi is responsible of §§ 2-7 and Giovanni Tuzet of §§ 8-9.

The first paper of the paper (§§ 2-7) is more focused on the legal and historical aspects of the topic. The second part (§§ 8-9) is more theoretically inclined and tries to provide a framework that makes Wood's puzzle explicit.

In a nutshell, we provide answers to how and why the American law was changed with respect to the termination of the employment relationship, and we leave to others the answer to the legitimization challenge in the hope that our theoretical framework will help clarify the issue at least.

2. THE COMMON LAW RULE OF DISMISSAL WITH NOTICE

Employment-at-Will, i.e. the faculty of both the parties of the employment relationship to terminate immediately (i.e. *at-will*) the employment bond, does not pertain to the Common Law tradition.

In the well-known *Commentaries on the Laws of England* by William Blackstone, the Author reckoned that servants were presumed to be hired on an yearly basis, due to “a principle of natural equity, that the servant shall serve and the master maintain him throughout all the revolutions of the respective seasons, as well when there is work to be done as when there is not”.¹ Accordingly, the master was not allowed to “put away” the servant, being the latter equally not allowed to leave the former without a quarter-year “warning” (i.e. one-season notice), unless a “reasonable cause” occurred.

Such British Common Law rules on the duration of the master and servant bond were easily transplanted into the American Colonies, considering how, at least initially, the two systems were based on similar, typically feudal rules in matter of labor organization.²

However, the picture changed dramatically at the end of the XIX century, when the two countries had to cope with the upsurge of the II Industrial revolution.³

Notwithstanding the shift from a rural to an industrial society, British Courts kept applying the one-year duration presumption and the rule of reasonable notice to terminate the employment relationship, unless one of the two parties committed a “fundamental breach of contract”, thus allowing the other party to withdraw immediately from the contract (“summary termina-

¹ Blackstone 2015 [1765], 110.

² Selznick 1969, 125.

³ Feerick 1979.

tion”).⁴ Whereas such one-year duration presumption progressively lost its importance during the xx century, the right of the Servant (ultimately, the employee) to a reasonable notice in case of termination of the employment contract was for long the core protection in matter of dismissal.⁵ Only in the ’70s, the British legislator passed a law requiring the scrutiny of the dismissal “fairness”,⁶ thus converging towards the policy standard of employment protection set by continental Europe countries and further distancing the US “anomaly” brought about by “Wood’s rule” at the end of the xix century.

3. WOOD’S EMPLOYMENT-AT-WILL DOCTRINE

Until the 2nd half of the xix century, US Courts kept adhering to both the annual hire presumption and termination with notice Common Law rules.⁷ Therefore, if the employee had left before expiration of the contractual period, he/she would not have been entitled to the wage for the work carried out, pursuant to the *Entire Contract Doctrine*.⁸

However, as previously mentioned, a fundamental fracture with British Common Law occurred at the end of the xix century.

The turning point was the publication in 1877 of the *Treatise on the Law of Master and Servant* by Horace Gray Wood, a lawyer from Albany.

In his influential work, Wood stated: “with us the rule is inflexible, that a general or indefinite hiring is *prima facie* a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof”. In other terms, an indefinite duration contract was presumed to be *terminable at-will* (without notice) by either the employee or the employer.

The rather assertive statement by Wood became later the target of some heavy criticism by several US scholars, who mainly stressed the fact that the

⁴ Freedland and Kountouris 2011, 244.

⁵ Rideout 1976, 151-155.

⁶ See Industrial Relations Act 1971, replaced by Employment Rights Act (Era) 1996: Ratti 2014.

⁷ Bleeker v. Johnson, 51 How Pr. 380, 1876.

⁸ Holt 1986.

⁹ Wood 1877, 272.

Employment-at-Will rule was unsupported by any judicial precedent and it was thus a pure “invention” of the Lawyer from Albany.¹⁰

Still, Wood affirmed clearly that “his” rule, although “inflexible”, applied (only) if “from the language of the contract itself it is evident that the intent of the parties was that it should at all events continue for a certain period or until the happening of a certain contingency”.¹¹ It was merely a presumption, which could be rebutted by either party who could demonstrate that the parties’ intention was to pre-determine the duration of the contract and/or to limit the faculty of either party to terminate it *ante tempus*.¹²

4. THE ACCEPTANCE OF WOOD’S “UPDATED” RULE BY US COURTS

Since the publication of Wood’s Treatise, US state Courts started to adhere to the Employment-at-Will rule, gradually subverting the British Common Law rule of the termination with notice.

However, although the Courts often referred to Wood’s alleged authority (“high repute”),¹³ they partially – but significantly – departed from “his” rule. In fact, while denying any relevance to the intention of the parties (if any) to limit their power to terminate the employment contract before a certain moment,¹⁴ they turned the Employment-at-Will presumption “invented” by Wood into an absolute right of either party to terminate the employment relationship without any (notice and, mostly) judicial interference.¹⁵

Some scholars argued that this revised version of Wood’s rule could benefit the same employee, given that it allowed the latter to claim his/her right to the

¹⁰ Feinman 1993, 126; Summers 1984, 1083; Shapiro and Tune 1974, 341.

¹¹ Wood 1877, 265-266.

¹² Freed and Polsby 1990, 553.

¹³ McCullough Iron Co. v. Carpenter, 11 A. (Maryland, 1887).

¹⁴ Martin v. New York Life Ins. Co., 42 N.E. (New York, 1895); Skagerberg v. Blandin Paper Co., 266 N.W. 872 (Minnesota, 1936); East Line & Red River Railroad Company v. Scott, 10 S.W. 99 (Texas, 1888); Perry v. Wheeler, 81 Cal. 596, 22 P. (Kentucky, 1899). See Pitcher v. United Oil & Gas Syndicate Inc., 139 So 760 (Louisiana, 1932): “An employee is never presumed to engage in services permanently, thereby cutting himself off from all chances of improving his condition; indeed in the land of opportunity it would be against public policy and the spirit of our institutions that any man should thus handicap himself”.

¹⁵ Mauk 1985, 202.

remuneration related to the whole period before termination of the contract (by way of resignation),¹⁶ previously denied by the above mentioned Entire Contract Doctrine.¹⁷

Nevertheless, only a few cases in matter of Employment-at-Will ever regarded resignation of the employee.¹⁸

Arguably, the consequences of the solemn affirmation of the free termination of the employment contract were much more relevant in the event of dismissal rather than in case of resignation, as demonstrated by the “hail” of claims filed by employees in the following decades.

US Courts had soon the chance to finally unveil the true rationale of the Employment-at-Will-Doctrine. As the Supreme Court of Tennessee held in *Payne v. The Western & Atlantic Railroad co.*, employers may freely “dismiss their employees at-will, be they many or few, for good cause, for no cause, or even for cause morally wrong, without being thereby guilty of a legal wrong”. The explanation was that “Trade is free, so is employment[] the law will not interfere, except for contract broken[] this secures to all civil and industrial liberty”.¹⁹

Under an accredited interpretation, the general acceptance of the Employment-at-Will rule by US Courts was based more on values and economic goals than on legal principles deriving from the law of contracts. Accordingly, the Courts simply gave response to the social change occurring during the rugged years of the II Industrial Revolution,²⁰ which required the consolidation of an absolute managerial discretion in the hands of the entrepreneurial class.²¹ Not by chance, the same Courts displayed a similar attitude while confronting with early labor legislation²² and, above all, with the new labor unions phenomenon,²³ preserving managerial prerogatives from any intromission, by either State or private autonomy, always in the name of liberty. Whose liberty, though?

¹⁶ Liebman 2010, 166; Stone 2007, 86.

¹⁷ Stone 2000, 353; Orren 1991, 8-9.

¹⁸ *Boogher v. Maryland Life Ins. Co.*, 8 Mo. App. 533 (Montana, 1880).

¹⁹ *Payne v. Western & A. Rwy. Co.*, 81 597, 518-519 (Tennessee, 1884).

²⁰ Atleson 1983, 15-16; Leonard 1988, 641; Ballam 1996; Bales 2008.

²¹ Hogler 1986; Blades 1967, 1405.

²² *Coppage v. Kansas*, 236 U.S. 1 (US Supreme Court, 1915); *Adair v. U.S.*, 208 U.S. 161 (US Supreme Court, 1908).

²³ Forbath 1989, 59; Hermann and Sor 1982.

5. BREAK IN THE CONTINUITY: THE SPREAD OF LIFE-TIME EMPLOYMENT IN THE AFTERMATH OF WORLD WAR II

Notwithstanding the persistence of the Employment-at-Will rule, in the aftermath of World War II the general trend of US companies was to pursue a long-term employment policy.

A shared view claimed that a Core Workforce featured by life-time hired employees was more devoted, motivated and thus more productive.²⁴ In this respect, scholars spoke of a new, “Psychological Contract” based on an “Implied Job Security”²⁵ of long-term, mutual commitment of both the parties. Companies relied on internal labor markets to fill vacant positions and the career ladders provided employees with strong incentives to ascend in the company ranks.²⁶

None of the two parties had an interest in terminating the employment bond without a valid reason and, in any case, the extensive coverage of collective agreements entailing “Just Cause” standards for dismissal prevented employers from easy layoffs.²⁷

Therefore, any employee who showed an adequate commitment and a diligent attitude could reasonably expect a long-term duration of his/her relationship with the employer,²⁸ and this condition paved the way of a whole generation towards the *American Dream*.²⁹ Apparently, Employment-at-Will did not hamper the stability of jobs in the times of economic growth,³⁰ but, once again, the profound modifications due to III Industrial Revolution were destined to alter the whole landscape, severely affecting the above illustrated Life-Term Employment perspective and ultimately challenging the Employment-at-Will itself.

²⁴ Stone 2000, 48.

²⁵ Stone 1993, 363; Limani 2007, 309-310.

²⁶ Jacoby 1983, 261.

²⁷ Phelps 1959.

²⁸ Rosen 1985, 1144.

²⁹ Crain 2012.

³⁰ Schanzenbach 2003.

6. THE DEVELOPMENT OF THE COMMON LAW EXCEPTIONS TO THE EMPLOYMENT-AT-WILL IN THE '70s

In the '70s, the fundamental shift in the economy and production “from widgets to digits” took place and it severely impacted, along with the enhancing globalization, the US labor market.³¹ The latter became extremely competitive and firms generally decided to replace their long-term hiring policy based on an implied-job security with a short-term oriented approach focused on flexibility.³²

In the same period, collective bargaining started its ongoing regressive trend, thus depriving the majority of employees of their “safety valve”, i.e. the “just cause” provision, keystone of the collective agreements.³³

In the event of mass layoffs, while, on the one hand, several Scholars endorsed a substantial reform of the Employment-at-Will regime, on the other hand, Common Law began to autonomously limit the excessive harshness of Wood’s rule.

In the wake of the Supreme Court of California *dictum* in Petermann v. International Brotherhood of Teamsters,³⁴ the Courts of a few States allowed employees to claim against *retaliatory*,³⁵ *malicious*,³⁶ or *Public Policy* violating dismissals,³⁷ granting them different remedies (either in contract or in tort).³⁸

Additionally, they (seldom) gave relevance to the *Implied Covenant of Good Faith and Fair Dealing*³⁹ and to the “promises of stability”⁴⁰ which could be

³¹ Stone 2004.

³² Stone 2006, 78-83. On the rise of the “Contingent workforce” in the US, see Biasi 2016.

³³ Biasi 2015.

³⁴ Petermann v. International Brotherhood of Teamsters, 174 Cal. App. 2d 184 (California, 1974).

³⁵ Smith v. Atlas Off-Shore Boat Service, Inc. 552 F. Supp. 128 (S.D. Miss., 1982).

³⁶ Monge v. Beebe Rubber Co., 316 A.2d (New Hampshire, 1974); Lucas v. Brown & Root, Inc., 736 F2d 1202 (8th Circuit, 1984).

³⁷ Nees v. Hocks, 536 P.2d 512 (Oregon, 1975); O’Sullivan v. Mallon, 160 N.J., A.2d (New Jersey, 1978), Frampton v. Central Ind. Gas Co., 260 Ind., 297 N.E.2d (Indiana, 1973); Kelsay v. Motorola Co., 74 Ill. 2d 172 (3rd Circuit, 1978).

³⁸ Agis v. Howard Johnson Co., 355 N.E. 2nd 315 (Massachusetts, 1976); Kaminski v. United Parcel Serv., 120 A.D.2d (New York, 1986).

³⁹ Fortune v. National Cash Register Co., 364 N.E. 2d 1251 (Massachusetts, 1977). See Dana 2004.

⁴⁰ Arnow-Richman 2011, 31.

extrapolated from the *Employer Handbooks*,⁴¹ or even from the verbal promises of the employer during the hiring process.⁴²

Not by chance, the unpredictable spread of the Common Law exceptions to the Employment-at-Will led the State of Montana to pass a statute on dismissal based on the “just cause” standard. Remarkably, employers firmly supported this piece of legislation, because it capped the amount of damages due to the unfairly dismissed employee, unlike in the event of application of the Common Law Exceptions.⁴³

7. THE SHORT-REACH OF COMMON LAW EXCEPTIONS AND THE RESILIENCE OF THE EMPLOYMENT-AT-WILL IN THE US

Notwithstanding the Common Law remedies, it is generally accepted (and broadly known) that the US rule with respect to dismissal is still Employment-at-Will,⁴⁴ with the only exception of the State of Montana.

Employers now pay a lot of attention in order to avoid explicit⁴⁵ or implicit⁴⁶ promises of job security and, above all, Common Law remedies are short-reaching:⁴⁷ accordingly, the persistence of Employment-at-Will in the US legal framework is often reaffirmed by US Courts nowadays.⁴⁸

⁴¹ Thompson v. St. Regis Paper Co., 685 P.2d 1081 (Washington, 1984); Cleary v. American Airlines, 168 Cal.Rptr. (California, 1980). See Berks 2000; Decker 1985.

⁴² Fries v. United Mine Workers, 30 Ill. App. 3d (3rd Circuit, 1975); Toussaint v. Blue Cross & Blue Shield, 409 Mich., M.W. 2d (Michigan, 1980); Drzewiecki v. H & R Block, Inc., 24 Cal. App. 3d (California, 1972).

⁴³ See 1987 Montana Wrongful Discharge From Employment Act (Mwdfe): Schramm 1990; Tompkins 1998.

⁴⁴ Harrison 2013; Bernt 2008.

⁴⁵ Fineman 2008.

⁴⁶ Hillman 2000.

⁴⁷ Cf. Muhl 2001; Miller 2001, 178; Scroghan v. Krafco Corp., 551 S.W. (Kentucky, 1977); Mead Johnson & Co. v. Oppenheimer, 458 N.E.2d (Indiana, 1984); Geary v. U.S. Steel Corp, 319 A. 2d (Pennsylvania, 1974); Patton v. J.C. Penney Co., 719 P.2d 854 (Oregon, 1986); Frankel v. Warwick Hotel, 881 F. Supp. 183 (Pennsylvania, 1995).

⁴⁸ Kentucky Technical Education Personnel Board v. Solly, 253 S.W. 3d 537 (Kentucky, 2008); Bammert v. Don'S Super Valu, Inc., 254 Wis. 2d 347 (Wisconsin, 2002); Cweklinsky v. Mobil Chemical Co., 267 Conn. 210, 837 A.2d 759 (Connecticut, 2004); Mallard v. Boring, 182 2d 390 (California, 1960).

Yet, US Scholars kept wondering about the opportunity of a federal statute on dismissal.

Promoters highlight the basic equality and fairness needs,⁴⁹ or eventually the interest of the same employers to avoid the uncertainties of the Common Law remedies.⁵⁰

Opponents firmly defend Employment-at-Will as the only system that might be consistent with a free-market economy.⁵¹

Like in a tug of war between equal forces, the outcome is a standstill, clearly shown – or driven? – by the lack of any reference to the disputed item on the agenda of the last US administrations.⁵² This marks a major difference with the European context, where policy makers have repeatedly intervened in the dismissal discipline, either enhancing or reducing the employment protection legislation, but always with the aim of striking a fair balance between social rights and market freedoms or, more generally, between labor and capital. On the contrary, the *laissez-faire* approach of US policy makers (especially the democratic administrations) shows how the idea of individual liberty, which was animating the times when Wood's rule was “invented” and extended, is still grounded in the spirit of the “land of opportunities” par excellence.

8. A PUZZLE FOR LEGAL THEORY

If we now look at the story told above in the perspective of legal theory, we find that it certainly has some puzzling features. These explain our title (*From Judge-made Law to Scholar-made Law*) and our subtitle (*The strange case of Employment-at-Will in the US*).

The case of Employment-at-Will is strange because Wood's rule was “invented” but largely accepted by the legal community. And because Wood had no real authority. He was no official in charge of interpreting and applying the law. He was no reputed scholar either. Thus, given that a scholar is not supposed to “invent” his/her findings and given that scholars – *a fortiori* obscure ones – are not sources of law, the case is strange indeed.

Apparently in that historical context the law was changed neither by the legislature nor by the judiciary. It was changed by Wood himself and by the ac-

⁴⁹ St. Antoine 1988; Summers 1976, 481; Bellace 1983, 232.

⁵⁰ Gould IV 1986, 908.

⁵¹ Epstein 1984; Power 1983.

⁵² The last attempt to pass a federal statute in matter of dismissal protection dates back to 1991 Model Employment Termination Act, which was aimed at introducing the “Good Cause” requisite. See St. Antoine 1994.

ceptance of his rule. Now, the idea of *Judge-made Law* is not easy to square with the standard Continental Doctrine of the Separation of Powers; however, it can be accommodated within a larger theory of the Sources of Law, encompassing Common Law rules and other forms of judicial law-making. But the idea of *Scholar-made Law* is really hard to digest in both Common Law and Continental Law systems.⁵³

In the perspective of legal theory, the puzzle can be made explicit if we use a simple but powerful model inspired by John Searle's theory of social reality.⁵⁴

For our purposes, suffice it to say that, according to Searle, social reality is made of facts that are not natural (not physical in particular) but are real in that they constitutively depend on our social attitudes. For instance, that a certain piece of paper counts as a 10 Euro banknote is not a natural fact. It is a social fact. It is such because *we* take that piece of paper as having that value and having the corresponding role of a medium of exchange.⁵⁵

To take another example, that a certain person counts as the President of the Italian Republic is not a natural fact, but a social fact depending on our attitudes, rules and procedures. In Searle's jargon, it is not a "brute" fact but an "institutional fact" grounded in a web of attitudes, rules and procedures conferring deontic powers.⁵⁶

Law is typically a part of our social and institutional reality (and an active part in that it shapes many social processes).⁵⁷ Law does not spring from the ground, nor falls from the sky like rain or manna. It is a social product.

Searle uses a formula to capture this. The formula is well-known among philosophers and social ontology scholars. In symbols, it is the following:

X counts as Y in C

where "X" is a physical or natural entity, "Y" is an institutional entity and "C" is the relevant context. For instance, a certain piece of paper (X) counts as a 10 Euro

⁵³ See however the "realist" approach supported by Guastini (2014, 411-422, 429-430): legal scholars contribute to the modeling of legal systems.

⁵⁴ See Searle 1995, 1999 and 2010. We make abstraction here from the details of his theory and from the changes it underwent.

⁵⁵ For a clear presentation and a critical assessment of Searle's framework, see in particular Celano 2010; cf. Roversi 2012, 55-83. See also Ferraris 2009, 161-176 and 2012, 80-82.

⁵⁶ The "building blocks" of social reality are the assignment of functions, collective intentionality, and constitutive rules (Searle 1995, Ch. 1).

⁵⁷ As Ehrenberg (2016, 11-12) points out, it is an institution that generate further institutions.

banknote (Y) in our institutional EU context (C); a certain person (X) counts as the President of the Italian Republic (Y) in our national constitutional context (C); etc.

Such mechanism can be iterated to construct complex institutional structures, claiming, for instance, that being the president of a certain republic counts as being the commander in chief of its armed forces, which in turn counts as having certain powers, and so on.

Now, let us assume that a certain individual, call him Mario, is the president. He is so according to the rules and procedures of a given system. Then imagine that everyone, or almost everyone, in the relevant context starts thinking that the president is not Mario, but Gigi. Who is the president?

According to the rules and procedures we have been assuming, it is Mario. But according to the attitudes of the people involved, it is Gigi. The situation would be puzzling because, according to the rules of context C, the president is Mario, but according to the attitudes of the people involved, the president is Gigi. What is the relevant social fact?

Similarly, towards the end of the XIX century the rule for dismissal in the US legal system was the traditional termination with notice rule. But then Woods came with his Employment-at-Will rule and the relevant legal community started thinking he was right. In fact he was *not* right. However, his “invention” paradoxically became the rule. Accordingly, a false statement about the system became a legal truth.

Notice that the same happens with our previous imaginary example of Mario and Gigi, where it is false that the latter is the president and, nonetheless, it becomes true when the relevant people start thinking he is such.⁵⁸

9. A POSSIBLE WAY-OUT?

There is a possible way-out of the puzzle. The intuition is this: we must distinguish the contexts. Instead of using a generic “C” to refer to an unspecified context, in our case we must distinguish a pre-Wood context and a post-Wood one. Call them “C₁” and “C₂”.

Then it is true that in C₁ the relevant rule is termination with notice and it is also true that in C₂ the relevant rule is Employment-at-Will. So the paradox disappears once we distinguish the contexts. Wood’s book and statements were so influential as to change the attitudes of the majority of the scholars and officials involved. His statement was false with respect to C₁ but became true in C₂.

⁵⁸ For more references and examples see on this issue Tuzet 2007, 185-186.

More precisely, we can reframe what happened along the following lines. The “X counts as Y in C” formula can be used to say two things:

- 1) in C_1 some past utterances (judicial opinions) count as the Common Law rule of termination with notice;
- 2) in C_2 some new statements (Wood’s opinion) count as the Employment-at-Will rule.

This is a theoretical way-out but it does not eliminate the legitimization problem which is remarkably present in our “strange case”. Was the change from C_1 to C_2 legitimate? We tried above to point out the rationale of the rule and of its acceptance in the post-Wood legal community (to protect the liberty of the contracting parties in a market economy) but that is not dispositive of its legal legitimacy. A scholarly statement does not amount to a form of legal enactment. Nor does it amount to an authoritative judicial opinion.

Therefore, according to the criteria of legal legitimacy valid in C_1 Wood’s opinion was false and could not generate any legal rule substituting the traditional one in C_2 .

But notice that Wood’s opinion did not change the system by itself: subsequent judicial opinions, supported by political consensus, adopted Wood’s rule and brought about a change in the system. And it is noteworthy that the restrictive attitude of US Courts towards the early labor legislation was visible well beyond the case of Employment-at-Will. Other paramount examples were the application of the 1890 Sherman Act Antitrust prohibition to employee combinations and industrial action in form of boycott⁵⁹ and the solemn affirmation by US Supreme Court that any statute precluding employer’s liberty to discharge a union member would breach the property right of employers.⁶⁰ Moreover, NY legislation setting limits to max working time was invalidated by the US Supreme Court, upon the premise that time limits violated the Fourteenth Amendment to the US Constitution, according to which no State shall “deprive any person of life, liberty, or property, without due process of law”: the imposition of limits to working time was taken by the Court as a violation of this “due process” clause

⁵⁹ Loewe v. Lawlor, 208 U.S. 274 (1908), commonly known as “Danbury Hatters” case, where US Supreme Court equated unions with cartels that might hamper the flow of free commerce.

⁶⁰ Adair v. U.S., 208 U.S. 161 (1908), questioning the 1898 Erdman Act provision that conferred upon railway workers the right to join and form unions and banned any dismissal due to union affiliation.

read as embedding a right to “freedom of contract”, namely the “liberty of the individual to contract”.⁶¹

Therefore, we might sight a social process leading to C₂ in spite of the criteria valid in C₁. It was a social process leading (many) officials and scholars to accept Wood’s opinion, with a political consensus based on fundamental axiological preferences (conscious or not) in matters of market, trade, labor and liberty.

Thus, to better state the point, we should modify the above account 2) in the following way:

2') in C₂ some new utterances (judicial opinions driven by Wood’s statement and supported by large social and political consensus) count as the new Employment-at-Will rule.

It remains hard to digest that a legal rule is changed that way, even if it is not hard to explain why it so happens. In other words, if we assume a normative perspective we seem to be committed to recognize that the shift from C₁ to C₂ was not legitimate. Yet, remember that, using the framework outlined above, our social reality is *what we take it to be*. Therefore, when in C₂ people think that Employment-at-Will is the rule, that is the rule. No doubt about it.

In this respect, notice the difference with natural or physical reality: there is no use taking a virus as a bacterium, it remains a virus. It won’t help fighting it with antibiotic drugs, they won’t be effective against a virus, even if you believe they will. Social reality is different: it is what we take it to be, because it is constitutively dependent on us.

Of course, the legal story we told is more complex than this. Wood’s rule was made even harsher (in the “updated” version) during the rugged years of the II Industrial Revolution. Later on it was used in a milder version admitting some Common Law exceptions. Therefore, the need of refining the rule and some legal disagreement about it have always accompanied the reception of Wood’s “invention”.

In any event, all of this testifies of the subtleties, intricacies and difficulties in the creation and application of law.

⁶¹ *Lochner v. New York*, 198 U.S. 45 (1905). But Justice Holmes wrote an important dissenting opinion in this case.

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Carlo Burelli

**Verso una concezione
realistica della
politica. Conflitto, ordine
e realismo politico***

INTRODUZIONE

Il confine tra realismo politico e liberalismo non è teoricamente così chiaro come l'asprezza del dibattito sembrerebbe suggerire. Tra le due tradizioni non c'è una forte distinzione né sul piano metodologico né su quello sostanziale.

Il dibattito sul metodo, che ruota attorno alle condizioni di realizzabilità dei propri ideali, non basta a qualificare una posizione come realista, perché questa preoccupazione è presente anche nella tradizione liberale della cosiddetta teoria non-ideale (Valentini 2012). Molti realisti, come Matt Sleat (Sleat 2014), Enzo Rossi (2015b) ed Edward Hall (2015), ritengono riduttivo assimilare le loro tesi a questa posizione.

Nemmeno sul piano sostanziale è facile distinguere tra realismo e idealismo perché entrambi gli approcci sostengono istituzioni liberali e democratiche. I realisti in questo caso si limitano a criticare il modo in cui queste vengono giustificate dagli idealisti (Finlayson 2015).

Per cercare di chiarire questo dibattito, è dunque necessario specificare che la «caratteristica che lo definisce [...] è il tentativo di dare autonomia al politico» (Rossi e Sleat 2014, 2). Questo articolo mira perciò a mettere a fuoco la «concezione fondamentalmente diversa di che cos'è la politica» (Sleat 2014, 5) adottata dai realisti politici. Utilizzando questa come criterio è possibile distinguere il realismo dal liberalismo politico kantiano di ispirazione rawlsiana, variamente criticato

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nella letteratura come «umanesimo liberale» (Gray 2002a, xi), «moralismo politico» (Williams 2005, 1), «approccio *ethic-first*» (Geuss 2009, 1), e «alto liberalismo» (Galston 2010, 385).

Alcuni realisti ritengono che cercare di concettualizzare la politica sia inutile. Bernard Williams, per esempio, è convinto che «provare a dare una definizione di politico [...] è certamente un’impresa vana» (2005, 12) e Raymond Geuss concorda che una «antecedente specificazione ontologica di una sfera distinta chiamata “politica”» (2008, 23) non è affatto necessaria. Tuttavia, i loro stessi scritti tradiscono un’implicita concezione della politica, e diversi realisti contemporanei hanno recentemente rivendicato questa tesi argomentando invece «che molte teorie liberali contemporanee hanno postulato una errata concezione del politico» (Sleat 2014, 9).

L’idea che guida questo articolo è che la politica per i realisti emerge da due «circostanze» (Waldron 1999, 101): il conflitto e l’ordine. La politica è sia possibile che necessaria proprio perché le nostre società sono caratterizzate da continui conflitti e dal bisogno di qualche ordine cooperativo. Dunque la consapevolezza di queste due circostanze è la caratteristica che definisce una teoria politica come realista. Qualunque teoria che non tenga conto dell’inevitabilità dei conflitti e del bisogno di ordine non sarebbe realista precisamente perché non riconoscerebbe la natura e la funzione della politica. Alla luce di questa interpretazione, si può comprendere meglio la tesi realista che gli idealisti erroneamente «soppiantano» (Honig 1993), «rigettano» (Newey 2001, 22), «aboliscono» (Gray 1995, 76) o «mettono fine» (Sleat 2014, 10) alla politica. Una teoria politica «soppianta» la politica in questo senso quando il suo fine è superare una volta per tutte i conflitti che attanagliano la società e il disaccordo su quale ordine politico sia da persegui. Così facendo, queste teorie si nascondono che la politica stessa nasce dell’inevitabilità del conflitto e del bisogno di ordine. Una tale critica ha spesso come obiettivo teorie ritenute idealiste, nella misura in cui queste non riconoscono il conflitto come inevitabile realtà politica. Tuttavia, una teoria può anche «soppiantare» la politica non tenendo conto che qualche ordine è una necessità inevitabile senza la quale la politica non emergerebbe.

Questa tesi è qui di seguito argomentata.

Nella prima parte verrà introdotta la teoria di Jeremy Waldron sulle circostanze della politica, e confrontandolo con la posizione rawlsiana ne verranno discussi i meriti, mettendone in risalto le debolezze. Questa parte preliminare pone le basi per riformulare la nozione di circostanze della politica in termini più realistici.

Nella seconda parte verrà introdotta la nozione di conflitto, come elemento costitutivo della politica. Contrariamente a quanto accade per il disaccordo e il

pluralismo, un conflitto deriva da un contrasto di preferenze tra attori e l'inclinazione di uno di questi a imporre la propria visione agli altri. Secondo questa interpretazione, il conflitto è tipico del realismo politico e si differenzia sensibilmente dalle nozioni di pluralismo ragionevole e disaccordo in buona fede prominenti nel pensiero idealista.

Nella terza parte verrà affrontata la questione dell'ordine, osservando che i conflitti sono rilevanti solo nella misura in cui esiste un fondamentale bisogno di ordine che questi minacciano. L'argomento è che la politica riguarda la messa in sicurezza della cooperazione sociale a fronte della minaccia continua e costante dei conflitti, e non ambisce necessariamente a proporre un sistema di cooperazione giusto ed equo tra ragionevoli cittadini liberi ed eguali.

Nella quarta parte questa concettualizzazione delle circostanze della politica verrà utilizzata come criterio per identificare come realiste quelle teorie politiche che individuano la politica nell'intersezione tra il continuo emergere di conflitti e l'inevitabile bisogno di qualche ordine sociale. Chi non riconosce questi due elementi costitutivi della politica non sta elaborando una «teoria politica *politica*» (Waldron 2013). Una tale teoria non individua le condizioni che segnano l'emergere della politica giacché sottostima o moralizza il conflitto, oppure non ammette che questo è rilevante solo alla luce del bisogno di ordine.

LE CIRCOSTANZE DELLA POLITICA

Nel suo libro *Law and Disagreement*, Waldron argomenta che la filosofia politica ha avuto almeno due finalità sensibilmente diverse tra loro: «(i) il teorizzare la giustizia (e i diritti, i beni comuni ecc.) e (ii) il teorizzare la politica [...] riflettendo sugli scopi per cui, e le procedure tramite le quali, le comunità si accordano su un singolo gruppo di istituzioni nonostante il disaccordo su tante questioni che considerano giustamente importanti» (1999, 3). Dopo che Rawls ha affermato che la «giustizia è la principale virtù delle istituzioni sociali» (1971), la filosofia politica si è concentrata sulla teorizzazione della giustizia. Pur se entrambe queste finalità rappresentano imprese intellettuali interessanti, è però un errore considerare la teorizzazione della politica come una mera applicazione della teorizzazione della giustizia, come fa certa letteratura che considera il realismo una mera teoria «non-ideale» (Valentini 2012), che dovrebbe limitarsi all'applicazione della teoria ideale a casi specifici. Al contrario, Waldron insiste giustamente sul fatto che «l'agenda distintiva» (1999, 3) della filosofia politica sta proprio, come quest'ultima suggerisce, nella teorizzazione della politica.

Ma che cos'è che distingue la teorizzazione della giustizia da quella della politica? Waldron ritiene che la differenza risieda nelle circostanze della politica, che rendono la politica sia possibile che necessaria. Il termine «circostanze» è ripreso da Rawls che lo utilizza per dire che la giustizia, come teoria e pratica, è resa possibile e necessaria perché gli esseri umani sono capaci soltanto di un «altruismo limitato» e vivono in condizioni di una «moderata scarsità» di risorse. Quindi, teorizzare la giustizia è appropriato soltanto nella misura in cui si applicano entrambe queste «circostanze di giustizia» (Rawls 1971, 126-130).

Similmente, Waldron argomenta che:

Il bisogno percepito dai membri di un gruppo di avere una comune struttura, decisione, o corso di azione, anche di fronte al disaccordo su quale questa struttura, decisione o azione debbano essere, esprime le circostanze della politica. [...] Il disaccordo non importerebbe se non vi fosse il bisogno di un corso di azione collettivo, e il bisogno di questo corso di azione collettivo non darebbe luogo alla politica come la conosciamo, se non vi fosse quantomeno un disaccordo potenziale su quale corso di azione comune dovremmo perseguire (Waldron 1999, 102-103).

Quindi, per teorizzare la politica, è necessario tenere a mente le circostanze da cui emerge, senza ignorarle o moralizzarle.

La prima di queste circostanze è il disaccordo. Secondo Waldron, viviamo con molte altre persone che possono non condividere i nostri interessi o valori. Ognuna di esse potrebbe cercare di resistere alla nostra visione del mondo tanto quanto noi resisteremmo alla loro. Ognuno ritiene in buona fede di avere ragione, mentre gli altri hanno torto. Questa visione è condivisa dalla visione liberale della politica, che Rawls chiama il “fatto del pluralismo”: «Una diversità di doctrine comprehensive confliggenti e irconciliabili non è una mera condizione storica che potrà presto essere estinta; ma una caratteristica permanente della cultura pubblica di una democrazia» (1989, 246). In parte per via dei nostri limiti epistemici – i cosiddetti “*burdens of judgment*” – siamo incapaci di stabilire quale visione del mondo sia quella corretta. Waldron radicalizza questo argomento asserendo che anche se vi fossero verità oggettive riguardo quel che si deve fare, ciò non farebbe alcuna differenza per la politica perché i criteri per riconoscere queste verità sono tanto controversi quanto le verità stesse. L'oggettività morale sarebbe perciò «irrilevante» (Waldron 1999, 164), se non accompagnata da un'epistemologia morale condivisa. Inoltre, Waldron sottolinea che Rawls si sbaglia se pensa che, mentre il disaccordo affligge le teorie comprensive del bene, le questioni di giustizia possano rimanerne isolate. Il disaccordo, al contrario, si estende alla giustizia. Waldron sostiene che «Rawls certo

non nega che le persone sono spesso in disaccordo su ciò che la giustizia richiede loro, ma non ci dice molto su questo tipo di disaccordo nella sua discussione» (1999, 151). Moralizzare, ignorare, o assumere che non ci sia questo disaccordo è forse accettabile in una teoria della giustizia, ma porta fuori strada una teoria politica. I filosofi che «con sotterfugi filosofici, desiderano fingere che i fatti del pluralismo e del disaccordo non esistano» (Waldron 1999, 99) commettono un grave errore.

La seconda circostanza della politica è il bisogno di cooperazione sociale. Waldron asserisce vagamente che «in vari modi e per varie ragioni, molti di noi credono che dovremmo agire o organizzarci assieme. [...] Infatti, quando si realizza, l'azione di concerto è una grande conquista della vita umana» (1999, 101-102). L'autore si appella all'intuizione che molte cose che le persone desiderano possono essere realizzate soltanto agendo in coordinazione con altre persone, seguendo determinate regole e creando istituzioni per vincolare i comportamenti. Tuttavia, «un'azione di concerto non è semplice, particolarmente quando le persone hanno un senso di sé come individui e i modi in cui agiscono con altri possono configgere con altri loro progetti di importanza minore» (Waldron 1999, 102). Questa visione riprende quella dei teorici del contratto sociale che da Hobbes in poi hanno considerato la società come una conquista artificiale stabilizzata dall'azione e dal pensiero umano, invece che un ordine naturale spontaneo. Questa cooperazione ricorda allo stato di natura hobbesiano (Gauthier, 2000), o della «caccia al cervo» di Rousseau (Skyrms, 2001), dove i benefici sono diffusi, ma il rischio di non realizzarli rimane alto perché gli individui tendono a distrarsi dallo sforzo comune. Credere che la coordinazione sociale sia desiderabile e difficile è il punto cruciale delle circostanze della politica. Senza questo bisogno di vivere assieme in modo stabile, il disaccordo permanente non costituirebbe affatto un problema.

Waldron dunque conclude che i filosofi politici dovrebbero impiegare più tempo a teorizzare la politica invece che preoccuparsi della giustizia. Per far ciò, devono riconoscere e tenere sempre a mente le circostanze della politica. Queste non rendono le circostanze di giustizia rawlsiane ridondanti, ma piuttosto le vincolano. Secondo questa interpretazione la politica non rende le considerazioni di giustizia irrilevanti, ma assegna loro una valenza soltanto condizionale, come emergerà nella parte sull'ordine.

La teoria di Waldron comprende molte nozioni fondamentali per la concezione della politica dei realisti: il contrasto tra politica e giustizia, l'enfasi sull'assenza di consenso e l'importanza di una legislazione imposta come mezzo per risolvere il disaccordo.

Il problema di questo resoconto di Waldron è che commette lo stesso errore che critica in Rawls, proponendo una nozione di disaccordo già moralizzato. Egli giudi-

ca negativamente il tentativo rawlsiano di sostenere che, nonostante un'ineliminabile disaccordo sull'idea di vita buona, questo non si estende necessariamente a un'idea politica di giustizia. Nonostante questo, anche Waldron confina la sua trattazione al disaccordo «in buona fede» (1999, 93). Questa limitazione è funzionale al suo argomento in difesa delle procedure di decisioni maggioritarie. Se il disaccordo si estende a questioni di interesse individuale, la minoranza non avrebbe buone ragioni per accettare le decisioni della maggioranza. Al contrario, se il disaccordo tra maggioranza e minoranza riguarda questioni di valore genuine, indipendenti dai relativi interessi, il sistema maggioritario risulterà accettabile da tutti. Tuttavia questa limitazione è moralizzante giacché esclude dalla trattazione conflitti di interessi o casi di disaccordo disonesto, nei quali l'unica cosa che conta è riuscire a far prevalere la propria visione, giusta o sbagliata che sia. Sostituendo il conflitto a questo disaccordo, si possono ampliare le circostanze della politica in un modo più realistico, ed è possibile avvicinarsi alla concezione realista della politica.

L'INEVITABILITÀ DEL CONFLITTO

I realisti ritengono che la politica riguardi qualcosa di più radicale di un tale pluralismo o disaccordo: il conflitto. Tuttavia, non è sempre facile capire precisamente che cosa essi intendano con “conflitto”. Nonostante questo concetto sia frequentemente impiegato in letteratura, raramente viene definito esplicitamente.

Un maggiore sforzo nella definizione di questo concetto è stato compiuto nella scienza politica e nella sociologia, da cui possiamo derivare preziose ispirazioni per chiarire il significato di questo termine. Primo, la diffusa consapevolezza che il conflitto esprime qualche tipo di incompatibilità. Questa intuizione è spesso sottoscritta, per esempio, nella scienza politica: il «conflitto non solo si riferisce all'interazione fisica; ma anche a ogni forma di disaccordo riguardo a quali fini siano da perseguire» (Bealey 1999, 79); «un conflitto esiste quando due persone intendono portare avanti azioni mutualmente esclusive» (Nicholson 1992, 11). Questo elemento oppositivo è anche diffusamente riconosciuto in sociologia: «[il conflitto] è in realtà il modo di rimuovere il dualismo e arrivare a una forma di unità, anche se attraverso l'annientamento di una delle parti» (Simmel 1904, 490); «al fondo di ogni conflitto vi è una contraddizione, qualcosa che blocca la realizzazione di qualcos'altro» (Galtung 1996, 70). Un secondo fondamentale elemento da cui possiamo trarre ispirazione in questa letteratura è l'intuizione weberiana che il conflitto avviene «nella misura in cui un'azione è orientata intenzionalmente a compiere la volontà di un attore contro la resistenza di un'altra parte» (Weber 1978, 38).

Mentre questo elemento oppositivo è comunemente riconosciuto, si comprende pienamente la natura del conflitto soltanto quando esso è combinato alla volontà di imporre agli altri le proprie idee.

Afferrare entrambi questi elementi è essenziale per una buona definizione di conflitto. Di conseguenza, propongo la seguente definizione:

Conflitto: una relazione sociale caratterizzata da (1) due o più attori (siano istituzioni, individui o gruppi) che hanno preferenze incompatibili (a causa dei loro interessi, valori, identità) e (2) almeno uno di loro intende perseguire le sue preferenze contro le preferenze dell'altro o degli altri.

Senza il contrasto tra preferenze, la propensione a imporre la propria visione non sarebbe problematica. Se tutti condividessero le mie idee non avrei alcun bisogno di imporle, anche qualora fossi intenzionato a farlo. Senza il bisogno di ordine però sarebbe difficile capire perché un tale conflitto possa risultare preoccupante.

Secondo questa definizione il conflitto è chiaramente distinto dal pluralismo. A livello generale, il pluralismo può essere infatti definito come «il riconoscimento empiricamente fondato della presenza di una pluralità di visioni e valori, come elemento significativo per una teoria politica» (Ceva 2007, 362). Tuttavia, il conflitto è un concetto più specifico ed è distinto dal pluralismo per due ragioni.

Primo, mentre il pluralismo registra il contrasto di preferenze, non dice nulla sulla *preferenza* di imporre la propria visione del mondo agli altri agenti. Rawls, per esempio, include tra i fatti della politica il «pluralismo ragionevole» (Rawls 1993, 24), che è il tipo di pluralismo presente tra individui ragionevoli. Dato che «le persone sono ragionevoli in un aspetto fondamentale quando, tra eguali, sono disposti a proporre principi e standard per termini di cooperazione equi, e per rispettarli volontariamente, data la ragionevole sicurezza che gli altri facciano lo stesso» (Rawls 1993, 49), per definizione non cercheranno mai di imporre le proprie idee ma, piuttosto, si sforzeranno di trovare qualche tipo di accordo. Questa visione del pluralismo è moralistica perché elimina con un'assunzione la possibilità del conflitto. Sfidando Rawls, alcuni filosofi politici hanno scelto di impiegare una concezione di pluralismo più radicale (Gray 2002), che include quello tra individui irragionevoli, i quali potrebbero cercare di imporre la loro visione del mondo. Così emendata, questa concezione di pluralismo è più vicina all'idea di conflitto dei realisti. Anche il concetto di «pluralismo di fatto» (Newey 1997) è più affine all'idea di conflitto dei realisti, giacché riconosce l'esistenza di differenti valori senza restringerne normativamente l'ambito e rimanendo agnostici sul loro fondamento metafisico.

Vi è una seconda caratteristica che differenzia conflitto e pluralismo irragionevole. Il pluralismo restringe le fonti del conflitto alle visioni del mondo e ai valori. Un conflitto invece può essere anche dettato da interessi incompatibili all'interno di un medesimo sistema di valori (per esempio una lotta per vantaggi economici). La definizione proposta sopra è perciò agnostica riguardo alle radici del contrasto di preferenze, perché ammette che conflitti politicamente rilevanti possono essere innescati da una gran varietà di cause.

La definizione proposta è utile nella misura in cui chiarifica in che modo il conflitto è diverso dal pluralismo e sotto quali condizioni il pluralismo si trasforma in conflitto (cioè quando si unisce alla preferenza per imporre le proprie preferenze). Questa definizione non solo rende possibile mostrare come il conflitto sia chiaramente differente dal pluralismo; ma cattura anche l'intuizione che il pluralismo, specialmente nella sua variante ragionevole, è una nozione eccessivamente moralizzata che ignora o rappresenta in modo fallace alcuni problemi distintamente politici.

Il disaccordo è un'altra nozione suscettibile alla critica di essere un punto di partenza idealizzato della teorizzazione politica. Se lo si confronta con la precedente definizione di conflitto, si può facilmente vedere perché. Al livello più generale, il disaccordo «non equivale ad altro, strettamente parlando, che all'assenza di accordo» (Besson 2005, 19). Un disaccordo implica visioni incompatibili, ma non la propensione a imporle ad altri, che è un elemento cruciale del conflitto. Chi è in disaccordo sta al contrario cercando di capire quale sia la verità sulla questione. Il disaccordo implica perciò visioni incompatibili, ma gli attori in questione sono disposti a ri-considerare le loro idee se persuasi da prove o argomenti convincenti, e possono persino essere indotti ad abbracciare la posizione opposta. Pensando alle tante dispute della politica reale, un tale ottimistico esito non sembra molto probabile, ma la ragione sta proprio nel fatto che queste sono spesso più dei conflitti che dei disaccordi. Come lo concepisce Waldron, per esempio, il disaccordo è solo «in buona fede» (1999, 93) tra persone che hanno differenti, ma sincere, visioni su ciò che si deve fare. Coloro che sono in disaccordo sono più interessati a capire quale delle visioni contrastanti sia vera che non a imporre la propria. Questo esclude anche casi di conflitti di interessi, che cadono al di fuori del raggio di azione del disaccordo. Dato infatti che «il suo oggetto è generalmente costituito da principi, deve essere distinto da un conflitto di interessi (personalni o di gruppo)» (Besson 2005, 19-20).

Contrariamente al disaccordo, il conflitto non mira alla verità. Perciò il suo contenuto è irrilevante. Non importa perché un conflitto emerge, né chi abbia ragione o torto. Non possiamo risolvere il conflitto ricorrendo alla verità, perché gli attori sono più interessati a imporre le loro preferenze che a metterle in questione

per vedere quanto siano giustificati a farlo. I realisti hanno spesso enfatizzato che il potere della ragione ha soltanto un limitato impatto sul cambiamento delle preferenze altrui (Morgenthau 1946). Come Stuart Hampshire ci ricorda «Machiavelli e Hobbes notoriamente insistettero sul fatto che i conflitti politici non sono mai risolvibili in modo conclusivo e affidabile con argomenti razionali, perché normalmente portano anche con loro una lotta per il potere nello stato o nella società, che spesso sopraffà ogni decisione razionale» (Hampshire 2001, 66). Sovrastimare l'importanza della ragione nella risoluzione dei conflitti può essere un errore. Addirittura si potrebbe affermare che ogni considerazione di contenuto, in quanto tale, non coglie la natura del conflitto, perché questo non riguarda solo le preferenze discordanti ma anche il modo di imporle. In modo all'incirca simile, per esempio, Schmitt ritiene la sua famosa opposizione «amico-nemico» (2007) come irriducibile ad altre distinzioni quali buono o cattivo, giusto o sbagliato. Uno non può risolvere un conflitto provando che il proprio nemico abbia torto. Appena entriamo in una relazione di conflitto, sappiamo – per definizione – che il desiderio di prevalere pesa di più della «volontà di verità» (Nietzsche 2002, 11). Se è veramente un conflitto, e non semplicemente un problema di disaccordo, allora gli altri non potranno essere persuasi con considerazioni che fanno riferimento al contenuto della disputa. Come dice Williams, «la diversità politica è essenziale in politica, e la diversità politica è una relazione di opposizione politica, piuttosto che una relazione di disaccordo intellettuale o interpretativo» (Williams 2001, 6-7).

Il discorso precedente può essere riassunto nel seguente schema:

Conflitto	Preferenza per imporre le proprie idee
Pluralismo ragionevole	Preferenza per trovare un equo accordo cooperativo
Disaccordo	Preferenza per la ricerca della verità

Questa concezione del conflitto enfatizza in particolare due proprietà che lo rendono saliente per la politica: la sua comparsa unilaterale e il potenziale per la violenza.

I conflitti sorgono unilateralmente. Ogniqualvolta un attore è disposto a imporre la sua visione su quelli che non la condividono, questi si trovano in una situazione di conflitto, che lo vogliono oppure no. Potrebbero anche desiderare di risolvere il contrasto deliberando su quale delle visioni incompatibili sia giusta, o cercando di negoziare una soluzione mutualmente accettabile. Tuttavia, l'altra parte deve avere la stessa disposizione alla ricerca della verità o di un accordo

perché le ragioni legate al contenuto della contesa abbiano un qualche effetto. Insistere sul fatto che «il modo più efficiente di trattare i conflitti umani è dissolverli con la ragione» (Dennes 1946, 344) è un atteggiamento molto pericoloso perché non coglie la natura fondamentalmente unilaterale del conflitto. Di conseguenza, anche qualora l'attitudine a configgere fosse minoritaria in una società, rimarrebbe il rischio che questa minoranza trascini gli altri in un conflitto provando a imporre le proprie idee.

Non necessariamente i conflitti si manifestano violentemente, a volte un conflitto può rimanere latente e inespresso. Tutti i conflitti, però, rimangono pericolosi perché comprendono sempre la «possibilità reale della violenza» (Schmitt 2007, 33). Nel pluralismo ragionevole e nel disaccordo che hanno in mente gli idealisti è escluso ogni ricorso alla violenza. Nel primo caso, tutti sono disposti a proporre e accettare dei giusti termini di cooperazione. Dato che la violenza non conduce a una cooperazione equa tra cittadini liberi ed eguali, attori ragionevoli non vi faranno ricorso. Nel caso di un disaccordo sui principi, per esempio, gli attori cercano di determinare la verità. In questo caso ogni ricorso alla violenza sarebbe inutile perché non contribuirebbe a determinare dove essa risiede. Quindi i conflitti sono salienti in politica perché le persone possono avere altre visioni diverse dalle nostre, e possono essere inclini a volerlele imporre. Come sostiene Hampshire: «perché vi saranno sempre conflitti sulle concezioni del bene [...] vi è ovunque un bisogno ben riconosciuto di procedure per la risoluzione del conflitto» (2001, 18).

LA NECESSITÀ DI UN ORDINE POLITICO

Come argomenta Waldron, il conflitto è un fatto rilevante soltanto se vi è un chiaro bisogno di perseguire un «corso di azione concordato» (1999, 103). Se i conflitti non sono contenuti, potranno sfociare nella violenza e andranno a destabilizzare le relazioni sociali al punto che poche altre preferenze degli attori potranno essere realizzate. La politica emerge perciò quando, davanti a conflitti ricorrenti, un meccanismo istituzionale legittimo decide quale corso di azione collettivo seguire. Per questa ragione molti realisti concludono che «l'ordine civile è una precondizione di tutti gli altri beni politici – e di molti beni non politici – perché senza di esso il conflitto li distruggerebbe» (Jubb 2015, 921). In questo senso, si tratta del primo «bene primario» (Rawls 1971, 54), un bene che è strumentale alla realizzazione di ogni preferenza che un soggetto possa avere.

Come ogni altro bisogno, anche il bisogno di ordine sarebbe così indipendente dalla volontà individuale. Il bisogno di cibo, per esempio, caratterizza ogni essere

umano, qualunque cosa esso possa credere o desiderare a riguardo. Anche se uno non si volesse nutrire, avrebbe comunque bisogno di farlo, in quanto la sua stessa vita dipende da questo.

Similmente i realisti argomentano che gli individui hanno bisogno di un pacifico e cooperativo ordine istituzionale. Questo perché gli uomini sono animali sociali, non nel senso morale che si preoccupano (o si dovrebbero preoccupare) dei loro simili, ma nel senso materialistico che dipendono l'un dall'altro per la propria sopravvivenza. Senza cooperazione con i propri simili, infatti, è molto difficile provvedere a se stessi anche per i più elementari bisogni. Anche nelle «condizioni ragionevolmente favorevoli» (Rawls 1971, 178) immaginate dagli idealisti molti beni di valore sono realizzabili solo dopo che un ordine cooperativo è instaurato con successo, ma la situazione al di fuori di questo ordine non è così grave da minacciare la stessa sopravvivenza individuale e dunque permette di essere più ambiziosi nel qualificare moralmente questo ordine. I realisti, al contrario, sono più radicali nelle loro assunzioni. Come Hobbes esprime in modo particolarmente evocativo nella sua descrizione dello stato di natura fuori dall'istituzione politica:

In tale condizione non vi è posto per l'industria, perché i suoi profitti sono incerti, e di conseguenza, né la coltivazione della terra, né la navigazione, né l'uso di beni importati dal mare, né confortevoli edifici, né strumenti per muovere e rimuovere oggetti pesanti, né concezione del tempo, della arti, delle lettere e della società, e quel che è peggio di tutto, una continua paura e pericolo di morte violenta, e la vita dell'uomo solitaria, povera, brutta, brutale e breve (Hobbes 2009, 89).

I realisti sono in questo senso attaccati all'idea che «le conseguenze della non-cooperazione sarebbero del tutto inaccettabili» (Galston 2010, 391). Tuttavia, contrariamente a concezioni moralistiche, il bisogno di ordine immaginato dai realisti non mira all'eliminazione del conflitto, che è riconosciuto come un elemento permanente della politica. Piuttosto, quest'ultima mira a contenerlo. Questo significa che la politica mette vincoli istituzionali diretti all'arbitrato d'autorità del conflitto attraverso la centralizzazione dell'uso della forza. I realisti spesso hanno in mente la familiare definizione weberiana: la politica come «monopolio della violenza fisica legittima all'interno di un particolare territorio» (Weber 2013, 33). In questo modo, i conflitti persistono e sono parte dell'arena politica. Tuttavia, non diventano violenti e non si propagano alle altre sfere.

Altri realisti potrebbero individuare un “errore kantiano” in questa mia concezione, perché essa pone l'attenzione sull'intenzione di imporre le proprie preferenze agli altri, e non sul farlo realmente. Questa distinzione è importante per comprendere la concezione della politica qui delineata. Un ordine non è la situa-

zione in cui nessuno dimostra l'intenzione di asserire la propria volontà contro gli altri, giacché questa non si verifica mai per lunghi periodi di tempo, bensì quella in cui l'intenzione – sempre presente – non si traduce in azione. L'idealismo politico rimuove l'intenzione di imporre la propria visione sugli altri, attraverso la nozione di pluralismo ragionevole, e adotta di conseguenza una visione moralizzata della politica. I realisti politici, al contrario, accettano che questo punto di partenza non possa essere evitato, e credono che la funzione stessa della politica stia proprio nel contenere il potenziale distruttivo del conflitto.

Il conflitto e l'ordine quindi non sono due estremi opposti di un'unica dimensione, ma possono coesistere. L'unico ordine realizzabile è il conflitto contenuto dallo sfociare in violenza con il monopolio della forza. Questo è il motivo per cui la filosofia politica non dovrebbe cercare di risolvere i conflitti una volta per tutte, ma concentrarsi sulla loro continua gestione.

Per Rawls il bisogno di ordine è moralmente qualificato. Non qualunque ordine è soddisfacente, ma solo quell'ordine che è espressione di un sistema di cooperazione equo tra cittadini liberi ed eguali. Questo, tuttavia, contrasta nettamente con la posizione dei realisti, che ritengono invece che sia necessario preoccuparsi innanzitutto di avere un ordine di qualunque tipo. Solo successivamente è lecito preoccuparsi di ideali più ambiziosi quali giustizia, libertà o egualianza. Rawls replica che un «*modus vivendi*» (Horton 2010) prudente ma ingiusto non può essere stabile. Quindi vi è una certa priorità della giustizia sulla stabilità. Un mero *modus vivendi* stabilito per ragioni strumentali può solo essere stabile fintantoché ogni parte ha un potere comparabile ed è capace di imporre la propria visione. Appena questo equilibrio di potenza cambia, la parte più potente abbandonerà il *modus vivendi* per imporre la propria visione. Quindi, la stabilità fine a se stessa non può che essere instabile se non è supportata da un equo accordo sostenuto per le ragioni corrette.

Un realista come Galston replica precisamente su questo punto dicendo che:

proprio la frase “un mero modus vivendi” suggerisce una certa distanza dalla sfera politica; l’esperienza (inclusa quella del tempo presente) suggerisce che coloro che beneficiano di un tale accordo sono già fortunati. I fortunati non dovrebbero immaginare che le loro comunità abbiano risolto il problema della stabilizzazione politica una volta per tutte; il disordine è una perenne possibilità ed è importante rovesciare la dissoluzione della fiducia e della cooperazione sociale prima che la situazione degeneri in un ampio conflitto (Galston 2010, 398).

I realisti invertono l'ordine di priorità rawlsiano e difendono la priorità della stabilità sulla giustizia. Una cooperazione politica stabile è una precondizione per

l'avanzamento di domande normativamente più ambiziose quali la giustizia, l'eguaglianza o la libertà. Se vogliamo vivere in una «società ben ordinata» (Rawls 1971, 397) dobbiamo prima avere una società ordinata. I realisti non sono necessariamente contrari a valori più ambiziosi, quali la libertà (Hall 2015) o l'eguaglianza (Jubb 2015). Enfatizzano però che lo stabilire una comunità politica ordinata ha la precedenza. Più importante forse per il tempo presente, è la convinzione che anche quando un sistema cooperativo è già in vigore, questo non è stabilizzato una volta per tutte, perché vi è sempre un potenziale di crisi e rotture da contenere. Questo è il motivo per il quale possiamo guardare successivamente ad altri ideali normativi, ma dobbiamo fare attenzione a non mettere a rischio la struttura politica che abbiamo messo in piedi. Il realismo politico enfatizza così quanto ogni potenziale di progresso si accompagna a un potenziale di regresso.

È realistico ipotizzare questo bisogno di un ordine minimo come condizione per parlare di politica? Un realista più radicale potrebbe porre la stessa obiezione che Michael Freeden poneva a Williams: che noi liberali stiamo «imponendo la nostra concezione della politica al resto dell'umanità, e così facendo stiamo scivolando di nuovo verso una teoria politica di tipo idealista» (Freeden 2012, 8). È vero che ogni tentativo di definire una concezione della politica richiede un po' di stipulazione, perché non è possibile comprendere propriamente in un unico concetto tutto ciò che nel linguaggio naturale viene chiamato politica. Perciò per poter asserire che coloro che hanno una visione moralizzata della politica stanno facendo un «errore di categoria» (Rossi 2015a), è necessaria una ricostruzione razionale del concetto di politica come quella che ho cercato di delineare. La persistenza del conflitto e il bisogno di ordine sono infatti elementi della sfera politica presenti in ogni contesto storico. È possibile immaginare una società dove tutti hanno sempre la stessa opinione riguardo a ciò che si deve fare collettivamente. Anche se questa società potesse esistere, sarebbe strano qualificarla come politica, perché mancherebbe del tutto l'elemento del conflitto. Oppure immaginiamo di non avere un bisogno di ordine perché ciascuno di noi vive nella propria isola privata senza alcuna connessione con le altre persone. Anche questa situazione sarebbe difficilmente qualificabile come una situazione politica, perché mancherebbe l'elemento del bisogno di ordine.

IDEALISMO POLITICO, IDEALISMO IMPOLITICO E REALISMO IRREALISTA

L'analisi fornita fin qui può essere utile a dimostrare come le teorie che sottovallutano, astraggono o moralizzano il conflitto o l'ordine non colgono davvero che

cosa sia la politica; quindi non possono essere buone teorie politiche. Possono essere buone teorie della giustizia, come dice Waldron, o buone teorie morali, ma non buone teorie politiche. Nella migliore delle ipotesi possono essere considerate teorie politiche parziali, visto che mancano di uno dei due elementi fondamentali della politica: conflitto e ordine.

Più specificamente, dalla discussione precedente possiamo ricavare tre differenti modelli di teorie politiche irrealistiche. La seguente classificazione mira a creare dei “tipi ideali” che, anche se non rendono del tutto giustizia agli autori citati, aiutano a comprendere dove una teoria fallisce e, nel caso lo si ritenga desiderabile, come renderla più realista.

Dimensioni della politica	Riconoscimento del bisogno di ordine	Sottovalutazione del bisogno di ordine
Riconoscimento del conflitto	Realismo politico (Williams)	Realismo irrealista (Mouffe)
Sottovalutazione del conflitto	Idealismo politico (Rawls)	Idealismo impolitico (Sandel)

Innanzitutto, vi è un gruppo di teorie che riconoscono l’inevitabile bisogno umano per un ordine politico ma che sottostimano il radicale impatto del conflitto. I realisti spesso criticano questo “idealismo politico” per la sua moralizzazione del conflitto, come il disaccordo o il pluralismo ragionevole precedentemente discussi.

Rawls è chiaramente il bersaglio di molte critiche realiste. Non perché sia l’idealisti più radicale, e quindi lo meriti particolarmente, ma perché è quello più influente. Come anticipato precedentemente, il problema principale che i realisti hanno con la concezione rawlsiana della politica riguarda la sua enfasi sul pluralismo ragionevole che sottovaluta l’entità di quanto i veri conflitti flagellino la sfera politica. Chiaramente, Rawls riconosce il bisogno di ordine, anche se, minimizzando l’asprezza del conflitto, finisce per proporre un sistema di equa cooperazione tra individui liberi ed eguali eccessivamente impegnativo.

Vi è comunque qualche ragione per temperare questo giudizio e riconoscere che «Rawls è più realista di quanto molti realisti realizzino» (Jubb 2015, 919). Infatti Rawls identifica l’emergenza di uno stabile ordine cooperativo tra visioni del bene in competizione tra loro come il problema principale della filosofia politica in una società democratica. Egli dichiara esplicitamente che «il suo ruolo pratico sorge dal conflitto politico divisivo e il bisogno di risolvere il problema dell’ordine» (Rawls 2001, 1). Tuttavia, come precedentemente argomentato, rimane idealista nel ridurre

l'ambito del conflitto in due modi: a idee del bene, escludendo conflitti tra idee della giustizia, e tra individui ragionevoli, disinteressandosi filosoficamente di conflitti tra irragionevoli.

Rawls si avvicina a una forma di «liberalismo realista» (Sleat 2013), quando dice che individui ragionevoli vanno ignorati se non sono una minaccia per la stabilità di una società ben ordinata, ma vanno repressi qualora diventino pericolosi. In una nota a piè di pagina di *Liberalismo Politico*, si spinge ad affermare: «che ci siano dottrine che rigettino una o più libertà democratiche è un fatto permanente della vita, o così sembra. Questo ci fornisce l'obiettivo pratico di contenerle – come una guerra o una malattia – cosicché non rovescino la giustizia politica» (Rawls 1993, 64). Tuttavia non bisogna enfatizzare troppo questo aspetto della teoria rawlsiana, visto che nella sua teoria generale egli non affronta dettagliatamente questo problema (anche se il punto è stato dibattuto nella letteratura successiva).

Diametralmente opposto nello spettro di teorie sopra descritte troviamo il “realismo irrealista”, che si concentra esclusivamente sull'inevitabilità del conflitto e nega che questo diventi saliente solo alla luce di un necessario bisogno di ordine. Di più, queste teorie tendono ad attribuire valore positivo al conflitto, e perdono di vista il suo lato pericoloso. Questo approccio è spesso considerato parte della tradizione realista ma, se la mia analisi è corretta, è anch'esso affetto da una fallace visione della politica.

Riprendendo il pensiero di Karl Schmitt, i cosiddetti agonisti politici come Chantal Mouffe e Bonnie Honig enfatizzano l'irriducibilità della dimensione del conflitto. Così questi autori criticano aspramente l'idealismo politico per fornire solo una visione addolcita del conflitto come pluralismo e disaccordo. Il prezzo del consenso liberale è l'esclusione di ciò che vedono come dottrine irragionevoli. Attraverso il filtro della ragionevolezza, la politica viene isolata dal pluralismo radicale di valori. Come dice Mouffe, «Rawls e Habermas vogliono fondare l'adesione alla democrazia liberale sul tipo di accordo razionale che preclude ogni possibilità di contestazione. Questo è il motivo per il quale hanno bisogno di relegare il pluralismo a un dominio non-pubblico, al fine di isolare la politica dalle sue conseguenze» (Mouffe 2009, 92).

Anche se questo argomento è corretto, è tuttavia incompleto, nella misura in cui sottovaluta la dimensione cruciale dell'ordine. Di conseguenza, queste teorie non riescono fornire una piena comprensione della politica. Mouffe, per esempio, dichiara che mentre desideriamo mettere fine al conflitto, se vogliamo che le persone siano libere, dobbiamo sempre permettere la possibilità che il conflitto appaia e fornire un'arena dove queste differenze possono confrontarsi. Contrariamente a questo isolamento liberale, gli agonisti asseriscono che a tutte le posizioni debba es-

sere garantito l'accesso all'arena pubblica. Una volta che queste visioni contrastanti sono state pubblicamente espresse, spetta alla discussione democratica trovare un sempre temporaneo compromesso (o vincitore) tra loro. Questo non significa che non vi sono limiti nelle discussioni pubbliche ma piuttosto che questi limiti devono essere riconosciuti come politici e quindi aperti alla contestazione.

È vero dunque che Mouffe definisce «politica» l'insieme di pratiche, discorsi e istituzioni che cercano di stabilire un ordine e organizzare una coesistenza umana in condizioni sempre potenzialmente conflittuali (Mouffe 2009, 101). Sembrabbe quindi che essa riconosca sia l'ordine che il conflitto come circostanze della politica. Tuttavia, nella sua teoria il bisogno di ordine non è specificato. Da un lato preferisce la democrazia e il suo *ethos*, che trasforma gli antagonisti, da nemici da distruggere in avversari, «de cui idee combattiamo ma i cui diritti a tali idee non mettiamo in discussione» (Mouffe 2009, 102). Dall'altro però non è in grado di sostenere veramente questa tesi perché convinta che anche il limite dei «principi etico-politici della democrazia liberale: libertà e egualianza» (Mouffe 2009, 102) da lei sottoscritto non può essere permanente, ma anch'esso sempre contestabile. Perciò a seconda di come interpretiamo il suo argomento, o Mouffe assume semplicemente l'ordine democratico liberale, nel cui caso non si differenzia significativamente dall'approccio moralistico rawlsiano o habermasiano, oppure adotta una nozione di ordine e cooperazione interamente contestabile, che non può che giungere alla negazione del bisogno di ordine.

Diametralmente opposto al realismo politico, giacché nega entrambe le circostanze politiche del conflitto e dell'ordine, troviamo l'«idealismo impolitico». Le teorie politiche che omettono completamente ogni interesse per entrambe le circostanze della politica sono in realtà poche, ma ci sono certamente teorie che si avvicinano a questo tipo ideale nel sottostimare o moralizzare ordine e conflitto. Secondo alcuni critici, un esempio di questo tipo è dato dalle teorie comunitariste. Come sottolinea Elizabeth Frazer, per esempio, «i comunitaristi si lasciano sfuggire precisamente la politica della “comunità” – a tal punto che il comunitarismo a malapena sembra una vera teoria politica» (Frazer 1999, 2).

Dibattendo le circostanze di giustizia rawlsiane, un altro comunitarista, Michael Sandel, riconosce che queste presuppongono che la società sia vista come un'«impresa cooperativa per il mutuo vantaggio, il che significa che è tipicamente segnata tanto da un conflitto quanto da una identità di interessi – l'identità di interessi è che tutti guadagnano da una mutua cooperazione; il conflitto sta nel fatto che, dati fini e interessi divergenti, le persone differiscono su come i frutti della loro cooperazione devono essere distribuiti» (Sandel 1998, 28). Sandel al contrario propone di adottare le «circostanze di benevolenza» (1998, 35) come

framework di una teoria politica, una concezione, questa, più idealizzata nel quale le circostanze di giustizia non si applicano perché le persone sono capaci di altruismo illimitato e abbondanza di risorse. Questa concezione si contrappone non solo alle circostanze di giustizia ma anche a quelle della politica. Sicuramente non vi sarebbe alcun bisogno di ordine cooperativo giacché gli esseri umani sopravvivrebbero senza fatica, dunque i conflitti non sarebbero problematici nella misura in cui gli individui non hanno bisogno di dipendere gli uni dagli altri.

A questa concezione della politica così idealizzata dal comunitarismo, i liberali hanno curiosamente risposto con critiche simili a quelle che ora i realisti rivolgono ai liberali. Gutmann, per esempio, osserva che non «ha senso teoricamente assumere che non vi siano conflitti tra fini in competizione [...] Così facendo, i critici evitano di discutere come risolvere moralmente i conflitti e perciò non riescono a delineare una teoria politica che sia rilevante per il nostro mondo» (Gutmann 1985, 319-320).

Quello che i comunitaristi hanno in mente con i loro ideali è una «comunità il cui principale legame sia una comprensione condivisa del bene degli uomini e di quello della comunità» (MacIntyre 2013, 290). Visioni del mondo discordanti, secondo questa interpretazione, possono essere generate solo da interferenze esterne alla comunità. Per riprendere una metafora cara ai comunitaristi, una comunità vede un membro che rifiuta i suoi valori nello stesso modo in cui una famiglia vede un figlio che si comporta male: lo biasima, ma incolpa le cattive compagnie che lo hanno portato su una brutta strada. Questo perché nella visione dei comunitaristi la società ha una propria unità naturale, che solo influenze esterne sono in grado di perturbare. Honig offre una critica simile a questa quando osserva che «Sandel presume che ogni mancanza di chiusura nella identità del soggetto provenga da una molteplicità che è esterna [...] che, se messa in ordine nel modo giusto e in un contesto più adatto, può rivelare una sotterranea, autentica e liberatoria unità» (1993, 184). Non solo tutti i contrasti provengono dunque dal di fuori della comunità ma possono tutti facilmente e naturalmente essere riassorbiti da quella comunità. Infatti, Sandel «implicitamente assume che molteplici fini e identità di una concezione intrasoggettiva sono suscettibili di essere ordinati e armonizzati nel giusto contesto» (Honig 1993, 180).

Dunque il comunitarismo sottovaluta sia il conflitto che l'ordine giacché i conflitti non sono altro che accidenti provocati da influenze esterne e facilmente armonizzabili e l'ordine non è affatto un bisogno perché sorge spontaneamente all'interno della comunità.

REALISMO POLITICO

L'ultimo, ma più importante, elemento della tipologia di ordine e conflitto è dato dalle teorie realistiche, che cadono all'intersezione tra le due circostanze realiste della politica.

I realisti politici enfatizzano l'importanza del conflitto nel pensare la politica. Questo può essere latente, come nell'idea greca di *Stasis* (Loraux 2006), ma una tendenza alla rottura dell'equilibrio permane sempre negli esseri umani. Questa è l'«immagine eraclitea», laddove «ogni anima è sempre arena di tendenze conflittuali e di fini e dubbi frammentati, e di conseguenza i nostri antagonismi politici in una città o stato non finiranno mai» (Hampshire 2001, 5).

La persistenza del conflitto è uno dei temi più antichi del realismo politico, ed è un elemento presente fin dai classici. Tucidide identifica la tendenza degli esseri umani a confliggere come una costante della politica che non può essere eliminata (Reeve 1999). È proprio per questa ragione che ritiene la propria storia della guerra del Peloponneso un «possesso per l'eternità» (Thucydides 1954). Machiavelli, per citare un altro esempio classico, notoriamente ritiene che ogni città contenga un conflitto tra gli aristocratici e il popolo: «le gravi e naturali nimicizie, che sono intra gli uomini popolari e i nobili [...] sono cagione di tutti i mali che nascono nelle città» (1863, 209). Persino Hobbes enfatizza la preminenza del conflitto negli affari umani, e arriva al punto di dichiarare che «durante quel periodo in cui gli uomini vivevano senza un potere comune capace di tenerli in soggezione, questi si trovano in una condizione di guerra» (2009, 88).

Similmente, nella letteratura delle relazioni internazionali, è stato suggerito che l'inevitabilità della guerra fosse il più semplice e generale elemento che identifica qualcuno come realista politico (Herz 1951). In filosofia politica, i realisti sembrano essere d'accordo che il conflitto è un elemento inevitabile e ineliminabile del mondo umano, sia per la natura umana, che per la forma delle nostre istituzioni politiche, sia per la struttura delle interazioni sociali (Waltz 2001).

La politica ci confronta sempre con questo rischio reale del conflitto perché gli attori politici sono individui reali con differenti interessi, credenze e potere e non idee puramente astratte o proposizioni teoriche che possono essere riconciliate tramite un dialogo razionale che miri alla verità. Nonostante i loro intenti differiscano, gli idealisti sembrano essere d'accordo sul fatto che l'eliminazione del conflitto è possibile. I realisti, d'altro canto, credono fermamente che la storia ha chiarito che così non è. Per loro, la politica consiste nella gestione di conflitti ricorrenti. Il fine è il suo continuo e fallibile contenimento, non l'eliminazione. Bealey, per esempio, ci ricorda che la «scienza politica si preoccupa di conflitto: certa-

mente senza conflitto non esisterebbe perché la politica non sarebbe necessaria» (1999, 79). Eliminare il conflitto significherebbe eliminare la politica. Questo è il motivo, secondo il realismo, per il quale il liberalismo neokantiano di Rawls mira a eliminare la politica tramite la morale. Come dice Galston: «il liberalismo alto rappresenta un desiderio di evadere, dislocare o fuggire dalla politica» (2010, 386). Questo non significa che il realismo diventi una sterile celebrazione del conflitto, completamente distaccata e persino opposta al suo intento dichiarato di enfatizzare il ruolo dei fatti e della realtà nell'informare la guida politica, come alcuni hanno suggerito (Baderin 2014). Al contrario è proprio dall'idea del conflitto che deriviamo una guida pratica. Come scrive Honig: «affermare la perpetuità della sfida non è celebrare un mondo senza punti stabili; ma è affermare la realtà di una sfida continua, anche all'interno di un contesto ordinato, e identificare la dimensione affermativa della contestazione» (1993, 15).

I realisti riconoscono il bisogno di ordine come una reazione all'inevitabilità del conflitto. Tuttavia non tutti i realisti condividono questa interpretazione. Machiavelli pensava che un certo grado di conflitto politico fosse benefico per lo stato, perché serviva a temperare la forza della comunità politica, che permetteva di mantenere la libertà. Nei *Discorsi* asserisce che «coloro che dannano i tumulti intra i Nobili e la Plebe, mi pare che biasimino quelle cose che furono prima causa del tenere libera Roma; e che considerino più a' romori ed alle grida che di tali tumulti nascevano, che a' buoni effetti che quelli partorivano» (Machiavelli 1797, 39-40). Se nessun pericolo interno o esterno è presente, una società cresce compiacente e sempre più incapace di far fronte al conflitto quando questo inevitabilmente si solleverà di nuovo. Machiavelli qualifica eloquentemente questo processo con queste parole: «quando il Cielo le fusse sì benigno che la non avesse a fare guerra, ne nascerebbe che l'ozio la farebbe o effemminata o divisa; le quali due cose insieme, o ciascuna per sé, sarebbono cagione della sua rovina» (1797, 46). Anche Machiavelli, comunque, difende solo un limitato livello di conflitto regolato dai vincoli istituzionali di un ordine politico. Argomenta nelle *Istorie Fiorentine* che i conflitti possono risultare utili, come a Roma, ma possono anche essere molto dannosi per la società, come a Firenze:

Perché le inimicizie che fuorno nel principio in Roma intra il popolo e i nobili, disputando, quelle in Firenze combattendo si definivano. Quelle di Roma con una legge, quelle di Firenze con l'esilio e con la morte di molti cittadini si terminavano. [...] La quale diversità di effetti conviene sia dai diversi fini, che hanno avuto questi due popoli, causata. Perché il popolo di Roma godere i supremi onori insieme con i nobili desiderava; quello di Firenze per essere solo nel governo, senza che i nobili ne partecipassero, combatteva (Machiavelli 1863, 209).

Hobbes è forse il realista classico che più ha enfatizzato il bisogno di ordine. Egli ha direttamente collegato la sopravvivenza alla cooperazione sociale. La sua filosofia è un tentativo di dedurre sia i diritti che le obbligazioni politiche dal fatto che un ordine politico è necessario alla sopravvivenza. La sua influenza si estende a molti realisti contemporanei che, come Williams e Geuss, si rivolgono a lui per enfatizzare la preoccupazione per l'ordine come una questione fondamentale di una filosofia politica realista.

Williams ritiene che la politica ruoti attorno a una «domanda di legittimità elementare» che bisogna soddisfare prima di porre questioni più impegnative quali libertà, giustizia, egualianza... Egli suggerisce che le questioni politiche presuppongano un ordine cooperativo stabile all'interno della società: «identifico la “prima” domanda politica in termini hobbesiani come la messa in sicurezza dell'ordine, della protezione, della sicurezza, della fiducia e delle condizioni di cooperazione. È prima perché la sua soluzione è condizione per risolvere, e persino per sollevare ogni altra questione» (Williams 2005, 3). Egli rivendica che «la prima virtù delle istituzioni politiche» (Rawls 1971, 3) non è la giustizia, ma la legittimità. Il fondamentale bisogno di sicurezza e cooperazione è ciò che caratterizza l'«elementare domanda di legittimità» (Williams 2005, 13), che può essere soddisfatta in differenti modi in contesti e epoche differenti. Il liberalismo è per Williams giustificabile come la migliore risposta a questa elementare domanda di legittimità nel momento presente, ma la sua valenza non è universale.

Secondo i realisti, dunque, la realtà politica presenta due caratteristiche: l'inevitabilità del conflitto, e il bisogno di ordine, riprendendo «l'intuizione elementare [...] che gli esseri umani siano animali sociali ma conflittuali» (Collins 1975, 58). Questi elementi trovano spazio in molti realisti politici, ma tra i classici Hobbes è colui che più di tutti vi ha prestato attenzione. Quindi, possiamo dire che il realismo politico discende in modo sostanziale da Hobbes, che alcuni considerano «il realista quintessenziale» (Runciman 2012, 58). Williams stesso ha dato un illuminante riassunto del perché le domande di Hobbes siano un importante punto focale del realismo politico:

È universalmente riconosciuto tra gli uomini che alcune persone usino la coercizione o cerchino di usarla, e quasi altrettanto universalmente accettato che le persone vivono sotto un ordine in cui parte della coercizione è intellegibile e accettabile, e può essere una illuminante domanda [...] chiedersi in che misura e sotto quali aspetti, una data società del passato è un esempio di capacità umana per un ordine intellegibile o della tendenza umana alla coercizione senza alcuna mediazione (Williams 2005, 10).

In breve, i realisti prendono di petto il problema della politica realista: «superare l'anarchia senza cadere nella tirannia» (Galston 2010, 391). Geuss è d'accordo con Williams che il realismo ha le sue radici moderne in Hobbes e nel problema della messa in sicurezza della cooperazione tra agenti conflittuali. Sotto questo aspetto, scrive:

ciò che vorrei chiamare “approccio realista alla filosofia politica” sviluppa questa intuizione hobbesiana. È centrata sullo studio di forme di azione umana collettiva storicamente istanziate, con una speciale attenzione per la varietà dei modi in cui le persone possono strutturare e organizzare le loro azioni in modo da limitare e controllare forme di disordine che potrebbero trovare eccessive o intollerabili per altre ragioni (Geuss 2008, 22).

Questa linea di pensiero si estende fino ad alcuni realisti contemporanei come Sleat, che ha recentemente affermato che: «una teoria più realista accetta il fatto che il conflitto è ubiquo nella vita umana e che non può essere permanentemente superato, anche se è il ruolo della politica che fornisce un ordine legittimo che previene questi conflitti dallo scadere in caos e anarchia» (2014, 10).

Solamente dunque il riconoscimento che la politica è resa necessaria e possibile dall'esistenza di un'inevitabile tendenza al conflitto e da un necessario bisogno di ordine dà luogo a una teoria politica realista.

CONCLUSIONI

In questo articolo, ho difeso la tesi che la peculiarità del realismo politico stia non soltanto nell'enfasi sulla realizzabilità, né nelle posizioni politiche concreteamente sostenute, ma nella concettualizzazione della sfera politica. Una concezione realista della politica riconosce il conflitto, come distinto da disaccordo e pluralismo ragionevole moralistici, e un bisogno di ordine, al contrario delle teorie che idealizzano questi elementi. Le teorie politiche che moralizzano, ignorano, o astraggono queste questioni non sono realistiche perché rivelano una scarsa comprensione di che cos'è la politica. Tale concettualizzazione può essere usata come criterio distintivo per distinguere il realismo non solo dall'idealismo politico, che non rende adeguatamente conto del conflitto, ma anche dal realismo irrealista, che sottovaluta il bisogno di ordine, e dall'idealismo impolitico, che non riconosce nessuno di questi elementi. Non comprendendo la natura della politica, questi approcci alternativi non riescono a capire che cosa sia veramente in gioco e finiscono per essere ingannevoli e fuorvianti.

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Giulio Ferraresi

**European populism
in the 21st century:
The ideological background
of Syriza, Podemos and the
5 Star Movement**

INTRODUCTION

Since the outburst of the economic crisis in 2007-2008, populist parties of both right and left have seen their popularity rise in Europe (Lagurashvili 2016). In the last five years they have become a political force of relevance, one to be reckoned with, as they have started gaining seats in Parliament and their electoral base has expanded.

Podemos in Spain, Syriza in Greece, and the 5 Star Movement in Italy are among the largest of such formations in Europe, and tend to lean to the left; other large populist parties are instead more right-wing. The aim is to attempt to identify the ideological background, if any, of each of these parties. Many commentators have linked Podemos and Syriza to Argentinian political philosopher Ernesto Laclau, whose political theory explores the elements of populist political discourse in order to propose a doctrine of radical democracy that can offer an alternative to both orthodox Marxism and the New Left; the 5 Star Movement has, instead, been associated with Rousseau, mainly due to its support for direct democracy.

Through a test of these potential connections, a brief outlook of the cultural background of these parties will be provided. Interestingly, Laclau's theory will prove to be rather suitable to describe the features of almost any populist movement, including right-wing ones; and yet, we cannot say that each of these parties have equally taken inspiration from Laclau: the 5 Star Movement for instance, never mention Laclau as an intellectual reference. As for Rousseau, he does not appear to be any more than a symbol to the 5 Star, whose political programme has little to do with the philosopher from Geneva.

The first part of this work will briefly illustrate the various political tendencies that make up the radical left cluster of parties and movements. Using these cat-

egories, each party will be defined accordingly: Podemos and Syriza as populist socialist parties, the 5 Star as a social populist one. The second section will focus on Laclau's theory of populism; the third, fourth and fifth will analyse, respectively, Podemos, Syriza, and the 5 Star. Laclau's influence will appear to be stronger on Podemos than on Syriza, but arguably relevant in both cases; the 5 Star Movement, instead, do not seem to have drawn much inspiration from either figure. Finally, the sixth part will contain concluding remarks.

THE RADICAL LEFT FAMILY

It is generally accepted that these parties – Syriza and Podemos, and , to a lesser extent, M5S – belong to the “radical left” family, regardless of their populist tendencies. And yet, defining what radical left means today is paramount to understand whether populist parties can, too, be viewed as belonging to such a group: not everyone actually agrees on such a classification. For instance, conservative Marxists (Fagerholm 2016; Wsws 2015), who still maintain orthodox communist positions, criticize contemporary populist parties for their acceptance of capitalism and unwillingness to ground their political stances on class struggle. According to conservative Marxists, only orthodox communism can be defined as radical, or, indeed, as left. Claiming that only one’s own movement can be properly defined as left, because it sticks to the letter of Marx’s texts, is undoubtedly pretentious; it is true, however, that acceptance of capitalism and rebuttal of class struggle may leave one to wonder if it makes sense to define these parties as radical.

Andreas Fagerholm (2016), following Bobbio’s observations, states that the left can be best defined in relation to its opposite, the right: the element that distinguishes the two is the different understanding of the concept of equality. Put simply, the left supports and promotes equality, while the right does not, arguing that, regardless of the [alleged] equal moral status of all human beings, societal relations have made them unequal.

As to radicalism, it is generally understood to be the “pursuit of a *root and branch* transformation of society” (Fagerholm 2016, 3); radical left parties are those trying to alter the socioeconomic structure of society by proposing an alternative societal arrangement. Their objective may be that of overthrowing capitalism, but not necessarily; what is always present is a critique of economic élites, and a “belittlement of *liberal* democracy (but not democracy *per se*)” (*ibidem*). These elements are typical of radical left parties and, moreover, distinguish them from non-radical left, or centre-left, ones. Already we could argue that, in terms of

political programme, Syriza, Podemos and the 5 Star Movement all belong to the radical left family, although to different degrees.

More in detail, the family of radical left parties is made up of 5 subgroups, according to Fagerholm (*ibidem*). First, conservative communists: these are orthodox Marxist-Leninist parties that wish to save “soviet revolutionary traditions”: the Kke in Greece and the Partido Comunista Portugues, Pcp, are of this kind. Second, reform communists, namely parties that have inherited at least part of the post-1968 “New Left” agenda: the Partito della Rifondazione Comunista (Prc) in Italy and the Spanish Communist Party (Pce) belong to this group. Third, democratic socialists, namely parties that support democratic, non-monistic and, sometimes, non-Marxist positions, while upholding a socialist restructuring of society – not to be confused with social-democracy, which is not a radical position. The Bloco de Esquerda (BE) in Portugal is an example of such a party. Fourth, populist socialist: these parties are similar to the third group – democratic socialists – but add to it an anti-élite, anti-establishment rhetoric: Syriza and Podemos are part of this group. Fifth, social populist parties: these are characterized by an “incoherent ideology that fuses left-wing with right-wing themes and are, hence, only rarely recognized as genuine left-wing parties (*ibidem*).” An example is Sinn Fein in Ireland, who, for instance, supports workers’ protection and the welfare state, while maintaining strong nationalist sentiments and mixed feelings about abortion.

This is, roughly, the radical left family today. Of all groups, only the last, that of social populist parties, may pose some doubts over its leaning to the left; this however depends on specific circumstances, and policies, of the actual parties, and cannot be established in advance by a general definition. In any case, all these parties, with some reservations concerning the latter, promote equality, both formal and substantial, and are thus left-wing; in addition, they all reject the current socio-economic order and virtually support the introduction of an alternative system, and are thus radical.

For the purpose of this inquiry, the focus is chiefly on the last three groups, namely 1) democratic socialists, 2) populist socialists and 3) social populist. Even though populism is the object of research here, it is important to keep in mind that democratic socialism – not to be confused with social democracy – is the subgroup on the basis of which populist socialism, in particular, has developed. Indeed, both democratic socialists and populist socialists accept democratic methods while upholding a socialist restructuring of society.

With this classification at hand, the task is now to state which party is to be placed where. For now, it will suffice to state that Syriza and Podemos belong to the populist socialist subgroup – the fourth on the list –, while the 5 Star Movement is a social populist movement – fifth on the list.

As to the cultural aspect, some things have been briefly mentioned. In general, radical-left populist parties come from either the democratic socialist tradition or the reform Marxist one and, in particular, their sociopolitical culture has been heavily influenced from the intellectual and political confusion of the post 1989 world. Truly, a critical acceptance of capitalism and a rejection of orthodox Marxism are common elements that are shared with democratic socialism, but there is one crucial difference: populist-socialists believe that democratic socialism has failed to offer a concrete alternative to the current world order. These details should provide a rough picture of the context in which contemporary European populism has initially developed; they do not, however, shed light on the specifically theoretical elements that characterize these sorts of parties, if any, and thus do not tell us which political doctrine they are indebted to.

LACLAU'S THEORY OF POPULISM

A number of observers have pointed out that Syriza and Podemos are highly indebted, culturally, to the works of Argentinian philosopher Ernesto Laclau (Hancock 2015, Tremlett 2015), who would often work with his wife, Chantal Mouffe, herself a political philosopher. Originally, they were both close to the Marxist Left, but soon became critical of its orthodoxy (Judis 2016). In their book, *Hege-mony and Socialist Strategy*, they review the history of socialist political strategy and reject the central role assigned to the working class and to class struggle in general, arguing that socialism need not necessarily be brought about by the clash between capitalism and the proletariat. In *On Populist Reason*, written by Laclau only, he counters the dominant understanding of populism as inherently negative, a deviation from standard political practice. Left-wing populism should be viewed, instead, as the legitimate heir of older non-communist left-wing parties; and this is indeed a salient element of their theory, namely, their support for democracy, even though described as a product of conflict rather than consensus – democracy is “antagonistic” (*ibidem*).

When Mouffe and Laclau published, in 1985, they hoped to offer an alternative to both the New Left which, they argued, had adopted a flawed strategy, and more typical Marxist parties, who centred their political struggle on the subversion of capitalism: their proposal was meant to be a new strategy for a “radical democracy”. A number of the radical left’s positions of the time had left them unsatisfied, and whether it was Lenin’s Jacobinism or Kautsky’s economic determinism, they believed that the failures of socialism to date largely depended on the adoption

of wanting doctrines. Kautsky believed that this *bourgeois* stage of history was marked by the opposition between working class and capitalists, and that the working class would have eventually taken over society as a matter of historical determinism: the role of the working class was to follow such a tendency (Judas 2016). Laclau and Mouffe saw this “passive” approach as responsible in bringing about the right-wing totalitarianisms of the early twentieth century.

Lenin, on the other hand, viewed in the dynamism of the working class the driving revolutionary force and believed that a subversive socialist party would have succeeded in overthrowing the capitalist state. Lenin’s strategy, centred on the party’s fundamental role, is more akin to that of the French Jacobins (*ibidem*), and less grounded on historical/economic determinism. Neither his approach, however, brought about positive outcomes: on the contrary, it has led to the dictatorship of the party and then that of Stalin.

The first communist theorist that, according to Laclau and Mouffe, identified the most appropriate strategy for socialism to take over is Antonio Gramsci. Gramsci (1948) challenges the idea that revolution is the means that will lead socialism to power, and instead maintains that the current socioeconomic structure of society is to be overthrown through a “war of position”. The underlying rationale of Gramsci’s thought is that society’s *élites* enjoy what he calls a “hegemony”, especially in terms of political culture and leading world view. The working class, which should constitute a “historical bloc” with other weaker/non-establishment groups of society, must conduct a war of position in order to establish a new hegemony. The struggle, thus, has to focus on persuasion and conviction.

The majority of Gramsci’s ideas have been inherited by Laclau and Mouffe, in particular those of war of position, hegemony and historical bloc. They only disagree with Gramsci’s appraisal of the working class’s pivotal role, which he still maintained, and argue that a historical bloc of the left should gather different political forces and their different demands, each of which articulates a specific struggle. For this reason, socialism cannot be achieved through a single struggle between two classes over one specific demand, but must capture a variety of social circumstances and claims.

Laclau and Mouffe’s whole approach is underpinned by a more general criticism, which is directed against Marx’s theory of history. Namely, they reject the idea that the struggle between the *bourgeoisie* and the proletariat is the driving force of history (Tremlett 2015), which will necessarily lead to historical change and to the establishment of a socialist society. They believe, instead, that socialism should concern all aspects of society, and not merely the political one: rather than opposing anti-capitalism, they simply view it as one of the various demands that

some historic bloc may wish to see satisfied, in the wider context of a hegemonic struggle aimed at imposing radical democracy.

In *Hegemony and Socialist Strategy* (1985), Laclau and Mouffe elaborated a critique of orthodox Marxist concepts; the actual theory is contained in *On Populist Reason* (2005), conceived by Laclau only. The book responds to the need for socialism of finding an alternative unifying principle to that of class struggle and anti-capitalism that would reverse the tendency of social democratic parties of leaning towards the “third way”: left-wing populism constitutes such an alternative.

In this work, Laclau sets off by criticising the dominant understanding of populism. The underlying idea is that there is a general bias in contemporary societies towards populism (D’Eramo 2013): this is normally viewed as a deviation from the standard political, an expression of the most brutal forces that lie silent in society and find their ultimate political realization in the collective and resentful cry of the masses. This notion of populism is however misleading and artificial, for it has benefitted the ruling oligarchy in its contest with the masses. Laclau instead argues that populism is like a container of various popular demands and feelings that arise out of uncertain circumstances. Its immediate effect is that of separating two different groups, through the creation of an “internal antagonistic frontier” (Laclau and Mouffe 1985, 110, 131): the people on one side and the *élite* on the other. The specific way that a “populist” movement will come to have significance will then depend on the circumstances: this is what Laclau means by “container of empty signifiers (Laclau 2005, 129)”. But populism is, in its essence, the true nature of the political: it expresses the vagueness of the political and societal reality of the moment, while at the same time taking simplification to the extreme – and simplification is the quintessence of political discourse.

Laclau’s theory is peculiar in two respects: on one hand, in its descriptive part, it captures a number of typical elements of populist movements, so that the majority of these may well be said to behave in “Laclauian” terms, insofar as they display those traits he singled out. The theory however owes much of its effectiveness to the intuition that a crucial aspect of populism is its lack of content, or, better, of a precise content, as this may change depending on circumstances. What defines populism, apart from the very lack of a precise content, is the kind of discourse, the behaviour: in other words, its external features, not theory. As a consequence, virtually any populist party can be viewed as “Laclauian”, not because they drew any inspiration from him, but merely because they behave like he described. All the parties that are analysed through this work can indeed be said to display Laclauian features.

On the other hand, Laclau maintains that, precisely because of its effectiveness, populism would be the best means to foster a socialist restructuring of society.

Socialism however cannot be pictured as the politicization of a single struggle, demand, or class: it is a sum of various demands, groups and struggles. The point is that even if we concede to the effectiveness of populism, nothing can guarantee it will be used to uphold socialism; indeed, Laclau's understanding of populism can very well describe many contemporary right-wing populist parties. Therefore, Laclau's theory is generally well-suited to accurately show the functioning of populist parties or movements; but while its descriptive part captures the nature of a true phenomenon, the normative part remains vague.

PODEMOS, LACLAU AND THE SPANISH CASE

Podemos, among the three, is the most consistent with Laclau's ideas, being the one where the link with the philosopher is strongest and most evident. Contrary to the leaders of Syriza and the 5 Star Movement, in fact, Iñigo Errejon, Podemos's chief theorist, explicitly mentions Laclau as his main intellectual reference, both in his doctoral thesis (Errejon 2011), and in various interviews (Judis 2016). Apart from the intellectual debt that Podemos owes to Laclau, which virtually places it in the "populist socialist" subgroup of the radical family, its actual programme is rather faithful to left libertarian ideals, and this constitutes further evidence such a grouping.

Podemos owes considerable part of its electoral success to the growing wave of dissatisfaction directed at austerity policies that have been implemented in Spain since 2010. This is no novelty and actually constitutes a common feature of all parties under scrutiny. In terms of composition, Podemos represents the merger of three rather distinct groups (Gomez-Reino and Llamazares 2015): Izquierda Anticapitalista, a Trotskyist radical left party; the 15M, a grassroots movement organized around a popular antiausterity protest, gathering different social groups; a group of political science students and researchers from the Universidad Complutense of Madrid. Each of these elements contributed to the forming of Podemos's specific character: Izquierda Anticapitalista's legacy can be seen by Podemos's political programme, clearly leaning towards the left of the political spectrum; 15M is viewed as constituting the original popular base of Podemos, and anticipated its rhetoric of antagonism between the people and the caste; the Complutense scholars, finally, provided Podemos with its ideological content, with references to Laclau and to South American populist experiences. The latter is however the dominant component in terms of the ideological outlook of the party.

The Universidad Complutense scholars – both Iglesias and Errejon come from this group - brought to Podemos the intellectual legacy of Laclau's thought and the practical one of Latin American Populisms. The link between the two is clear: South American populisms are presented as a successful practical application of Laclau's ideas who, in turn, are the ultimate source of ideological content for Podemos's leaders, who mainly come from this group. Indeed, Iñigo Errejon, in his doctoral thesis *Evo Pueblo: la Hegemonia del Mas en Bolivia*, he applies the core of Laclau's ideas to the analysis of the seizure of power of the Mas (Movimiento Al Socialismo) in Bolivia. In brief, the Mas has managed to capitalize on a fragmented political scenario where no group or movement could be said to be hegemonic. Mas and Evo Morales, its leader, gathered around the movement different elements of society – mainly indigenous and peasants, the majority of the Bolivian population –, each having its own demand. Morales however managed to create a unified bloc, which became “the people”, around the symbolic theme of preservation of natural resources, and found a common enemy in the white, industrial and capitalist *élite*. Once the Mas reached power, it filled the hegemonic vacuum that had always been present in Bolivia, thus establishing, finally, a hegemonic leadership. Through this work Errejon has sought to highlight how a consistent application – regardless of the intentionality of its leaders – of Laclau's theory has brought the Mas to success.

Podemos is, in its own right, attempting to establish a hegemonic leadership in Spain, but a number of Laclauian elements are already easily identifiable. In the first place, Podemos has immediately exploited the transclass nature of the anti-austerity protests, which transcended the traditional political dimensions of left and right. As Laclau and Mouffe (1985) had imagined, Podemos harnessed the emergence of an “internal antagonistic frontier” which eventually opposed the “people” from the “caste”. Such an internal frontier, according to Laclau, is paramount to defining the nature of the popular movement itself which, indeed, we can argue has been the case with Podemos, since it has constructed its very identity in open confrontation with a ruling *élite* unwilling to yield to their demands.

Second, Laclau's mark on Podemos led the party to present itself as an alternative to the traditional left, as a popular movement encompassing a wider strata of the population. This operation of gathering multiple popular demands is a typical feature of Laclau's populism which, as “container of empty signifiers”, may capture more effectively than other, more traditional political formations, the variety of a given social context, as its inherent ideological vagueness can more easily accommodate different social demands (Laclau 2005; Laclau and Mouffe 1985). This operation of uniting various popular demands is facilitated by the

adoption of one key concept, or key claim, around which the whole movement is grounded: in Podemos's case, this is a cry to put an end to austerity. Indeed, the identification of the ruling political and economic *élites* with austerity policies, which ought to be overturned, are the bulk of Podemos's rhetoric.

Third, In Laclau's mind, radical democracy would transform standard political practice: political activities would not be carried out exclusively by the institutionalized, representative system, but through all sorts of channels that are provided for by society. In this respect, too, Podemos has shown consistency with Laclau's thought, as its presence has been felt well outside traditional political boundaries: thanks to the experience of the 15M, Podemos has started its existence as a grassroots movement, which was paramount for the mobilization of people in the squares. Podemos even brought TV use to a different level for Spanish standards: not only political debate has been carried out more effectively on TV than in Parliament (Hancox 2015; Toscano 2015; Barriere, Douglas and Robson 2015), but TV and media debates certified Pablo Iglesias's role as political pundit, and introduced to the wider public his political views. Furthermore, Podemos is present in the Spanish – and European – Parliament, which, albeit a more institutionalized means of representation, is still crucial for the political success of the party.

Through time, however, Podemos has undergone a few changes. After the Vinalegre congress in fall 2014, the party has undergone an organizational change: more centralization, greater importance of the leader, and, most importantly, the relative weight of Podemos's radical component has diminished, as it has been kept out of Parliament. This strategy responds to the new circumstances, which have marked Podemos's entry in Parliament and its new role as one of the major parties in Spain: Iglesias, supported by Errejon, has concluded that a more "institutional" outlook for Podemos would have helped it win Parliament and become Spain's leading party. This move seems yet not to be too consistent with Laclau's idea that a historical bloc of popular forces, different among each other in composition and demands, should unite against the establishment. Laclau, however, never said which specific demands should constitute the content of a populist discourse, precisely because its perk is that of adapting its message and its demands to the circumstances. Thus, if on one hand Iglesias has weakened the most radical and most left-wing elements of the party, especially those from Izquierda Anticapitalista (Kouvelakis, 2016), keeping them out of Parliament, on the other he has done so in order to be more appealing to moderate forces, so, in theory, it remains consistent with the idea of a party gathering different groups and different sets of demands.

To see whether Podemos will remain faithful to Laclau and his radical populist appeal, that will depend a lot on the figure of Pablo Iglesias. Indeed, Laclau's container of empty signifiers need not necessarily be a discourse or a concept, but it may as well be a person (Barriere, Durgan and Robson 2015) who plays the role of uniting different popular demands and presenting them in a new form, that is convincing to the people. Partially, it seems that Iglesias may possess the qualities of a charismatic leader: according to Alberto Toscano (2015), he is much more pragmatic than Errejon, consistently with their two different roles, and is obsessed with victory: "The autonomy of politics as a moment of power and the seizure of an occasion is Iglesias's driving preoccupation, not the Laclauian populist hypothesis – though at times he echoes Errejón, populism appears in Iglesias more as an expedient discursive strategy, not as a theoretical commitment (*ibidem*)."¹⁰ If Iglesias can succeed in representing the people's struggle against the ruling élite, and in uniting different segments of the population under the anti-austerity motto, he may well be that charismatic figure that can serve as container of empty signifiers, attempting to impose a new hegemony. Importantly, this may occur independently of Iglesias's theoretical commitment to Laclau: insofar as the strategy is efficient, the content may vary.

SYRIZA

Like Podemos, Syriza's relevance rose only in recent years partly as a result of the economic crisis, which hit Greece unlike any other European country. Its connection with Laclau is however not as evident, if only because none of Syriza's members explicitly mentions him as intellectual mentor of the party, and there is no document, like Errejon's doctoral thesis, that can testify their deliberate intention to follow his thought. In spite of this, it is rather likely that a number of Syriza's members have been influenced by his ideas, as they were students at Essex University, where Laclau taught. Among these: Fotini Vaki, Rena Dourou, and Yanis Varoufakis (Howarth 2015), who was not however a student of Laclau's course, albeit they were both at Essex during the same period of time.

Links with Laclau can however be inferred, and there are plenty. Like Podemos, Syriza is the result of a merger of different political currents and factions: the number of single components, however, is much higher, reflecting Syriza's attempt to gather all the radical forces of the country, each carrying their specific demand, under one single "popular bloc", striving for hegemony. As a strategy, it appears consistent with Laclau's ideas.

The number of parties making up the coalition – Syriza means “coalition of the radical left” – is rather high, but the main currents inside Syriza come from a limited number of groups: Synaspismos, Syriza’s main component, whose members mostly come from the Kke, the Greek orthodox communist party; a number of “Trotskyist groups, Maoists, *altermondialistes*, [...] as well as the remnant eurocommunists, the Akoa (Kouvelakis 2016).” Albeit a number of Syriza’s most prominent figures, including Tsipras, come from the Kke component of Synaspismos, the main intellectual influence over the latter was Eurocommunism (*ibidem*). This was Syriza’s original composition in 2004, when it first formed; but in 2012 the party reorganized in the direction of deeper unity, and attracted former Pasok members and other figures coming from the old establishment of the socialist party. The role of social movements, even though present, was not as crucial: its origin is thus more “institutional”, if compared with Podemos and its strong grassroots base. This character is quite telling: on one hand, Syriza is not as committed as Podemos on the front of “radicalizing” democracy, spreading the debate through all possible channels, from TV and media to the squares. On the other, the single components of the coalition are more numerous and more heterogeneous among each other, which is consistent with Laclau’s idea of a populist front competing for hegemony.

Syriza, moreover, displays a number of additional elements that suggest a correspondence with Laclau’s theory: it has, like Podemos, harnessed the presence of the “internal antagonistic frontier”, dividing the people from the ruling *élite*; it has united its voters around one central theme, namely to put an end to austerity; and it has attempted to offer an alternative to the traditional left, presented as inefficient and corrupt. Finally, during the negotiations with the so-called Troika over Greece’s sovereign debt, Syriza, and in particular Varoufakis, lamented that representatives of European and Member States’ institutions treated Syriza as an outcast, politically destabilising, blindly radical and dangerously populist, somewhat confirming Laclau’s warning over the stigma that surrounds the mere word *populism*. This however is no novelty, but rather typical of the majority of radical or populist parties.

The party’s heterogeneity is further shown, for instance, by the figure of Varoufakis, an economist coming from the academic environment: Tsipras called him to serve as Finance Minister, mainly to conduct the negotiations with European institutions. Even though he attended Essex University, where Laclau taught, it is unclear how much he owes to the latter’s work (Marsden 2015; Dmitryev 2015). He claims Karl Marx and Margaret Thatcher are two of his main sources of inspiration (Varoufakis 2015, Dmitryev 2015). The former defined the content of his

political thought, and indeed he defines himself as an “erratic Marxist” (*ibidem*), while the latter helped him adjust his political goals: he does not aim at overthrowing capitalism, but at saving it, while waiting for the left to come up with a better alternative, which it has so far failed to do (Varoufakis 2016).

We could thus say that Syriza is consistent with Laclau in *spirit*, as shown by its moves in the Greek political arena, but how much of its programme has been intentionally shaped so as to match Laclau’s doctrine, that we do not know. What we do know, instead, is that, considering the political and intellectual origin of Syriza’s components, Syriza is a populist socialist party, the fourth on Fagerholm’s list. The merger of former members of the Greek communist party with Eurocommunists and Social Democrats from Pasok, Feminists and Greens definitely marks its departure from both orthodox communists and reform communists (Syriza 2015); its populist approach, on the other hand, distinguishes it from traditional democratic socialism. Finally, lying clearly on the left of the political spectrum, it belongs to the populist socialist group, and not to the social populist one, whose ideology appears to shift between right and left. Syriza’s belonging to the populist socialist subgroup and, more in general, to the radical left family, has however been recently challenged, mainly by orthodox communists.

This criticism should however be viewed as internal to the radical family, for it stigmatizes Syriza – and indeed other populist socialist parties – for not being anti-capitalist, or not centred enough on class struggle and on revolution (Wsws 2015). For these reasons, the criticism goes, these parties should not be labelled as left, but, at best, as “pseudo-left”. As we have seen, the radical family comprises parties or groups that are neither communist, nor anticapitalist: truly, even a group that swings between left and right, such as the social populist, may be viewed as radical. The communist claim to represent the only true left is the only true content of this criticism, which shall therefore be dismissed.

One last remark on Syriza’s recent developments. After the party was forced to accept the memorandum imposed by the EU in late spring 2015, it has undergone internal turmoil: rejecting the EU memorandum was the chief reason for which Syriza was elected and the crucial element in its political programme. As a consequence, many MPs left Syriza which resulted in it being much less aligned with the radical left than it was before. On the other hand however, its populist element has remained intact: it must be recalled that, since it became the majority party in Greece in January 2015, Syriza has governed in coalition with the Independent Greeks, a right-wing populist party. The two parties remained together during the September 2015 election, and they are governing together at the moment. In

spite of having different positions on a number of topics, they agree on the main demand of their programme: to put an end to austerity.

Syriza's present situation, in sum, is rather unique: it has built its fortunes on antiausterity positions, and has highlighted its leaning towards the left, in terms of political culture, programme and membership. More than Podemos, however, it has bent to more traditional party dynamics, such as forging alliances out of need with ideologically different factions. This move however, which has appalled the most leftist of commentators (Wsws 2015), seems to be rather consistent with Laclau's intuition that alliances of very different groups may well be possible and effective, provided that these agree on a minimum of shared objectives and demands. Considering that both parties agreed on ending austerity, and that accepting the memorandum has emptied their programme of significance, it seems that Syriza has now to agree on a new "key concept", or final objective, in order to reaffirm its identity as an antiestablishment party.

THE 5 STAR MOVEMENT

The Italian 5 Star Movement, in terms of ideology, is the hardest to assess. Partially this depends on the Movement's view of traditional party politics, which are deemed to be corrupt and inefficient: for this reason, the traditional dimensions of left and right are rejected. In addition, the party is truly novel, in the sense that, regardless of previous political affiliations of its members, it has attempted to do away with any competing political culture. As a result, the party's position on the right-left spectrum is less defined than that of the other two, even though it arguably leans slightly to the left, and the party can most sensibly be defined as "social populist", the fifth subgroup of Fagerholm's list.

In general, the Movement's political attitude can be defined as populist, and indeed it appears to reflect many points of Laclau's theory, in that it 1) draws a line between the "people" and the "caste", 2) its main political stances on pivotal issues are often vague and unclear (Perazzoli 2013), 3) it purports to be an alternative to both the right and the traditional left, by now identified with the "caste" in general. Indeed, its supporters come from both the right and the left, and the Movement itself declares to stand nowhere on the left-right spectrum – it stays with the citizens. 4) It makes use of a revolutionary rhetoric and aggressive language and, even though its classification as an "antisystem" political organization is subject to debate, it definitely displays a number of features that are typical of political movements of this kind.

Two elements stand out: the 5 Star's peculiar understanding of political alliances and coalitions, which they reject altogether (Barbacetto 2015); the crucial role that it attributes to the internet as the most appropriate *forum* where democratic political activity can take place. Concerning the first point, the refusal to forge alliances, the 5 Star do not seem to be too consistent with Laclau, nor with Gramsci for that matter. Instead of trying to construct a "historical bloc" of the left, gathering various demands and uniting them in a single struggle for hegemony, the 5 Star have decided to do away with the traditional concepts of right and left, and to present themselves as the true depository of all instances of the "honest" portion of the population. There is no need, thus, to compromise their own position through alliances, for their apparent lack of political affiliation on the right-left spectrum would arguably accommodate every reasonable political demand. Moreover, alliances would amount to a concession to traditional party politics, which the 5 Star so strongly despise.

As to the internet, it has been described by Movement supporters as the arena where all citizens can debate, take part and contribute to the decision-making activity of the polity. It could thus constitute the most appropriate place for the formation of a "general will", whereby a contemporary, high-tech form of direct democracy could be realized (Perazzoli 2013). These elements have led observers to link the Movement's principles to Rousseau's political philosophy. Indeed, not only the reference to direct democracy recalls Rousseau, but their aversion for party politics appears similar to how Rousseau viewed political factions as a potential obstacle to the effective formation of a general will. Their aim is, in fact, to construct a movement that is not positioned anywhere on the right-wing dimension, but that would attract anyone who, like them, proves to be honest: mainly, the ordinary citizen. Thus, the internet as the *forum* for direct democracy, and a sort of anti-establishment universalism: these elements have often been associated with Rousseau's vision of the state.

Those highlighting the connection between Rousseau and the 5 Star usually present two different sorts of arguments: right wing journalists and politicians single out Rousseau as the source of Grillo's despotism and apparent authoritarianism; left-wing observers point out that the 5 Star's focus on direct democracy, on the rejection of the party system and on the principle of imperative mandate, may be ideas adapted from Rousseau's *Social Contract* (1762).

As to the right-wing critique, it views Rousseau as the father of modern totalitarianism, and thus the connection with the 5 Star only proves the latter's authoritarian tendencies (Gurrado 2016). The main point of the argument is that by adopting Rousseau's political vision, it is not fully clear what would be of those

who disagree with the General Will. Many critics believe that what is implied is that there would actually be no room for disagreement, in a typically authoritarian fashion (Macioce 2015; Gonzato 2016). Since Grillo has indeed expelled from his party (which he refrains from calling “party”) those offering alternative views, the link with this understanding of Rousseau’s work aims at showing how direct democracy is in fact a veil to hide more subtle forms of authoritarianism.

Others have seen similarities between Grillo’s, or Casaleggio’s, attitude and Rousseau’s figure of the legislator. Even though, as admitted by Bertram (2010), “the figure of the legislator is a puzzle,” he is presented as being needed when citizens lack the moral qualities to produce good laws; he is a sort of *deus ex machina* that injects life to the new polity by putting it on the right moral tracks. Regardless of the questions that may legitimately arise around this figure, Federico Gonzato (2016) promptly equates Rousseau’s legislator to either Grillo or Casaleggio’s son, Davide. Again, Gonzato probably makes this association as Rousseau’s legislator was authorized to “persuade [citizens] by non-rational means to legislate in their own best interest”; this means, in other words, coercing individuals to understand and accept the general will, approach that Grillo often seems happy to apply to his fellow party members.

The left-wing critique attempts instead to assess whether certain elements of the Five Star can truly be traced back to Rousseau and, if so, whether the 5 Star are consistent with his thought.

Some years ago Casaleggio (Cecere 2013) explained how the Five Star’s support for direct democracy, and its rejection of representation, find their root in Rousseau’s Social Contract. While it is true that Rousseau had little sympathy for representative politics (*ibidem*), he did however concede that it may have been an appropriate tool for administration, at least sometimes. Rousseau’s claim is sound if we consider the reasoning that grounds it: the sovereign is a different entity from the government. The former refers to the population as a whole, who is entitled to debate, make and vote the laws of the state, and cannot be represented; the latter, government, is made up of a restricted number of people who issue decrees, not laws, on day-to-day administrative activities, and can indeed be represented. If we follow Bertram, we can imagine the “laws [...] conceived of as the people setting a constitutional framework for society, with the government decrees comprising the more normal business of legislation (Bertram 2010)” ; this picture is not so different from that of a contemporary representative democracy. Clearly, however, neither Casaleggio nor other members of the Movement have fully grasped what Rousseau meant to say.

Additionally, the Five Star Movement is known to support the imperative mandate for MPs and the popular referendum; these two are presented as quint-

essential elements of a more direct form of democracy. Whether it so or not, Rousseau would have hardly supported either practice. Actually, Rousseau (1762) maintained that government should be elected by *ad hoc* commissions, which shall in turn be elected by the population; both government and commissions can, however, be revoked anytime if the people deem it necessary. This is what probably led commentators to deem Rousseau to be committed to the imperative mandate, which is a mistake though. For the sake of clarity, imperative mandate means that a public official is elected under the condition that he will perform a certain action; in case he fails to do so, he has to leave office.

As we noted above, Rousseau distinguishes the sovereign/people from government: the latter has to run the administrative day-to-day activities and does not issue laws, but decrees. On the other hand, the sovereign designs the constitutional framework of society and issues laws, which must always be respected by government, because laws coming from the sovereign are nothing but the general will of the people, which its commissioners – government – cannot but respect. In other words, one thing is to say that government must always comply with the basic principles of society, or with its constitutional framework, or with the General Will; quite another is to say that Rousseau is committed to the imperative mandate, which he is not. Moreover, we must recall that the 5 Star support the imperative mandate for Parliamentary deputies, which represent the legislative body. The legislative, according to Rousseau, is the Sovereign, i.e. the people, and it cannot be represented, so: it does not really make sense to talk about imperative mandate for a non-representative body. Indeed, Rousseau said that *government* and *commissions* may be revoked, not the *legislative*. Additionally, Rousseau puts a lot of emphasis on the role of deliberation, which is crucial in order to reach the general will; it is thus hard to imagine him supporting the imperative mandate, because it challenges the idea that laws should be formed through a process of deliberation: if I have to vote something on pain of losing my job, there is little to deliberate on.

The stress Rousseau puts on deliberation, moreover, seems not to be consistent with support for referendums: referendums challenge deliberation, in that political agency is reduced to a yes/no vote. It is thus very unlikely that Rousseau would have favoured them. Recall that in Rousseau's view, it is the sovereign/people who make laws, not government; in our days, the only way through which the people can directly make laws is through a referendum, so this may have led to confusion. Rousseau merely meant to say that it is the people who issue laws, and not government, who issues decrees.

In sum, the Five Star are definitely populist, and their attitude reflects a good deal of Laclau's concepts, but this should not lead to see them as inspired by him.

In terms of ideological content, that of the Five Star Movement is rather vague and scarce. Even Rousseau, as Lorenzo Mosca (2016) argued, “is but a symbol”, used to ideally connect the Five Star with the philosopher of direct democracy. In addition, its political programme contains a number of peculiar stances: for instance, it supports a basic citizenship’s income, but has restrictive views on immigration. It is hard, therefore, to define the movement as either a left or right wing political entity. It would seem more appropriate to define them as a social populist group.

CONCLUDING REMARKS

We have seen that Laclau’s theory can accurately describe the strategy of each of these parties. As he had imagined, all parties have built part of their success on the widening of an “internal antagonistic frontier” that has formed in European societies, dividing the people from the élites. All parties, moreover, present themselves as an alternative to more traditional political groups: Syriza and Podemos are an alternative to both social democracy and the traditional left; the 5 Star presents itself as a political revolution, which has overcome the traditional political concepts of right and left, and will found a new society based on direct democracy. Finally, in terms of membership and political programme, all parties can be said to be a synthesis of various political demands and different social groups.

In general, the former political culture of party members has contributed heavily to the specific positions of each party on the left-right spectrum. Podemos, whose members came, in part, from Izquierda Anticapitalista and the 15M movement, maintains leftist-libertarian policies; Syriza, whose members come from the Kke but have been fed with Eurocommunism, seems to be more typically socialist. The 5 Star Movement, who do not refer to any preceding political culture, are harder to define, and for this reason should be viewed as a social populist group, whose positions are vague and whose cultural content is little defined.

Of these groups, only the former two present a connection with Laclau. In the case of Podemos, the connection is evident: Errejon has, in his doctoral thesis, taken the Bolivian Mas as an example of how effective Laclau’s doctrine is; Errejon is truly following Laclau’s concepts when elaborating Podemos’s political strategy, and Laclau’s figure as mentor can hardly be disputed. As for Syriza, the connection is lighter for, even though a few of its members have attended Essex University, there is no clear evidence that they intended to shape the party according to his ideas. Moreover, as we have seen, Syriza is has a more traditional party structure, as shown by its alliances and by the presence in its ranks of people coming from the

old establishment. The connection with Laclau however remains, as Syriza's attitude and strategy can be said to correspond to Laclau's design, and surely they do not deny their belonging to the radical left.

The Five Star, instead, present no real connection with either Laclau or Rousseau. True, some of their features can be said to recall Laclau's theory, and their constant reference to direct democracy may remind of Rousseau, but there is little more than this, insofar as theory is concerned.

To conclude, as we have seen in the introduction, Laclau's theory proves to be very useful in capturing the essential features of populist parties and movements, for it has singled out the vagueness of populism as its crucial element, and its adaptability to different sorts of contents and demands. However, it is precisely this vagueness that seems problematic: it helps a lot in the task of description, but it can accommodate any kind of content, from those of Podemos and Syriza, to Berlusconi's and Trump's. What remains to be seen, moreover, is whether populist discourse is effective *per se*, or whether it merely exploits periods of uncertainty and successfully rides the wave of widespread popular dissatisfaction.

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**The basis of liberal
democracy: Political not
moral? Some critical
remarks on Habermas's
Principle D***

Modern democracies live in the space of pluralism. For this reason, they cannot be committed to a strong moral conception of the person and society. They cannot take sides in the controversy between visions of the good life, ethical ideals, religions and so on. On the other hand, if they were totally independent of any moral commitment, they would be condemned to a crisis of legitimacy and generate a lack of motivation in their citizens. But every attempt to strengthen the ethical foundation of liberal democracy provokes tensions with pluralism. This dilemma appears inescapable. Theories of liberal democracy try to bolster a foundation which provides both the necessary openness of democracy to pluralism, and the adequate sources of legitimacy and motivation for the proper functioning of institutions.¹

The answer to this dilemma lies at the level of the principles grounding liberal democracy. Is it possible to define these principles so that they can justify legitimacy and political obligation, without being dependent on moral contents?

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¹ For this presentation of the problem, which reflects a widespread position, see for example Larimore (1996, 152-174); for an opposite view, which denies the necessity of an underlying consensus in democracy, and stresses the positivity of conflict and the ineradicability of antagonism, see Mouffe (2000).

We need then a theory which provides a source of legitimization for public institutions assuring their neutrality towards the plurality of visions of the good life, but also a universal principle of equal consideration of every member of the political association. Rawls's political liberalism and Habermas's deliberative democracy give two different answers to this question. The first is based on the concept of the moral person: the original position models the moral powers of persons in a situation of equality and rational individual freedom (Rawls 1999, ch. III; 2005, lectures II-III). The second is, on the contrary, based on practical discourse: principle D assures the equal consideration of every person who is directly affected by a norm of action (Habermas 1996, ch. III).² The rawlsian position accepts political institutions being grounded on some basic moral presuppositions: the political conception of the person implies the moral powers that we attribute to persons in order to consider them equal members of the association (Rawls 2005, 72-88, 102-110; Quong 2011). Habermas's theory, on the contrary, aims to provide a foundation *prior* to the distinction between morality and law: principle D is a principle of practical reason concerning every kind of norm of action, so it is indifferent to the moral or non moral content of norms. It is a normative principle of equal consideration of participants in a practical discourse, but it doesn't have any moral content, since it is grounded on the universal-pragmatic presuppositions of communication. It precedes the differentiation between moral and law, which is generated by the application of the moral point of view to D, on the one hand, and of the legal form to D, on the other (Habermas 1996, 104-122; Baynes 2015, ch. VI; Von Schomberg and Baynes 2002).

Habermas's proposal is the most ambitious and promising solution to the dilemma of pluralism, as formulated at the beginning of this analysis. It relies strongly on the *non-moral* character of principle D. But can this point be maintained without contradiction? I will try here to develop the thesis that it is impossible to conceive D as practical, normative and non-moral, as Habermas argues, because: (1) this interpretation generates contradictions within the theory itself; (2) D contains implicitly a reference to the moral point of view, otherwise it couldn't assure an equal consideration of participants; (3) it is probably impossible, in general, to treat persons as equal without treating them as *moral* persons.

² For a presentation and analisys of Principle D, see forward, section 2.

1.

The domains of moral and law are differentiated, according to Habermas, by some structural factors: morality concerns relations between human beings in general and deals with only deontological questions; law, on the contrary, concerns relations between members of a political association and deals not only with moral (deontological) matters, but also with pragmatic and ethical questions (Habermas 1996, 111-114, 153-158). Now, if juridical discourse is not founded on moral presuppositions, then the different types of questions that it covers – moral, pragmatic and ethical questions – are *all on the same level*. Each type of practical discourse operating inside the juridical sphere follows its own internal logic, which is that of *rightness* for moral discourses, *efficiency* for pragmatic discourses and *authenticity* for ethical discourses. But what happens if goals of efficiency or values of authenticity are in conflict with moral rightness? Habermas's answer is well-known: in these cases, right prevails over other principles and morality cannot be violated.

This idea is repeated several times: “[...] a legal order can be legitimate *only if it does not contradict basic moral principles*. In virtue of the legitimacy components of legal validity, positive law has *a reference to morality inscribed within it*³; “Valid legal norms indeed *harmonize with moral norms*”;⁴ “their [= of ethical political discourses] results must at least be *compatible with moral principles*”;⁵ “The law of a concrete legal community must, if it is to be legitimate, *at least be compatible with moral standards* that claim universal validity beyond the legal community”.⁶

However, these affirmations sound curious; they try to preserve the priority of morality over efficiency and authenticity, but they are in contradiction with the theory. In fact, if moral discourses have a prevalent position, then this means that even in the domain of law the principle of moral equality of persons has a prior

³ Habermas 1996, 106, italics are mine (“[...] eine Rechtsordnung kann nur legitim sein, wenn sie moralischen Grundsätzen nicht widerspricht. Dem positiven Recht bleibt, über die Legitimitätskomponente der Rechtsgeltung, ein Bezug zur Moral eingeschrieben”).

⁴ *Ibidem* 156, italics are mine (“Gültige Rechtsnormen stehen [...] mit moralischen Normen in Einklang”).

⁵ *Ibidem* 167, italics are mine (“[...] deren [= der ethisch-politischen Diskursen] Ergebnisse müssen mit moralischen Grundsätzen wenigstens kompatibel sein”).

⁶ *Ibidem* 282, italics are mine (“Das politisch gesetzte Recht einer konkreten Rechtsgemeinschaft muß, wenn es legitim sein soll, mindestens in Einklang stehen mit moralischen Grundsätzen, die auch über die Rechtsgemeinschaft hinaus allgemeine Geltung beanspruchen”).

and grounding role. If this principle, in the domain of law, were not moral, but only a normative principle of communication, then it would only mean that in a rational discourse on pragmatic or ethical matters all participants in the discussion must have free and equal access to communication. But if the discussion leads to an agreement which accepts moral inequalities? I will examine this case in the next section. Here, I just intend to underline that the affirmation of the priority of right over efficiency and authenticity is not coherent with the general principles of the theory. This incoherence is the symptom of a more profound difficulty in the theory. Principle D, which is the basis of the legitimacy of law, should be a practical principle *without* moral content. For this reason, it is not clear why political decisions and legal norms should always be compatible with moral norms, as these quotations say. The root of this contradiction is perhaps the fact that principle D is in effect not totally independent from the moral point of view, but *it includes it in itself*.

2.

Habermas argues that morality is generated by the connection of principle D with the moral point of view. The moral point of view is the perspective which imposes, in a practical discourse about moral norms, the equal consideration of interests and value choices of every person affected by the norm under examination. The moral point of view implies a universal perspective, extended to every person concerned without any other limitation, and implies the consideration of the moral powers of persons, because it takes into account their interests and value choices. In this regard, we can say that the moral point of view coincides with the rawlsian consideration of persons as *moral* persons. At this level, treating persons as equal means adopting a principle of equal respect for their moral dignity. In Habermas's theory, this is possible only in the domain of morality. In the domain of law, on the contrary, the participants in the political association are treated as equal insofar as they are members of the association (so the extension of the principle is limited) and subjects of rights (Habermas 1996, 108-114, 153-158). This differentiation is made possible by the common root of the two domains in principle D. This is a principle of practical discourse which doesn't yet contain either the moral point of view or the form of law. For our discussion, the first point is important. Is it really possible that principle D doesn't have in itself the moral point of view?

We have seen the contradictions in the theory. Let's try now to see what are the roots of these contradictions in the formulation of principle D itself.

Principle D is conceived as the general presupposition of democracy, as a presupposition external to it, which delimits the domain inside which it is possible to think of a political regime as a democratic regime. It guarantees to this regime the necessary openness to pluralism, because it puts normative and *not* moral conditions on citizens; on the other hand, it assures the respect of a principle of equal treatment of persons, a necessary condition to conceive a political regime as democratic. Principle D is presented by Habermas at the beginning of the system of rights (Habermas 1996, 107). It is enunciated, but not justified. However, through other texts and analysis, we can reconstruct the justification of D, that is provided by the principles of argumentation and discourse contained in the theory of communication. The most recent exposition of this justification is in the last episode of the long debate between Habermas and Apel (Habermas 2003, 77-97).

The validity of assertive, normative and expressive speech acts depends on the pragmatics of communication: each type of speech act is defined by the validity claims raised at the level of illocutionary forces; the validity claims specify in what sense a proposition is acceptable (as a description, an order, a prayer etc.); the enunciation is valid if the proposition is accepted in the sense of the illocutionary force, that is, if the validity claim raised by a speaker A is accepted by a speaker B in a communication which is free from any external or internal constraints. The internal logic of illocutionary forces shows that, according to Habermas, communication is possible only if certain idealized conditions are satisfied. In the discussion with Apel, he stresses four conditions:

- a) inclusivity: no one who could make a relevant contribution may be prevented from participating;
- b) equal distribution of communicative freedoms: everyone has an equal opportunity to make contributions;
- c) truthfulness: the participants must mean what they say; and
- d) absence of contingent external constraints or constraints inherent to the structure of communication (Habermas 2003, 89).

On this basis it is possible to formulate Principle D, which notoriously affirms:

Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses.⁷

⁷ Habermas 1996, 107 (“Gültig sind genau die Handlungsnormen, denen alle möglicherweise Betroffenen als Teilnehmer an rationalen Diskursen zustimmen könnten”).

The intrinsic sense of D is that norms of action are just if they are accepted in a rational discussion which respects the idealized conditions of communication cited above.

If principle D is justified in these terms, we can say that it imposes on participants in rational discourse an obligation of equal treatment, which is not moral, because it is only a set of inclusive conditions which ensures that each participant can have equal and free access to communication, and that each argument can be discussed without limitation except for the shared search for agreement or consensual understanding (*Einverständnis*). So these conditions are *normative* and *not moral*.

I see two difficulties in this theory.

1) The first problem is the acceptance by citizens. A principle which is the grounding presupposition of democracy should be, at least implicitly, accepted by all citizens as the shared presupposition of every discussion on politics and right. It should, as it were, set the boundaries outside which it is impossible to consider a regime democratic. It is a common normative content which all citizens must accept. This acceptance can be implicit, of course; it doesn't need a complete theoretical elaboration and a clear consciousness of it. But, in some way, citizens divided by comprehensive doctrines, religious commitments, conceptions of the good life and so on, must be united at least by a minimal normative conviction in virtue of which they treat themselves mutually as equal, even in discussions about very controversial matters. In this case, this shared normative ground should be provided by principle D.

But the acceptance of D in this sense is highly problematic. Certainly, we could think that all citizens agree on the principle that every topic must be discussed in a post-metaphysical and inclusive way: no content can be considered "sacred" and exempt from critique, and discussion must be open to the contribution of every citizen. But this principle is not so easily accepted by citizens who are divided by moral and religious doctrines, because it implies also the acceptance of a highly reflexive attitude towards every content of their own doctrines. For a citizen with a strong religious conscience, for instance, it might be difficult to accept that every moral content can be subjected to reflexion and criticism; it would be easier, for him, on the contrary, to accept a principle of equal treatment of moral persons, that can be justified for other reasons.⁸

Moreover, why should all citizens share principle D? If the answer is that they accept the theory of rational communication, we see that, of course, this is not possible: this theory is highly controversial, like every philosophical theory, and lies at the level of comprehensive doctrines. If this theory, in effect, tries to describe the

⁸ For this argument, see Larmore 1999, 139-167.

situation of argumentation conducted by citizens of a post-metaphysical society, it is contradicted by cases such as the one I just mentioned. If it says that we can accept the validity of normative enunciations only in virtue of the principles of the pragmatics of communication, it is contested at a philosophical level (Honneth and Joas, 2002; Wingert and Günther 2001; Cooke 1994). The simplest way to think that all citizens could accept D as a presupposition of democracy is to suppose that they would find it easier to agree about *procedural* principles of deliberation, then about the *outcomes* of deliberation. The problem is that these principles, in the case of Habermas's theory, are so idealized and counterfactual that they cannot be accepted without accepting all the theory of communication.⁹ So the risk is that citizens must accept the entire theory of rational communication in order to accept D.

2) Another difficulty is that the conditions imposed on communication, that must guarantee its rationality, are so strong that they implicitly refer to moral contents. In a strictly procedural theory, procedures specify the conditions under which a decision can be called "just". The criterion of justice, here, is not the confrontation of the outcome with a principle or an ideal of justice, but the confrontation of real procedures with the ideal of correct procedures. So, if procedures are correct, the outcome is just, whatever its content (Ceva 2009). Now, if an intuitive moral conscience sees a contradiction between the outcome of procedures and a vague idea of justice, this contradiction doesn't allow a correction of the outcome. In this reductionist version, proceduralism risks producing the effect "anything goes". But, if we introduce limitations and correctives to procedures, in order to eschew this effect, then we risk transforming a procedural theory into a substantial one (in other words: into an "outcome oriented" theory). I think that this is the case in Habermas's theory.

Let's take an example. Suppose that under conditions of correct deliberation all citizens agree on promoting a policy of a strong reduction in the salaries of factory workers, in order to assure the competitiveness of the country in global markets. In this case, we could say, in rawlsian terms, that efficiency prevails over justice; this policy wouldn't be justified by Rawls's theory.¹⁰ But could it be justified by Habermas's theory? In a first, limited sense, it could be. If the public deliberation which led to this conclusion respected all the conditions of ideal communication, then the outcome is just. But we see that there is a flagrant contradiction between this outcome and a vague intuition of justice according to which we can't

⁹ On the problem of Habermas's proceduralism, see Ottonelli 2012.

¹⁰ The lexical ordination of the principles of justice and the difference principle itself impose the priority of justice on efficiency: see Rawls 1999, ch. II.

accept accentuating income inequalities in order to face global competition. At this point, from the perspective of habermasian theory we would remark that perhaps the ideal conditions of communication were not so-well respected, in this deliberation; we could think so, because it is unlikely that factory workers would accept a big cut in salary as just. Since, according to Habermas's idea of counterfactual conditions, real communication is always related to these conditions, while at the same time always remaining ideal and not totally realized, it is always possible to raise this kind of objection to the validity of procedures.

But this kind of objection is very problematic for the status of a procedural theory. If the conditions of communication are always, to a certain degree, ideal, no real communication is, *per se*, just. So proceduralism is useless, because it doesn't give a stable standard to judge the empirical communications by. At the same time, this kind of objection transforms a procedural theory into a substantive ("outcome oriented") one. If, even in the presence of a formal (exterior) respect of procedure, it is possible to say that the ideal conditions are not satisfied, this means that we dispose of a vague criterion of justice, which is conceived of in terms of content. That is, we dispose of a substantive principle of justice, even if not specified and very vague, that allows us to judge *the outcome* of the procedures under examination. And, secondly, but most importantly for Habermas's construction, this principle is a *moral* content, it is an idea of moral person.

Let's look at our example again. Suppose that the majority of factory workers, in open and democratic processes of deliberation, accepts the big reduction in salaries and so, implicitly, the growth of profits and the increase in inequalities. They accept a situation of inequality, if judged in terms of moral equality, but they do that in a condition of equality, intended as equality of access to deliberation. In these terms, the habermasian non-moral foundation of public deliberation is respected. But, if we are dissatisfied with this outcome of the deliberation, what could we say from the point of view of this theory? We must remember that the four conditions of rational communication exposed by Habermas are aimed at excluding internal and external constraints to the free and equal participation in discourse. So, for example, the fourth condition is:

[...] absence of contingent external constraints or constraints inherent to the structure of communication: the yes/no positions of participants on criticizable validity claims should be motivated only by the power of cogent reasons to convince.¹¹

¹¹ Habermas 2003, 82 ("[...] Abwesenheit von kontingenten äußeren oder der Kommunikationsstruktur innewohnenden Zwängen: die Ja-/Nein-Stellungnahmen der Teilnehmer zu kritisierbaren Geltungsansprüchen dürfen nur durch die Überzeugungskraft einleuchtender Gründe motiviert sein").

In our example, we could say that the workers accept low salaries because of fear of dismissals, unemployment and so on. These could be described as external constraints to communication: the workers would judge as just high salaries, but accept low salaries because they are obliged by contingent factors, which operate on their consciences as external forces, not as convincing arguments. Moreover: if their conviction in favour of low salaries is produced not only by forces of market relations, but also by a campaign of opinion led by the media to create an ideological justification of this choice, the access to free communication for these workers is altered and so we can say that their opting for low salaries is not just for procedural reasons.

As I already said, this kind of analysis is a problem for the status of the theory as procedural. But here I would like to stress another point. What is at stake when we say that factory workers, in our example, don't have free access to communication because their deliberation is subjected to external and internal constraints? I think that here we are talking about the status of workers as free and equal *moral* persons. The limits that market relationships and power hegemonies in the media system impose on workers' choices are limits imposed on their equal freedom as moral subjects. In fact, what is impeded is their capacity to judge the situation freely, that is, their faculty to exercise the moral power of judgment rightly, in view of their rational project of life (in which is expressed their moral power to choose ends). If we don't accept a reductionist view of proceduralism, here, it is because from a formal point of view, even if the workers accept low salaries without any evident constraints and as a result of their evaluation of the situation, we see clearly that as moral persons they are treated unjustly, insofar as they must accept a disadvantaged situation in favour of persons who are more advantaged. This moral intuition is expressed by the fourth condition imposed by Habermas on communication: the participants to discussion must be, in a certain deflationary way, *autonomous persons*, who are not influenced by other more powerful persons.

But this kind of solution generates a sort of instability in standards of justice. The intuition that persons must be treated as equal insofar as they are moral persons, is here specified as a condition of access to communication; but since this condition is rarely satisfied, it is very difficult to accept the outcome of a decision as just by only referring to procedures. This result shows that in fact the standard of justice is prior to procedures and is applied to the outcomes themselves; so the theory is not procedural, and, most of all, is not independent from any moral content. The standard is in fact *an ideal of persons as autonomous subjects*, which is *implicitly moral*. So we can say that principle D has implicit moral

contents, namely the idea that the participants in communication must be treated as equal persons, and not only as equal participants in communication.

But, in a sense, the concept of person necessarily presupposes a moral consideration. This is the reason why we find in Habermas's theory the contradictions analyzed in the first section of this work. A strict application of principle D doesn't authorize us to fix a priority between the moral, the pragmatic and the ethical uses of practical reason. However, we are guided by the intuition of the priority of right, and so Habermas says that in the case of conflict the moral point of view prevails. This contradiction is rooted in the implicit moral character of principle D, which is not recognized by the theory.

3.

Is it possible, in general, to treat persons as equal without treating them as *moral* persons? Principle D aims at treating persons as equal from a perspective which is not moral, but practical, detached from moral questions. The difficulties in this theory suggest that probably the principle of equality applied to persons implies always a necessary dependence on the moral point of view.

Theories of equality distinguish themselves by the answer they give to the question: "equality of what?" (Sen 1992, ch. I). This question is raised at a "superficial" level. It concerns the kind of incomes, goods, resources, capacities and so on, which must be allocated in a distributive theory of equality. But the differences at this level depend on more profound distinctions concerning the conception of person. Persons can be conceived as holders of negative rights or valid titles; as potential containers of utilities; as bearers of fundamental interests, such as welfare, resources, capacities, or opportunity of welfare; and so on. In all these cases, the fundamental dimension which characterizes the theory concerns the level at which persons are equal. In fact, it is evident that treating persons *as equal* doesn't mean treating them *equally*. Treating persons equally would mean establishing a measure of arithmetical equal division of goods, resources, rights etc.; but nobody could accept that this kind of distribution as such is always *really* equal or fair. We all see that, in order to treat different persons as equal, it is often necessary to allocate goods or resources in non-equal parts. But at the same time, we don't think that, in these cases, the principle of equality is violated. The reason for this is that, in treating persons non-equally in some particular regards, we are trying to treat them *as equal moral persons*. That is, we are trying to treat them always *equally* in a moral dimension that we consider fundamental for the definition of a person.

I'll try to explain this with an example. From a strict kantian perspective, treating persons as equal means that we must respect them as rational subjects who are capable of moral autonomy. The capacity to know and follow the moral law is the dimension of the agent which is constitutive of her as a moral person, and so must always be respected in the same way if we want to treat persons as equal. In this dimension, equality as distribution in equal parts coincides with equality as treating persons as equal. We must respect everyone *in the same way* as moral agents capable of moral decisions. But this equality doesn't entail an equal treatment, for example, in income and property, as is well shown in Kant's theory.

Every theory of modern democracy relies on the idea that there is a deep dimension to the person which is the object of equal treatment. Only theories of other types of political regimes, such as traditional monarchies or aristocratic societies or theocracies, for example, don't depend on a conception of this type, because they assume that persons are, for fundamental moral reasons, unequal, and that this inequality of persons is one of the sources of the legitimacy of non-democratic power.

But insofar as political power is democratically legitimated, it implies the pre-supposition that citizens are conceived as equal persons. And so, it implies a radical dimension of persons which is the real object of the obligation to treat them as equal. Now, in kantian theory, that I mentioned only as an example, this dimension is moral, obviously, because of the general conception of rationality in Kant. But the hypothesis that I propose is that *every* democratic theory is grounded on a conception of moral equality, even when this equality is not interpreted as moral. Of course, this is only an hypothesis, which needs to be justified, by showing analytically this element in different theories (Piras 2008; 2010). Here, I would just like to argue in what sense Habermas's conception of equality between participants in a discourse is in fact a conception of moral equality.

The radical dimension which justifies equality, in Habermas, is the capacity to accept or reject reasons.¹² Rationality is interpreted as the capacity to give reasons, that is, to satisfy validity claims. The illocutionary forces of language constitute the universal rational dimension which lead to agreement (*Einverständnis*), and consequently rational shared meanings. This is the domain of humanity, in Habermas's theory. The sociolinguistic constitution of human beings differentiates them from other natural species. This constitution makes human beings not

¹² This thesis is, of course, highly controversial. For a critique, and a more convincing theory on the basis of equality, see Carter 2011, 538-571. See also Galeotti 2010.

only rational subjects, but also moral persons. In fact, the capacity to recognize moral norms as valid is entirely rooted in language interaction (Habermas 1984, ch. III and V). Habermas shows that, while assertive and expressive speech acts refer to a domain of objects constituted as “external” to the linguistic formulation (the external or the internal world), normative speech acts don’t refer to any “world” of this kind. Normativity is constituted by language itself. This is, in some sense, the essential intuition of Habermas’s reflexion since the first appearance of the thesis that the root of rational validity is in language. The conditions of validity of speech acts, according to Habermas’s interpretation, are pragmatic, because they are valid if they are acceptable in the sense of the illocutionary force. This “network” of intersubjective validity is produced by the mutual recognition of participants in interaction. By this recognition, every participant understands herself and other participants as subjects. It is well known that Habermas, in his critique of the philosophy of conscience, develops an intersubjective theory of subject: the self is constituted by the recognition given by others in linguistic communication. The pragmatic dimension of language is the source, also, of the constitution of the self. But then, how is it possible that the constraints immanent to the use of language don’t imply also a principle of *respect for moral persons*, in the course of interaction?

In the course of interaction, I meet someone who is entitled, like me, to raise validity claims; by this, I recognize that she/he is a subject like me, and that I am a subject with obligations towards her/him. By this recognition, I learn that we – I and you – are autonomous subjects, capable of taking Yes/No positions as regards the validity claims raised by others. In this interaction *a weak notion of moral autonomy* is implicit, because we can’t dismiss the validity claims of others without treating them unjustly as subjects; that is, *without disrespecting their nature as subjects who can decide autonomously*. But this qualification is moral. The capacity to judge by myself in a normative situation is a moral capacity: the power to judge according to a notion of the right. The inner connexion between normativity and interaction, which is the core of habermasian theory, can’t be thought of without accepting the consequence that in discourse participants already recognize themselves as moral persons. This immanent but not thematized morality of communication produces the contradictions of the theory, and the *de facto* moral and substantive character of some “procedural” idealized conditions of communication. For this reason we could say that principle D, which is derived from the pragmatics of communication, is a principle not only of practical rationality, but also of *moral equality*.

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Abstracts

Marco Biasi e Giovanni Tuzet

From Judge-made Law to Scholar-made Law? The strange case of Employment-at-Will in the US

Until 1877, when Horace Gray Wood's *A Treatise on the Law of Master and Servant* was published, the rule in matter of termination of the employment relationship in the US was dismissal with notice, pursuant to the British Common Law tradition. On the contrary, Wood "reckoned" that the US rule in relation thereto was Employment-at-Will, which allowed any of the parties to immediately terminate in any case the employment relationship. Notwithstanding the ungrounded nature of Wood's statement, since then US Courts started to adhere to Employment-at-Will, which became accordingly known as "Wood's rule". This constitutes a puzzle for legal theory, for the rule was "invented" but largely accepted by the legal community: it was, on the one hand, a false statement about the legal system but, on the other, a legal truth once accepted. In the present paper we try to make the puzzle explicit and to present a way-out of it, distinguishing a pre-Wood and a post-Wood context. However, such a way-out does not solve by itself the legitimization issue represented by the shift from the first to the second context.

Carlo Burelli

Towards a realistic conception of politics. Conflict, order and political realism

The question that I address in this paper is what makes a political theory realistic. Political realism's dissatisfaction with moralistic liberal theories cannot be reduced

to methodological worries of the sort that concern non-ideal theorists; rather, it involves a different theoretical background. In this paper, I unpack the specific conception of politics that distinguishes political realism from liberal moralism. Drawing on Waldron's account of the circumstances of politics, I argue that politics emerges from the interplay between conflict and order. I provide an analysis of conflict as distinct from pluralism and disagreement. By observing that the presence of conflict is salient only if a need for some cooperative order is presumed, I describe how such need is an essential element of politics. I conclude that while politically realistic theories properly acknowledge both conflict and order, other theories ignore, moralize, or abstract them away. 'Political idealism' fails to acknowledge conflict and focuses instead on disagreement or reasonable pluralism. Theories can also be flawed if they do not properly recognize the need for order: agonism is an example of this 'unrealistic realism'. Finally, there are theories that fail to fulfil both criteria: communitarianism is taken as an example of 'non-political idealism'.

Giulio Ferraresi

European populism in the 21st century: The ideological background of Syriza, Podemos and the 5 Star Movement

This article aims at singling out the cultural foundations of left-wing populist parties and movements in the contemporary European political arena. Specifically, the focus is on Podemos, Syriza and the 5 Star Movement, three of the most successful populist parties in the EU. It is generally argued that they belong to the radical left political culture, the boundaries of which are however blurred: defining what radical left means and whether such parties belong to it is one tasks of this paper. In addition, they have been linked to the ideas of Ernesto Laclau, the Argentinian post-marxist political theorist who elaborated on Gramsci's concept of hegemony, so as to propose an alternative to both orthodox Marxism and the New Left. The other goal of this work is to test whether any connection actually holds between their political strategy and Laclau's works.

Laclau's idea is that socialism should stop focusing exclusively on class struggle and the proletariat, in order to comprehend a wider set of social demands. These, in turn, will represent the claims of different segments of the population, each carrying a specific request; various claims and multiple social groups will then be united

under a key concept or principle, that will serve to define the party's identity and its enemy. Populism, in fact, must exploit – or contribute to create – an “internal antagonistic” frontier, which separates the people from ruling élites. The specific way that a “populist” movement will come to have significance will then depend on the circumstances, for populism is, in its essence, the true nature of the political: it expresses the vagueness of the political and societal reality of the moment, while at the same time taking simplification to the extreme – and simplification is the quintessence of political discourse.

All three parties – Syriza, Podemos and the 5 Star Movement – would appear to correspond to at least some of Laclau's ideas, independently of their intention to adhere to his doctrine or not. This is because Laclau's theory is, in its descriptive part, very effective in singling out the features that a populist movement should possess; among these, the lack of a precise ideological content is one of the most distinctive elements of populism. This way, regardless of a party's cultural content, it can be said to match Laclau's doctrine insofar as it displays certain external features.

Therefore, while all parties display some of such features, this does not necessarily imply that they were inspired by Laclau's works. The three parties are actually quite different from one another, and the 5 Star Movement is definitely the most peculiar: some have linked its interest for direct democracy to the works of Rousseau, who is however merely used for symbolic reasons. The point remains that these parties are rather different, even though they are all populist in a “laclauian” sense. Syriza and Podemos come from a radical left-wing political culture, while the 5 Star's alignment on the political spectrum is harder to define.

Mauro Piras

The basis of liberal democracy: Political not moral? Some critical remarks on Habermas's Principle D

The dilemma of liberal democracies in the domain of ethical and religious pluralism can be stated as follows: is it possible to define the principles grounding liberal democracy so that they can justify legitimacy and political obligation, without being dependent on particular moral contents?

Habermas's proposal of Principle D is the most ambitious and promising solution to this dilemma of pluralism. It relies strongly on the *non-moral* character of princi-

ple D. But can this point be maintained without contradiction? The article tries to develop the thesis that it is impossible to conceive D as practical, normative and non-moral, as Habermas argues, because: (1) this interpretation generates contradictions within the theory itself; (2) D contains implicitly a reference to the moral point of view, otherwise it couldn't assure an equal consideration of participants; (3) it is probably impossible, in general, to treat persons as equal without treating them as *moral* persons.

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