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# OPEN NEGOTIATION: THE CASE OF SAME-SEX MARRIAGE

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SAME-SEX MARRIAGE**

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

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## KEYWORDS

inclusion, negotiation of differences, public space,  
political deliberation, equal respect

## ABSTRACT

**OPEN NEGOTIATION: THE CASE OF SAME-SEX MARRIAGE**

This paper analyzes a very harsh case that is widely debated nowadays, namely the legal attempt to extend the right to marry to same-sex couples. This case is theoretically interesting, as it shows that even when there is a stable and shared agreement on a specific human right as it happens for the right to marry, still many public conflicts may arise with regard to the implementation of such right. The case of same-sex marriage involves a public conflict over the meaning of a specific concept, as “marriage”, that has been determined long time ago and that is now undergoing a process of re-conceptualization. A set of members of the society is against this process; some others believe that modifying this social standard, in order to make it more inclusive, is the only way for respecting the liberal ideal of equal respect for persons. I analyze the same-sex marriage case from two perspectives. (1) I expose different legal arguments that, following the “fundamental right” strategy, show that law should enforce rights, such as the right to same-sex marriage, whose enjoyment grants equal treatment before the law for every citizen. (2) I stress that it is also important to dwell on political arguments in favor of the extension to the right to marry to same-sex couples. These arguments acknowledge the fundamental role played by the symbolic aspects in the political deliberation over the same-sex marriage debate. In fact, same-sex couples’ request challenges the traditional view about family and their claim happens to be seen as running afoul of the morality of the majority. The main conclusion that I want to stress is that, in order to mitigate the public conflict around the same-sex case marriage, it is fundamental to booster a public deliberative procedure that involves a “concept negotiation” in which different alternatives are depicted and evaluated assessing their adherence to the normative evaluative standards that constitute the core values of liberal democratic societies. I will argue in favor of the practice of open negotiation, showing that both political institutions and the legal system can play a fundamental role in publicly recognizing the normative reasons that underpin the requests of extending the right to marry to same-sex couples. Provided that political institutions respect some normative constraints, it is possible to articulate an open negotiation between citizens and institutions in which even unreasonable citizens are included in the political processes; granting therefore a multilogical dialogue among citizens (horizontal relation) and among all citizens and institutions (vertical relation).

## OPEN NEGOTIATION: THE CASE OF SAME-SEX MARRIAGE

### 1. INTRODUCTION

In this paper my aim is to assess the validity of a general theory about the symbolic meaning of public space in multicultural societies and the possibility of establishing a political practice of deliberative negotiations in the light of the analysis of the legal attempt to extend the right to marry to same-sex couples. This case constitutes a paradigmatic example of the public conflict that can arise regarding the practical implementation or the public interpretation of a specific right, even when a stable and shared agreement on the specific notion of such right has been historically and contextually established. The case of same-sex marriage involves a public discussion over the meaning of a specific concept, as “marriage”, that has been determined long time ago and that is now undergoing a process of re-conceptualization. A set of members of the society is against this process, whereas another set of citizens believes that modifying the concept, in order to make it more inclusive, is the only way for respecting the liberal ideal of equal respect for persons.

One of goals of this paper consists in showing that, in order to address the normative relevance of the legal battle in favor of same-sex marriage, it is important to investigate the symbolic aspects of public space, as this battle for an extension of a specific right implies, more extensively, fighting for full citizenship, to wit, equal visibility and equal membership within the public space. Historically, public space, within liberal democracies, has been defined as a neutral and impartial space that should not be partisan and hostage of one party. However, the so called neutrality of the public space is actually infringed by the fact that the social meaning of political and moral concepts is almost always determined by the historically established majorities. This positional power in framing the social standards is not viewed as an unfair advantage by members of the majority. Rather, majorities accept minority’s claims with difficulty, since reframing the public space *via* re-interpretations of rights and by modifying political practices in order to make them more equal would involve an enlargement of the paradigm of “normality”. Even when the distribution of material goods is not at stake, the struggle for determining who has the power of revising the symbolic meaning of fundamental political concepts

could be extremely destabilizing. As a matter of fact, the public recognition of identity differences by the political institutions involves a re-articulation of the public space in a more equal and less sectarian space. The same-sex marriage case is a perfect example of such dynamic. Indeed, in the case that the same-sex marriage were accepted and legalized, such decision would involve a radical revision of the concept of “marriage” and, consequently, an enlargement of the set of alternatives that constitutes the “normality” among the social standards.

In the next sections, I introduce the debate over same-sex marriage and divide the discussion in two different perspectives. First of all, I expose different legal arguments that, following the **“fundamental right” strategy**, show that law should enforce rights, such as the right to same-sex marriage, whose enjoyment grants equal treatment before the law for every citizen (section 2.1). Secondly, I stress that it is also important to dwell on political arguments—regarding what political institutions ought to do—in favor of the *extension of marriage rights* to same-sex couples. These arguments acknowledge the fundamental role played by the **symbolic aspects** in the political deliberation over the same-sex marriage debate (section 2.2). Then, in section 3, I discuss in some length the theoretical outcomes of the more concrete analysis over the same-sex marriage case. The main conclusion that I want to stress is that, in order to mitigate the public conflict around the same-sex case marriage, it is fundamental to booster a public deliberative procedure that involves a **“concept negotiation”** in which different alternatives are depicted and evaluated assessing their adherence to the normative evaluative standards that constitute the core values of liberal democratic societies. In this regard, I argue in favor of the **practice of deliberative negotiation**, showing that both political institutions and the legal system can play a fundamental role in publicly recognizing the normative reasons that underpin the request of extending the right to marry to same-sex couples (section 4).

## 2. THE SAME-SEX MARRIAGE CASE

In the last two decades, the legal attempt to extend marriage rights to same-sex couples has provoked harsh public battles and legal debates. I take this case as emblematic for showing that the **majority discriminatory power** is one of the relevant features at stake when institutions try to extend a right to previously mis-recognized minorities. Furthermore, this case allows me to cast a light on different, but connected, aspects of the public practice of political deliberation and negotiation. First, such case could be investigated referring both to the legal and the political perspective, as an exhaustive analysis of the concept of right involves both these two aspects. Second, dealing with a concrete case helps me to show that even when people widely agree on the value of a specific right—in this spe-

cific instance, on the validity of the right to marry<sup>1</sup>—, still they often disagree on the correct interpretation of the concept they agree on (i.e. providing a unique and ultimate definition of “marriage”) and on the most correct procedure for implementing such right. Third, it is relevant to bring out that even when there are extremely sound reasons for supporting a revision of the actual practice, still political circumstances and lack of motivation in a majority of people to engage themselves in a public deliberation on such matter can lead to a refutation of revising the practice and therefore to restate the status quo.

### 2.1. Legal review: the “fundamental right” strategy

The same-sex marriage case can be faced from a strictly legal perspective. Such modality is expressly investigated by those authors that refer to the US legal system, as the US Constitution has been articulated so as to reflect and cope with the Tocqueville insight about the tyranny of the majority.<sup>2</sup> According to this line of argument, the relevant point from the legal perspective consists in establishing whether the extension of the right to marry involves a judicial review that can be determined by the Court regardless of the majority opinion. The underlying idea is that even when the majority is not ready for accepting a revision of the status quo that will favor a group that until now has suffered an unequal treatment, still the right choice is to modify the legal system in order to be loyal to the democratic principles of equality and fairness.<sup>3</sup> The strictly legal arguments in favor of the extension of the right to marry to the same-sex couples become compelling in case that **the right to marry is recognized as a fundamental right**. Indeed, once that such right has been defined as fundamental, then the legal issues can be reframed within the equal protection paradigm.<sup>4</sup> Thus, acknowledging the right to marry as a fundamental one—a decision that is line with the *Universal Declaration of Human Rights*—involves many legal outcomes. First of all, assuming this perspective avoids

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

<sup>2</sup> On the fundamental ideals around which the US Constitution has been written, see the *Federalist Papers* (Hamilton, Madison and Jay 1787-1788).

<sup>3</sup> The judicial review case regarding the extension of the right to marry to same-sex couples has started in USA with the *Baehr* case (1991-1999) decided by Hawaii Supreme Court. Then, two well-known and deeply studied legal cases have been the *Brause v. Bureau of Vital Statistics* (1998) addressed by Alaska Supreme Court and *Baker v. State of Vermont* (2000) decided by Vermont Supreme Court. More recently, in 2013, several jurisdictions enacted same-sex marriage and, in 2014, after an extremely long legal battle, same-sex marriages are recognized by the US federal government and are legal in 36 US states.

<sup>4</sup> The judicial review analysis about the case of same-sex marriage has been focused in the attempt to frame the issue at stake in term of the principle of equal protection that rules the allocation of a bundle of rights, instead of referring to the principle of substantive due process that is led by the ideal of establishing a zone of protected privacy. See Gerstmann 2004.



having the same-sex couples' requests labeled as "special rights request". Second, determining the right to marry as a fundamental constrains the Court to assess it through a more compelling judicial standard.<sup>5</sup> Third, referring to this right as fundamental allows to frame the same-sex couples' claim in term of due equality instead of protection of difference.<sup>6</sup>

Such approach maintains that the right to marry is such a fundamental right that the principle of equality should be respected in spite of what the majority of people in the country might think about the case. This argument hinges on the normative idea that legal institutions might sometimes limit the political bargains within a democratic arena, in case that an infringement of fundamental rights might be the outcome of such political process. According to this view, once that the democratic principle of equality and fairness has been established by a constitution, the Court duty is to enforce rights even when they are unpopular. Naturally, limits to the Court powers should be established and determined in the light of the prominence of the rights at stake. There are cases in which the battle about the possible extension of a right to new groups or according to new circumstances can be determined by the public deliberation and by the process of making decisions through the political debate and the vote. Other times, instead, the rights at stake are so fundamental, that it is possible to prompt for judicial decisions that challenge the traditional conception of the public space defended by the majority.

Civil rights, legal equality, and human dignity cannot be legitimately revoked by the majority; they exist as inalienable human rights not subjected to community approval. (Snyder 2006, 7)

Introducing legal arguments in favor of the extension of the right to marry to same-sex couples helps me showing that often, when the re-determination of social standards is at stake, judicial decisions are not enough to solve a political issue if this decision is not supported as well by a public discussion involving public opinion and institutions.<sup>7</sup> Even though there are sound legal reasons,

<sup>5</sup> Gerstmann (2004, ch. 2, 14-47, emphasis added) exposes the three different standards of scrutiny that US Supreme Court should meet in different case. "In attempting to protect legal equality, federal courts have focused much of their energy in dividing people into 'classes' that receive different levels of constitutional protection against governmental discrimination. 'Suspected Classes' are protected by **strict scrutiny**, 'quasi-suspected classes' are protected by **intermediate scrutiny**, and others, such as gays and lesbian are protected by the lowest level of scrutiny" (i.e. **rational basis scrutiny**). On these lines, Kory Schaff (2004) provides arguments for sustaining that sexual orientation is a category that meets the criteria of suspect classification that the Court has established in order to determine which standards of scrutiny should be employed in the different cases.

<sup>6</sup> Gerstmann (2004, 141) provides us with a set of criteria for determining if a right is a fundamental one: "to determine whether a right is fundamental, the Court should consider whether it squares with precedent; whether it is inherently connected to other rights, whether government exercises monopoly power over it; and whether it runs afoul of the political question doctrine".

<sup>7</sup> For a specific analysis on the impact of public opinion on the political process concerning states recognizing same-sex marriage, see Lewis and Seong Soo Oh (2008) and Lewis and Gossett (2008).

appealing to the principle of genuine legal equality,<sup>8</sup> according to which it is correct to extend the right to marry to same-sex couples,<sup>9</sup> still legal decisions have been appealed every time, imposing a never-ending litigation.<sup>10</sup> It is clear that legal litigation can push the social movement forward, challenging majority traditions and benefits through the legal process. I think that this “destabilizing”—for established social and political categories—role played by legal litigation is extremely important and should be highlighted. Yet, as theorists, we cannot overlook the fact that the Court has a weak implementation capacity, especially for those decisions that run afoul of majority opinion. The Court should rule in the light of what is required by the law. Still, public opinion cannot be dismissed as simply biased and irrelevant. Rather, as I will argue in the next sections, it is important to promote a fruitful exchange of reasons and explanations among Courts, politicians and citizens; as both citizens and political organisms should be placed in the position of understanding the rationale of Court decisions, averting therefore to suffer them as a paternalistic imposition.

Legal litigation plays a fundamental role in a wider process for granting equality and full citizenship to any member of a society. Yet, to be actually effective, the judicial review process should be coupled with dialogic procedures that, involving both citizens and political institutions, are designed to support social transformations and mitigate political conflicts. The efficacy, for social inclusion and equality, of legal battles depends on social, cultural and institutional circumstances as well.<sup>11</sup> For example, it has been observed that the political system, being often prone to majority desiderata, can push for backlash actions<sup>12</sup> against the Court

<sup>8</sup> In the case of US Constitution this legal argument grounded in the protection of equality hinges on the Fourteenth Amendment that states the Equal Protection Clause. Regarding this feature of the Fourteenth Amendment, Cass Sunstein (1994, 272-273) claims that it provides us with an **anticaste principle**: “The motivating idea behind an anticaste principle, broadly speaking Rawlsian in character, is that without very good reasons, social and legal structures ought not to turn differences that are irrelevant from the moral point of view into social disadvantages. They certainly should not be permitted to do so if the disadvantage is systemic. A difference is morally irrelevant if it has no relationship to individual entitlement or desert. Race and sex are certainly a morally irrelevant characteristic in this sense”.

<sup>9</sup> According to Snyder (2006), the extension of the civil right to marry to everybody is a matter of principle, as marriage is a civil right that must be extended to all people.

<sup>10</sup> See for example the legal battle that arises in California after the California Supreme Court has ruled in the *In re Marriage Cases* (2008) that same-sex couples have a constitutional right to marry. In order to contrast such decision, a ballot propositions was presented, the Proposition 8, which states that “only marriage between a man and a woman is valid or recognized in California”. Such proposition was voted by the majority of California’s citizens in the November 2008 state elections. Then, in 2013 the US Supreme Court ruled against the legal validity of the Proposition 8, overturning the federal DOMA statute as well.

<sup>11</sup> For an exhaustive analysis on the value of legal litigation as booster for social and political progresses, see Dupuis (2002) and Goldberg-Hiller (2002).

<sup>12</sup> As good example of backlash see “The Defence of Marriage Act” (DOMA), a federal law enacted on 1996 and voted by the two Houses of Congress by a large majority and that denied federal benefits to marriage people of the same-sex, as after such act no states or politi-

decisions, as political institutions and politicians are pushed by majority to interpret Court decisions as threats against the status quo and the traditional “meaning” of relevant political concepts.<sup>13</sup>

## 2.2. *The political dimension of “marriage”*

I have claimed that there are extremely compelling legal reasons for supporting the request of extending marriage rights to same-sex couples. The legal line of argument is fundamental, as the political meaning of rights hinges on a legal account of them. Still, one of the goals of this paper is to show that it is also important to dwell on the political arguments—regarding what political institutions ought to do—in favor of extending marriage rights to same-sex couples.<sup>14</sup> Marriage has a social meaning, and it is especially the revision of established social standards that usually troubles the majority of citizens. Beyond the legal act of ruling on a specific case, when a minority claims for an extension of a right in order to be allowed to enjoy it or to obtain protection from the state against majority unfair protection of the status quo, the fundamental issue at stake is the fight for reframing the social meaning of fundamental moral and political concepts. According to this line of argument, the strictly legal analysis of these hard cases is not enough, as an exhaustive account of these public issues should involve an analysis of the symbolic and indirect aspects as well.

Same-sex marriage case perfectly expresses the fundamental role played by the **symbolic aspects** of public space in the political deliberation over a public matter. In fact, same-sex couples’ request challenges the traditional view on family and some members of the majority believe that, in the case that their claim were accepted, then the public meaning of marriage would drastically—and illegitimately—be modified. This modification of traditional interpretations of publicly relevant concepts or practices is a fundamental political issue as it involves an enlargement of the number of the members of the *polis* that obtain a symbolic recognition as full citizens. Majority members interpret such kind of claims purported by a minority, as the same-sex couples’ request, as unjustified aggressions against the public space itself; without ever noticing (or perhaps refusing to note) that the status quo is already culturally mediated by ste-

cal subdivision were obliged to recognize a same-sex marriage from another state. On June 26<sup>th</sup> 2013 the US Supreme Court has overturned the federal DOMA statute as unconstitutional.

<sup>13</sup> Cass Sunstein (1995 and 1996) is aware of such difficulties in implementing Court decisions. For this reasons, he argues in favor of judicial minimalism; an approach of legal review that focuses more on determining the single case at stake, instead of making decisions with broad effect on a wide range of cases. Judicial minimalism claims that it is fundamental to leave space to public discussion and that, therefore, Court should leave as much as possible as undecided, determining what is right but not also establishing why is right.

<sup>14</sup> Both Wellington (1995) and Wedgwood (1999) introduce a normative defense of same-sex couples’ requests along the lines of the necessity, for liberal democratic institutions, to abide by the political principle of equality and therefore to legalize same-sex marriages. “So the law excluding same-sex couples from marriage are, *prima facie*, a violation of the principle of equality, and hence an unjust form of discrimination. So long as there is not a sufficient evidence that allowing same-sex marriages would have uncontroversially harmful effects, the refusal to allow such marriages must be presumed to be seriously unjust” (Wedgwood 1999, 241).

reotypes regarding who belongs to the *polis* by full right and who, instead, is not directly entitled to be a full member of it. Since members of the majority usually fail to recognize the **double standards** tendencies provoked by the symbolic appraisal of the public space, they often interpret minorities' requests as unjustified pressures for obtaining special rights or undue privileges. Hence, a fundamental aspect for solving such dynamics is to find the correct way for showing to the members of the majority, who feel that they are members of the *polis* by default, that there are both political and legal good reasons in favor of reframing public space in a way that offsets the disadvantages historically suffered by minorities. In order to re-shape the symbolic political arena in a more inclusive and fair public space, it is necessary to establish a correct dialogic procedure among citizens, both members of the majority and of the minorities, and political and legal institutions. Such dialogic procedure should engage every citizen, respecting the intrinsic differences, but treating everybody as *first class* citizen. The political deliberation over a case such as the same-sex marriage, for example, should be structured to bring out the intrinsic normative reasons that back up the legal and political attempts to establish corrective procedures in order to mitigate the control of the public standards by the majority.

Analyzing the role played by the symbolic aspects within this legal debate over the possibility of extending the right to marry to same-sex couples is fundamental for understanding that the legal battle in favor of same-sex marriage implies fighting for full citizenship, namely equal visibility and equal membership within the public space of any member of the society. At this point, it should be clear that the legitimation of same-sex couples' request does not solely stems from legal reasons (e.g. the appeal to the Fourteenth Amendment for US legal system), as it hinges on extremely sound political reasons as well. The democratic ideal of full citizenship reflects the attempt of meeting the standard of respecting human rights as concrete instantiation of the moral principle of human dignity.<sup>15</sup> In order for human dignity to be respected, every person should be included within the public space as a full member. Majority's arguments against the extension of the right to marry stress the fact that, in contemporary democracies, same-sex couples are free to practice, even publicly, their favorite form of intimacy and that therefore they are not discriminated. However, as Galeotti (2008) has exhaustively pointed out in a paper on this issue, full membership does not simply require to be "tolerated" within the public space as second-class citizens. Rather, full membership calls for a full enjoyment of civil rights as long as such enjoyment has been historically granted to the majority of citizen by default. The misrecognition of same-sex couples as full members of the public space is an outcome of the long history of public invisibility that homosexuals have suffered and of the attempt, by the majority, to maintain the control over the positional power for determining the public standards of "normality" that articulate the public arena. It follows, from that, that the extension of marriage rights to same-sex couples would not constitute an unnecessary

<sup>15</sup> "The idea of human dignity is the conceptual hinge that connects the *morality* of equal respect for everyone with positive *law* and democratic lawmaking in such a way that their interplay could give rise to a political order founded upon human rights" (Habermas 2010, 469, italics in the original). See also Donnelly 2003 and Valentini 2012.

modification of an established practice in order to favor a minority that is already tolerated and whose equal dignity is recognized in the public space. Rather, extending the right to marriage to same-sex couples is the only correct way for granting them the **full enjoyment of the status of equal citizens**. Indeed, respecting human dignity all the way down does not simply mean that we have to look for private respectful relations among human beings; rather, it necessarily requires, as an enabling condition, a normatively correct political and institutional framework. Consequently, the determination of the costs of access to the public space as “full citizen” is a fundamental aspect of the attempt to respect human dignity. If for some members of the society the access to the public space is more costly, as they have to hide some of their peculiar characteristics, or to renounce to the full enjoyment of some rights, then the ideal of equal recognition of human dignity is dismissed. “Majority cannot take away the liberty for others to marry while retaining it for themselves” (Gerstmann 2004, 172).

Once it has been established that the legal extension of the right to marry to same-sex couples will employ as well a symbolic acknowledgment of the members of a minority as full member of the *polis*, it follows that addressing the same-sex marriage case through the second-best option of providing a system of legal recognition of partnerships outside marriage is not enough.<sup>16</sup> Even though the legal partnership or civil unions institution would provide the same-sex couples with the same amount of rights and legal advantages granted by marriage, still this solution would completely dismiss the symbolic aspects of the issue. Such solution would eschew any re-interpretation of the concept of marriage, reaffirming the status quo and the traditional morality as an undisputable feature of our societies. Furthermore, the majority would preserve its positional power and same-sex couples would have to accept legal partnership as the “best” solution, as they cannot dare to ask for a full equality that implies—as necessary step—the recognition of the legitimacy of same-sex couples marriage.<sup>17</sup> Once that the fundamental role played by symbolic recognition for achieving equality in liberal societies has been made explicit, it becomes clear that the legitimation of same-sex marriage is the only fair way for granting equal opportunity to

<sup>16</sup> Some theorists claim in favor of granting to same-sex couples the right to the legal recognition of partnership instead that the right to marry in the light of a **“slippery slope” argument**. According to this argument, the legalization of same-sex marriage will be the first step of a process that will afterwards lead to allow polygamy, incestuous marriages and child marriages as well. Analyzing this issue would lead me too far away from the purposes of this paper. For a deep analysis of this issue, see Eskridge 1996 and March 2010.

<sup>17</sup> “None of the options currently available to same-sex couples—‘commitment ceremonies’ with sympathetic clergymen, private contracts, or ‘registered domestic partnership’—has a social meaning of this kind; none of these options is familiar and widely understood as marriage. As a result, these options will be less effective than marriage for couples who want to affirm their commitment in a way that community will readily understand. [...] In effect, they need to be able to *say that they are married*. Suppose that same-sex unions had a different name—as it might be, ‘quarriage’. There will presumably be many fewer same-sex quarriages than opposite-sex marriages; so the term ‘quarriage’ would be much less familiar and widely understood than the term ‘marriage’, and for this reason ‘quarriage’ would be less effective at fulfilling this serious desire than marriage” (Wedgwood 1999, 241, italics in the original).

same-sex couples to pursue their ideal of the good life and, meanwhile, to become full members of the society sharing with the established majority the public space as fellow—and equal—citizens.

### 3. JUSTICE-ORIENTED REASONS WITHIN A JUSTIFICATORY FRAMEWORK

In the previous section, I investigated the possibility of justifying the extension of the right to marry to same-sex couples following two specific lines of argument. The first hinges on the legal practice of judicial review, while the second derives its validity from the reference to the democratic ideal of fairness and recognition of equal dignity of human beings. Even though I believe that there are sound reasons for being persuaded by the validity of such arguments, it is relevant to recognize that the extension of marriage rights to same-sex couples is still extremely criticized and the countries that are trying to support such extension are facing a very harsh public debate on the matter.<sup>18</sup> Therefore, in the second part of this paper my goal is to connect the specific issue of the legalization of same-sex marriages with a more general topic, namely the discussion regarding the public practice of political deliberation. The main conclusion that I want to stress is that, in order to mitigate the public conflict around the same-sex marriage case, it is fundamental to booster a public deliberative procedure that involves a negotiation over the reconceptualization of the meaning of “marriage” in order to make it a more inclusive concept. I refer to this practice as a “**concept negotiation**”<sup>19</sup> in which different alternatives are depicted and evaluated assessing their adherence to a loose background framework constituted by some organizing ideas that can be described as the core values of liberal democratic. I will analyze in some length such negotiation practice in this section. In order to bring to foreground the theoretical and practical relevance of such practice in addressing the issue at stake in this paper, I now want to briefly recapitulate the most common arguments that are usually posed against the extension of the right to marry to same-sex couples.<sup>20</sup>

a. The first argument against the extension of the right to marry to same-sex couples hinges on the claim that the concept of marriage has a definitive and not

<sup>18</sup> While I am working on this case, both France and United Kingdom governments are trying to pass a law for extending the right to marry to same-sex couples. Especially in France, such legal attempt has provoked harsh protests and mass demonstrations by the opponents to the extension of marriage rights to same-sex couples.

<sup>19</sup> I use here a concept introduced by Roberto Casati in his attempt to describe the first role played by philosophy into the society, namely that of producing and ruling the historic and contextual procedure of “concept negotiation”. “My position with regard to the general role of philosophy is that philosophy, as a theory, does not look for the truth of the world directly; rather explores the various alternatives that allow us to reframe the world in ways that are fruitful from the negotiation perspective” (Casati 2011, 158; translation from Italian by the author).

<sup>20</sup> For an extensive analysis of these arguments, see Eskridge (1996), Gerstmann (2004) and Galeotti (2008).

negotiable definition. According to this argument, it is logically inappropriate to ask for an extension of the right to marry to same-sex couples as, by definition, marriage is the legal and symbolic recognition of a long-term union between a man and a woman. From a descriptive fact—as the historical fact that marriage has been defined in a specific way—it follows a normative conclusion about what should be legally authorized or not. Naturally, this argument results extremely appealing for the members of the majority, since it refers to the supposedly superiority of majority’s standards in determining the right interpretation of fundamental political concepts. However, I have already sustained that there are sound reasons, that appeal to the symbolic meaning of public space, according to which it is against the liberal and democratic ideal of recognition of equal human dignity to allow the majority to determine who are first-order citizens referring solely to historically established standards, since such standards reflect the positional power enjoyed by the majority itself. In this regard, it is important to recall, along with Snyder (2006, 100), that “tradition does not justify continued injustice”.

b. A second argument, on the same line of the previous one, refers to the religious roots of marriage, therefore claiming that same-sex marriage should not be an option at stake, since it is against the natural and intrinsic meaning of marriage as established by the dominant morality. This kind of argument can be faced referring to the fact that legitimated political decisions—and interpretations of fundamental social and political concepts—cannot refer to partisan moral doctrines or traditions, even when such doctrines or traditions were backed up by the majority of citizens (see Rawls 1993).

c. A further objection against same-sex marriage refers to the idea that extending such right to same-sex couples will involve a stamp-of-approval toward the homosexual practice by the government. As it should be clear by now, such argument is hostage of a double standards, as it implies that since heterosexual marriages are socially acceptable by default, then the legal recognitions of such unions does not involves any positive approval of such practice, while recognizing same-sex marriage will involve something more, a non-neutral moral approval of such unions. Notwithstanding the impression that this argument can make on some members of the society, same-sex couples are not claiming for special rights, rather they are asking for the equal opportunity to profit from legal and economic benefits – and consequently to enjoy the symbolic public space as first-class citizens – that derive from marriage as much as it happens for opposite-sex couples (see Schaff 2004).

d. Another argument against the legitimation of same-sex marriages describes the right to marry as an instrumental right focused primarily on the procreation. According to this line of argument, procreation is a fundamental definitory feature of marriage legal practice. Again, this argument involves a double standard, as many opposite-sex couples get married and do not have children. Think, for example, of opposite-sex couples that get married at an old age or people that suffer from fertility problems. Since opposite-sex couples do not need either to show the ability

or the intention to procreate in order to get married, it does not seem right to describe procreation as a *conditio sine qua non* for justifying the legal right to marry when at stake are the right to marry of same-sex couples.

e. Finally, a less compelling argument involves a strictly pragmatic analysis according to which same-sex couples movements are wrong in working on a target too far. Following this pragmatic analysis, some people propose that same-sex couples work for obtaining the recognition of same-sex civil unions, averting the more complicated issue—and extremely more destabilizing for the majority’s sectarian standards—of modifying the marriage practice.<sup>21</sup> I agree that from a strictly pragmatic perspective this strategy might be more efficient. Yet, I believe that there are extremely compelling reasons of justice for refuting such argument. Indeed, civil unions would be shaped in the light of the legal benefits that married couples enjoy from the legal institution of marriage. If this is the case, and at the end civil union will end for being a “civil copy” of the marriage, why should same-sex couples just ask for the recognition of their union as a partnership rather than as a legal marriage? I claim that it is not enough to focus on the actual chances someone has to win a legal battle through a specific political strategy. Rather, it is important to focus on the underpinning reasons and justifications that should be referred to in order to steer the legal decision. Along this line, I believe that there are important normative reasons against the pragmatically “less ambitious” solution of looking for the recognition of civil unions, instead of same-sex marriage. Accepting the civil union solution will have a symbolic side-effect, namely allows the majority to restate the fact that homosexuality is not part of the set of normal alternatives within the public space.

It is not hard to see that the main arguments moved against the request of extension of marriage rights to same-sex couples stem from a difficulty of the members of the majority to recognize the reasons of justice that underpins same-sex couples’ request. Therefore, my aim in this second part of the paper is to show that a public deliberative process developed in the right way can help in stress the normative reasons that underlie this political claim. In order to approach this debate in a fruitful way, it is important to keep in mind that political debates and conflicts can be assessed following two distinct, though complementary, perspectives: a normative analysis that describes and frames the issue at stake in the light of the normative ideals and evaluative standards around which liberal democracies have been established and legitimated; and a more dialogical and contextual perspective that focuses on the actual practice of negotiation that involves political institutions and citizens. Whether public actions proceed top-down (decisions by institutions) or bottom up (*via* citizens’ requests), it is important to draw a line

<sup>21</sup> Another extremely important issue connected to this one is the fact that the legal recognition of same-sex couples marriage would involve extending to same-sex couples the right of adoption. I do not want to discuss this issue here, as it will lead us too far. However, for an analysis of this issue developed on the same line I would support, see Galeotti 2008.



between these two perspectives. As a matter of fact, even when political discussions are conducted correctly, **according to justice-oriented reasons**, the outcomes are not always entirely satisfactory (and vice versa). In this regard, it is important to distinguish between the potential outcomes of a deliberation and the reasons that underlie it. What should be considered as most relevant are precisely the underpinning reasons of justice that drives institutions and citizens in the attempt to reframe the political domain in a more equal and fair public space.

The relevant justice-driven reasons, for being legitimate, should be derived from the normative framework that underpins the Constitutions of liberal democracies. As a matter of fact, western liberal democracies, even though not perfect, as many flaws and inconsistencies are always present, have already been established and people stably live and exchange reasons among each other within this institutional context. Conflicts, which arise in contemporary liberal democracies, usually involve new interpretations or modification of principles or rules of law already established by Constitutions and system of rights. In my opinion, it is important to stress the fact that citizens, that already live their lives in a democratic society, are compelled to recognize the validity of a set of principles and regulative ideals in order to consistently enjoy the right to be a citizen. I believe that the actual dialogic practice that incurs among citizens and political institutions, if conducted in the right way, could result in demonstrating that the very same citizens, through their claims, are expressing adherence to a certain loose normative framework that is working on the background. That is, the analysis of specific claims by minorities toward political institutions already reflects the fact that the minority's members might be carriers of certain ideals about political society itself. If one believes of being entitled (by right) to fight for the recognition of her identity, not only in terms of a public acquiescence for private individualistic differences, but *via* a public re-framing of the public space, then it means that individuals who raise such claims believe that democratic societies have particular obligations towards their citizens. In this regard, if a citizen struggles for the public recognition of her identity (or for a specific need) calling for the normative fact that such recognition is "due" and publicly justifiable within a democratic context, then the same citizen has demonstrated that she agrees (at least implicitly) on a loose normative framework that informs her public request.<sup>22</sup> According to this account, it is the very same dynamic of public discussion, if conducted in the right way, to bind citizens to respect some evaluative standards. As a matter of fact, when citizens directly claims for an action from the political institution for amending a previous situation of injustice, this political claim reflects the confidence of getting a positive answer; essentially they are declaring that they believe that democratic political institutions can properly address their requests. Consequently, the normative principles underlying democratic institutions are recognized, at least implicitly, by those advancing

<sup>22</sup> "The *shared belief* that is produced, or even just reinforced, between speaker and hearer by the intersubjective recognition of validity claim raised in a speech act implies a tacit acceptance of obligations relevant for action; to this extent, such acceptance creates a new social facts" (Habermas 1996, 147, italics in the original).

claims for amending previous injustice and making the public space a more inclusive locus.<sup>23</sup>

In order to grant the possibility of developing sound political deliberations over conflictual cases, it is fundamental that citizens agree on a loose general normative framework regarding some organizing ideas around which the notion of a liberal democracy has been built and legitimized.<sup>24</sup> Such organizing ideas are laid out starting from a specific context—as they have been developed, although imperfectly, within the historical process that has originated the first liberal democracies. These organizing ideas constitute a loose normative framework<sup>25</sup> that, in my opinion, can be fruitfully used for regulating the public deliberation over political debates. This theoretical and normative-laden framework is necessarily loose for at least two reasons. On the one hand, this framework is loose as it derives, partly, from a contingent historical process. In this regard, the looseness of the framework is a necessary condition, as contextual revisions are always possible, in the light of the fact that the agreement over such organizing ideas should be assessed against the actual constituency and not an idealized one. On the other hand, the loose framework is extremely useful for pragmatic reasons as well, since, for facing disagreement, it is relevant to deal with a theoretical framework that, although normative, is still flexible and allows work in progress solutions. Naturally, the agreement on such organizing ideas does not provide an ultimate solution to the conflicts or a panacea against any political discussion where citizens do not meet the liberal standards of mutual respect and reciprocity. Rather, this is a shared agreement on a loose framework and therefore actual disagreement will still arise with regard to the concrete interpretation of such organizing ideas. Yet, this agreement over organizing ideas might play an extremely relevant role, for without achieving a minimal agreement on some normative standards and general procedural principles, it is hard to believe that a sound political deliberative practice can be established in a stable way among citizens and institutions.

Recognizing a normative validity attached to some organizing ideas grants the possibility of establishing a public **justificatory framework**. The idea is that actual

<sup>23</sup> For a broad analysis of these issues, see Galeotti 2002 and 2010.

<sup>24</sup> The first author that refers to “fundamental organizing idea” is Rawls in *Political Liberalism*, where he states: “This central organizing idea is developed together with two companion fundamental ideas: one is *the* idea of citizens (those engaged in cooperation) as free and equal persons; the other is the idea of a well-ordered society as a society effectively regulated by a political conception of justice” (Rawls 1993, 14). I use this terminology in a more loose way, to wit, without necessarily having to refer to the complicated Rawlsian justificatory framework. In this paper I refer to organizing ideas as the normative tenets around which the liberal democracies have been historically constituted. The normative relevance of such ideas, that I do not define as ideals to avert a more demanding terminology, stems from the contextual and historical value that it usually attached to them when people discuss over political matters in a democratic and liberal environment.

<sup>25</sup> Rawls talks about a “loose framework for deliberation” in his *Dewey Lectures* (Rawls 1980, 560).

citizens, when called to deliberate on political matters, may at least be able to converge on an antecedent meta-agreement over the correct evaluative framework for assessing the validity of every proposal introduced into the deliberation. The justificatory framework would work as a “filter” that grants that any argument introduced is at least mutually acceptable. According to this line of argument, the only way for dealing with deep disagreement, and meanwhile providing a normative framework for public reasoning, is to translate a justificatory problem in a more tractable deliberative one. Indeed, if citizens are able to accept as valid a loose justificatory framework, then political deliberation will have to cope with a justificatory disagreement rather than a foundational one. **Justificatory disagreement** occurs when those who disagree between each other still share some premises; hence, the disagreement lies in different views about what these premises entail. By contrast, disagreement is foundational when it stems from a contrast on basic convictions, and therefore it implies that it is very unlikely that a justice-oriented and efficient deliberation can be put into practice. Think, for example, of a public discussion over the legitimacy of democracy as the right political system for aggregating different preferences where someone holding an egalitarian view of society confronts another holding a hierarchical view. This kind of disagreement is almost impossible to be reconciled, as the people involved would almost certainly disagree about the epistemic and normative standards by which their dispute might be solved.<sup>26</sup>

Even without hoping to reach—at the nonideal level of actual democracies<sup>27</sup>—the ideal conditions depicted by deliberative democracy models, it is however important to assess the existence of shared evaluative standards that can be employed both by the citizens and by political institutions. According to this model, **legal review** can be interpreted as a normative view for promoting a re-interpretation of the organizing ideas in order to cope with contextual modifications of political circumstances and new claims by the ongoing political society.<sup>28</sup> Since such organizing ideas establish a loose normative framework, they should be interpreted in order to be applied to concrete cases. Naturally, given contextual

<sup>26</sup> On this distinction, I follow Quong 2011.

<sup>27</sup> A theoretical distinction between ideal and nonideal circumstances of justice is employed commonly in political theorization. See Phillips (1985), Rawls (1999), Simmons (2010) and Valentini (2009).

<sup>28</sup> Cass Sunstein (1995) has developed an interesting theory coupling both political theory and legal review practice. According to Sunstein, a viable strategy for avoiding indeterminacy is to look for an **incomplete theorized agreement**. “*Participants in legal controversies try to produce incompletely theorized agreements on particular outcomes. They agree on the result and on relatively narrow or low-level explanations for it. They need not agree on fundamental principle. They do not offer larger or more abstract explanations than are necessary to decide the case. When they disagree on an abstraction, they move to a level of greater particularity. The distinctive feature of this account is that it emphasizes agreement on (relative) particulars rather than on (relative) abstractions. This is an important source of social stability and an important way for diverse people to demonstrate mutual respect, in law especially but also in liberal democracy as a whole*” (Sunstein 1995, 1735-1736, italics in the original).

differences and disagreement among citizens, the interpretation of these organizing ideas, given different circumstances, might slightly vary. Indeed, establishing a justificatory framework simply guarantees that political conflicts might be managed through the reference to shared normative evaluative standards and appealing to the same organizing ideas, even when such ideas are interpreted in different ways.<sup>29</sup> For example, one thing is to deal with citizens that do not recognize the validity of same-sex couples' claim on marriage, as they argue that homosexuality is immoral and that therefore any public recognition of such practice should be banned for moral reasons. Another thing is to debate about this issue when both the proponents and the opponents share a commitment toward some normative standards—such as reciprocal respect, recognition of equality before the law and requirement of restrain myself from stating political arguments that are grounded in my own specific moral doctrines. Again, starting the political deliberation from an already achieved loose agreement over some organizing ideas would guarantee that citizens and political institutions will accept reasonable constraints as valid and legitimate.

Along these lines, we can re-describe the same-sex marriage case as a political debate in which many citizens, even citizens that usually are willing to agree on the general validity of some organizing ideas, do not see the compelling normative reasons for revising their interpretation of the marriage practice. According to this account, then, the fundamental role that both the political institutions and the legal system can play is to publicly recognize the normative reasons that underpin the requests of extending the right to marry to same-sex couples.<sup>30</sup> Afterwards, a deliberative public process should be put in practice, involving both the proponent of the revision of the marriage legal practice and the members of the society that fight against this extension.

#### 4. DELIBERATIVE NEGOTIATIONS

I maintain that democratic deliberation is a multilayered concept that can be employed in different ways, with regard to different contextual circumstances and to the different public reasoning procedures that can be uphold by reasonable or

<sup>29</sup> “Because of their abstract character, basic rights need to be spelled out in concrete terms in each particular case. In the process, lawmakers and judges often arrive at different results in different cultural contexts; today this is apparent, for example, in the regulation of controversial ethical issues, such as assisted suicide, abortion, and genetic enhancement. It is also uncontroversial that, because of this need for interpretation, universal legal concepts facilitate negotiated compromises” (Habermas 2010, 467).

<sup>30</sup> As a perfect example of the fundamental role that legal institutions can play in the deliberative process, see Rawls (1993, 231-239) and his description of the US Supreme Court as the best exemplification available of the ideal of public reason.

unreasonable citizens.<sup>31</sup> Citizens react differently to the public practice of political deliberation. Some of them, for example, might accept the reasonable constraints and willingly engage themselves in public deliberation. Some others, more for passive acquiescence, might accept principles and rules outlined by the democratic procedure of decision without necessarily looking for a more committing participation in the public debate. Finally, politically unreasonable citizens might endanger the same practice of political deliberation, rejecting any normative constraints that should rule the democratic process.

However, the modality in which unreasonable citizens endanger the political practice of democratic deliberation cannot be determined in advance and once for all. The reality is much more blurred than the theory. There might be citizens that, although holding philosophically unreasonable views, are able to accept the political constraints of a public form of deliberation or, at least, accepting passively the validity of the outcomes of the democratic deliberative process.<sup>32</sup> Or, for example, some usually reasonable citizens might lack the political reasonableness when facing a particular harsh case of disagreement that calls into question some of their most believed non-political beliefs. Very often, indeed, even citizens that have traditionally taken advantages from the democratic context in which they happen to live are ready to take up an illiberal stance if such position favors their positional conditions instead of those of another group. Of course, such inconsistencies are not due solely to cynic calculus. Rather, very often citizens do not realize the unfairness or illegitimacy of some positions that they hold. For this reason, again, is fundamental that a **multilogical** (see Moodod 2010, 10) dialogue is established among citizens (horizontal relation) and among all citizens and institutions (vertical relation).<sup>33</sup> Establishing such a normatively committing dialogue is extremely difficult and very often people are not willing to submit the strong moral intuitions and principles they hold to a revisionary process in order to make them consistent with the political framework they happen to live in. Same-sex marriage case, again, is a perfect example of such lack of consistency between the legitimation recognized to the democratic system and the individual not willingness to abide by the normative framework that informs such democratic system. Extending the right to marry to same-sex couples is seen by the vast part of the majority as a quasi-obscene request, as it involves a radical modification of the interpretation of one

<sup>31</sup> This distinction between reasonable and unreasonable citizens is a common technical distinction introduced in political theory by Rawls (1993) and mostly accepted hereafter by liberal theorists.

<sup>32</sup> For an analysis of the conceptual distinction between citizens that are politically unreasonable and other citizens that instead are politically reasonable, but hold unreasonable philosophical views, see Kelly and McPherson 2001.

<sup>33</sup> Kymlicka (2007, 96), in this regard, speaks about a process of **citisenisation**: “The task for all liberal democracies has been to turn this catalogue of uncivil relations into relationships of liberal-democratic citizenship, in terms of both the vertical relationship between the members of minorities and the state, and the horizontal relationships amongst the members of different groups”.

of the historically established dogma of the traditional morality, namely the definition of marriage as a moral and legal bound between a man and woman in order to constitute a family and—very often—procreate. Citizens that belong to the majority—in the case of the example we are dealing with, heterosexual citizens—should be correctly motivated, by justice-driven reasons and not just for pragmatic and political calculus, to accept the revision of a historically established political institution or interpretation of a specific concept, even when such revision might run afoul of some important aspects of their background doctrines and/or strongly believed moral intuitions. Some people evaluate this request of modifying some aspects of political status quo as an illegitimate claim and are ready to face it, restating the intrinsic validity of the historically established interpretation of social standards and concepts. Of course, this tendency of restating the validity of the status quo is more dangerous, and at the same time more likely to happen, when the majority's monopoly of the public space is put under pressure by a minority claim that is recognized as legitimate by a legal or political institution.

The theoretical analysis that brings to foreground the normative reasons that back up minorities' claim in many political conflicts is necessary, but unfortunately very often not sufficient. Even when the public debate hinges on a general agreement over a loose justificatory framework and the justice-oriented reasons in support of a specific solution are exposed by institutions within the political debate, still the right outcomes of democratic deliberation cannot be granted in advance. In this regard, public negotiations are available some times as a second best option in order to look for a concrete trade-off among contrasting views and interests. Shortly, we can distinguish strict deliberation from negotiation saying that whereas the ideal goal of deliberation is having people changing their preferences along the lines of the deliberative process, in order to achieve a shared consensus over a single solution, negotiation procedures look for a less ideal convergence in which actors can still hold conflicting positions and yet being able to look for collaborative decisions.<sup>34</sup> When I refer to negotiation, I mean a dialogic practice between parties that aim to find a compromise and that therefore are willing to cooperate and gain an advantage from the outcomes.<sup>35</sup>

I believe that **open negotiations** can be extremely useful when coping with political relations of the vertical kind, namely negotiations in which actual claims by the

<sup>34</sup> Fisher, Ury and Patton (2011) have worked on the actual possibility of building up a negotiating agreement that is both efficient and produces wise outcomes.

<sup>35</sup> In this regard, Bellamy (1999, 111) claims: "The art of compromising is negotiation. By engaging with others, individuals and groups are led to take an enlarged view of a situation. Instead of seeking to get as much of their own way as they can, in the manner of traders, negotiators try and accommodate others as far as possible. Whereas trimmers seek a lowest common denominator, negotiators strive for collective agreements embodying the highest degree of mutual recognition attainable. That goal arises out of a deliberative process through which all parties moderate and in part transform their preferences by placing them in the context of the claims and needs of the rest of the community".

citizens are addressed by political institutions. Horizontal negotiations among citizens often turn out to be a strictly bargaining practice. By contrast, the negotiations among institutions and citizens can at least be ruled by the some procedural constraints enforced by the institutions, therefore increasing the actual possibilities of reaching a reasonable compromise.

As we have seen, the attempt to yield a justificatory framework that, hinging on the normative validity attached to some organizing ideas, helps us developing a sound political practice of public deliberation, is a sensible goal. Yet, such enterprise is intrinsically work in progress, for the normativity attached to specific liberal organizing ideas derives from a contextual analysis that leaves the room for a never-ending re-discussion and re-adjustment of the public interpretations of these very same ideas. In my opinion, the practice of open negotiation is extremely valuable and can be employed quite successfully in cases of political conflicts over social standards. Provided that political institutions respect some normative constraints, it is possible to articulate an open negotiation between citizens and institutions in which even unreasonable citizens might be included in the political processes. Naturally, in these cases the trade-off achieved would be less than a justified and conclusive agreement over a specific principles or mid-level rule. However, even partial resolutions are better than an unsolvable clash among different and irreconcilable views. Liberalism does not have a conclusive answer that is already defined for all circumstances and issues, but it has the opportunity to demonstrate that its normative background is adequate for answering in the best way, given the concrete conditions of reality, to the multi-faceted and complex conflicts that arise in contemporary democracies.

According to this account, promoting negotiations supported by good reasons and by a fair dialogical dimension not only allows justice to develop, but fosters the stability of the *polis* as well. In this regard, the negotiating process, even when is conducted in nonideal conditions, if reflects a previous shared agreement on some organizing ideas and a convergence on evaluative standards, can produce political solutions that can be consistent with the democratic and liberal ideals. Once that it has been shown that it is possible to reach satisfying solutions about public and political issues even when ideal conditions are not attained, it is then possible to promote a work in progress deliberative process in which negotiations are allowed. Such deliberative process, if correctly cashed out, might be able to grant a positive attitude toward public debates by citizens instead of exacerbating the reasons of conflicts. Furthermore, examples of historical successful political negotiations will potentiate the educative role that political institutions can play, since such good examples will show that two debating parties can at least share the terms of the negotiations and that such starting point is fundamental in order to achieve a reasonable compromise.

To conclude this section, I want to bring out the fact that not necessarily consensus should be the goal of political discussion. Indeed, within the multicultural con-

text of contemporary societies, very often achieving a compromise that is acceptable for all the opponents is the only solution available. Since most of the theories of justice have tried to argue in favor of reaching a stable consensus, *via* some kind of idealizations, then every form of compromise has been viewed as irremediably weak and normatively irrelevant as it is described as nothing more than a trade-off among clashing interests. Notwithstanding a quite spread negative attitude toward the public practice of political negotiations from the normative perspective, there are authors, as Richard Bellamy (1999) and Jane Mansbridge (2009), that have investigated the normative potentiality of such procedures. Mansbridge identifies a specific form of negotiation, the **deliberative negotiation**,<sup>36</sup> which is able to produce sensible outcomes—both from the normative and the pragmatic perspective—even in a nonidealized political context. Such procedures, even though not perfectly adherent to an ideal deliberative model, are able to reflect a commitment toward some normative ideas. This commitment is expressed in my model by the achievement of a quite stable—even though always revisable and open to new instances from reality—justificatory framework that exposes the normative core that both citizens and institutions recognize at the grounding bottom of democratic procedures. Once that such normative core is backed up by a wide majority—although perhaps not by the same majority every time and not for any issues steadily—, then I hold that it is sensible to argue in favor of a deliberative model of negotiations. Furthermore, the more these deliberative negotiations among citizens and among citizens and political institutions grant good results, the more it is possible to foster an attitude of reciprocity among citizens and gain loyalty toward the democratic procedures from the citizens themselves. Indeed, as Bellamy clearly points out:

individuals are more likely to accept the legitimacy of decisions they disagree with if they feel they have been to some degree involved in making them, that their interests have been explicitly consulted and that there are opportunities for re-opening the debate in the future. (Bellamy 1999, 179-180)

## CONCLUSION

In this paper I addressed from a normative perspective the political debate over the possibility of extending marriage rights to same-sex couples. I introduced legal and political arguments in favor of this extension and I connected this concrete issue with a more general picture regarding the possibility of open up the paradigm of political deliberation to include processes of open negotiation. Political negotia-

<sup>36</sup> “These forms are ideally based on mutual justification, mutual respect, and a search for both fair terms of interaction and fair outcomes. [...] Deliberative form of negotiation not only can approach the deliberative criteria for legitimacy, they are also efficient” (Mansbridge 2009, 39).



tions can be defined as those public dialogic practices that engage citizens in public discussions that, even though not framed after a strictly deliberative model, are yet outlined referring to some normatively relevant ideas that, sometimes just implicitly, we often regard as relevant for determining what we expect—as citizens—from democratic institutions. In this regard, the theoretical findings of the second part of this paper suggest a possible direction for potentiating the normative and practical relevance of political processes of deliberative negotiation.

I do believe that the possibility of increasing the number of citizens that accept a liberal justificatory normative framework and that, consequently, are guided in their deliberation over political matters by such normative standards, does not rely exclusively on theoretical argument. Rather, it depends as well on the ordinary practice of public discussion and on the political institutions' ability to improve **the democratic attitude of citizens**. Consequently, the reference to the past cases of good public negotiations and the fact that many citizens, every day, are engaged in fighting for having their rights completely recognized, are reasons for hoping in the possibility of building up a fruitful paradigm that might keep together the regulative ideal of public justification and the more concrete practice of open negotiation. If political institutions accept to engage themselves in negotiations with citizens and meanwhile citizens are able to recognize the possibility of agreeing on a loose justificatory framework—over some evaluative standards and organizing ideas that have already been reflected in democratic procedures, legal practices and in the ongoing political culture—, then the political arena might properly become that public space in which all individuals are equally entitled to be first-class citizens and where a fair exchange of reasons and motivations would lead to efficient and normatively committing negotiations that, at the end of day, would also promote democratic values.

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