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Michel Croce

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James Humphries

The Social-Relational View of Recognition Respect¹

Introduction

Respect wears multiple hats in political philosophy: as a goal to be worked towards, a good to be distributed, and as a principle governing interactions. Often, what exactly we mean by ‘respect’ is different depending on the role the concept is playing. In this paper, I focus on recognition respect both as a component of Andersonian democratic equality and as an independent political value, a principle governing interactions – specifically, how it places certain requirements on the way political institutions such as states treat both citizens and non-citizens.

I argue for two claims: that recognition respect is implied by democratic equality as well as being a plausible political value, and that it should be understood in large part as a matter of an agent’s social-relational standing rather than as their merely being regarded in a certain way by others. Most distinctively, the second-personal emphasis on recognition respect, the conceptual requirement that recognising somebody as an agent involves recognising them as somebody to whom you are in principle accountable, requires that agents actually be able to hold you to account rather than merely that you see them as being the right sort of being to do so.

¹ Many thanks to participants at the ASPP conference in Sheffield in 2017 for comments on a very early draft of this paper; to several anonymous reviewers for their comments and criticisms; and to Katharine Jenkins and Ben Colburn of the University of Glasgow.

Taken together, I argue that these claims suggest, fairly uncontroversially, that recognition respect should motivate anyone concerned with agency; and more controversially, that this implies that the republican idea of non-vulnerability ought to be more widely embraced.

The structure of the paper is as follows. First, I set out a working definition of recognition respect, drawing on Darwall's 2006 account, and contrasting it most particularly with appraisal respect. I then make the case for recognition respect's political value: showing that certain kinds of treatment of agents are inconsistent with respecting them qua agents and that the value of political engagement is in part given by the value of agency. This can be thought of as an argument about the nature and value of recognition respect.

In the second section, I make an argument about the success conditions of recognition respect and the implications of these conditions, arguing that recognition respect should be understood as primarily constituted by standing in certain social and structural relations or kinds of relations, as opposed to being seen a particular way by others. I conclude that such an understanding in turn implies that agents must be non-vulnerable. So although the ideal of non-vulnerability is strongly implied by democratic equality, it is also implied by respect for agency, and the latter is already widely embraced.

1. *Recognition respect, appraisal respect and democratic equality*

1.1 Recognition respect and appraisal respect

In Darwall's 2006 book *The Second-Person Standpoint*, he argues for a particular kind of respect, 'recognition respect'. This is the notion of respect based on recognition of one's agency, rather than of some perceived excellence.² The latter, Darwall argues, is 'appraisal respect', a form of respect we must earn and which applies to excellence or merit, while

² Strictly speaking, I should say that Darwall thinks the object of recognition respect is the dignity or authority of an agent; however, since I wish to avoid arguments about dignity (and in any case take it that the important part of the claim is the dignity or authority *of the agent*) I refer to agency as the object of respect throughout this paper.

the object of the former is dignity or – crucially – authority, and must be presumed or simply granted on the basis of different qualities from those that prompt appraisal respect.³ The distinction matters because if appraisal respect were the only kind of respect (or the only kind that mattered), we would have fewer, or even no, theoretical tools to explain why certain rights, resources, etc should be guaranteed regardless of somebody's particular excellence. In essence, appraisal respect gives us a way of explaining why somebody should (or shouldn't) be given certain responsibilities, or rewarded with particular things over and above those things which are basic moral and political rights. Recognition respect gives us a way of explaining why we have these moral and political rights, and of explaining why they take the shape they do. An examination of recognition respect by contrast with appraisal respect should help to highlight the important differences between the two.

There are, firstly, no immediately intuitively obvious cases where I can somehow fail at agency in the same way I can fail at some excellence. I may, for example, make a hideously ill-advised decision about whether to go to the bar or to go home, but this is patently still an agential act in the relevant sense; I did not, contra some interpretations of Kant, somehow cease to be metaphysically free – or at least, didn't cease to be forced to act as if I were free – when I settled upon having another round. To grant someone recognition respect as an agent is not something we base on an assessment of how well they 'succeed' at agency. Instead, recognition respect directly regulates the authority we grant to others; when we offer someone recognition respect, we acknowledge their *prima facie* authority over their lives and their actions.

To give an example, say that you grant me appraisal respect as a philosopher to the extent that I meet particular conditions. In this case, the conditions will be to do with the extent that I display excellences or vices. Perhaps, for example, I don't *always* affirm the consequent, but often do so; this lessens your appraisal respect for me just insofar as I do it. But I cannot only sometimes be an agent, or only sometimes have basic human needs. If you make the evaluation that I am an agent, then the respect demanded admits of no apportioning according to 'how much' of an agent I am.

³ Darwall 2006, 122-126. I use Darwall's terms for convenience's sake.

There are fairly broad evaluative properties that we might use to determine agency: minimally, an agent must be aware of themselves as distinct from the world around them, and have a sense that they can, at least in principle, influence this world according to their choices.^{4,5} Once this determination has been made, the form of respect demanded – recognition respect – gives prescriptions on how we may act and what sort of reasons we must consider, rather than how we should evaluate the property.

The idea of recognition respect as playing a basic normative or prescriptive role leads to an important point. Appraising someone as an excellent left-back (that is, granting them appraisal respect as a left-back) only gives us certain realm-specific guidance: as spectators, it is appropriate to applaud their play; as team-mates, we should rely on them doing, or not doing, certain things down the left flank; as managers, we should be comfortable giving them certain responsibilities, and so on. But the normative force of all of this is dependent on whether we actually care about the realm in the first place: it is perfectly consistent for me to accept that Andy Robertson is an outstanding left-back and also not to take this as giving me any reasons to act, just so long as I don't care about football. Recognising someone as an agent, on the other hand, is

⁴ I've adopted this deliberately thin account of agency for two reasons: first, it means I can at least for the moment evade difficult arguments about whether such-and-such contentious feature is *really* part of agency; second, if I can show that a minimal account has such weighty substantive requirements, then it follows that a thicker account will have even weightier requirements.

⁵ Maybe I'm not an agent when I'm asleep, admittedly. The more serious problem is of cases such as those where somebody is medically (and, let's stipulate, correctly) judged to be 'incapable', and that is something I can't satisfactorily deal with here. Two points can be made, though: even a harmful or misguided use of agency still 'counts' as agency, on this minimal view (though there may be other values in play that speak against treating such agency as having over-riding value); and such a judgement still has to start from the presumption that the person in question *does*, at least under normal conditions, have a sense of themselves as distinct from and able to influence the world around them. The *prima facie* authority is not carried through, in other words, but that is because of specific defeaters with respect to some acts, not because the *prima facie* authority is itself defeated.

intimately bound up with treating them a certain way, and the recognition *itself* gives us some normative moral and political prescriptions that aren't dependent on whether we take ourselves to have other reasons to care about these prescriptions. Recognising someone as an agent requires that we take their desiring something to be a *prima facie* authoritative reason for them to pursue that thing. That is to say, while I might be able to consistently give someone appraisal respect as a philosopher, or a left-back, while also denying that they have any principled rights to self-determination, I cannot grant them recognition respect as an agent and deny them these rights. To borrow a framing from meta-ethics, I can cogently respond "so what?" to the claim that Robertson is the best left-back in Europe, but not to the claim that he is an agent.

Recognition respect as agents, then, is not something that we must earn or something that we can forfeit by our actions – unlike appraisal respect – but a kind of respect granted on the basis of what we are, which is to say on the basis that we are agents. Although we must obviously evaluate whether some particular candidate is in fact an agent, that is as far as the evaluation goes: where appraisal respect is scalar and tendered depending on how fully we meet the conditions for such respect (or many of those conditions we meet, etc), recognition respect is a binary affair. If we are agents, in short, we should receive recognition respect.

Darwall has another important claim: that such respect requires "seeing ourselves [and others] as mutually accountable... accord[ing] one another the standing to demand certain conduct of each other as equal members" (2006, 119). For Darwall, in fact, this is more or less the whole basis of morality, but I want to make a weaker claim: that recognising someone else as an agent does indeed require seeing them as being in principle able to hold us accountable (and, similarly, that we see them as being in principle accountable to us). The idea isn't that we can at all times and in all contexts demand that others justify their behaviour to us; it's just that we recognise them as being the *right kind of being* to demand explanation and justification.

It's worth noting that even to deny somebody's request for accountability or justification in some particular contexts is nonsensical if we *don't* think that they can in some others – to tell someone that they don't get to demand a justification for *x* is already to acknowledge that they're

the sort of being who can in general make such demands.⁶ It doesn't make sense to think that a toaster I throw out of the window could hold me accountable, nor to imagine that I might have to explain to the toaster why it can't demand justification of me on this occasion; it does make sense to think that the unfortunate passer-by who gets clocked by it could do so.

So: as I have outlined it here, recognition respect as a concept comes bundled in with some normative requirements, such that being recognised as an agent entails that we are regarded and/or treated a particular way – one such way being that we are seen as appropriate beings to hold others to account, and vice-versa. What these requirements and ways of treatment turn out to be, and why we should think that they obtain, is a matter largely for Section 2: in the next sub-sections, I show how recognition respect is implicit in democratic equality, and why it should appeal even to non-Andersonians.

1.2 Recognition respect and democratic equality

On Anderson's model, democratic equality is to be understood as something like each citizen having equal ability to "effectively exercise specifically political rights...[and] to participate in the various activities of civil society" (1999, 317) – in essence, that each citizen is able to take full part in the political life of a community. Although there is a distributive element to this, Anderson's account of egalitarianism is primarily relational: we are equal as citizens if we stand in certain relations to each other and to the institutions of our community. Questions of distribution are thus relevant insofar as, for example, some particular distribution of resources is required in order for us to stand in particular relations – we can't stand in relations of engagement with our political community if we can't get to town halls, vote on proposals etc, and we can't stand in any relations at all if we're dead of starvation.

⁶ I should emphasise here that I have in mind second-personal cases rather than third-personal – that is, where (at least in principle) we are telling *someone* why their specific request or demand is being turned down, rather than where we are explaining to a student why (e.g.) the toaster isn't the right sort of being to demand accountability and redress for its defenestration.

To a certain extent, then, the model of democratic equality foreshadows much of what I'll say about the social-relational view of recognition respect: it's clearly necessary to have enough to eat, and not to be held indefinitely without charge (and so on), to be able to function as an agent, and on Anderson's view, functioning "as a human" (1999, 317), which seems roughly equivalent to what I'd term functioning as an agent, takes priority to functioning as a citizen. This re-invites the question of why we should bother with my notion of recognition respect. There are two reasons: first, we need some reason to explain why we care that "people are intrinsically valuable...they are self-originating sources of claims, and have equal authority to make claims" (2009, 223), in the way that Anderson does. Recognition respect does this: if and insofar as we recognise people's agency, their status as self-originating sources of claims, we're committed to treating them in the sorts of ways that Anderson suggests. Second, it seems plausible that relational equality should apply to more than citizens insofar as there are relevant and uncontroversial ways in which non-citizens *should* be treated equally within a given community – when it comes to the provision of food and shelter, most obviously. Related to this, we need some non-arbitrary way to adjudicate between clashing claims, such as between increased political engagement for citizens at the cost of hardship for non-citizens, and it plainly won't do for citizens to come out on top simply in virtue of being citizens. Again, recognition respect provides such a method of adjudication, by emphasising that the value of political engagement is ultimately derivative of the value of agency.

Let's take these reasons in order. To see people as self-originating sources of claims is, it seems to me, just one way of seeing them as agents: it matters that they be able to self-direct in light of their values simply because they *are* their values – having some desire or value to *x* is enough to give a *prima facie* justification for their *x*-ing.⁷ That is to say, while democratic egalitarianism implies recognition respect, I think the implication works the other way round as well: caring about recognition

⁷ The claim here is that to be an agent is a sufficient, rather than a necessary, condition on being a self-originating source of claims. I think it might be a necessary condition on actually being able to *make* claims, but that's different.

respect means that we ought to care about people *actually standing* in relations that make them equally able (in principle) to issue claims. This is different from, for example, a Dworkinian notion of equality of opportunity (1981), or a Cohenite notion of equal access to advantage (1989), because these ideas of equality are ultimately about distributions rather than relations. It doesn't seem unreasonable to say – as Anderson does (1999, 295-302) – that equality of opportunities theories will permit people to fall into situations where they can no longer function as citizens, or as agents, because of bad option luck. But if we care about people being able to relate to others as equals – specifically about the relating, not about the presupposition of equal agency – then we ought to be democratic egalitarians. This isn't novel, and isn't my point here; rather, my point is that if we care about recognition respect, then we ought also to be democratic egalitarians.

The objection might then come that this is just to misunderstand what it is to recognise and respect somebody as an agent: that, in fact, we do so by giving them an equal opportunity to pursue whatever goals they happen to value, with the understanding that sometimes we pursue harmful things, or that we're mistaken about what we value (in other words, that recognition respect really just requires Dworkinan equality of opportunity). To some extent, my response to this must wait until later sections (specifically 1.3, 2.1 and 2.2), but I can foreshadow it by saying that if agency is valuable, then I think we've got good reasons to make sure (as best we can) that people continue to be agents, howsoever unlucky or foolish they might be. That implies to me something very similar to Anderson's idea of making sure that people are capable of functioning in certain ways – as humans, as citizens, and so on. In short, I think it implies that recognition respect as a value does imply a particular, substantive theory of justice, namely democratic egalitarianism.

Now for the claim that recognition respect may help us to adjudicate clashes between requirements for recognition as agents and recognition as citizens. The reasoning here is, again, fairly straightforward: if we're concerned first with agents as agents, rather than agents as citizens, then the relational egalitarian model of democratic equality has another gap to fill. Certainly, Anderson's (1999) multiple-step model suggests that operating as a human is lexically and normatively prior to operating as a citizen, but this doesn't tell us anything about the respect owed

to those who *aren't* citizens in the first place. Taking recognition respect as the underlying value, however, explains why we care about political engagement as a member of the community – it's because such engagement increases the scope of agency. It also explains why agency takes priority over political engagement; if you care about the latter, you have to care about the former, and treat it as more important. An agent can still operate as an agent (albeit with a reduced scope of agency) if their freedom of assembly is restricted; they cannot operate as an agent, let alone as a political equal, if they die of starvation or ill-health.⁸

So, recognition respect is implied by democratic egalitarianism: respect for agents or agency is the fundamental value underpinning democratic equality, explaining (some of) why we care about political engagement as equals and also explaining why securing agency must take priority over increasing political engagement of citizens. In the next section, I suggest that recognition respect should be held as a genuine political value even by those who are not Andersonians about democracy or justice.

1.3 Recognition respect as a political value

I've argued above that recognition respect is implicit in democratic equality. However, I think there is a good independent reason to hold it as an important (and plausible) political value – that is, as something that can and should play a role in discussions of political organisation and political legitimacy – regardless of whether one is persuaded by democratic egalitarian arguments. This reason is that 'recognition respect' denotes an agential good which is, at least in certain contexts, best pursued by

⁸ I should emphasise that in the actual world, certainly in the global 'West', a citizen/non-citizen clash in terms of provision is vanishingly unlikely – *contra* the British media, there is no tension between improved political equality as citizens and a decent life for displaced persons who aren't British citizens. But it's worth noting that the priority of agential resources over political resources *exactly* and straightforwardly explains why, for example, it is permissible to restrict freedom of assembly in order to prevent the spread of Covid. There are alternative if sub-optimal means of political engagement, but (let's assume) no alternative means of keeping infection rates down; you can go to an online town-hall if you can't go in person, but you can't do anything if you're dead.

political organisations and institutions rather than inter-personally (in turn, this thought motivates my eventual argument that we should think of recognition respect as being constituted largely by social and material conditions beyond individuals' attitudes).

When I claim that recognition respect is a political value, I mean to distinguish it from solely moral values – the question of what, if anything, differentiates the 'personal' and the 'political' must be left aside for now.⁹ So, for my purposes, to say that recognition respect is a political value is to claim that it is to do with how we ought to organise society, and that it is a proper aim of political institutions rather than solely an ethical injunction for individuals: there is some particular task or set of tasks that such institutions should perform, and (some of) the tasks entailed by the demands of recognition respect fall into this set.

The first such institutional task follows from the thought that to grant somebody recognition respect is to give them *prima facie* authority over their lives. If I am recognised as an agent, then my wanting to perform such-and-such an action should be presumed to be a good reason for relevant political authorities not to prevent me from performing that action. This is, of course, only *prima facie*: if it turns out that my urge to dance on the edge of a cliff is the result of my being blind drunk, then this is plausibly a defeater of my presumed authority. Notice, though, that it still might not be; and if I soberly, rationally etc decide that I want to court destruction in such a fashion, then it looks like I should still be allowed to do so. In practical terms, this might suggest that while it's permissible to make it *difficult* for folk to do things like prance about on cliff-edges (particularly since we will also have to consider, for example, the risks posed to children and animals by not having sturdy fences), it's probably impermissible to *punish* them for doing so. It will be legitimate to erect a barrier along a cliff-top walkway, in other words, but not to fine people for climbing over the barrier unless there is some other justification for doing so.

⁹ I suspect, also, that we might mean two closely related but distinct things by 'political value': that something is a political *rather than* moral value, and that it is a value that political institutions ought to pursue. I have elided these meanings here for the sake of not having to write a double-length paper, but am aware that the distinction is an interesting and potentially fruitful one.

Similarly, this *prima facie* authority does not mean that others may not in principle intervene to prevent us from performing actions which would fail to accord others the same recognition respect that we claim for ourselves. To re-use the above example, if I'm climbing over a cliff-top fence in order to hurl rocks at swimmers below, I can't claim that recognition respect for me entails that my action is permissible because I am authoritative over my actions. After all, we can safely presume that the swimmers want *not* to have rocks thrown at them – and recognising the swimmers as agents requires that we prevent them from being used as mere means to my misanthropic ends. Reaching again for Darwall, the notion of recognition respect as entailing that we see the others as (in principle) being able to hold us accountable for our actions (2006, 111-115, 119-121) is also doing some work here. To think that someone may hold me to account for some action is already to think that they have authority (within some more or less limited realm) to demand explanation and justification from us, and "I wanted to" is not a satisfactory response to "why were you chucking rocks at me?". So the relation holds both ways: if we recognise others as agents, we recognise their principled right to hold us accountable, and if we recognise others' rights to hold us accountable then we recognise them as agents.

Recognition respect, then, requires agents to be recognised as ends in themselves, with the concomitant *prima facie* authority over their lives – and to some extent over *our* actions – entailed by that. So far, so Kantian, and also not noticeably political as opposed to 'merely' inter-personal. Why else should we think of recognition respect as a political value?

One obvious candidate presents itself. If we are serious about recognising agents as *prima facie* authorities, then minimally we must recognise their authority to demand – and receive – those resources necessary for them to continue being agents. At the most basic level, these are food, shelter, healthcare and safety: nobody can be an agent when they're dead. I am working with a deliberately thin notion of agency here and so will confine myself to the claim that for somebody to be recognised and respected as an agent, the *least* they must have is somewhere to live in safety and health, such that they can make decisions about the direction of their lives without risking impoverishment, ill-health or arbitrary imprisonment.

That is, in order for someone to be granted recognition respect as an agent, they must also be granted whatever is required in order for them

to function as agents. These demands seem apt to be met by political institutions rather than being seen than as a purely inter-personal ‘private’ matter: one of the paradigm roles of political institutions is, even on the slimmest or most conservative conception that is still plausible, to provide the goods required for a minimally decent life. Since being able to operate as an agent is part of a minimally decent life, then we should regard recognition respect as a legitimate value for political institutions to pursue.

Again, accountability can play a useful explanatory role: if I can properly be held accountable for someone’s demands for food, shelter etc, then via ought implies can I must be able to meet these demands. Clearly, though, no individual can do this for every member of a political community – so the ‘agent’ being held accountable must be the political community itself, and it must be this community that meets agential needs.¹⁰

Imagine that there is some resource to be distributed, and which allows humans to operate as agents. The use of this resource is exclusive in at least some sense, either because it is a consumable resource or simply because it can’t be used by everyone at the same time. Since not everyone can make use of it simultaneously, we’re faced with a decision about who should get to use it at some particular time. Here, it seems fairly obvious that the correct way to make the decision is not for each individual with a claim to talk to every single other individual, as it might be if it were three flatmates discussing who got first dibs on the communal shower, but for there to be a collective decision-making process in which everyone can contribute. In other words, the best way of settling the resource allocation question here is for there to be a political decision on the matter; the value of agency is a political one, though not only a political one.

I say more about what this value requires in later sections; what is important for the moment is to note that the notion of recognition respect suggested here implies that political institutions should treat it as

¹⁰ I make no claims about group agency here. Whether we’re individually being held to account as part of the political community (or through it), or whether we compose some collective agent that is held to account, etc, doesn’t seem to make much of a difference in terms of such accountability, and recognition respect more generally, being a specifically political value.

a value of (roughly) the same sort as welfare or autonomy – something which is valued at least partly by working towards people’s actually having it, instead of something which is valued just by treating people as if they already do have it.

Lastly, adopting recognition respect as a political value conceptualises the pre-theoretic intuition that there is something profoundly hypocritical about the way that states lionise respect in the abstract while denying agents the minimum level of respect necessary for their continued agency. It explains, for example, why it sticks in the craw to see wealthy politicians harp on about the need for choice and self-determination at the same time as they take a machete to those social structures that allow us to make meaningful choices, to self-determine in light of values more wide-ranging than brute survival. Indeed, it explains exactly the thought that, for example, giving people the ‘choice’ to live in substandard and dangerous housing is in an important sense literally to treat them as lesser persons. This isn’t simply callous, or objectionably individualistic; it is a failure to meet the absolute minimum requirements for recognising and respecting agents as agents. If you really respect people as agents, then you must structure society such that they have the resources to operate as agents.

2. *Recognition respect as relational standing*

So far, I’ve argued that recognition respect, here understood as respecting agents *qua* agents, is a genuine and distinct political value (albeit one already implied by democratic egalitarianism), and that tendering it entails both negative and positive duties. Negatively, it rules out certain kinds of treatment, and positively, it places duties on political institutions to ensure that their members can continue operating as agents. In this section, I argue that the best way to understand these requirements is to think of recognition respect as being in large part constituted by agents standing in a particular set (or some particular sets) of social and economic relations. These relations go beyond the trivial claim that we must stand in relations where we are seen as deserving of recognition respect, which is why I talk specifically of the *social*-relational account of recognition respect; the obtaining of particular attitudes between per-

sons is not sufficient (and may not even be necessary) for agents to be granted recognition respect. What's required are relations that constitute a minimum level of material well-being and engagement with organising bodies: if we're serious about respecting agents *qua* agents, then we owe it to them to arrange social relations such that they can in fact exercise that agency, and such that they can in principle hold other agents and institutions to account.

2.1 Recognition respect: Attitudinal or socially relational?

First, let's get clear that I'm not arguing simply for people to be regarded in a certain way, for a particular relation of respectfulness to hold between two agents, or between an institution and an agent – basically in the way that Darwall thinks of it. If I were, all the argument would amount to is that certain kinds of treatment are inconsistent with attitudes of respect, and my claim that we should conceive of that respect relationally would be trivial.

As a first move, it's not too tricky to present cases where at least on the face of it, we all hold attitudes of appropriate respect towards an agent but they stand in relations that deny them the resources necessary to continue operating as an agent. Let's say that somebody has arrived in a community with a strict 'citizens-first' policy when it comes to the provision of basic resources; a policy with which all current citizens disagree, but have not yet managed to overturn. Here, though all citizens can sincerely aver that they recognise the newcomer as an agent who should be treated equally to any other agent, it's not the case that the newcomer actually *is* treated that way. If the agent really *is* regarded as equally deserving of respect as the rest of us, then it seems very odd that they don't stand in the same relations; there needs must be some story which explains why the putative equality of recognition by persons doesn't translate into their having equal access to the resources necessary for minimal agency.

One way to question this story (or, rather, to question whether it shows what I claim) would be to ask just how hard the citizens have tried to overturn this policy. Do they merely aver that it's unjust, post on social media about it and so forth, or have they taken practical (perhaps direct) action to try and change it? In the first instance, we might simply deny that they *do* have attitudinal respect; they make the right noises,

but it doesn't amount to actually holding the right attitude because that attitude demands more than talk. In the second instance, though, it's difficult to see what more the citizens can do to show their respect for non-citizens, and so the lack of recognition respect seems to be institutional – taken all in all, the non-citizens lack the relational standing of recognition respect, because the relevant relations include *actually being treated* in respectful ways by the relevant institutions. This seems right to me. But of course, the critic might now claim that all this shows is that the non-citizens are not *attitudinally* respected by institutions – the social relations which would be implied by such an attitude don't obtain, and so we oughtn't to think the attitude to obtain either.

This also seems plausible to me, as it happens. However, a response is available. If we hold that it's simply a case of institutions lacking certain appropriate attitudes then we're committed to making certain claims about whether institutions can *have* attitudes: whether they are collective agents with something analogous to individual agents' mental states; or whether their attitudes are set by the preponderance of attitudes held by individuals who make up the institution; or whether the 'attitudes' are simply shorthand for certain norms and policies, and so on. Perhaps such claims can be supported, of course, but the simpler move is surely just to distinguish between relations of respect that are necessarily interpersonal and constituted by individual attitudes (which if sincerely held have implications for how agents should act), and relations of respect that are constituted by relational standing including how one is treated by governing institutions and public services. It is difficult to *force* people to hold certain attitudes, but (theoretically!) easier to make sure that there are certain social relations and structures that take heed of the normative implications of such attitudes. I return to this point at the end of the section. For now, I think it's enough to say that even if all or most members of a given society do hold attitudes of recognition respect towards an agent, these attitudes don't simply equate to the agent actually standing in the relevant relations of respect.

There is an obvious and historically well-worn move to make here. That move is to accept that recognition respect *prima facie* demands equal treatment, as suggested above, but then to suggest that there are *ultima facie* reasons against equal treatment. The citizen and non-citizen both have equal claims on *some* institution providing the resources necessary

for continued agency, but they might not have equally good claims on a *particular* institution doing so. So, we can hold the same attitudes of respect towards them, but these attitudes end up committing us to different obligations. Walzer (1981) and Miller (2012), among others, clearly hold views of this sort.

In response, we can point to the fact that in many real-world cases, agents cannot plausibly seek resources from other political institutions. This is especially obvious with respect to displaced persons: if you've sold everything you own to pay for an unsafe boat trip across the Mediterranean, you're hardly in a position of untrammelled choice. This being so, such a defensive move is unsatisfactory even beyond the strong whiff of bad faith – the excuses of one 'Western' nation will be pretty similar to those of another, and we *know this*, so there's something especially disingenuous about the metaphorical shrug and "perhaps you'll have better luck next door" excuse.

We should probably be charitable about this, and assume that the interlocutor is not talking about turning people away with no food or shelter – rather, that they're arguing that (for example) governments should meet existing obligations towards refugees, including providing emergency accommodation and so forth, and hence denying that partly closed borders are inconsistent with recognition respect.¹¹

But even this assumption leaves two glaring problems. The first is that giving people just enough to survive isn't, actually, giving them enough to continue being agents – somebody confined to a processing or deportation centre *doesn't* have any particularly meaningful way of affecting the world around them in light of their desires; they're in the position of Raz's man in the pit, or (more pertinently) of the prisoner deciding which way to walk round the exercise yard.¹² So just keeping somebody alive isn't enough, even on the minimal attitudinal view, to be consistent with respecting them as an agent. The second problem is that it denies the authority of the agent. I've already said that this is just a *prima facie* au-

¹¹ They might, for example, argue that recognition respect for non-citizens merely entails something along the lines suggested by Fine in her recent work on refugees and safe passage – see Fine 2019.

¹² Raz 1986, 374-375.

thority, so – as I’ve said above – the problem isn’t that refusal to fulfil any old desire denies such authority. Instead, the issue is that when somebody’s request for agential resources is denied for the kinds of reasons that are standardly given (public order, limited resources, etc), they are not authoritative: it’s simply not the case that somebody is being treated as a source of values if their demands are fobbed off with palpably unconvincing excuses. Political communities like nation-states *might* have a claim against treating non-citizens equally if they were in fact right up against the limits of their resources; but nations that spend billions on their military and millions on state jamborees cannot expect to be taken seriously when they cry poverty as a reason for not providing agential resources for non-citizens.

So, while there’s some reason to think that even just sincerely holding an attitude of respect towards an agent qua agent entails certain commitments, it also seems true that there are situations where this attitude could be held by many or most individuals without the agent thereby being treated in the way the attitude demands. Attitudes of respect are therefore insufficient to constitute recognition respect. It does seem that presuming an agent’s competence to make political decisions will be involved somewhere along the line, but I think there are good reasons to believe that the kind of respect necessary for democratic equality requires a fuller conception of respect than this. Part of what is required for democratic equality, after all, is not (just) that we *think* agents are able to make decisions in this way, but that they *are*; and if it’s important, then we should do our best to make sure that agents are indeed so capable. This being the case, a presumption of competence will not fill out the notion of respect in the right way. The notion of holding agents as *prima facie* authoritative which is given by recognition respect, however, will do so, because it presumes that agents are competent over a wider range of claims including claims on resources necessary to allow them to continue operating as agents (and then as equal citizens). In other words, something like opacity respect is probably required by recognition respect, but the latter also calls for ensuring, rather than merely presuming, that agents can operate as equal citizens. An attitude of respect is insufficient for this.

What about necessity? It seems very plausible that recognising somebody as an agent involves thinking of them in a certain way – we surely can’t regard somebody as literally incapable of agency and simultane-

ously recognise them as an agent, on pain of conceptual confusion. In a similar vein, it may seem obvious that if we don't see something as meeting the requirements for moral considerability, we can't treat them as a moral subject. But this analogy should give us pause, since there is in fact a way for the above scenario to occur; namely, if there is some set of social relations in place which constitute treating that thing as a moral subject. Let's say, for example, that I am a hardcore speciesist and think that non-human animals are deserving of no consideration whatsoever, but that I live in a community where treating animals as moral subjects is enforced. That is, I will be prevented from or punished for mistreating animals, such that I am (from reasons of prudence rather than my moral values) forced to treat animals as if I *did* think they were deserving of moral consideration and was acting in accordance with that belief. In this example, my attitudes clearly aren't the determinant of what relations I stand in to the subject in this relevant sense. The relational component doesn't exhaust my reasons in this respect, of course – assuming that we buy the claim that animals are morally considerable, then I should in fact hold an attitude of consideration for them – but in terms of how the animals are situated, their relational standing, it need not be true that any given individual actually does respect (attitudinally) their moral considerability.

The analogy isn't watertight, of course; most importantly, non-human animals aren't (generally) as psychologically sensitive to displays of disrespectful behaviour as are humans, although whether this is true in a given case will depend on the specific behaviour and the specific human and non-human animals, and there are in any case different attitudes involved in seeing somebody as a moral subject and seeing them as an agent. So the thought experiment falls far short of proving that respect attitudes aren't necessary for recognition respect. However, it does suggest a distinction between some agent being *seen* (by some other particular agent) as deserving of recognition respect, and the agent being *granted* (by the political community) recognition respect; where some psychological attitude's obtaining is necessary for the former, but perhaps not the latter. That is to say, what determines whether somebody sees me with respect is plausibly different from what determines whether I occupy a social position consistent with (or constituted by) being granted that respect. It's to the implications of the latter that I now turn.

2.2 Implications of recognition respect as social-relational

I will now connect the claim that we should think of recognition respect in largely social-relational terms with the neo-republican notion of freedom from vulnerability to arbitrary interference (Pettit 1996; 1997). Specifically, I argue that since recognition respect requires that agents are able to continue operating as agents and are able to hold institutions accountable, the requirement for political communities to respect agents just *qua* agents implies that recognition respect is in large part constituted by non-vulnerability.

As laid out so far, recognition respect consists in being recognised and respected as an agent *qua* agent (as opposed to *qua* citizen, parent, etc; and as opposed to being granted appraisal respect for some excellence). Part of someone being respected as an agent, I've argued, is that they're given the resources to continue operating as an agent. This because respecting someone as an agent is inconsistent with denying them the things they need to be an agent, and because respecting someone as an agent entails granting their *prima facie* authority over their desires – and we can reasonably expect people to desire the resources necessary for their continued agency.

The first claim for why the relational view implies non-vulnerability is similar to Anderson's claims regarding democratic equality and resource distribution (1999). On such a model of recognition respect (as with the relational account of equality) the claims that agents have on resources are in this respect set by what's needed for them to occupy a particular set of relations to others and to political institutions, rather than by requirements of welfare, or of autonomy, or other political values. Importantly, however, recognition respect (like democratic equality) will be able to subsume at least some of these values thanks to what's necessary for meaningful agency. Recognising and respecting agents *qua* agents entails that we recognise and respect the needs of such agents, and for the two reasons given previously – what's necessary for operating as an agent, and the authority of agents over their own desires – these needs require more than (and may not even include) certain attitudes obtaining on everyone else's part. Rather, agents must stand in relations that by design allow them to self-direct according to their values without fear of arbitrary interference or un-

reasonably damaging consequences – in other words, they must not be vulnerable in the Pettitian sense.

In order to avoid the kinds of vulnerability (especially though not exclusively economic vulnerability) which threaten our ability to self-direct in accordance with our values, the resource baseline must be set partly relative to the positions and powers of other agents and of institutions. After all, the scope of agency may widen or narrow depending on where (and when) agents operate; it would be extremely implausible to claim that a Regency dandy lacked recognition respect because they lacked internet access through no choice of their own, and much more plausible to make the same claim about somebody in the contemporary UK. Conceiving of recognition respect social-relationally, in terms of non-vulnerability, has the advantage of being able to explain the distinction between (for example) lacking resources because of disaster conditions and lacking resources because of injustice. The social-relational account isn't alone in being able to do this, of course, but it can do so simply and consistently, and that's surely a virtue. If somebody lacks the resources necessary for continuing to operate as an agent, but are situated such that by design they would be able to claim such resources (if they were available), then they are being treated with respect appropriate to their agency, and they are also non-vulnerable. If, in contrast, they lack those resources because they are situated such that they're denied access to these (available) resources, then they are not being granted such respect. So a volcanic eruption which causes crop failures doesn't, or needn't, mean that agents in a subsistence agriculture economy aren't being afforded respect; their society is structured such that they are genuinely held to be deserving of the things they need to survive, but (some) of those things just don't exist. Conversely, an affluent society containing citizens who lack these basic resources cannot claim to be treating those citizens with the respect they deserve as agents: it's the difference between rotten luck and a rotten society, and political philosophy should surely focus primarily on the second problem rather than the first.¹³

¹³ The same, obviously, is true of any society that fails to give resident *non*-citizens such resources.

That, then, is the broad argument for why we should think of recognition respect relationally, and as (in large part) non-vulnerability. Here's how non-vulnerability connects with the specific claims that recognition respect requires agents be able to operate as agents and to demand accountability. My claim is that if one is non-vulnerable, then one stands in the relations which (part-) constitute recognition respect for two reasons: first, because to be non-vulnerable is – barring disaster conditions, which I have already addressed – a necessary condition for us to be able to continue operating as an agent, and to do so by design. Second, because to be non-vulnerable is to have contestatory powers that make one able to hold other agents and institutions to account, thus fulfilling the distinctive requirement that recognising somebody as an agent requires recognising them as somebody who you are in principle accountable to. I'll take these reasons in order.

When it comes to operating as an agent, the non-vulnerability condition functions in several different but closely-related ways. Most obviously, to lack access to the basic requirements of life is to be vulnerable to arbitrary interference: if the cost of my opposing some interference is, or is likely to be, the denial of food, water or shelter, then I cannot meaningfully contest it. Similarly, precarity of subsistence alters the threats/offers scales significantly: if I am comfortably-off and you offer me fifty quid to kick a cat, then (assuming I'm minimally morally competent) I will obviously reject the offer.¹⁴ If, though, I'm just keeping my head above water, then the calculation becomes much more complicated, and more importantly I'd rather not have been asked the question in the first place – I would rather not have to choose between “no money, happy cat” and “money, injured cat”, and this fairly uncontroversially makes the putative offer a coercive one.¹⁵ Finally, if I'm in a situation where I sim-

¹⁴ I have here more-or-less adopted the view of coercive offers given in Zimmerman 1981.

¹⁵ To take a different line, we might also say that in this situation I'm forced to kick the cat, in a Cohenite fashion – given that I need to survive, I have no reasonable alternative to kicking the cat. See Cohen 1983. Whether or not coercion without adequate justification amounts to a complete denial of agency I leave to one side; all that matters for my purposes is that such coercion *reduces* agency, which seems obviously true here.

ply don't have access to the necessities of survival, then I'm vulnerable for the above reasons *and* I'm at the point where it's arguable whether I am self-directing according to my values in the first place; to pick up on an earlier point, and as Nussbaum's observed (2000; 2006), something distinctive of human agency seems to be lacking in a context where I can make no decisions beyond those directly relating to my survival. If agency requires *only* that we can decide between *x* and *y*, then I'm still an agent in this context; but even the deliberately thin account I've assumed throughout requires more than this. So vulnerability threatens my agency by making it implausibly or unreasonably difficult for me to self-direct according to my values; both because I may simply be *unable* to do so, or because the cost of doing so would be unreasonable. Conversely, non-vulnerability means that I can make decisions, even very difficult ones, without risking my basic ability to act as an agent.

Now for non-vulnerability and accountability. As I've indicated, there is a disconnect between merely seeing somebody as the right kind of being to hold you accountable – in the way that an imaginary interlocutor in a thought-experiment would be the right kind of being – and that person actually being *able* to hold you accountable. Though recognition respect can't require that every agent is equally able to hold every other agent, or institution, to account at all times, if it's to be understood in a more than merely attitudinal way then being recognised as the right kind of being to demand accountability must entail that every effort is made to facilitate this demand. Non-vulnerability, with its requirement that agents hold meaningful contestatory powers, does this: on the social-relational view what it means for me to be granted recognition respect is that I actually *can* hold others to account.¹⁶ Think about the difference between somebody's thinking that their colleagues are the right kind of beings to demand accountability from them when it comes to conduct in professional contexts, and there being an institutional norm or set of norms such that they cannot in fact ride roughshod over demands for justification. In the first instance, even if the attitude is sincerely held,

¹⁶ There's a parallel here with the constitutively relational account of autonomy, whereby our autonomy is constituted in large part just by standing in relations that actually allow us to pursue our conceptions of the good. See, for example, Oshana 1998; 2006; 2014.

it doesn't amount to *correctly* seeing colleagues as able to hold them to account (because they can't!), while in the second instance the attitude is largely irrelevant: colleagues being able to demand accountability is a function of their having contestatory powers, i.e. a function of the social and institutional structures they are situated within. This second case both presents the correct 'view' for colleagues to hold about each other, and ensures that the view has meaningful consequences.

Invoking talk of contestatory powers, of course, invites questions about how we should think of these powers. Remaining within the Pettitian framework, the question is whether contestatory powers consist in "reciprocal power" or in "constitutional provision" (Pettit 1997, 67-68) – roughly, whether it consists in agents having roughly equal social, political and economic powers against each other and against institutions, or there being legal rights and systems, backed by the power of the state, that ensure a genuine possibility of contestation. As an example of the former, I can demand accountability from – have contestatory powers against – management regarding some change to working conditions if their refusal to explain or consult about the decision will be met by a mass walkout (such that they would then find themselves in a very awkward position of trying to fire x hundred people); whereas constitutional provision would allow me to demand accountability through legally-mandated consultation, or through an industrial tribunal challenging the decision.¹⁷

It is tempting to say that my view is agnostic between them, especially as (unlike Pettit, or indeed Anderson) I don't see even the ideal state as a necessary or sufficient guarantor of non-vulnerability. However, if we presume statism, then I suspect that constitutional provisions will be necessary: since we're concerned with the structures that people find themselves in, and these structures include the state and its organs, it seems plausible to say that the structures must ensure (or try their best to ensure) that agents can hold each other, and hold institutions, to account. If agents do not stand in these structures, it's difficult to see how

¹⁷These shouldn't be taken to be exclusive possibilities, of course – plausibly, the best chance for non-vulnerability is to have both reciprocal power and constitutional provision.

we could make the claim that those agents stand in the appropriate relations of recognition respect, especially given the imbalance of power between the state and any given agent or group of agents. A state that merely says “don’t dominate each other, and we won’t prevent you from forming pressure groups”, and otherwise holds off, doesn’t seem like one that is producing structures that by design give people contestatory powers against potential arbitrary interference, or that by design allow agents to demand accountability of more powerful bodies. This isn’t to say that reciprocal power is excluded – in fact, if we’re in a state that *does* fail to instantiate the appropriate relations, then we’ve got a strong reason for agents to try and produce reciprocal power insofar as they can – just that the presumption of the state brings with it the necessity of constitutional provision for contestation insofar as contestatory powers are a requirement of non-vulnerability.¹⁸

This, it will be noticed, means that anyone who is already concerned with non-vulnerability and with recognition respect won’t find their position much altered; neither will the democratic egalitarian. However, neither democratic equality nor non-vulnerability are as widely-held values as is respect for agency – indeed, insofar as non-vulnerability is a key component of the republican conception of freedom, it has come under fire for simply being a way of securing negative liberty rather than anything distinctive.¹⁹ If I’m right, though, then anyone concerned with agency ought to be *directly* concerned with non-vulnerability regardless of how they think about freedom, or of how they think about equality in political philosophy: to respect someone as an agent entails doing the best one can to ensure that they can continue to operate as an agent and to hold other people accountable. This being so, there is a fairly straight line between recognition respect as a political value and non-vulnerability as the constituent of such respect – for an agent to be granted recognition respect by a political community is for them to stand in relations that protect their agency and their ability to hold that community to account.

¹⁸ As it happens, I think states are incapable of accommodating such contestation (see Humphries 2021), but that needn’t detain us here.

¹⁹ E.g. Lang 2012.

Conclusion

To summarise, I've argued that recognition respect is a good candidate for explaining and motivating Andersonian-type democratic egalitarianism, as well as being an independently appealing value; and that given the fundamental appeal to agency, it should be understood as being primarily constituted by social relations rather than attitudinally. If we're to understand it this way, I think we should understand the relevant relations as those of non-vulnerability: to be respected as an agent is in large part to stand in relations that prevent you from being arbitrarily interfered with, as such relations guarantee your ability to continue operating as an agent and to hold other agents and institutions to account.

I think this is important for two reasons: first, it fills out the picture of democratic equality a bit further (and allows us to non-arbitrarily adjudicate clashes between the various 'levels' of functioning that Anderson identifies). Second, it suggests that more people are committed to the value of non-vulnerability than may be thought at first glance: it's fairly uncontroversial to hold that agency is a political value and, on my view, this means a commitment to recognition respect or something very like it as a political value.

If I am right, this means that anyone who cares about agency should care about non-vulnerability – this doesn't seem like a surprising result to me, but it is nonetheless novel given that non-vulnerability is often taken to be a much more controversial value than agency in the literature.

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Ilaria Cozzaglio

**Concetto e concezioni
della legittimità: il realismo
politico tra contestualismo
e principi universali**

1. *Introduzione: realismo politico e normatività*

Il dibattito sulla normatività politica trova il proprio fondamento nell'idea che la teoria morale rappresenti la fonte normativa per valutare e guidare i fenomeni politici. Valori morali quali eguaglianza, giustizia e autonomia rappresentano il punto di riferimento per la giustificazione delle istituzioni politiche, da Aristotele in avanti (Larmore 2013). Negli ultimi decenni, un nuovo modello di teoria politica si è contrapposto al precedente: Bernard Williams, nel suo saggio su realismo e moralismo in teoria politica (2005), definisce i fondamenti del "realismo politico", un approccio alla teoria politica che, pur intendendo offrire una prospettiva normativa, ne ricerca i fondamenti non nella morale, bensì nei tratti della politica stessa¹.

¹ In questo articolo, intendo far riferimento al realismo politico come branca della teoria politica normativa, e non al realismo come branca delle relazioni internazionali. Val la pena notare, però, come il primo si sviluppi a partire dal secondo, per quanto riguarda la sensibilità verso alcuni temi – quali la centralità di conflitto, potere e interessi nella sfera politica, e la peculiarità delle dinamiche politiche rispetto a quelle che permeano la sfera morale – ma come se ne differenzi per una più spiccata vocazione normativa, che lo rende appunto un approccio appartenente alla teoria politica più che alle scienze sociali empiriche. È utile riferirsi al saggio di Matt Sleat per apprezzare le differenze tra realismo in teoria politica normativa e *Realpolitik* (Sleat 2014). Per una ricostruzione dei punti di giuntura tra realismo in teoria politica e realismo nelle relazioni internazionali, faccio riferimento al saggio di Alison McQueen (2017).

Padre fondatore del realismo politico, Williams ispira teorici contemporanei quali, tra gli altri, Williams Galston, Matt Sleat, Enzo Rossi, Mark Philp, John Horton, i quali approfondiscono le linee guida di un modo di fare teoria politica che, per la sua eterogeneità di sviluppi e fonti, va inteso come una «famiglia di approcci» più che come una scuola di pensiero sistematizzata (McQueen 2017, 297; trad. mia). Tuttavia, e nonostante le (talvolta ampie) differenze interne, il realismo politico può essere definito sulla base di alcuni assunti metodologici.

In primo luogo, la politica è una sfera autonoma caratterizzata da alcuni tratti specifici, quali la presenza ineliminabile del conflitto, la pluralità di visioni e interessi, il disaccordo sui valori, l'uso del potere coercitivo come ultima *ratio* per ottenere obbedienza. La specificità della natura del politico richiede, secondo i realisti, l'elaborazione di una normatività altrettanto specifica: detto altrimenti, i valori e gli standard con cui regolare la dimensione politica non possono collassare su valori e standard che pertengono ad altre sfere, per esempio quella morale (Williams 2005; Galston 2010; Rossi e Sleat 2014; Philp 2010). Gli standard normativi devono dunque essere compatibili con la natura del politico e con i fatti che lo caratterizzano, pena l'inaccuratezza descrittiva e l'irrelevanza normativa della teoria (Horton 2010).

Ciò comporta un secondo, fondamentale requisito della normatività politica, ossia la sua sensibilità al contesto. Gli standard normativi devono essere compatibili con le circostanze politiche, economiche e culturali presenti nei contesti sotto scrutinio. Questo requisito si traduce, a sua volta, in più specifici standard metodologici. Per esempio, alcuni autori insistono sulla necessità di legare il concetto di legittimità politica alle credenze dei cittadini (Horton 2012; Sagar 2018; Cozzaglio

Vale altrettanto la pena notare che gli stessi realisti delle relazioni internazionali si sono mostrati tutt'altro che inconsapevoli circa il ruolo dei fattori morali nella politica – un esempio su tutti sono i sei principi del realismo formulati da Hans Morgenthau (1993). Per un'analisi di questo aspetto, si veda il saggio di William Scheuerman (2018). Infine, è bene notare che anche all'interno del gruppo dei realisti in teoria politica ci sono differenze sostanziali circa le fonti della normatività politica: per esempio, i cosiddetti realisti radicali – per esempio Rossi – tendono a rifiutare in maniera molto più marcata di altri il ruolo dei valori morali nella formulazione di standard politici.

2020b); altri sottolineano come la giustificazione del potere politico debba essere compatibile con le circostanze storiche e culturali in cui si applica (Williams 2005; Sleat 2013); altri ancora sviluppano gli standard normativi a partire dall'analisi di scopo e funzione di istituzioni e pratiche politiche esistenti, e di forme di protesta e resistenza che permeano il contesto politico analizzato (Jubb 2016 e 2019a).

È tuttavia fondamentale notare che il contestualismo della normatività realista non va confuso con un approccio descrittivo alla politica. David Beetham chiarisce bene questo aspetto, nel commentare criticamente l'approccio weberiano alla legittimità: secondo una nozione normativa della legittimità, uno stato è legittimo, Beetham ammonisce, non perché i cittadini lo ritengono tale, ma perché può essere *giustificato* sulla base delle credenze dei cittadini (Beetham 1991, 11). Più precisamente, la specificità della normatività politica non richiede l'abbandono di ogni appello alla morale, tutt'altro: l'appello ai valori morali è fondamentale, e non in contrasto con la metodologia realista, nella misura in cui tali valori sono condivisi da coloro che sono sottoposti all'autorità politica, o comunque compatibili con il contesto politico da valutare (Sleat 2014 e 2021).

Lo sviluppo del realismo politico per mano dei successori di Williams è stato accompagnato da un crescente dibattito circa i fallimenti del realismo stesso. È possibile raccogliere le voci critiche attorno a due temi. Il primo è che il realismo, nell'insistere sull'autonomia della sfera politica, sulla centralità e immutabilità di certi fatti e sul contestualismo, finisce per essere un approccio conservatore, incapace di distaccarsi davvero dallo *status quo* (Estlund 2014 e 2020; Ypi 2016), se non offrendo standard normativi insufficienti per ripararci dagli orrori cui l'umanità ha assistito e contribuito (Erman e Möller 2013). A questa critica, i realisti hanno risposto seguendo varie strategie. Alcuni hanno mostrato come la teoria realista possieda strumenti, quali il principio di teoria critica [*critical theory principle*] (Williams 2005 e 2002), che sono in grado di stimolare processi critici interni (Sagar 2018; Hall 2015a). Altri hanno mostrato la capacità del realismo politico di pensare utopicamente (Rossi 2019; Favara 2021) o di fornire le coordinate del progresso politico (Cozzaglio 2020a; Cozzaglio e Favara in pubblicazione, 2022). Altri ancora hanno mostrato come il realismo, nonostante la propria vocazione contestualista, sia in grado di accomodare alcune forme di critica esterna (Cozzaglio 2020b; Favara 2021).

La seconda critica sostiene che il realismo, proprio nel tentativo di offrire una visione normativa della politica, finisce per trasformarsi in un approccio moralista (Forst 2017; Leader Maynard e Worsnip 2018; Larmore 2013; Leader Maynard 2021) o in un approccio incoerente rispetto alle proprie promesse originarie (Erman e Möller 2019, 2021). I realisti hanno risposto mostrando la differenza tra valori morali e valori politici (Sleat 2016), sottolineando come l'appello a valori morali non sia incoerente con la metodologia realista (Hall 2015a, 2015b; Sleat 2014, 2021) o chiarendo i termini della specificità della normatività realista (Jubb 2019b).

In questo articolo intendo obiettare, sebbene in maniera indiretta, a entrambe le accuse mosse al realismo, mostrando come la nozione di legittimità realista sia in grado, tramite la distinzione tra concetto e concezione, di tenere insieme tanto spinte contestualiste, quanto spinte universaliste funzionali a muovere criticamente oltre lo *status quo*. Nel fare ciò, intendo anche rafforzare la teoria realista mostrando più chiaramente come queste due spinte si relazionano l'una all'altra, e come sia possibile rivendicare un ruolo centrale per le credenze di coloro che sono soggetti al potere politico. Se ciò che sostengo si dimostra plausibile, allora il realismo può respingere sia l'accusa di conservatorismo, che quella di non specificità. Si noti, tuttavia, che l'obiettivo preposto è ampio e complesso, e richiede un lavoro che va ben oltre la portata di questo saggio. In questo articolo, mi limito a proporre alcune considerazioni che sperabilmente stimolino una riflessione più approfondita su questi temi.

Il saggio si struttura come segue. Partirò dalle nozioni di relazione politica e di legittimità di Williams, e dalla nozione di legittimità di Max Weber, per mostrare come tali nozioni siano intrinsecamente legate alle credenze e ai valori di coloro che sono soggetti all'autorità politica (2). A partire da queste riflessioni, proporrò una teoria (descrittiva e normativa) della struttura della credenza nella legittimità, a partire dalla quale distinguerò il concetto dalle concezioni realiste della legittimità (3). Mostrerò dunque come il primo incarni la vocazione universalista del realismo, mentre le seconde la sua sensibilità al contesto. Infatti, le concezioni della legittimità si differenziano dal concetto, in quanto esprimono standard normativi contestuali che dipendono dalle circostanze politiche, storiche e culturali in atto, e dalle credenze espresse da

coloro che sono soggetti all'autorità politica. In conclusione (4), proporrò alcune riflessioni preliminari circa le implicazioni normative del legame tra legittimità e credenze, per mostrare come tale legame implichi un ideale politico di autonomia, benché fondato non nella teoria morale, ma nella distinzione fattuale stessa tra relazione politica e relazione di dominazione su cui il realismo politico impenna la propria normatività.

2. Legittimità, relazione politica e credenze

2.1 Qualche definizione

In questa sezione, intendo fare chiarezza su tre concetti che sono al cuore del realismo politico, e che forniscono le basi per sviluppare l'argomentazione di questo saggio. Questi concetti, che nel realismo sono legati tra loro in maniera peculiare, sono: relazione politica, legittimità e credenze. Per coglierne i tratti e le reciproche relazioni, mi affiderò ad alcuni passaggi contenuti nei lavori di Williams e di Weber, e alla loro rielaborazione da parte di alcuni teorici contemporanei.

Williams prende le mosse da un'interpretazione di cosa sia una relazione politica in quanto opposta a una relazione di cruda dominazione per introdurre il concetto di legittimità – il quale, a sua volta, dipende – sebbene solo in parte – dalle credenze dei soggetti. Uno stato, secondo Williams, deve prima di tutto offrire una *soluzione accettabile* al «primo problema politico» [*first political question*], cioè «l'assicurazione di ordine, protezione, sicurezza, fiducia e delle condizioni per la cooperazione» (Williams 2007, 5-6). Una relazione politica si distingue da una relazione di cruda dominazione proprio per l'accettabilità della soluzione alla domanda politica prima. Ma da cosa dipende tale accettabilità? È qui che entra in gioco il concetto di legittimità e, in particolare, quello di «richiesta di legittimazione fondamentale (RLF)» [*Basic Legitimation Demand* (BLD)] (Williams 2007). Affinché una soluzione sia accettabile, e dunque ci si trovi in presenza di una relazione politica, tre condizioni devono applicarsi. La prima è che lo stato fornisca una «giustificazione del proprio potere *a ciascun suddito*» (Williams 2007, 7). La seconda è che tale giustificazione sia intelligibile in quanto giustificazione del potere, cioè abbia senso [*make sense*] date le circostanze storiche e culturali

(Williams 2007). La terza è che l'accettazione di tale giustificazione da parte di coloro che sono soggetti al potere politico non sia un prodotto di interventi manipolatori da parte di coloro che esercitano il potere politico stesso – così raccomanda il «principio di teoria critica» [*critical theory principle*] (Williams 2007, 9). Il concetto di legittimità fa dunque da leva normativa per distinguere una relazione politica da una relazione di dominazione². Detto in altri termini, per Williams una relazione continuativa di comando-obbedienza non è necessariamente una relazione politica, se l'esercizio del potere è percepito, da chi vi è soggetto, come arbitrario.

Un'idea simile si trova nel Max Weber di *Economia e Società*³. Weber fornisce due nozioni di dominazione. La prima stabilisce che dominazione [*Herrschaft*] è «la probabilità che un dato gruppo di persone obbedirà ad un comando con un contenuto specifico» (Weber 2006, 62; trad. mia). La seconda, che esprime invece il concetto di dominazione legittima, intende dominazione come

la situazione in cui la volontà manifesta (comando) di chi governa è intesa a influenzare la condotta di uno o più soggetti, e in effetti la influenza in modo che la loro condotta si strutturi, a un grado socialmente rilevante, come se i soggetti avessero fatto del contenuto del comando la massima della loro azione. Visto dall'altro lato della medaglia, questa situazione verrà chiamata obbedienza (Weber 2006, 980; trad. mia).

È importante sottolineare come, per Weber, l'obbedienza possa originarsi da situazioni molto diverse tra loro, e che diversi tipi di obbedienza segnalino diversi tipi di legittimità del potere politico. Infatti, mentre l'obbedienza basata sul timore, l'abitudine o l'espedito segnala il tipo

² Vi è disaccordo circa la questione se in Williams la nozione di relazione politica collapsi completamente su quella di legittimità. Per un approfondimento in questo senso si veda l'articolo di Ed Hall (2015a). Ad ogni modo, rispondere a questa questione non è necessario per l'argomentazione di questo articolo. Infatti, per i presenti scopi, è sufficiente mostrare che vi è una relazione tra i due concetti.

³ Per un'analisi delle differenze tra la normatività weberiana e quella di Williams, si veda l'articolo di Cozzaglio e Greene (2019). Per un'analisi dell'impatto normativo del pensiero weberiano, si vedano Greene (2017), Wolin (1981), and Philp (2007).

più generale di obbedienza – quello, appunto, della prima definizione – l'obbedienza fondata sulla credenza nella validità del comando è ciò che distingue la dominazione legittima – ovvero quella della seconda definizione – dalla dominazione *tout court*. Si tratta quindi di un tipo di obbedienza qualitativamente differente rispetto a quella del primo caso, proprio perché fondata sulla convinzione della validità del comando, e che, pertanto, generalmente garantisce maggiore stabilità al potere politico. Anche nel caso di Weber, dunque, come in quello di Williams, la legittimità del potere politico è una caratteristica della relazione politica che ha a che fare, in un modo o nell'altro, con le credenze di coloro che sono sottoposti all'esercizio del potere.

2.2 Contestualismo *versus* universalismo?

Ciò ci permette di introdurre il tema del contestualismo e dell'universalismo come spinte (apparentemente) opposte, eppure compresenti, nel realismo politico sviluppatosi a partire dagli scritti di Williams e di Weber. Di fatti, il concetto di intelligibilità di Williams, così come l'idea weberiana della legittimità come dipendente dalle credenze dei soggetti, hanno dato spunto a una serie di ulteriori elaborazioni della metodologia realista in generale, e della sua spinta contestualista in particolare. Sostenere che la legittimità debba essere in qualche misura dipendente dalle credenze dei soggetti significa appellarsi alle caratteristiche del contesto al fine di formulare standard normativi. Un esempio di teoria realista della legittimità sviluppatasi in questo senso è quella di John Horton (2012; 2010b), il quale fa propria la lezione weberiana, ma anche la critica mossa da David Beetham allo stesso Weber, cioè che uno stato non è legittimo semplicemente perché i cittadini credono lo sia, ma perché lo si può *giustificare* sulla base delle credenze dei cittadini (Beetham 1991, 11).

Tuttavia, il contestualismo della teoria realista non si limita ad associare legittimità e credenze. Infatti, appellarsi al contesto significa ancorare gli standard normativi a una serie di ulteriori aspetti che caratterizzano ciascun contesto politico e dunque variano di comunità politica in comunità politica. Galston ne ricorda alcuni: la scarsità delle risorse a disposizione, la pluralità degli interessi e delle visioni, la conflittualità tra diversi sistemi valoriali, ma anche l'influenza che hanno passioni e

impulsi sulle azioni sociali degli individui (Galston 2010 e 2018). In questo spirito, Jubb ritiene che dovremmo derivare i principi dai fatti politici così «come li conosciamo» (Jubb 2016, 77; trad. mia), invitando così a una disincantata indagine di cosa sia la politica, e di quali siano gli spazi di manovra possibili, prima di procedere con una proposta normativa. Similmente, Philp annovera tra i desiderata di una teoria realista della politica che essa tenga conto delle circostanze dell'esercizio del potere, delle capacità e degli interessi degli agenti, così come dei loro ruoli e competenze (Philp 2010).

È importante sottolineare, tuttavia, che ancorare i principi ai fatti non significa necessariamente arrendersi allo *status quo* e dunque rinunciare a prescrivere corsi d'azione in grado di determinare un progresso della società. Infatti, come ricorda Lorna Finlayson, il conservatorismo della teoria realista dipende esclusivamente da dove viene posta la soglia tra fatti modificabili e fatti imm modificabili (Finlayson 2017)⁴. La normatività realista si differenzia da quella morale tradizionale non per essere meno critica di quest'ultima verso lo *status quo*. Piuttosto, si distingue per il proprio appello a una normatività dal basso, o dipendente dalle pratiche, cioè quella composta da principi che scaturiscono anzitutto da una valutazione degli scopi e delle funzioni delle istituzioni politiche⁵.

Dall'altra parte, il concetto di relazione politica in Williams restituisce la dimensione universalista della metodologia realista. Infatti, che una relazione politica sia diversa da una relazione di dominazione è una verità fattuale che si applica indipendentemente da qualunque sia il contesto in considerazione. Del resto, Williams sottolinea che, mentre non possiamo appellarci ai nostri valori per valutare la legittimità di stati appartenenti alla storia passata, possiamo certamente formulare giudizi circa la loro le-

⁴ Non c'è qui lo spazio per fare giustizia al complesso dibattito che si è instaurato tra critici e difensori del realismo circa la capacità di quest'ultimo di muovere oltre lo *status quo*. Per chi fosse interessato, si vedano i contributi critici di Eva Erman e Niklas Möller (2013, 2019), Jonathan Leader Maynard e Alex Worsnip (2018), David Estlund (2014, 2020) e Lea Ypi (2016). In difesa del realismo, e in risposta – diretta o indiretta – ai contributi sopra citati, si vedano gli articoli di Rob Jubb e Enzo Rossi (2015a; 2015b), Ed Hall (2015a), Rob Jubb (2019b).

⁵ A riguardo, si veda la nozione di *practice-dependence* elaborata da Andrea Sangiovanni (2008).

gittimità se tali giudizi si fondano sulla distinzione tra relazione politica e relazione di dominazione (Williams 2007, cap. 6). Per esempio, possiamo giudicare uno stato illegittimo, se questo stato esercita potere sui propri cittadini in maniera arbitraria, cioè se stabilisce un ordine politico che non corrisponde al sistema valoriale adottato in quella comunità politica. In questo senso, la definizione di relazione politica fornisce uno standard universale per esprimere giudizi applicabili indipendentemente dalle caratteristiche specifiche dei diversi contesti politici.

C'è di più. La nozione stessa di legittimità ha valore normativo universale, mentre la nozione di "avere senso", ricorda Williams, è normativa solo quando applicata al nostro caso specifico (Williams 2007, 15). Si può dire quindi che la nozione di legittimità faccia da congiunzione tra spinte universaliste e spinte contestualiste. Ma cerchiamo di spiegarlo meglio. Dopo aver esposto le tre "condizioni" della richiesta di legittimazione fondamentale, Williams si sofferma a specificare che i valori che costituiscono ciò che ha senso in quanto giustificazione del potere costituiscono un vincolo normativo soltanto nelle comunità in cui tali valori sono effettivamente condivisi. Un esempio: laddove una certa concezione della giustizia distributiva viene ritenuta dalla comunità come un valore politico fondamentale, ogni ordine politico che violi tale concezione risulterà illegittimo. In questo senso, la categoria di "*make sense*" ha valore normativo contestuale.

La nozione di legittimità, invece, specifica Williams, ha valore normativo a-contestuale. Cosa significa? Significa che qualsiasi giudizio sulla legittimità di uno stato deve essere formulato sulla base di quei tre vincoli che compongono la richiesta di legittimazione fondamentale. In altre parole, la legittimità di qualsiasi stato va valutata sulla base della capacità dello stato stesso di offrire una giustificazione accettabile – compatibile con i valori lì condivisi e non manipolata – del proprio esercizio del potere. Pertanto, qualsiasi giudizio politico sulla legittimità di uno stato che violi uno di questi criteri non è un giudizio valido. In questo senso, sia la nozione di relazione politica che quella di legittimità in Williams offrono gli strumenti per formulare giudizi politici che hanno validità indipendentemente dal contesto, e dunque permettono – sebbene solo in certa misura – anche giudizi comparativi.

Anche Weber offre una nozione di legittimità che si tende tra vocazioni universaliste e spinte contestualiste. Infatti, come ricordato in prece-

denza, da una parte la legittimità di un regime dipende dalle credenze dei cittadini, e queste credenze variano a seconda dei contesti culturali, e soprattutto storici, in cui il regime esercita il proprio potere. Weber individua tre basi per la credenza nella legittimità di un regime – tradizionale, carismatica e razionale-legale – e queste tre si susseguono (anche se non in maniera lineare) in un percorso storico che va dal pre-moderno, dove a sostenere la validità dell'autorità politica sono considerazioni di stampo religioso, di continuità familiare o eroicità del leader, alla modernità, in cui prevale un impianto giustificativo di tipo razionale e la burocratizzazione dello spazio politico prende piede (Weber 2006, I, cap. III). Dall'altra parte, però, qualunque sia il tipo di credenza coinvolta nel processo di legittimazione, essa deve avere una caratteristica, cioè quella di far sì che il comando venga percepito come massima dell'azione di per sé, al di là di ogni convenienza, espediente, o paura. Questo dice la seconda definizione di dominazione sopra citata, e questo esplica la spinta universalistica che anche la nozione weberiana di legittimità include. Infatti, i tre tipi di legittimità (basati sui tre tipi di credenze) illustrati da Weber sono ideal-tipi (Weber 2006) che raccolgono una serie di diverse credenze "reali". Ora tali credenze, affinché contino come "marcatori" della legittimità del regime, devono tutte esprimere la validità del comando o, per dirla in altro modo, l'autorevolezza del comando e di colui che lo proferisce: riconoscimenti della legittimità di un regime che si basino sul timore della punizione, su espedienti o su (acritica) abitudine non valgono come manifestazioni di legittimità.

3. Concetto e concezioni della legittimità realista

3.1 Oltre Williams e Weber

Nella sezione precedente abbiamo appurato come sia Williams che Weber, a cui si ispirano molti dei contributi contemporanei nella letteratura realista, intendono la normatività politica come tesa tra spinte contestualiste e spinte universaliste e che la nozione di legittimità, in particolare, imbriglia queste due vocazioni apparentemente opposte.

Alcuni critici hanno però visto negli standard universalisti che permeano le teorie della legittimità realista una forma di contraddizione.

Infatti, sostengono i critici, tali standard non possono che originare da una normatività che è esterna alla politica e dunque da rigettare, almeno secondo il diktat realista. Per esempio, Rainer Forst sostiene che il dovere dello stato di fornire una giustificazione del proprio esercizio del potere a ogni cittadino non possa che derivare da un sotteso principio di eguaglianza che Williams silenziosamente introduce per rinforzare la normatività della propria nozione di legittimità (Forst 2017). Similmente Charles Larmore (2013), meno criticamente, e Erman e Möller (2013), più criticamente, imputano al realismo la reintroduzione di principi morali universalistici, che minerebbero il proclamato contestualismo che caratterizza il realismo politico.

Molti realisti hanno fornito risposte a queste accuse⁶ – risposte volte principalmente a difendere la coerenza e la specificità della normatività realista. Tuttavia, ciò che manca ancora è un più dettagliato esame del rapporto tra contestualismo e universalismo. Detto altrimenti: una volta appurato che i due possono coesistere, anche in maniera coerente, all'interno di una stessa teoria, come si relazionano l'un l'altro? Porsi questo quesito non è puro esercizio filosofico. Piuttosto, la domanda scaturisce dall'esigenza di capire quali siano le variabili normative soggette a modifica (cioè quelle dipendenti dal contesto) e quali invece fungano da costanti immutabili della teoria (cioè quelle universaliste). Comprendere ciò serve anzitutto a delineare la capacità della teoria di incentivare il progresso politico, poiché restituisce un'immagine più nitida di quali siano gli aspetti sui quali è possibile intervenire per modificare lo status quo. Inoltre, serve anche a porre un confine tra ciò che legittimamente caratterizza un contesto (per esempio un certo sistema valoriale) ed eventuali violazioni e abusi di potere che caratterizzano tale contesto ma che non possono attribuirsi a una mera (e legittima) peculiarità storica, culturale, circostanziale.

C'è poi un secondo tassello mancante nella concezione realista della legittimità: nonostante molti autori abbiano fortemente sostenuto la

⁶ Si vedano, per esempio, i contributi di Ed Hall (2015a, b), Ed Hall e Matt Sleat (2017), e Matt Sleat (2021). Per quanto riguarda la distinzione tra standard morali e standard politici, si veda anche il contributo di Sleat del 2016 sulla definizione del valore politico. Infine, si vedano anche i riferimenti indicati alla nota 3 di questo saggio.

relazione tra le credenze dei cittadini e la nozione di legittimità, pochi hanno cercato di chiarire in cosa consista una credenza nella legittimità del regime, che ruolo abbia precisamente all'interno della nozione di legittimità, e a quali vincoli normativi debba sottostare per non ricadere nel riduzionismo weberiano denunciato da Beetham e poi da Horton. Altrove (Cozzaglio in pubblicazione, 2022) ho sostenuto che Williams, nell'introdurre il principio di teoria critica come vincolo a ciò che 'ha senso' in quanto giustificazione del potere, perde di vista l'importanza del ruolo delle credenze nel determinare gli standard normativi della legittimità. Come abbiamo visto, Williams ammette che «quando arriviamo al caso che ci riguarda, la nozione di "avere senso" diventa normativa» (Williams 2007, 15) e dunque i valori impliciti nelle credenze dei soggetti sulla legittimità del regime devono avere un impatto su come dare forma all'ordine politico. Tuttavia, una volta che il principio di teoria critica viene innescato, non è chiaro che cosa rimanga della normatività espressa da quei valori che hanno senso in una determinata comunità politica, né chi debba impugnare tale principio al fine di criticare le credenze. Un esempio del primo dilemma è il seguente: cosa fare se un soggetto, la cui credenza è stata giudicata inammissibile sulla base del principio di teoria critica, sostiene di non essere manipolato, ma che invece tale credenza derivi da un'eredità storica e culturale che non è accessibile a coloro che non appartengono alla stessa comunità politica e che dunque la interpretano come frutto di manipolazione? Questa domanda apre inoltre alla seconda questione prima menzionata, cioè a chi spetti esercitare la critica delle credenze: da una parte, se è il soggetto stesso a farlo, c'è il rischio che molte forme esistenti di manipolazione non vengano disvelate; dall'altra, se è il teorico a farlo, c'è il rischio che la forza della prospettiva di coloro che sono soggetti all'autorità politica venga eccessivamente annacquata, proprio a causa della non familiarità del teorico con il contesto politico in analisi.

Alla mia critica qualcuno potrebbe obiettare che se l'aver senso di un certo ordine politico è determinato da una qualche forma di manipolazione, allora l'aver senso stesso non è altro che un'illusione. Certamente, il principio di teoria critica ha un ruolo fondamentale nel salvaguardare la capacità normativa della nozione di legittimità. Tuttavia, a mio avviso, Williams pecca nel non prendere sufficientemente sul serio la possibilità che ciò che dall'esterno è percepito come il risultato della

manipolazione sia invece il frutto di una determinata costellazione di fattori culturali, sociali e storici che caratterizzano un certo contesto, influenzando il significato della nozione stessa di relazione politica, e che sono accessibili solo a coloro che appartengono a quel contesto. Williams insiste in più punti sulla necessità di astenersi dall'utilizzare i propri valori al fine di giudicare la legittimità di regimi lontani da noi, per distanza temporale o relazionale (Williams 2007, cap. 6). Tuttavia, allude anche al fatto che l'astensione dal giudizio non vale, se i regimi in questione sono a noi contemporanei, o a noi prossimi in termini relazionali (Williams 2007, cap. 6). In questi casi, che non rappresentano certo una minoranza, rimane oscuro come il giudizio vada formulato, e dunque quale sia davvero il ruolo concesso alle credenze dei soggetti nella formulazione di giudizi di legittimità rispetto al verdetto del principio di teoria critica.

Al fine di spiegare la relazione tra contestualismo e universalismo, e di ricollocare in maniera convincente il ruolo delle credenze dei cittadini all'interno della nozione di legittimità, intendo introdurre la distinzione tra concetto e concezioni della legittimità, e mostrare come essi prendano forma nel linguaggio del realismo politico. Prima di farlo, però, è necessario chiarire in che cosa consista, appunto, una credenza nella legittimità.

3.2 La struttura della credenza nella legittimità

A tale scopo, è utile partire da alcune considerazioni metodologiche che Horton propone sulla nozione di legittimità. La prima è che, certamente, alcune delle nostre credenze possono essere ripugnanti, o irrazionali, o incoerenti, e che vanno dunque sottoposte a processi interpretativi ed ermeneutici (Horton 2010b, 197). Tuttavia, una concezione della legittimità politica deve iniziare «prendendo quei pensieri e sensazioni seriamente e trattandoli con rispetto, invece che come qualcosa che va meramente dismesso come irrazionale o ideologicamente illusorio in nome di una preconcepita idea di teoria politica» (Horton 2010b, 197; trad. mia). La seconda, e conseguente, considerazione è che dovremmo resistere alla tentazione di pensare che «spetta al teorico politico determinare al posto loro [di coloro che sono assoggettati al potere politico] i criteri con cui gli individui, indipendentemente dalle circostanze geogra-

fiche e storiche, debbano giudicare se le loro istituzioni politiche sono legittime» (Horton 2012, 145).

Come interpretare, dunque, le credenze? Sebbene non affronti direttamente la questione, Horton offre uno spunto interessante per sviluppare una teoria delle credenze nella legittimità. Nel criticare quelle teorie basate sulla nozione di consenso, infatti, Horton sottolinea che ciò che conta non è tanto il consenso o meno all'autorità politica, quanto le *ragioni* per cui i soggetti sono disposti a riconoscere la legittimità del regime, e dunque ad acconsentire al suo esercizio del potere:

Io acconsento a, o più propriamente riconosco, lo stato come legittimo, perché soddisfa i criteri salienti della legittimità che sono operativi nella pratica [...] L'affermazione della legittimità certamente conta, ma tale affermazione è radicata in qualcosa che va oltre l'affermazione stessa. Quindi, cosa spiega la mia attribuzione di legittimità? Questo varia a seconda dei tipi di considerazioni che sostengono la legittimità dello stato di cui un individuo è membro (Horton 2012, 142; trad. mia).

Partendo dalle considerazioni di Horton, si può dunque affermare che le credenze nella legittimità debbano esprimere le ragioni per cui un individuo è disposto a riconoscere legittimità allo stato, e non semplicemente l'affermazione di tale riconoscimento. Pertanto, tali credenze devono identificare un qualche tipo di *positività* dello stato, cioè appunto la sua capacità di soddisfare criteri che sono considerati salienti dai propri membri. Alla luce di queste considerazioni generali, è possibile tratteggiare la struttura di una credenza nella legittimità come segue⁷:

Soddisfare la caratteristica X è un criterio saliente di legittimità.

(*componente normativa*)

Lo stato soddisfa la caratteristica X (*componente fattuale*)

Lo stato è legittimo (*credenza nella legittimità*)

Adottando questa definizione, è possibile sostanziare le riflessioni metodologiche offerte da Horton. Infatti, le componenti normativa e fattuale, insieme, restituiscono le ragioni per cui un individuo è disposto

⁷ Per una più approfondita analisi delle basi, e delle conseguenze normative, di questa elaborazione si vedano (Cozzaglio 2020b) e (Cozzaglio in pubblicazione, 2022).

ad affermare la legittimità dello stato, e dunque a esprimere una credenza in tal senso. In altre parole, lo stato è legittimo (*credenza nella legittimità*) poiché effettivamente soddisfa (*componente fattuale*) alcuni criteri salienti (*componente normativa*), secondo la prospettiva degli individui soggetti al suo potere.

Ancora un paio di precisazioni, prima di passare alla distinzione tra concetto e concezioni. La prima è che tale struttura della credenza nella legittimità è permissiva circa ciò che conta come criterio saliente – anche se, come vedremo, è necessario applicare alcuni vincoli normativi. Ciò significa che ciascun individuo, o ciascuna comunità politica, può inserire al posto di X i criteri che più ritiene consoni. La seconda è che X può rappresentare non uno, ma un insieme di criteri salienti, che possono essere più o meno esplicitamente già ordinati secondo gerarchie di priorità. La struttura, come sopra presentata, intende fornire solo un modello ideale in grado di semplificare, o meglio, cristallizzare, un certo tipo di ragionamento politico.

3.3 Concetto e concezioni della legittimità realista

A questo punto, al fine di chiarire il rapporto tra spinte contestualiste e universaliste della teoria normativa realista, e il ruolo delle credenze per la nozione di legittimità politica, intendo introdurre la distinzione tra concetto e concezioni, e proporre le rispettive formulazioni in termini compatibili con la metodologia realista. Propongo il seguente come *concetto* della legittimità:

La legittimità è una caratteristica ascrivibile a un regime politico, la cui ascrizione dipende dalle qualità positive del regime in quanto percepite come tali da un soggetto, a patto che tale percezione soddisfi almeno i seguenti tre requisiti normativi: *coerenza*, *adeguatezza fattuale* e *adeguatezza politica*. La legittimità conferisce al regime il diritto (legale e morale) di richiedere obbedienza ai soggetti, poichè tale obbedienza è funzionale a soddisfare le qualità positive che i soggetti stessi individuano come tali nell'ordine politico. In altre parole, l'obbedienza è in questo caso l'altra faccia della legittimità così concepita.

Analizziamo ora, una a una, le varie componenti di questa definizione. La positività delle qualità del regime dipende da ciò che il soggetto ritiene saliente o per se stesso direttamente, o per il mondo in cui vive.

Tale positività si concretizza in quei criteri che abbiamo visto essere parte della struttura della credenza nella legittimità, e può riguardare sia le fonti del potere politico (*input legitimacy*) che gli esiti del suo esercizio (*output legitimacy*). Per esempio, un soggetto che ritiene una certa concezione della giustizia distributiva G_d come un requisito saliente dell'ordine politico⁸, ascriverà legittimità al proprio regime solo nella misura in cui riterrà che il regime implementi effettivamente G_d .

Veniamo ora ai tre requisiti normativi⁹. Per *coerenza* intendo il fatto che la credenza nella legittimità derivi effettivamente dal riscontro fattuale della capacità del regime di soddisfare quelli che vengono individuati come criteri salienti. In altre parole, un soggetto che individua in G_d il criterio saliente della legittimità (*componente normativa*), ma che riscontra l'incapacità del regime di soddisfare G_d (*componente fattuale*), non può coerentemente sostenere la legittimità del regime (*credenza nella legittimità*). Si noti che il requisito della coerenza non è un requisito esterno, arbitrariamente applicato. Piuttosto, è un requisito inerente alla definizione stessa di credenza nella legittimità: se tale credenza deve esprimere la positività del regime secondo un soggetto, conferire legittimità sulla base di una valutazione negativa delle qualità del regime è in contraddizione con la definizione e il ruolo di tale credenza, nonché con la logica argomentativa interna alla credenza stessa. Il requisito della coerenza spinge gli individui a riflettere sulle ragioni per le quali sono disposti a riconoscere legittimità al regime e, nel richiedere che tali ragioni (componente normativa e fattuale) vengano esplicitate, filtra sia istanze acritiche – per esempio, il conferire legittimità per abitudine a sottostare a una certa autorità politica – sia istanze che non si fondano su qualità positive del regime – per esempio, il conferire legittimità per timore.

⁸ Ritorrerò più avanti, anche se brevemente, sul perché non sia problematico, per una teoria realista, riferirsi alla giustizia distributiva come criterio saliente per la legittimità. Per approfondire il tema della compatibilità tra concezioni morali e realismo politico, si vedano Sleat (2014) e Jubb (2015). Per una più dettagliata discussione del perché il requisito dell'adeguatezza politica non reintroduca una forma di moralismo, si veda (Cozzaglio in pubblicazione, 2022).

⁹ Per una più ampia analisi di questi tre requisiti, si veda (Cozzaglio in pubblicazione, 2022).

Per *adeguatezza fattuale* intendo che la componente fattuale contenuta nella credenza nella legittimità sia compatibile con le informazioni rilevanti a disposizione, cioè, tornando all'esempio sopra riportato, che il regime davvero soddisfi i requisiti espressi da G_d . Mentre è chiaro che nessun individuo possa avere completezza di informazioni, né gli possa venir richiesto di spendere un'irragionevole quantità di tempo e risorse nel cercarle, è però necessario che ne acquisisca in misura ragionevole a formulare una credenza che sia plausibile dal punto di vista fattuale e, soprattutto, che sia disposto a rivedere tale credenza qualora le informazioni su cui si basava si rivelassero incorrette. Il requisito dell'*adeguatezza fattuale* aiuta a filtrare quelle istanze di legittimità che sono frutto della manipolazione da parte del regime, perché invita a raccogliere informazioni circa le qualità effettive del regime stesso – nel sopracitato esempio, un regime che dichiara di soddisfare i requisiti di G_d ma implementa policies che aumentano il divario economico e sociale tra classi non può essere considerato legittimo, laddove G_d è considerato un criterio saliente per la legittimità. Anche questo requisito, come il precedente, è inerente alla definizione e al ruolo della credenza nella legittimità¹⁰.

Con *adeguatezza politica* mi riferisco al fatto che i criteri salienti per la legittimità inclusi nelle credenze espresse dai soggetti (*componente normativa*) non debbano violare il compito base della pratica politica, intesa, nei termini di Williams, come volta alla «assicurazione di ordine, protezione, sicurezza, fiducia e delle condizioni per la cooperazione» (Williams 2007, 5-6). Per esempio, un soggetto che dovesse attribuire legittimità al proprio regime sulla base della sua effettiva capacità (*componente fattuale*) di minacciare attivamente l'integrità fisica e morale di una minoranza (*componente normativa*), esprimerebbe una credenza nella legittimità che non è accettabile dal punto di vista del criterio dell'*adeguatezza politica*. Si noti che i termini di cosa significa assicurare ordine,

¹⁰ Sia la coerenza che l'*adeguatezza fattuale* rappresentano criteri epistemici che vincolano le credenze. Pertanto, la loro introduzione non è imputabile a una forma di moralismo. Un intervento normativamente simile viene suggerito da Rossi (2019) e da Prinz e Rossi (2017), i quali propongono di valutare le narrative di legittimazione attraverso una critica genealogica, volta a escludere narrative epistemicamente sospette dall'insieme delle giustificazioni adottate per l'esercizio di un determinato potere politico.

protezione, sicurezza, fiducia e condizioni di cooperazione variano a seconda dei contesti politici, e dunque il requisito dell'adeguatezza politica può presentarsi – e tendenzialmente si presenta, almeno nei regimi democratici – come un vincolo normativo decisamente più robusto della versione minima qui presentata. Il criterio dell'adeguatezza politica deriva dalla definizione stessa di politica come differente dalla definizione di dominazione – come abbiamo visto in precedenza con Williams – e ha lo scopo di preservare, nella pratica politica, tale differenza.

Veniamo, infine, alla questione dell'obbedienza. Laddove il regime è considerato legittimo secondo la definizione sopra fornita, esso ha il diritto di pretendere obbedienza. Tale obbedienza, rimandando alla definizione di dominazione legittima di Weber, non è dovuta a timore, espediente o costume; piuttosto, è dovuta alla credenza nella validità del comando – o all'autorevolezza di chi lo proferisce. Non solo. L'obbedienza è funzionale alla realizzazione di un ordine politico strutturato sulla base di quei criteri salienti che proprio i soggetti riconoscono come tali nel valutare la legittimità del regime¹¹. Per queste ragioni, la pretesa di obbedienza è legittima, poiché tale pretesa non si fonda sull'instaurazione di una relazione di timore, né su una acritica accettazione dell'esercizio del potere da parte dei soggetti, ma su una valutazione, condotta dai soggetti stessi, delle fonti dell'autorità così come degli esiti politici per i quali l'obbedienza viene richiesta.

Fin qui, il concetto di legittimità sembra assolvere a tre ruoli. Il primo è quello di legare la nozione di legittimità a quella di politica. Infatti, la definizione sopra proposta offre un modo (certamente non l'unico) di esprimere la distinzione che Williams traccia tra relazione politica e relazione di dominazione, dove quest'ultima è caratterizzata da un esercizio arbitrario del potere politico, mentre la prima stabilisce un ordine la cui giustificazione è accettabile dal punto di vista dei soggetti all'ordine politico stesso. La concezione degli scopi e delle funzioni della politica funge anche da vincolo normativo – insieme a coerenza e adeguatezza ai fatti – per filtrare quelle credenze nella legittimità che non possono considerarsi accettabili.

¹¹ Nella prossima sezione tornerò brevemente sulle implicazioni normative di questa idea.

Il secondo ruolo del concetto di legittimità è quello di offrire una prospettiva normativa, che eviti il collasso della nozione di legittimità sulle credenze possedute dai soggetti. Infatti, tramite la nozione di positività delle qualità del regime in quanto percepite come tali dai soggetti, il concetto di legittimità garantisce spazio alle credenze di coloro che sono assoggettati al potere politico. Tuttavia, il concetto pone anche dei vincoli normativi per stabilire quali credenze possano essere accettate, e dunque continuo come marcatori della legittimità del regime, e quali no.

Il terzo ruolo del concetto di legittimità è quello di assolvere alla vocazione universalista dell'approccio realista. Infatti, il concetto di legittimità funge da guida "indipendente" dal contesto per formulare giudizi politici, pur senza violare le specificità che caratterizzano le diverse comunità politiche, come vedremo tra poco parlando delle concezioni della legittimità realista. Da una parte, infatti, l'idea che la legittimità si basi sulla percepita positività del regime da parte dei suoi soggetti è un'idea che rimanda, come sottolineato in precedenza, alla distinzione tra relazione di dominazione e relazione politica. Tale distinzione passa, infatti, dalla percezione dell'arbitrarietà o meno dell'esercizio del potere politico da parte dei soggetti. Dall'altra, i vincoli normativi sono vincoli che rendono funzionale – o, se si vuole, efficace – l'idea di legare legittimità e positività del regime, poiché assicurano che il giudizio politico si basi *effettivamente* sulla corrispondenza tra l'ordine politico implementato attraverso l'esercizio del potere e i criteri salienti individuati dai soggetti. Pertanto, questi vincoli non rappresentano prospettive pregiudiziali in favore di uno o l'altro dei sistemi valoriali e culturali esistenti o passati.

Veniamo ora alle *concezioni* della legittimità realista. Esse derivano dalla contestualizzazione del concetto della legittimità, in quanto si appellano a specifici valori che sono condivisi all'interno di un certo contesto politico. Le concezioni della legittimità specificano quali siano i criteri salienti che il regime deve soddisfare affinché sia considerato legittimo, e dunque danno contenuto, o sostanza, a quell'X che nel concetto di legittimità rimane un'indicazione formale di positività. L'individuazione dei criteri salienti dipende da una serie di circostanze contestuali e individuali. Contestuali, perché le caratteristiche storiche, politiche, economiche, culturali e sociali di un contesto politico contribuiscono all'individuazione e alla formazione, al mantenimento, e al cambiamento di un certo sistema valoriale. Individuali, poiché individui diversi appartenenti

al medesimo contesto possono abbracciare sistemi valoriali differenti, o ordinare gerarchicamente in maniera differente valori diversi, quando due o più di essi si trovino in conflitto.

Tali concezioni possono essere di diversa natura, cioè appellarsi a valori e principi diversi come criteri salienti della legittimità – siano essi morali, politici, legali, eccetera – e focalizzarsi sia sugli aspetti input che sugli aspetti output dell'esercizio del potere. Per esempio, una concezione C_m della legittimità potrebbe indicare che

Ridurre la disuguaglianza sociale ed economica è un criterio saliente di legittimità. (*componente normativa*)

Lo stato implementa politiche che effettivamente riducono la disuguaglianza sociale ed economica. (*componente fattuale*)

Lo stato è legittimo. (*credenza nella legittimità*)

D'altro canto, una concezione C_l della legittimità potrebbe indicare che

Derivare il proprio potere politico da una procedura di elezione democratica è un criterio saliente di legittimità. (*componente normativa*)

Lo stato deriva il proprio potere politico da una procedura di elezione democratica. (*componente fattuale*)

Lo stato è legittimo (*credenza nella legittimità*)

Come accennavo in precedenza, questi sono soltanto esempi – nella forma di idealtipi – di concezioni della legittimità, le quali naturalmente si presentano nella realtà politica come elaborazioni più complesse e sfaccettate. Tuttavia, è utile ricorrere a questi modelli per comprendere quale tipo di logica politica debba stare alla base dell'attribuzione di legittimità, cioè un ragionamento che leghi la legittimità a una accertata positività del regime.

È bene qui soffermarsi su un altro aspetto: potrebbe infatti sembrare contraddittorio, rispetto alla metodologia realista e, in particolare, al suo rifiuto del moralismo politico, includere tra le concezioni della legittimità realista anche quelle di natura morale. Tale contraddittorietà, tuttavia, si mostra infondata, se si guarda più attentamente alla natura delle concezioni morali della legittimità. Tali concezioni, infatti, non rappresentano una forma di normatività dall'alto, dove i principi morali sono considerati aventi validità oggettiva e universale, e *pertanto* applica-

ti al contesto politico. Piuttosto, queste concezioni rappresentano una forma di normatività dal basso, poiché sono i soggetti al potere politico ad individuare in tali standard morali i criteri salienti per la legittimità. Detto altrimenti, non è il teorico (come ammonisce Horton) a decidere che – nell'esempio C_m – la riduzione della disuguaglianza economica e sociale debba essere un criterio saliente sulla base del quale giudicare la legittimità di un regime. Invece, è il cittadino soggetto al potere a richiedere che l'ordine politico venga stabilito sulla base di quel principio, e che sulla base della realizzazione di quel principio venga legittimamente richiesta obbedienza da parte dell'autorità politica¹².

Le concezioni della legittimità danno quindi sostanza a quei requisiti formali espressi dal concetto di legittimità. Allo stesso tempo, il concetto di legittimità funge da vincolo normativo delle concezioni, cioè indica la gamma di possibilità in cui una specifica concezione della legittimità può prendere forma. Infatti, ciascuna concezione deve soddisfare i requisiti di coerenza, adeguatezza fattuale e adeguatezza politica espressi dal concetto della legittimità. Naturalmente, soddisfare tali requisiti richiede di ancorare la teoria al contesto. Si prenda, ad esempio, il vincolo dell'adeguatezza politica. In una democrazia di lunga tradizione, i concetti di sicurezza, protezione, fiducia e cooperazione avranno probabilmente significati – e implicazioni pratiche ed istituzionali – diversi da quelli che troviamo in una democrazia di recente formazione. Similmente, in un regime libertario il concetto – e le implicazioni pratiche e istituzionali – di protezione saranno diversi da quelli abbracciati in un regime fondato su principi comunitaristi.

Questi esempi ci permettono di sottolineare come la distinzione tra concetto e concezioni permetta alla teoria realista di chiarire il rapporto tra vocazioni contestuale e universalista. Infatti, contestualismo e universalismo non sono spinte indipendenti l'una dall'altra, ma piuttosto forze intrinsecamente legate tra loro attraverso il rapporto tra concetto e concezioni. Infatti, il concetto di legittimità implica necessariamente

¹² Si vedano anche i riferimenti bibliografici forniti alla nota 7. In particolare, Sleat, nell'articolo del 2014, sembra fare un ragionamento simile a quello qui proposto, circa la non problematicità di appellarsi a considerazioni morali per la teoria realista, laddove tali considerazioni appartengano a ciò che, per dirla con Williams, "ha senso" per coloro che soggiacciono all'autorità politica.

che una concezione venga formulata, affinché la teoria fornisca indicazioni sulla pratica politica. In altre parole, il concetto di legittimità è un requisito fondamentale, che non può fare a meno di essere esplicitato attraverso una specifica concezione della legittimità. Tale concezione, a sua volta, incarna gli aspetti contestuali della nozione, ed ha valore normativamente vincolante rispetto al contesto in cui viene formulata. Tuttavia, affinché una concezione sia normativamente accettabile – e dunque tale da stabilire legittimamente che cosa va fatto in un certo ordine politico – essa deve necessariamente soddisfare i vincoli posti dal concetto di legittimità. Detto in altri termini, una concezione della legittimità è normativamente rilevante per il contesto cui si riferisce se e solo se rispetta i vincoli normativi formali posti dal concetto di legittimità.

In questo modo, il rapporto tra concetto e concezioni della legittimità chiarisce anche il ruolo delle credenze dei cittadini per la teoria realista, pur mantenendo l'impianto normativo della stessa – cioè pur evitando il collasso della nozione di legittimità sulla mera credenza in tal senso dei soggetti. Infatti, sia il concetto che le concezioni prendono forma a partire dalla struttura della credenza nella legittimità, e dunque tale credenza è il fulcro, e non un elemento periferico, della nozione stessa di legittimità. Allo stesso tempo, non tutte le credenze sono considerate egualmente accettabili: solo quelle che soddisfano gli standard normativi di coerenza, adeguatezza fattuale e adeguatezza politica (con ciò che essa comporta anche in termini di normatività morale dal basso) sono considerate come marcatori della legittimità del regime.

4. Conclusione: Verso un ideale non moralista di autonomia

In questo articolo ho mostrato come introdurre la distinzione tra concetto e concezioni della legittimità realista aiuti a spiegare meglio come il realismo politico possa tenere insieme vocazioni contestualiste e universaliste, e a rivendicare il ruolo delle credenze dei soggetti per la nozione di legittimità politica senza ricadere in una visione meramente descrittivista dell'autorità politica. Nel concludere questo saggio, vorrei mostrare un possibile sviluppo di ciò che è stato fin qui discusso, e che ha il potenziale di riavvicinare due campi – realismo e moralismo – che si sono spesso concepiti come assolutamente opposti l'uno all'altro.

Riprendiamo la definizione proposta in precedenza del concetto di legittimità, dove parlo di diritto non solo legale, ma anche *morale*, del regime di richiedere obbedienza qualora esso soddisfi i criteri di legittimità. Abbiamo già visto come il riferimento alla sfera morale non sia di per sé problematico per il realismo politico. Tuttavia, vorrei fare qui un passo avanti, e accennare alle motivazioni dell'utilizzo dell'espressione *diritto morale* all'interno della teoria realista della legittimità qui proposta. Infatti, sia il concetto che la concezione della legittimità sono strutturati attorno all'idea che il regime debba possedere delle qualità positive, e che siano i soggetti a giudicare la positività di tali qualità. Più nello specifico, i soggetti stabiliscono sia quali siano i criteri salienti della legittimità (*componente normativa*) sia se il regime soddisfa quei criteri (*componente fattuale*): è sulla base di queste due componenti che deve fondarsi una credenza nella legittimità, e su cui si fonda conseguentemente anche il diritto del regime a richiedere obbedienza.

Astraendo dal concetto di legittimità come centrato su questa struttura della credenza, si può quindi affermare che, secondo tale nozione, la legittimità è la caratteristica di un regime in cui gli individui (ragionevolmente) *considerano* se stessi gli autori, o le fonti, delle loro obbligazioni politiche (Cozzaglio 2018). Sebbene dispiegare in maniera soddisfacente come questa definizione muova verso un ideale non moralista di autonomia richieda un lavoro a parte, vorrei concludere questo saggio ponendo l'accento sul fatto che, sebbene una teoria moralista e una realista dell'ideale dell'autonomia certamente prendano le mosse da due sistemi normativi differenti, e si appellino a prospettive diverse per giudicare i regimi politici – quella esterna nel primo caso, e quella interna nel secondo – è possibile che si incontrino circa le implicazioni pratiche della nozione di legittimità, cioè circa l'idea che un regime debba rispecchiare l'idea di ordine politico che i propri cittadini hanno, laddove tale idea incontri i requisiti dell'accettabilità normativa. Adottando la nozione di legittimità qui proposta, che certamente apre anche alle considerazioni morali purché appartenenti a una normatività dal basso, vi è spazio per fondare una teoria non moralista dell'autonomia come valore centrale per la nozione di legittimità politica.

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**Algorithms and Prejudice?
Covid-19, Contact Tracing
and Digital Surveillance
in the EU**

1

1. Introduction

The Covid-19 pandemic has revamped the debate over algorithmic surveillance and its potentially detrimental effects on fundamental rights. Digital tools have been heavily employed to track and curb the curve of contagion as well as to monitor vaccination campaigns. While many governments have released artificial intelligence (AI)-enabled applications to complement manual contact tracing or enforce lockdown measures, a parallel exercise has been carried out by non-institutional actors, which have developed their own set of surveillance technologies supporting a smooth return to daily activities past the early phase of the emergency. After the most severe restrictions were lifted, digital tools remained a primary mitigation and tracing measure. In substance, the pandemic has served as a catalyst for a gargantuan proliferation of AI surveillance

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through massive data collection and tracking. If, on the one hand, the spread of these AI-powered tools has increased the public awareness towards the use of technology for surveillance and monitoring, on the other, such a pervasive presence into individuals' private sphere raises significant legal and ethical concerns that may extend well beyond the immediacy of pandemic management.

A central concern relates to whether and to what extent threats to public health may justify a State's – or a firm's – intrusion on individuals' rights. Most countries attempted to control the outbreak through draconian lockdowns combined with thorough testing and tracing strategies. After the implementation of drastic monitoring measures by China and South Korea at the beginning of the pandemic, EU Member States launched their own digital tracing initiatives. The European approach is widely benchmarked for higher attention to citizens' rights, not only in comparison to non-democratic regimes but also, for example, against the American uninhibited libertarian approach. For these reasons, the EU offers a salient case in the analysis of how safeguards may prove insufficient under the pressure of health and economic concerns.

Additionally, the relevance of digital pandemic surveillance is not limited to early waves and lockdowns. In late 2021, containment measures remain in place as Covid-19 continues to ravage. At the same time, the public debate has largely archived official contact tracing apps, which gained limited participation in most countries (Seto *et al.* 2021), to focus on vaccinations and Digital Certificates. Nevertheless, nearly two years after the Covid-19 crisis rose to the ranks of a global pandemic, digital surveillance remains a cornerstone of the mitigation of contagion. At the same time, the largely uncontested proliferation beyond official apps undermined the voluntary focus characteristic of the EU approach, as surveillance has at times become a requirement for accessing workplaces, universities or services. Implications of choices – and their distributive consequences – during the pandemic may also be long lasting as the boundaries of individual rights have been tested and contested by the health crisis. Under such premises, the impact of digital pandemic management on privacy, discrimination and inclusion is at the frontier of concerns over the ethics of AI.

The analysis considers the human rights implications of pandemic surveillance against well-established pre-existing challenges in relation

to the use of automated decision-making systems. In doing so, building on the literature on the ethics of AI, the analysis of the relevant EU legal framework and case studies of problematic pandemic digital surveillance tools, the article outlines the balance between public health and algorithmic injustice, defined here as the exacerbation of existing inequalities and socio-economic disadvantages endured by vulnerable groups through the use of algorithmic technology.² The assessment highlights the strengths and weaknesses of the EU legal framework in protecting human rights within the digital ecosystem. The analysis identifies possible problematic aspects of the wide variety of digital solutions introduced in the public and private sector including contact tracing and exposure notification applications, wearables and other devices to enforce social distancing, AI-based symptoms checking questionnaires and biometric solutions to access physical spaces (e.g. workplace, education). From such a perspective, the analysis provides empirical evidence through selected case studies of Covid-related apps and digital tools within the EU displaying shortcomings in the arenas of privacy violations, bias and/or discriminatory outcomes and limits to accessibility.

Findings put a dent in the comparative claim of limited ethical concerns within the European model, especially in the highly fragmented ecosystem which exceeds official apps. Such results are robust to the potential additional safeguards under the Proposal for an AI Regulation (hereinafter AI Act) (COM(2021) 206 final) tabled by the European Commission, whose multi-tier risk-based approach marks a step forward in identifying the inherent risks of algorithmic tools, but which in its current form risks delivering further legal uncertainty. In fact, without changes to the current draft of the proposal, in particular when it comes to the provisions on biometric identification systems, even in the protective

² The existing literature refers more generally to algorithmic discrimination or bias, namely the phenomenon of intended or unintended biases in software that lead to unfair outcomes for particular groups of individuals (see, for instance Barocas 2016; Hacker 2018; Xenidis and Senden 2020; Zuiderveen Borgeisius 2020; Wachter *et al.* 2021). However, for the purpose of this analysis, we refer to algorithmic injustice, which in our view better addresses the multifaceted consequences of algorithmic surveillance during the pandemic, which are not only limited to discrimination but also to privacy and accessibility concerns.

ecosystem of the European legal framework, human rights may remain at the mercy of the proliferation of digital surveillance tools.

The work contributes to the extant literature on AI ethics and digital policy in the Covid-19 context with an assessment of how the pandemic offers a breeding ground for algorithmic injustices. In this respect, a particular concern emerges about the risks of fragmentation and privatization of tracing as local entities and companies have developed their own tracing systems without the transparency and scrutiny of official apps. Such complementary tools are already imposed on citizens when going to work, school or accessing services even in the absence of mandatory general use, and they may be the most problematic insofar they are harder to map, decodify and monitor by public authorities. The analysis hence not only sheds some light on the problems of algorithmic injustice in the pandemic within the EU borders, but also indicates how such an extreme case is a powerful cautionary tale of the challenges ahead as algorithms – whose boundaries of acceptance have been further expanded by the health emergency – take an increasingly pervasive space in our daily activities.

2. The risks and ethics of digital surveillance in a pandemic

The pandemic is *per se* an example of a phenomenon far from egalitarian in the impact of the health crisis and its mitigation on society. Covid-19 has exacerbated pre-existing unjust conditions, disproportionately affecting disadvantaged and vulnerable groups categories of individuals that were already suffering from economic and social disadvantages. The direct health and economic cost of the pandemic has indeed increased inequalities (Deaton 2021). Indirectly, inequalities extend to social control and repression by authorities, also by means of technology-led surveillance, which is more widespread in delicate times characterized by political tension, protests and health emergencies (European Parliament. Directorate General for External Policies of the Union, 2021).

In parallel, the health crisis has deeply accelerated the pre-existing trend of the datafication of society as AI-powered and biometric solutions became ubiquitous. Private and public actors have had access to a wider range of information, from live time location to sensitive health

data. In light of the augmentation of surveillance powers in the aftermath of the pandemic, it is worth assessing the role of technology in managing contagion and supporting mitigation measures. In placing the analysis within the existing literature of digital and AI ethics, the section considers (i) the use of digital technology in tackling the pandemic, (ii) comparative differences in the EU approach, (iii) features and risk across the taxonomy of pandemic surveillance and (iv) its ethics and distributive implications.

2.1 The rise of pandemic surveillance: features and risks

The isolation of symptomatic individuals and the tracing of asymptomatic individuals have been two key aspects in strategies aimed at containing the spread of Covid-19. Contact tracing procedures follow two paths: manual contact tracing, based on interviews by health care personnel to reconstruct infection chains, and digital tracing, through apps installed on smartphones exploiting network effects (i.e. the more users adopt the technology, the better the monitoring). While manual contact tracing has shown several limitations in terms of costs and efficacy,³ digital contact tracing promised to complement the recollection of contact chains, potentially reducing contagion with limited resources (Barrat *et al.* 2020; Cencetti *et al.* 2021). In light of this enhanced capillarity in tracking people's movements, these applications have been employed extensively by both institutional actors (such as health authorities and governments but also local entities), and private ones (like companies for their employees or universities for their students) throughout the pandemic. However, their effectiveness is strictly dependent on the rate of adoption of the app, unsatisfactory in most voluntary contexts (Seto *et al.* 2021). A sizable refusal of digital tracing not only hinders its efficacy, but also signals citizens' distrust of public authorities when their privacy is at stake (Privacy International 2020a). In France, according to a poll on the national application

³It is time-consuming, costly and not always effective in tracking down people exposed to the virus. For instance, in February 2021, a manhunt of a hundred passengers from a London-Rome flight was conducted after one passenger had tested positive and local health authorities struggled to locate the passengers from the flight list (Pistilli 2021).

StopCovid carried out by the observatory Data Publica, 67% of interviewed people believe to be badly informed about the end-use of their personal data, and 54% do not trust the use of their data by the State (Cazzola 2020). The implications are twofold, supporting the need of adequate safeguards and warning against de facto mandatory uses.

Against this background, technology choices in digital surveillance change radically the risk of harming individuals. In this respect, we must distinguish between apps embracing Bluetooth technologies, which exploit proximity data, and solutions adopting Global Positioning System (GPS), which use location data. With systems based on proximity, devices placed within a few meters exchange Bluetooth Low Energy (BLE) signals that create an encrypted, random and temporary key code. In the case of positivity to Covid-19, the infected subject can update his status on the app and provide his consent to share his key, so that his contacts will receive an exposure notification. Conversely, geo-tracking works in real time by collecting people's coordinates: applications capture location data through GPS, share them with a centralized server and track movements as they occur. The former system has been adopted by most EU countries, while the latter is active, among others, in China, Israel and South Korea. Furthermore, and particularly in the case of proximity-based automated decision-making (ADM) systems, there are applications that adopt centralized data collection systems and others operating in a decentralized manner. In a centralized setting, health authorities have access to the chain of contagions and can better track the evolution of the pandemic, whereas opting for a decentralized solution allows for anonymity and more effective safeguard of privacy.

A further element to be considered when assessing the level of intrusiveness of mobile apps is whether they are made mandatory or voluntary. Voluntary use is a precondition for compliance with the EU legal framework. Conversely, official governmental apps are compulsory in countries such as South Korea where it is required for people entering the country (Joo and Shin 2020), and Russia, where it is mandatory only for individuals who tested positive (Dellanna 2020). Other countries, such as China, required individuals to download the app in order to move across cities (Seto, Challa and Ware 2021). In other instances, mandatory apps, such as the one adopted by the Qatari government, were violated by hackers, exposing sensitive data of more than one million users. A further con-

cern emerges about the risks of fragmentation and privatization of tracing caused by several initiatives promoted by companies and other private organizations that have developed their own tracing systems without the transparency protocols provided by official apps.

In the realm of the classification of technological solutions, biometric identification systems – allowing for the recognition of faces, gaits, fingerprints, voice, DNA and other biometric signals – warrant particular attention. The pandemic fostered the mainstreaming of such technologies as well. Facial recognition systems have been employed in several cities to monitor the enforcement of social distancing and other restrictions. In Russia, the pandemic has accelerated the process of installation of a network of 100,000 facial recognition cameras used to monitor people in quarantine (BBC News 2020). The pervasive use of such a tool emerged also within the EU. In France surveillance cameras help monitor whether people are adhering to social distancing or wearing masks (Vincent 2020). In Poland, a biometrics app allows authorities to check whether people who tested positive to the virus stay under quarantine (Privacy International 2020b).

Biometric systems are alarming from a privacy perspective insofar they enable real-time and *ex post* location tracking without individuals' consent. According to civil rights associations, their use infringes several human rights enshrined in the Charter of Fundamental Rights of the EU (hereafter, EU Charter) (EDRI, 2021). In this respect, grassroots campaigns such as 'Reclaim Your Face' are raising awareness calling for a ban of all types of biometric identification. The privacy risks embedded in biometric identification systems vary according to the identified feature. In the case of facial recognition, the use of surveillance tools to track individuals' location may lead to the wrong identification of people if the algorithm is not well trained but also to the identification of persons that did not give any consent to figure in a database. Finally, privacy may be impacted also in the case of voice recognition, as well as in the case of DNA-based identification systems.

2.2 Ethical considerations in times of algorithmic surveillance

The overview of the use of technology to manage the pandemic results in the key message that a simple characterization of an EU approach to Covid-19 digital surveillance as a sharp break from problematic inva-

sions of individual rights in the rest of the world may be far too simplistic. While the regulatory framework illustrated in the section to follow provides extensive guarantees, the pandemic has tested such boundaries both in the arena of government initiatives and especially in the uncontrolled proliferation of private and local tools.

Against this backdrop, the limitation of certain rights in the context of a public health emergency cannot *per se* be classified as problematic. On a purely legal account exceptions are explicitly foreseen. Reasonable limitations on certain rights, such as freedom of movement, right to peaceful assembly, right to personal liberty and right to privacy, are allowed in international human rights law when they are necessary to protect public health, as in the case of the Covid-19 pandemic (Human Rights Committee 2020). To limit the risk of arbitrary actions taken by the State and to protect the rule of law, any restriction must be consistent with the principles of legality, necessity, proportionality and non-discrimination. Namely, they must be limited in duration, geographical coverage and material scope, and any measures taken, including eventual sanctions, must be proportional in nature. In this context, the development of algorithmic surveillance technologies in compliance with such human rights standards could strengthen the effectiveness of global efforts to address the health crisis, as it would increase users' trust and the ability of such tools to support public health (Christou *et al.* 2020).

However, legal compliance alone does not guarantee a shield against algorithmic injustice. The AI ethics literature in this respect has highlighted the lack of consideration for a societal perspective in the broader discussion on algorithmic regulation. More specifically, it has been argued that the current debate fails to capture broader societal harms of AI (e.g. Smuha 2021). From such a perspective, the mainstream focus on assessing and regulating AI from an individual or at most collective right perspective leads to the underestimation of risks, for example, concerning "democracy, equality or the rule of law" (*ibidem*, 9).

While the use of invasive digital tools may be justified during a health crisis, it is worth considering whether in a long-term scenario, the asymmetry of power resulting from a *de facto* surveillance of citizens by private entities (as opposed to the State) may cause societal harm. Moreover, although human rights' concerns and ethical considerations related to public authorities' digital surveillance tools have been timely addressed

(WHO 2020; Ranish *et al.* 2020), major issues arise from the uncontrolled proliferation of similar technologies in the unregulated private ecosystem. While in adopting such solutions, the State is guided by public interests' goals (with ethical values embedded in constitutions and international human rights treaties), private actors follow their own interests, thus potentially taking advantage of contingency solutions to the detriment of society overall and vulnerable groups in particular.

A further concern covers the distributive implications of digital surveillance. Alike the pandemic itself and mitigation measures more in general, the widespread use of technology to support crisis management may result in unduly higher burdens for vulnerable groups. A special category of injustices in this domain relates to algorithmic discrimination, a challenge well-established within the literature ahead of the pandemic (e.g. O'Neil 2016), as AI may be biased or harmful for women, minorities, people with disabilities, or reveal the sensitive information of belonging to such vulnerable groups, for example in relation to gender identity (Fosch-Villaronga *et al.* 2021). Similar reasoning, in broader terms apply to socio-economic status, as mandatory use of certain tools may exclude those who do not have the skills or resources to access certain apps or platforms. As such, among the ethical weak points of pandemic digital surveillance there may be the further exacerbation of pre-existing inequalities reflected in heterogeneous impact of mitigation strategies. For example, the under consideration of needs of vulnerable groups such as people with disabilities in policies to contain the outbreak is well-documented (e.g. Goggin and Ellis 2020) extending to the two sided relation between technology as both an asset and a liability for inclusion. Additionally, as fruition of public and private services became increasingly digital, accessibility shortcomings become even more problematic for the inclusion of people with disabilities.

3. Digital surveillance tools in the relevant EU legal framework

The uncontrolled spreading of surveillance technologies has aggravated structural concerns which well-precede the health crisis, in relation to privacy and data protection, accessibility, equality and non-discrimination, with major risks for vulnerable groups at risk of social exclusion

(Sekalala *et al.* 2020; McGregor 2020). Digital technologies and apps have not only been used by public authorities to track the contagion curve, but also by private entities to avoid gatherings and regulate access to everyday services. In this context, digital surveillance conditioned access to services and venues poses a high risk of exclusion for the population which may not have access to a smartphone or to a specific operating system. In this vein, such tools may be at the same time a powerful instrument for protecting public health and a dangerous source of discrimination and social exclusion.

Against this background, the EU legal framework provides an advanced protection to the fundamental rights of EU citizens, where data protection, equality and accessibility are well-established principles in the legal order. Nonetheless, the Union is now struggling to stay at pace with the new challenges posed by technological innovations, such as automatic decision-making systems also used in digital surveillance technologies.

3.1 Setting the scene of the EU relevant legal standards

First of all, the numerous digital surveillance and contact tracing tools developed in the wake of the pandemic must confront the comprehensive EU legislative framework on data privacy rights. More precisely, relevant provisions for digital surveillance tools can be inferred from the General Data Protection Regulation (hereafter GDPR, Regulation (EC) 2016/679) and the ePrivacy Directive (Directive 2002/58/EC). These address respectively personal data (Articles 6 and 9 GDPR), location data processed in an electronic communications network or by an electronic communication service (Articles 6 and 9 ePrivacy Directive) and data stored in and accessed from user's terminal equipment (Article 5 ePrivacy Directive) (Della Morte 2020a e 2020b; van Kolschooten and de Ruijter 2020).

According to Article 5 GDPR, the processing of personal data must comply with the principles of lawfulness, fairness, and transparency, purpose limitation, data minimization, accuracy and keeping data up to date, storage limitation, integrity and confidentiality. More precisely, a distinction must be made whether the data involved in the processing of the digital surveillance tools belong to special categories, such as health data, or not (Bradford *et al.* 2020; Rugani 2020). Article 6 GDPR allows the

processing of data not included in special categories when this is necessary for the performance of a task in the public interest (Article 6(1)(e) GDPR). Article 9 permits the processing of health data (e.g., to monitor the health status of an infected individual) or biometric data (i.e. facial recognition) when required for reasons of public interest in the area of public health (Article 9(2)(i) GDPR), or for health care purposes (Article 9(2)(h) GDPR), or when necessary for scientific research purposes or statistical purposes (Article 9(2)(j) GDPR). Seemingly, the processing of data might also be based on explicit consent (Articles 6(1)(a) and 9(2)(a) GDPR). Nonetheless, the mere voluntariness of the contact tracing applications does not imply that there is valid consent, which depends on stricter requirements, *i.e.* this must be freely given, specific, informed and under an unambiguous indication of wishes (EDPB, 2020b).

The ePrivacy Directive, concerning the processing of personal data and the protection of privacy in the electronic communications sector, is relevant whereas contact tracing applications involve the storage or access to information stored in terminal equipment, in particular location data (Ventrella 2020). According to Articles 6 and 9, location data can only be transmitted to authorities or other third parties if they have been anonymized by the provider or, for data indicating the geographic position of the terminal equipment of a user, which is not traffic data, with the prior consent of the users. In addition, Article 5 imposes confidentiality of the communications collected directly from the terminal equipment. It allows access to the information stored only whether the user has given consent, or this access is strictly necessary for the information society service explicitly requested by the user. Re-use of location data collected for modelling purposes by the service provider can be further processed only with the additional consent of the user or based on legislative measures, a necessary and proportionate measure in a democratic society.

Another major issue refers to the accessibility of digital surveillance tools for users belonging to vulnerable groups at risk of social exclusion, such as persons with disabilities or older people. The 2006 United Nations Convention on the Rights of Persons with Disabilities (hereinafter, CRPD) lays down an international obligation to design accessible websites and to provide public information in accessible and usable online formats (Seatzu 2017; Charitakis 2018; Lawson 2018), also affirming its importance as a tool for participation and social inclusion (CRPD Com-

mittee 2014). As CRPD forms an integral part of the EU legal order (after the ratification of the CRPD by the EU in 2010: Waddington 2009; Ferri and Broderick 2020), the EU has recently developed several legal and policy initiatives addressing web accessibility (Waddington 2019).

Most notably, the Web Accessibility Directive (Directive 2016/2102/EU) establishes mandatory accessibility requirements for websites and mobile applications of public sector bodies, including contact tracing tools developed by public authorities. It also includes reference to the European standard EN 301 549 V2.1.2 (2018-08) (eHealth Network 2020), which has been recently amended in August 2021 by Decision (EU) 2021/1339. The latter, which has been developed by the three European Standardization Organizations (CEN, CENELEC and ETSI), is a merely voluntary standard so that it does not contain legally binding obligations. Nonetheless, it clarifies the functional accessibility requirements applicable to ICT products and services. In addition, this standard is in line with the most recent Web Content Accessibility Guidelines (WCAG 2.1.), developed by the World Wide Web Consortium (W3C),⁴ which are internationally accepted as the primary standard by which accessibility should be measured.

Correspondingly, the European Accessibility Act (or EAA, Directive 2019/882/EU) regulates the accessibility requirements of key products and services in the internal market, such as, *inter alia*, mobile applications. This Directive establishes the legal basis for an obligation to comply with accessibility standard for contact tracing tools developed by private entities. However, it allows three years for its enforcement into the national laws of the Member States, meaning that the laws, regulations and administrative provisions necessary to comply with the Directive shall be adopted and published by the EU Member States by 28 June 2022 (Broderick 2019).

Finally, algorithmic surveillance systems are challenging the existing EU anti-discrimination legal framework. Equality and non-discrimination are basic fundamental values underpinning the EU legal order (Article 2 TEU) and permeate the entire legal framework. They are recognized as general principles of EU law (Tridimas 2006) and mentioned in vari-

⁴The World Wide Web Consortium (W3C) is an international consortium where member organizations, full-time staff, and the public work in tandem to pursue the accessibility of the Internet (<https://www.w3.org/Consortium/>).

ous provisions of the EU Treaties and the EU Charter, but also inspire a set of antidiscrimination directives, adopted after the adoption of the Amsterdam Treaty in 1999.⁵

Nonetheless, contact tracing systems are posing new and enhanced risks of inequalities and social exclusion. Also in this arena, issues relating to digital inclusions and the digital divide well precede the pandemic. From such a perspective, extensive effort has been devoted at the EU level in the context of the Digital Agenda for Europe to universal broadband access, whose success has even led to the claim of having bridged the digital divide (European Commission 2021). Nevertheless, broadband coverage and other barriers linked to socioeconomic background remain highly relevant. The acceleration of digitalization and online access to fundamental services including eHealth, education and teleworking has paralleled lockdowns and the pandemic containment effort. As digital technologies became a fundamental tool for inclusions in times of social distance, they are at the same time the culprit of an increasing digital divide especially among vulnerable groups (Shah *et al.* 2020; Campos-Castillo and Anthony 2021; Giansanti and Veltro 2021; Lai and Widmar 2021). ADM systems, as those used in contact tracing tools, are producing new forms of (algorithmic) discrimination (Hacker 2018; Xenidis and Senden 2020; Zuiderveen Borgesius 2020; Wachter *et al.* 2021). Not only algorithmic profiling reproduces and amplifies intersectional forms of discrimination, but also contributes to creating new patterns of discrimination (Xenidis 2020).

3.2 The European approach to contact tracing and digital surveillance

In such a context, the massive use of algorithmic surveillance to combat the spread of Covid-19 raised major concerns among the EU institutions, which at the very beginning of the pandemic offered a guidance to Member

⁵ These are Directive 2000/43/EC, Directive 2000/78/EC, Directive 2006/54/EC and Directive 2004/113/EC). A Directive Proposal offering more symmetric protection is also pending since 2008 (Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM/2008/0426 final).

States to develop official contact tracing apps respecting the fundamental rights of EU citizens. In April 2020, the European Commission issued a common Union toolbox (Commission Recommendation (EU) 2020/518) and a Guidance on contact tracing apps concerning data protection (Commission Communication 2020/C 124 I/01). These documents recommend the exclusive use of voluntary apps, namely apps downloaded, installed and used on a voluntary basis by individuals and with opt-out options available. This position has been confirmed by the eHealth Network (eHealth Network 2020) and by the EDPB, which recalls that the general principles of effectiveness, necessity, and proportionality must be taken into account for any measure involving the processing of personal data (EDPB, 2020a). More precisely, contact tracing applications must respect the proportionality of the measure in terms of duration and scope, limited data retention, data minimization, data deletion, purpose limitation and genuine anonymization of data (Ponce 2020). In the same vein, national authorities, or entities carrying out a task in the public interest in the field of health, are required to act as data controllers to ensure the principle of accountability. Accordingly, Data Protection Authorities must be consulted in the context of the development of the applications.

Moreover, the EU Toolbox also addresses the importance of ensuring the compliance of contact tracing tools with accessibility standards. This document lists the relevant parameters to enable a coordinated development and use of officially recognized contact tracing applications, with the purpose to develop a common EU approach to support the gradual lifting of confinement measures (eHealth Network 2020). In this line, the digital accessibility of the contact tracing applications is referred to as a means to reach inclusiveness from both a human rights and an effectiveness perspective.

However, to date, there is a substantial difference among public and private digital surveillance tools in the EU legal order. The fragmented context of Covid-related surveillance tools far exceeds official contact tracing apps. Firstly, beyond national apps, several other initiatives have been launched for specific purposes. In some instances, local proliferation parallels a decentralized health system in which regions often develop their own initiatives. In this context, these multiple tools while remaining in the public domain do not necessarily attract the same attention, scrutiny and accountability processes of national contact-trac-

ing apps regarding data protection. Moreover, only contact tracing applications of public sector bodies must comply with accessibility standards. Namely, the content of public surveillance apps should meet the accessibility requirements set out in the transposition legislation of the Web Accessibility Directive. On the contrary, the same accessibility duty is not directly applicable for private tracing tools, as the implementation period of the European Accessibility Act has not yet expired.

Concomitantly, other relevant issues, such as the extensive use of biometric identification systems, including recognition of faces, gait, fingerprints, DNA, voice, keystrokes and other biometric or behavioral signals, has not been addressed by the European Commission and still remain without response in the EU legal and policy framework. Nonetheless, these technologies challenging the data privacy rights of EU citizens, as they enable real-time and ex post location tracking without individuals' consent. The European Data Protection Board, the European Data Protection Supervisor (EDPB 2021) and the European Parliament (EPRS 2021) called for a general ban on any use of AI for automated recognition of human features in publicly accessible spaces.

3.3 A way forward with the new European Commission Proposal for an AI Regulation?

As illustrated above, the existing EU legal framework tackles some of the risks posed by the unrestrained use of automated decision-making systems in the pandemic context and beyond. In this respect, the EU has always adopted a paternalistic approach, opting for command-and-control regulation vis-à-vis more lenient attitudes. In doing so, the EU aims to become the leader in establishing a clear legal environment based on the protection of fundamental rights, a rationale that lies behind the recent proposal for an AI Act.

Beyond and preceding the ongoing legislative process for an AI Act, paralleled by the 2020 White Paper on AI (European Commission 2020), a strategy for Artificial Intelligence was already presented in 2018 (European Commission 2018). The plan highlighted the need for an EU framework capable of fostering technological benefits while ensuring compliance with the Union's values, including the protection of citizens from emerging ethical and legal challenges. The approach meant to balance the objective of

competitively leading in AI with leaving no one behind, thus balancing the need for safe products while protecting individuals' rights.

The AI Act was put forward in April 2021 by the European Commission and it aims to be the first horizontal and binding legal instrument harmonizing the European approach to the development and use of AI. In light of the heterogeneous nature of AI applications, in approaching the regulation of AI, a multi-tiered risk-based approach was adopted: under such framework, AI systems are classified into different categories of risk, from those posing an unacceptable risk (which are prohibited under EU law) to high-risks systems (allowed but subject to specific requirements) and minimal-risk systems (subject to transparency obligations). The adoption of a risk management system had been encouraged by a plethora of institutions, from the OECD to the IEEE, and governments (e.g. US, Canada and Singapore). The rationale of such an intervention stems from proportionality considerations, that is only harmful AI applications should be regulated, as well as from the need to avoid a one-size-fits-all measure.

The Commission opted for a prescriptive rather than procedural guidance, prohibiting in Article 5 AI systems that bring about unacceptable risks, namely those a) deploying subliminal techniques and/or b) exploiting vulnerabilities of a specific group of people due to age or disability to distort behaviour or cause physical or psychological harm, and c) classifying the trustworthiness of people based on social behaviour or personality characteristics leading to discriminatory treatment. The same article prohibits the deployment of real-time biometric identification in public spaces for law enforcement - with three exceptions, i.e. in case of missing children, prevention of terrorism, and detection, identification and localization of a suspect.

In the same vein, the AI Act refers to high-risk systems as those implying health or safety risks or adverse impacts on fundamental rights in certain areas. Applications such as remote biometric systems (e.g. public security cameras) figure in this category, regardless of whether they work in real-time or use previously collected images or video. High-risk applications belong to the following areas: i) biometric identification and categorization of natural persons; ii) management and operation of critical infrastructure; iii) education and vocational training; iv) employment, workers management and access to self-employment; v) access to and enjoyment of essential private services and public services and benefits;

vi) law enforcement; vii) migration, asylum and border control management; viii) administration of justice. These systems are permitted but are subject to certain essential requirements. For instance, providers of AI must carry out a conformity assessment and design a risk management system, ensuring high-quality of datasets and accuracy of their model.

Although in theory this holistic approach to the regulation of algorithms could usher in an ecosystem of accountability and transparency, some aspects of the proposal leave ample room for improvement, especially with respect to those AI systems that raise the most concern, namely biometric identification systems. More specifically, the proposal bans only some of their uses by law enforcement in real-time and in publicly accessible spaces. This automatically exempts remote biometric recognition, which is widely used, for instance, to identify *ex-post* people participating to protests (EDPB 2021). Another shortcoming of the proposal is the exclusion of “live” online biometric identification, as online spaces fall outside the scope of the proposed regulation (Veale and Zuiderven Borgesius 2021). Furthermore, in the Covid-19 context, biometric identification systems used for contact tracing ought to be considered as high-risk. However, as pointed out in the preamble of the act, under exceptional reasons of public security or protection of health, a conformity assessment could be avoided. Hence, tools used in extraordinary events such as the pandemic could be expected to be exempted from such obligations, resulting in potential infringements of the high-quality standards required under Title III of the proposal. At the same time biometric systems used for categorization purposes would be classified as low-risk systems, thus only subject to transparency obligations.

Finally, several commentators have emphasized that such a distinction between biometric identification systems as high-risk and biometric categorization systems as low-risk is flawed, because many of the current categorization systems posing high-risks of discrimination would be exempted from stricter requirements (Malgieri and Ienca 2021). In sum, despite the ambition of setting a new gold standard for regulating algorithmic surveillance, AI Act in its current form addressed only partially the inherent risks of invasive technologies such as face recognition and other biometric systems, which have been adopted extensively during the pandemic. The legal ambiguities of some of the definitions included in the proposal, together with the limited ban on certain practices that are widely recognized as harmful for vulnerable groups, hamper the ef-

fectiveness of the scope of the provision. To overcome these limitations, the political actors involved in the next stages of the policy process would need to strengthen the proposed safeguards extending the requirements to the remaining biometric systems that are currently outside the scope of the provision or only subject to information requirements.

4. Pandemic digital surveillance in practice: a survey of problematic tools within the EU

The current and prospective legal framework with the AI Act Proposal has already pinpointed theoretical strength and weaknesses in the context of the pandemic. As illustrated, beyond the realm of official contact tracing apps, substantial gaps have been outlined, at times especially in the private domain as in the case of accessibility. Against such backdrop, the multiplication of a variety of tools directly addressing the mitigation of contagion or indirectly supporting mitigation measures provides for a variety of cases potentially infringing specific individual or collective right, as well as posing general societal challenges, for instance to equality. The question addressed within this survey, in evidencing the argument of non-negligible algorithmic injustices at the hand of pandemic surveillance in the EU, is whether challenges to privacy, accessibility, non-discrimination and inclusion emerge in practice. Short of untenable comprehensive mapping of unofficial Covid-19 related apps and digital tools – many of which may not be publicly disclosed – this section provides problematic examples refuting the claim of the EU as a safe haven from invasive pandemic surveillance even in the absence of coordinated government mass surveillance.

The analysis avoids overtly technical assessment of compliance with standards. Rather it focuses on (i) instances in which the implied anonymity is blatantly violated by the choice of technology or the app or service request for access to identifying information, (ii) likewise evident problems in accessibility and/or reported issues from interest groups of people with disability and (iii) technology type (e.g. facial recognition), restriction to specific ecosystems (e.g. iOS) or preferential access through apps inherently problematic for digital inclusion and discrimination. In doing so it shows how the risk for algorithmic injustice may loom quite at the surface of the European fragmented and largely unregulated ocean of pandemic digital tools.

4.1 Privacy

Two levels of concern emerge in the realm of privacy. On one side, we highlight instances in which tools violate in practice the presumption of anonymity or employ technology outside of the EU approach (e.g. location data). On the other, we indicate use-cases which are not fully voluntary (e.g. conditioning access to workplaces or education) hence inherently not complying with freely given consent. A final concern emerges in the duplication of tracing efforts in the private and public subnational domains, which do not fall under the extensive transparency, accountability and scrutiny devoted to the official ones at the country level. Examples abound on all accounts.

WhatsApp bots and services linked to users' phone numbers include the Croatian Andrija digital assistant⁶, a discontinued AI powered health self-assessment tool developed by the private sector and deployed by the government. Another discontinued public tool⁷ in Estonia likewise implies anonymity of the online self-assessment questionnaire while it records the IP address of the users. A German private app – Coronika - Your Corona Diary⁸ – goes as far as importing contacts and saving locations readily shareable with public health authorities, hence implying a far more invasive tracing and potential for exposing sensitive information of third parties. Finally, in Spain the private comprehensive Mediktor⁹ app, which includes a Covid symptom self-assessment, asks for access to the user location albeit implying anonymity and expands beyond the symptoms and risk factors questions to include previous disease and vaccination status. Additionally, problematic technologies include the extensive use of biometric data, which in the context of facial recognition in physical spaces implies consent-free real tracking of citizens exact location. Arguably the most controversial instance in the EU landscape pertains to a government initiative in Poland, Kwarantanna domowa,¹⁰

⁶ Andrija digital assistant (<https://andrija.ai/>).

⁷ Koroona viirustest (<https://mhealth-hub.org/coronatest/>).

⁸ Coronika (<https://www.coronika.app/>).

⁹ Mediktor (<https://www.mediktor.com/en>).

¹⁰ Privacy International. Poland: App helps police monitor home quarantine (<https://privacyinternational.org/examples/3473/poland-app-helps-police-monitor-home-quarantine>).

a mandatory app requiring people under quarantine to respond with a selfie within 20 minutes of an unscheduled notification, using both facial recognition and location data. Other examples in the public domain include the use of facial recognition enabled CCTV in France to monitor masking compliance,¹¹ controversial and claimed to be illegal by privacy interest groups.¹² Along the same line, biometric enforcement of quarantines through drone has been blocked by the judiciary in France,¹³ which was, however, successfully deployed in Greece.¹⁴ Moreover, biometric infringements on privacy are not contained to physical spaces. An example is the use of facial recognition for monitoring remote educational and work activities. Notably, technology-driven monitoring of employees and data-driven management allows firms to maintain and strengthen their control over workers both in a work-from-home setting and on-site. Workers who kept their in-person occupations were required to install softwares or applications proving their Covid-free health status, but also to wear biometric devices such as ultrasonic bracelets beeping in case of a virus catching proximity between blue-collars (Aloisi and De Stefano 2021). Concomitantly, universities and other education institutions adopted AI-enabled tools to monitor students during exams from home, collecting tons of personal information.¹⁵ In Italy, a university deployment of digital proctoring software for virtual exams was recently fined

¹¹ Mathieu Pollet, “France to use CCTV to monitor mask-wearing on public transport”, *Euractiv*, 16 March 2021 (<https://www.euractiv.com/section/data-protection/news/france-to-use-cctv-to-monitor-mask-wearing-on-public-transport/>).

¹² “Le Sénat doit s’opposer à la reconnaissance faciale des masques”, *La Quadrature du Net*, 15 March 2021 (<https://www.laquadrature.net/2021/03/15/le-senat-doit-sopposer-a-la-reconnaissance-faciale-des-masques/>; <https://www.laquadrature.net/2021/03/15/le-senat-doit-sopposer-a-la-reconnaissance-faciale-des-masques>).

¹³ La Quadrature du Net, “France: First victory against police drones”, EDRI, 27 May 2020 (<https://edri.org/our-work/france-first-victory-against-police-drones/>).

¹⁴ Homo Digitalis, “Covid-Tech: Covid-19 opens the way for the use of police drones in Greece”, EDRI, 24 June 2020 (<https://edri.org/our-work/covid-tech-covid-19-opens-the-way-for-the-use-of-police-drones-in-greece/>).

¹⁵ “Universities are using surveillance software to spy on students”, *Wired UK*, 15 October 2020 (<https://www.wired.co.uk/article/university-covid-learning-student-monitoring> (accessed: 2 October 2021)).

by the DPA in relation to tools which have been widespread in assisting online monitoring across numerous institutions.¹⁶ The tools were needed to help professors supervise written tests and are used by many other campuses. In the judgement it is stressed that such systems must not be unduly invasive and involve monitoring of the student in excess of actual needs.¹⁷ The decision points out that the university failed to properly inform students not mentioning the photograph taken by the system at the beginning of the test nor the retention periods for personal data, which was being transferred to the United States. In other words, according to the DPA, the consent provided by the student at the beginning of the exam was not a sufficient condition processing biometric data.

Moving onto the fragmentation and duplication of public and private tracing services and eHealth apps, examples proliferate across several Member States. In Austria, the city of Vienna deployed its own symptom homecare app¹⁸. In Belgium, private services for triage, home-monitoring and access to testing abound, including the Moveup.care¹⁹, Bingli²⁰ and the Andaman²¹ app. In France public hospitals in Paris²² and Marseille²³ have developed apps to track patients and individuals at risk of exposure. In Italy several regional authorities have

¹⁶ “Maxi multa di 200mila euro alla Bocconi per gli esami con il ‘riconoscimento facciale””, *MilanoToday*, 28 September 2021 (<https://www.milanotoday.it/attualita/multa-bocconi-esami-privacy.html>).

¹⁷ Garante Privacy, *Ordinanza ingiunzione nei confronti di Università Commerciale “Luigi Bocconi” di Milano - 16 settembre 2021 [9703988]* (<https://www.garanteprivacy.it:443/home/docweb/-/docweb-display/docweb/9703988> (accessed: 2 October 2021)).

¹⁸ Homecare app (<https://futurezone.at/apps/coronavirus-stadt-wien-ueberwacht-heimquarantaene-per-app/400780490>).

¹⁹ Moveup.care (<https://futurezone.at/apps/coronavirus-stadt-wien-ueberwacht-heimquarantaene-per-app/400780490>).

²⁰ Bingli (<https://chat.mybingli.com/#/covid>).

²¹ Adaman7 (<https://www.andaman7.com/en/covid-19>).

²² Covidom (<https://www.aphp.fr/actualite/application-covidom-mise-disposition-gratuitement-pour-lensemble-des-medecins-et-les>).

²³ Covid ap HM (<http://fr.ap-hm.fr/actu/covid-aphm-l-intelligence-numerique-au-service-des-patients-covid-19-de-l-aphm>).

deployed their own app to track travelers, such as the Sicilia Si Cura²⁴ app, or self-assessment questionnaires such as the Cerca Covid²⁵ app in Lombardy or the HCasa app of the Puglia region, which extends into a fully-fledged telemedicine tool.²⁶ In some countries, such as in Italy, local initiatives have already received warnings from privacy oversight authorities for violation of the current regulatory framework.²⁷

Some of the previous examples of apps mandating registration of travellers already land in the realm of non-voluntary tools. In this arena two use-case, which carry important implications beyond the domain of consent and privacy, emerge: universities and workplaces policing of access to physical spaces. Universities, which at times publicly disclose their digital mitigation procedures, evidence potential abuses in both domains through invasive tracing tools forced onto students and employees. They may involve a combination of digital contact tracing and self-assessment questionnaires required for in-person activities. University College of Cork in Ireland employs the UCC Covid Tracker and Day Pass App²⁸ for students and staff. Similarly, the IE University in Spain has developed the Covid-19 Tracer app²⁹ imposing daily completion of a health questionnaire, which the health protocol available online³⁰ indicates a prerequisite for the “Health Passport” greenlighting access to campus.

²⁴ Sicilia Si Cura https://www.ansa.it/sicilia/notizie/sanita_sicilia/2020/03/28/coronavirus-sicilia-si-cura-app-monitorare-asintomatici_el109bae4-424c-4a10-9a8a-f96897b8dd5a.html

²⁵ Cerca Covid (<https://www.openinnovation.regione.lombardia.it/b/572/regioneaicittadiniunappermonitorareladiffusedelcovid>).

²⁶ Hcasa (<https://www.openinnovation.regione.lombardia.it/b/572/regioneaicittadiniunappermonitorareladiffusedelcovid>).

²⁷ Garante della privacy (<https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9590434>).

²⁸ UCC Covid Tracker and Day Pass App (<https://www.ucc.ie/en/emt/covid19/ucc-covid-app/>).

²⁹ Covid-19 Tracer (<https://it.ie.edu/news/detail/COVID-19-Tracer>).

³⁰ IE university. Health Protocol for Accessing IE University. (<https://docs.ie.edu/weareready/07-Health-Protocol.pdf>).

4.2 Accessibility, inclusion and discrimination

As apps multiply, potentially even precluding in-person access to education services and workplaces, concerns expand over the risk of exclusion. Any service requiring an app or other digital tool to obtain access is especially problematic as the older demographic may overwhelmingly not own smartphones (Gasser *et al.* 2020). The same applies to economic barriers affecting the digital divide (e.g. smartphone or broadband ownership). Beyond tout-court exclusion, cumbersome and slower alternatives may imply delays in accessing certain services, as crucial as vaccination enrolment discriminating against users unable to book electronically quickly saturated slots, for example, becoming available online at midnight. Additionally, discrimination may occur as a result of inherently problematic technologies, such as facial recognition which the previous section evidenced used by several public and private surveillance tools.

A further and especially delicate arena is that of accessibility. Fragmentation returns as a particularly problematic aspect. Firstly, the proliferation of private applications excludes the legal obligation for accessibility which so far only applies to public services. Such a voluntary feature, generally well-advertised by apps as an element of pride, is overwhelmingly not mentioned by many of the apps surveyed here. Additionally, even in the public arena, scrutiny is relevant also for the domain of accessibility. While the spotlight of interest groups monitors official apps, such screening becomes less feasible when facing the plethora of public digital tools multiplying across specialized policy domains and the regional and local level. Nevertheless, even as only a single usability study has been carried out for official digital contact tracing tools within the EU (Bente *et al.* 2021), even some of such apps have attracted accessibility complaints. In Italy the institute for assistive technology INVAT has identified several concerns for the Immuni app (INVAT 2020). Likewise, the Spanish app RadarCOVID has been deemed unfit for the needs of the blind community (Euronews 2020). The emerging picture is hence far from unproblematic from an accessibility standpoint, as even the benchmark official app initiatives at time failed to reach the mandated standard.

5. *Conclusions*

The pandemic has exponentially accelerated digitalisation and the mainstreaming of AI based tools, in a context of higher acceptability of compression of individual rights justified by crisis management under a public health emergency. The analysis of the constraints imposed by the relevant EU legal framework highlights its advanced protection in comparison to less consumer-centric regulatory environments. At the same time, the findings show far from minor gaps allowing for numerous and highly problematic use-cases to proliferate. Moreover, the theoretical and empirical assessment indicates how the sole focus on privacy fails to capture the complex and diverse risks of algorithmic injustices operating in the context of pandemic digital surveillance. Conversely, under the umbrella of a broader human-rights-oriented-approach, the analysis signalled the implications of shortcomings in the legal framework in relation to non-discrimination and inclusion. Against this framework, findings support the core argument that while the EU may comparatively represent a best practice, existing protections against algorithmic injustices are insufficient faced with the high tide of the explosion of algorithmic injustices, especially in an emergency context such as the pandemic. Additionally, the evaluation of the current proposal for an AI Act by the European Commission shows that the adoption of a risk-based approach could indeed tackle some of the challenges posed by AI applications for concerning use case (e.g. systems used to manipulate vulnerable people). However, as it stands, the proposal fails to adequately regulate biometric identification systems, which have been heavily employed in the pandemic context.

Conversely, we show that pandemic digital surveillance aggravated pre-existing inequalities. The datafication of society, which relies on the ubiquitous collection of personal information, coupled with the augmentation of surveillance powers by public authorities and private organizations, have led to a massive use of AI-enabled tools to track the evolution of contagion and monitor the enforcement of restrictive measures. Although digital contact tracing may be a powerful tool for the protection of public health thanks to its cost-effectiveness and capillarity, it may as well entail risks in terms of privacy, accessibility and discrimination, thus resulting in further social exclusion. In particular, biometric identification systems and mobile applications used at the

local level and by private entities have opaque features that do not always ensure the protection of fundamental rights. In such a context, voluntary and highly scrutinised official contact tracing apps differ in light of the extensive protection and proportional and minimised intrusion into user lives and rights. While imperfect, as evidenced, for example, by shortcomings in the Italian and Spanish app in term of accessibility, such pandemic digital management tools may arguably be well-justified against the challenge of protecting public health in an emergency. Conversely, blatant violations of voluntary use and privacy friendly technologies such as the Polish quarantine app can hardly fall within the same category. Similarly, we showed empirically a broad array of problematic use-cases in the biometric realm, encompassing tools such as CCTV and likewise *de facto* mandatory submission to digital surveillance for accessing universities and workplaces.

Against this backdrop, the EU comparatively devotes a high priority within its regulatory framework to the protection of citizens from infringements of their right to privacy, equality and accessibility. Nonetheless, owing to the uncontrolled proliferation of such pervasive technologies, which often rely on ADM systems, it may struggle to keep the pace and may lag behind in protecting individuals from subtle abuses. Results hence support the urgent need of further regulating against algorithmic injustices, as purported by the AI Act proposal, following a human (rights) centred and risk-based approach. Therefore, it is of the utmost importance that the new regulatory regime, which already employs a tailored risk-based approach, does not underestimate the extent of the problems of fragmentation, proliferation and augmentation of contact tracing solutions and other tools for digital surveillance. The proposed Regulation takes positive steps in such direction, for example, in recommending in Recital 81 voluntary additional requirements, such as accessibility and the participation of stakeholders, in the design and development of AI systems which may foster a human rights-oriented approach to artificial intelligence. At the same time, the ambition of the AI Act proposal may prove insufficient if adequate safeguards on a reckless use of biometric identification and categorization systems used by private actors are not adopted.

In concluding, our analysis evidences how the commitment to privacy through use of proximity-based apps rather than location-based ones, the

recourse to decentralized architecture and voluntary use of official digital contact tracing apps do not alone guarantee against problematic tools emerging in the fissured ecosystem and hence algorithmic injustices. The theoretical and empirical assessment of the case of pandemic digital surveillance against the EU legal framework contributes to the literature on AI ethics, EU digital policies, and their implication for human rights. Specifically, the analysis constitutes a warning against dismissing concerns over ethical and human rights challenge on the basis of the false reassurance of a comparatively advanced and protective legal framework. Conversely, we also show how proposed solutions such as the AI Act may prove insufficient against the gaps and shortcomings evidenced by the case of pandemic surveillance, of high relevance and timeliness for the unfolding policy debate over the future regulation of artificial intelligence in the EU.

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Caterina Giacometti

**Civil Society Organisations
and the Local Governance
of Asylum. Resistances,
Alignments and Unspoken
Imbrications**

1. *Introduction*

Starting in particular from the widespread perception of a ‘refugee crisis’ in 2015, the issue of the presence of asylum seekers and refugees in Europe has been taking a central place within international and national political agendas, media information, public debates as well as within the scientific domain. The latter has mainly focused on public policies analysing “immigrants’ policies” (Campomori 2008, 20) through the study of national reception systems and often underlying some elements of confinement and exclusion as their characteristics or rather investigating “immigration policies” (*ibidem*, 20), through political, geographical and sociological analysis of European borders control devices and logics. More in general, the scientific domain has been more and more interested in the dynamics of de-nationalisation which have been involving the decision-making processes concerning migration and asylum management in Europe. Despite representing an extremely important level of analysis, the focus on institutional policies, though, neither exhausts the subject of asylum seekers and refugees’ experience in Europe, nor one of the ‘Multi-levelled governance’ of their presence. In fact, it is by now widely agreed that the rescaling of State powers towards supra or sub-national public authorities is frequently coupled with the more or less formal and official involvement of private actors within the concrete dynamics of management and inclusion/exclusion of asylum seekers and refugees, especially at the local level, and regarding integration processes. In this sense, some scholars have recently recalled that

“the diversification and plurality of actors contributing to the govern is a very common trend among European cities starting from the 1990s” and that “this multiplicity of actors sometimes supports local public authorities, sometimes it substitutes them” (Andreotti and Les Galès 2019, 21).

Added to the mentioned ‘supportive’ and ‘substitutive’ options, other researchers have also underlined the possibility of a resistant approach among individual and collective private subjects of the civil society that may try to “escape, subvert and criticise forms of rationality and regulatory practices” (Ong 2003, 24) implemented by public authorities.

The identification of ‘supportive’, ‘substitutive’ and ‘resistant’ modalities of action of civil society organisations (CSOs) in relation to public authorities in the field of welfare provision allows to dust off the never-ending question concerning the borders between the different classical spheres of society (the State, the Market and Civil Society) in the light of contemporary societal and political dynamics, applying it to the domain of migration and asylum studies. Indeed, most of the literature about the local governance of migrations refers to the important role of non-state actors, in particular civil society actors approaching the issue from a strict institutional and overtly optimistic conception of it. It only rarely wanders about “the ambiguity of this participation and about the risks for the democratic nature of the system” (Busso and Gargiulo 2016, 119), failing almost completely to account for dimensions of conflict and power that should not be excluded.

In this perspective, the article aims to provide an updated and original contribution to the analysis of the relationships existing between CSOs supporting asylum seekers and refugees among themselves as well as with public authorities in the shape of the institutional organisation of reception and integration services at a local level.

The main argument raised is that CSOs may represent the places where the deficits and top-down dynamics of institutional reception, as well as the structural barriers to inclusion raised by a chaotic and slow bureaucratic machine, may potentially be challenged and counterbalanced. Though, many contradictions and criticalities arise from the attempt of undertaking this role. In particular, CSOs may struggle to find a balance between the attempt to satisfy asylum seekers and refugees’ urgent needs, while simultaneously trying not to align uncritically with state institutions. In this sense, the article argues that CSOs often find themselves in the middle of a ‘civil dilemma’ from which they struggle to exit separately and that un-

dermines at both their capacity to professionally support asylum seekers and refugees' paths of inclusion and their own potentially transformative strength vis-à-vis institutional devices, mechanisms and interpretations. The paper further suggests that CSOs unsystematic networking dynamics complicate their positioning within asylum local governance, whereas structuring them would help them making their service provision more effective as well as developing a collective civil discourse strong enough to incisively advocate for alternative policies and practices. To deepen and support the mentioned arguments, the article is organised as follows: in the first paragraph, the main theoretical premises will be presented, while the second paragraph will be dedicated to the brief explication of methodological choices and the introduction of fieldwork. Subsequently, two empirical paragraphs will detail the main results of the study. The last paragraph will provide the reader with conclusive interpretations and with suggestions for future research perspectives.

2. Applying the notion of integration and governance to CSOs engagement with asylum seekers and refugees.

The notions of civil society, integration and governance are at the core of the theoretical reflections that gave birth to the study presented in this article and have been constantly feeding it. Indeed, the main subjects taken into consideration in my observation and analysis are the collective actors of civil society, their roles within the local reception system and their position within the inclusion/exclusion dynamics of asylum seekers and refugees in terms of integration (or non-integration) into forms of governance.

Hereafter, a brief literature review of the three main concepts above evocated will be provided to inform the reader about the scientific positioning lying at the heart of this work and to provide a shared understanding of the meanings that they will take in this framework.

2.1 Integration

Despite its polysemic and controversial nature, the notion of integration still represents a resourceful instrument to observe and understand the experience of asylum seekers and refugees in a specific western ur-

ban setting, which represents the starting point of the PhD thesis from which this paper generated. The notion is useful not exclusively in terms of their attempts to 'find their place' but also to understand the positioning of different city's actors that deal with their presence and needs within the local scenario of institutional and non-institutional reception. Actually, the concept includes two main versions. The deepening and deconstruction of the 'ethno-cultural version' of integration, since the 1960s the mainly used in the public and institutional debate to describe the insertion process of non-national citizens into national societies, is certainly fundamental when trying to investigate asylum seekers and refugees' reception and inclusion processes. Nonetheless, this will not be the focus of this article. Instead, it is the Durkheimian 'societal integration version' that needs to be bothered to understand if, how and why civil society organisations form an integrated system among themselves and if, how and why they integrate the institutional dynamics of local governance related to asylum seekers and refugees' reception and inclusion. To avoid confusion about the two versions of the concept, from now on whenever the "ethno-cultural" one will be at stake, the concept of integration will be substituted by the one of inclusion, although it shall be mentioned that the two have slightly different meanings.

The issue of CSOs integration into local governance dynamics is quite thorny. Indeed, despite the existence of more than one scientific perspective about civil society, most of them actually agree in advocating for the importance of civil society to defend its autonomy from the State and the market in order to accomplish its role of defining a "third way" between 'the atomization of competitive market society', on one side, and 'a state dominated existence', on the other" (Kumar 1993, 380). At the same time, though, some critical scholars have been trying to deconstruct such consensual conceptions of civil society and to find a balance between the dogma of an absolute autonomy of civil society and opposing arguments about the inevitable domination of state and market powers over it. In this view, Marion Young's perspective is particularly inspiring insofar because while she agrees with the idea that civil society should be considered as a separate sphere from the State and the market, she additionally argues that it does not mean to represent it as a social entity completely independent from them, but to correctly identify its specificities in terms of ways of co-ordinating actions and kinds

of activity (Young 2000). Despite and because of differences in these domains, “each social aspect – state, economy, and civil society”, she states, “can both limit and support the others” (*ibidem*, 156) and this reciprocal limitation and support is what is needed for achieving social justice. Young particularly insists on the relationship between civil society and the State, which, she argues, needs to exist and to be balanced in order to counterweight the ability of “profit- and market-oriented economic processes to impinge on the ability of many people in most societies to develop and exercise capacities” (*ibidem*, 184). The importance given to the existence of a relationship of mutuality between civil society and the State certainly adds relevance to the attempt of investigating and understanding the role of CSOs in terms of relations with State institutions (do they integrate the institutional system of governance?) as well as among themselves (do they represent a comprehensive integrated civil system?) and it allows to introduce and make a bridge with the concept of governance, which cannot be excluded when analysing contemporary modes of governing.

2.2 Governance

Since the 1980s, the notion of governance has been playing a major role in both the scientific and political debate concerning the new mechanisms of management of social unrest and assistance. It has widely established itself as the most adequate tool for facing the growing fragmentation and differentiation of social problems. The notion was firstly used in management theory during the 1970s for underlying the need to control and limit corporate managers through the adoption of a “decentralised, non-hierarchical, fluid organisation” as “the model now and for the future” (Eagleton-Pierce 2014, 16). It then rapidly proved to be inspirational and it was appropriated by other domains, including the institutional political world that picked it up to promote the idea of new modes of governing. It involves multilateral actions and the collaboration among different levels and entities of both public and private social spheres for the achievement of a common political, ethical and governmental aim. The whole dynamic of rescaling of power and competences gains clarity if it is replaced into the wider scenario of the evolution and crisis of the Welfare State in Europe during the xx century. Indeed,

starting from the end of the 1970s, “structural changes undermined the functioning of welfare institutions” (Kazepov 2008, 247). The myth of the unconditional trust in the capacity of the State of ensuring the well-being of its entire population, including legally resident foreigners, while adopting an open and encouraging approach in relation with neo-liberal dynamics and globalisation processes, came to terms with important economic difficulties that led in few years to a generalized stagnation (Ranci and Vanoli 1994). Hence, as both a cause and a consequence of the incapacity of national States to autonomously and independently govern their more and more complex societies, external forces have been regaining more and more relevance. It is in this scenario that we witness the trigger of a process of redistribution of the legislative and regulative power that had been until then a prerogative of national governments, including responsibilities and competences concerning asylum seekers and refugees’ reception and inclusion. This dynamic of government reorganisation moved both vertically, towards supra-national (i.e. EU Institutions) and sub-national political and administrative entities (i.e. Regions and Municipalities); and horizontally, with the gaining of importance and power of non-governmental actors and their frequent formal involvement into national Welfare States, which have been progressively transforming into ‘local welfare systems’, conceptualised as “dynamic arrangements in which the specific local socio-economic and cultural conditions give rise to different mixes of formal and informal actors, public or not, involved in the provision of welfare resources” (Andreotti and Mingione 2013, 242).

2.3 CSOs integration into governance dynamics

It is important, though, to underline that the existence and intervention of civil society’s collective actors concerning local populations’ social needs and claims isn’t anything new. Admittedly, far from representing merely a marginal complement and/or support to national Welfare activities, the private organisations of civil society have historically anticipated the State, starting from religious institutions and private charities no less than during the 16th century, followed by the first mutual-aid associations born in the early 19th century, which progressively underwent a process of “functional differentiation” (Busso and De Luigi 2019, 271)

giving birth to co-operatives, trade unions and many other specialised organisations (*ibidem*). Hence, what we have been witnessing is more like a redefinition of their role and of their relationship with public institutions, a “renewed interest in something that never really disappeared” (Jessop 1998, 32). And though, the institutionalisation of the participation of CSOs brought about and supported by official governance dynamics is the main worry raised by scholars applying a critical approach to the study of the latter. Indeed, what they strongly warn against is the risk of the “cultural consequences of an integrated system” (Busso and De Luigi 2019, 283) of governance, which, because of the internalisation by civil society actors of “the dominant, more traditional communicative norms of the process” (Gaynor 2011, 499), materialises into the “narrowing of the discursive space and a reduction in the plurality of voices and claims” (Busso and Gargiulo 2019, 283), thus into an inoffensive and aligned civil sphere where everyone “ends up ‘talking the same language’” (*ibidem*). Though, some interesting scientific contributes¹ refer to the reciprocity of civil society-State relationship allowing to assume that while the hegemonic power supporting State structures may find its most fertile ground into civil society, the latter is also capable of challenging it through counter-hegemonic forces². Hence, associational life can actually foster the emergence of “subaltern counter-publics” (Fraser in Young 2000, 171), essential in my view for democratic societies to carry on evolving instead of remaining static and loyal to anachronistic State structures and bureaucratic functioning. And though, Michael Foley and Bob Edwards urge to point to an important question, namely to what extent and how “the formation of ‘habits of the heart’ conducive to cooperation and collective action” enhanced by associational life within civil society may actually translate into “‘macropolitical’ outcomes” (Foley and Edwards 1996, 47), thus concretely playing a role for social change. The issue is not a minor one. Indeed, asking that question, Foley and Edwards suggest that it is not enough for social transformation

¹ See Chandoke 2001; Young 2000.

² As it stands quite clear, I assume a Gramscian perspective about civil society. For deepening the issue and concepts of hegemony and counter-hegemony see: Carroll 2010; Ferrarotti 1984; Fontana 2008; Gramsci 2014; McNally and Schwarzmantel 2009; Smith 2010; Ungsuchaval 2016.

that civil organisations provide alternative services, imagine innovative social practices or facilitate the voice of otherwise aphonic individuals or groups, if these actions remain limited to their internal and microsocial universes. In order to decisively act their counter-hegemonic power, civil society organisations must make their discourses inclusive and understandable at a higher level of generalisation in order to make them flow onto the dominant public sphere and to actually influence and transform the hegemonic power of the State. Starting from a scientifically-based personal political positioning about the essential role of civil society for feeding, though constructively, the social conflict – which I consider necessary to social change aiming at social justice – one of the empirical challenges which gave birth to this article has precisely been to observe and understand if CSOs intend, and are able to, resist the co-opting state power and to exercise a subaltern force concerning issues of asylum seekers and refugees' inclusion, reception, rights and dignity. In addition, I was interested in understanding if and how they succeed in catalysing and valuing the mentioned counter-hegemonic power in order to exploit its transformative potential, which, I argue, can only be done by forming an integrated compact system among CSOs. In this sense, I could mobilise a version of the notion of governance different from the above-mentioned widespread institutional and technocratic scientific conceptions of it. Indeed, the idea of “new modes of governance” gives primacy to the private sector and to informal mechanisms of self-regulation and it accounts for “less hierarchical and more network-like structures” (Conzelmann 2008, 1), which is helpful when trying to identify and to understand the networking dynamics at play among CSOs. Finally, the issue of the dual nature of social justice and integration in terms of self-determination and self-development (Young 2000) was particularly relevant as it allowed me to reflect upon if and how CSOs want and are able to give answers to both the aspects, without becoming instruments of the hegemonic power.

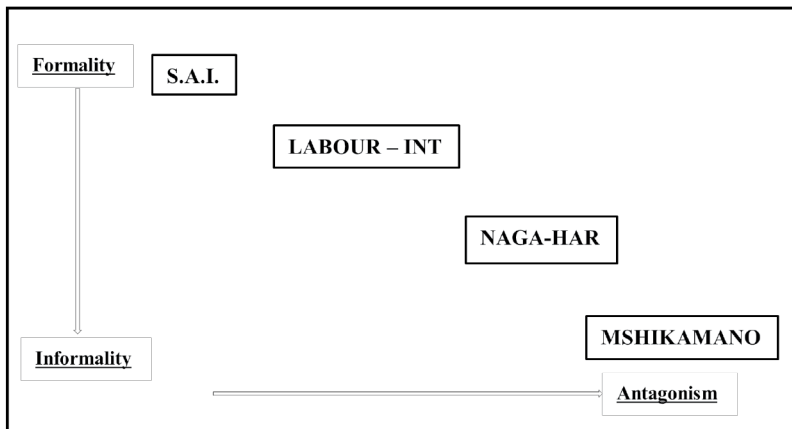
I have asked myself: can the concept of governance be actually applied to the action of CSOs concerning asylum seekers and refugees' local reception and integration processes? How? Should CSOs be defined as compliant actors of that governance or rather as “foci of resistance” (Cavaliere 2007, 100) affirming an alternative idea of inclusion? How do they get in relation with one another? What does this lead to?

3. Methodology and fieldwork

In order to empirically answer to the above-mentioned research questions, I have chosen to focus on a societal local level rather than a national or international one as by now wide agreement about the local dimension of inclusion processes allowed to echo and make use of the horizontal dimension of the concept of governance, and to investigate inclusion processes as caught within specific 'local welfare systems'. At the same time, I have decided to focus on an urban dimension backed up by those studies that consider cities as being "at the forefront of organising refuge and the arenas where new relationships between the relevant players from the public, private civil society sectors are fought out" (Mayer 2017, 14). Subsequently, I have chosen Milan as a strategic observation point based on an analysis of the positioning of Italy within the European scenario about asylum and, in its turn, of this city within the Italian context of reception. Indeed, although Italy has been representing since some time one the main entry doors of the continent and has been evolving in terms of policies and organisation of reception, according to many scholars, the country still witnesses a chaotic and emergency-based reception system and some integration policies have been talked about as an "implicit model of integration" (Ambrosini 2001), characterised by the inertia of national authorities. In this national framework, the city of Milan has been representing a key node of the internal migratory dynamics of the country, giving rise to an ideal-typical image about the city as a supposed 'Modello Milano' regarding reception and integration. The latter is though often interpreted as due to a better regional economic situation compared to other Italian regions rather than to a virtuous management of reception per se and, more importantly, as supported by the important contribution of a historically dynamic civil society.

Methodologically speaking, I have chosen a comprehensive approach operated through some related qualitative methods, which allowed to gather the subjective perspectives and experiences of those met and solicited. First, for trying to grasp the multiplicity of approaches and practices existing among civil organisations regarding the support to asylum seekers and refugees, I have decided to put ethnography in practice within four different civil sites: the reception service for immigrants of the

Caritas of Milan (SAI), a trade-union project aiming at the professional inclusion of asylum seekers and refugees (Labour-Int), a voluntary association offering to asylum seekers and refugees Italian classes, info desk and socialising activities (Naga-Har) and a mixed-association falling within the category of the ‘social movements’ organisations’ aiming at developing regular residential and professional opportunities through self-management, mutual-aid and collective demonstrations. These CSOs were selected considering the typologies of actors identified by contemporary literature dealing with the civil support to asylum seekers and refugees in Italy and ranging on a hypothetical scale from the most antagonist one to the more compliant with the institutional system and from the most informally organised to the more formally structured.



Observation lasted 1 full year (2018), even if it differed in intensity and duration depending on each studied civil organisation. In fact, the multi-situated nature of my fieldwork has brought with it some issues in gathering data homogeneously. Indeed, I had to constantly negotiate my presence and my legitimacy within the different ethnographic sites and, depending on the moments and people, I was allowed to more or less participate and to develop a direct relationship with the migrants participating in the proposed activities. The depth of the exchanges with people on the field and the level of my active participation in each site have been the result of a co-construction between the subjects of the research and me, empirically confirming that while doing ethnography, the

researcher is “involved in some intersubjective relations that oblige him/her to negotiate roles, places and statuses” (Campigotto *et al.* 2017, 9), where the term negotiation implies a non-full independence regarding its positioning. Observation was enriched by 32 in-depth interviews to asylum seekers and refugees and 11 to civil organisations’ members, which have provided me with additional data.

The complementary use of observation, participation and in-depth interviews has been useful for putting the spotlight on people’s subjective accounts, while paying attention to those dynamics of power and influence which could mask their authentic personal point of view. In this sense, I am urged to underline that the analysis produced on the fieldwork and provided in this article is based on the subjective perspectives and experiences of those met and solicited. For this reason, my theoretical interpretations do not aspire to offer a generalised reading of the issues addressed, but rather to provide insights about the complexity of the processes of societal integration based on a more intimate knowledge of a smaller slice of reality” (Korac 2001, 4) from some specific points of view.

For reasons of anonymity, the names used in the drafting of this work do not correspond to the real names of the asylum seekers and refugees met and interviewed. Civil organisations’ members, instead, will be referred to by using their initials.

4. The civil dilemma: CSOs swinging between resistance and alignment

Literature concerning the annihilating nature of institutional reception is, by now, very rich. Along its line, fieldwork proved that migrants’ precarious conditions at the arrival in Italy are coupled with and worsen by a procedural and disorganised reception machine and a complex and chaotic bureaucracy. Indeed, the narrations of many interviewees delivered to me the picture of a national reception system often incapable of healing the physical or psychological wounds accumulated through complicated and dangerous migratory paths and or providing the basic conditions for them to recover their health and resources and in order to put them to good use for building a dignified, stable and autonomous future. The fulfilment of reception norms at their minimal stan-

dards, which has proven to be the main functioning of most of reception centres, produces a feeling of not being seen or heard among migrants and concomitantly undermines their chances to enforce their rights and make autonomous decisions, as Salim witnesses through his account:

Three months after commission, I had the result: negative, they didn't accept my request, they are not convinced. What next? "You have to find a lawyer", they (reception social workers) told me. I was confused, I didn't know anyone... They told me not to worry, they would have given a lawyer to me, but... it is something that really hurts me... a lawyer should defend his client, right? A lawyer usually doesn't seat looking his client losing. I really don't understand... mine didn't even understand French... I told them all this, that the lawyer is supposed to listen and to understand what I have to say. Nothing, as always, they just told me that these are the rules, to calm down and to not worry, they told me that the lawyer would have taken care of everything. They kept me out, understand? Telling that I don't have to worry... Tze (Salim, Ivory Coast, September 2018).

The careless, procedural, normative, sometimes repressive, often alienating national reception which interviewees pictured is coupled with a chaotic, slow and aseptic bureaucratic machine that erodes asylum seekers and refugees' social rights as well summarized by the experience of Muneer, who has been recognised as a political refugee, but actually received his permit only 3 years after the decision of the Commission:

I had my first interview in 2011, and the commission answered positively the same year. But Questura gave me my permit in 2013. I went there immediately after having received the answer and they asked me to go back 6 months later because I hadn't the *marca da bollo*³. Then I went again, and there were too many people so they postponed by 3 more months, then 4 more months...finally it was almost 3 years. And now I am in it again. My permit has expired, and I have an appointment in 6 months. Meanwhile, I have to squat a friend's place as I cannot work... well, I am working a bit, but it is illegal work (Muneer, Afghanistan, October 2018).

Hence, interviewees' experience of institutional reception has proven to be often characterized by standardised procedures and typified paths,

³ Revenue stamp.

without them perceiving any consideration for the specific needs, inclinations and plans of each individual. The latter, beyond making them feel harmless, concretely hinders a sound stabilisation of their life conditions and produces a dangerous difficulty in enforcing those rights to which they are theoretically entitled. Subsequently, asylum seekers and refugees often feel the need to turn to external organisations in search of voice and for filling those holes left by institutions, in order to find some foothold and chances of carrying on with their lives.

Indeed, civil organisations often represent themselves as providers of services and/or opponents that, in any case, aim at offering another kind of relational dimension to asylum seekers and refugees. Nevertheless, no matter how civil organisations struggle for keeping themselves outside the bonds of the institutional system, they finally find themselves navigating into them. Does this automatically mean that they finally integrate the institutional dynamics of governance of reception and integration? Fieldwork allowed to refute such hypothesis. Certainly, public institutions consider and recognize civil organisations as functional pieces of asylum local governance where to address asylum seekers and refugees whenever they cannot – or don't want to – assist them, as witnessed by the direct experience of most interviewees, well represented by the following excerpt:

I was in *Questura*, they kept me one night and then they gave me this paper. But I couldn't read it, so I asked to a man on the street. He told me that the paper said that I had 7 days for leaving Italy autonomously. I was astonished. So, I came back to the *Questura*, and they just add that if I didn't agree with this, I should find a lawyer. I told that I don't know any, but they answered that neither do they. The person in charge told me that I had to go. "But where? I don't know anything here" You give me this paper and then...? What should I do?", I said. "Just find a lawyer", he answered. I was desperate. A policeman told me that I just had to go out and find an association: 'there are so many that want to help immigrants, go ask to them'. This is how I arrived at the Naga (Hachem, Senegal, November 2018).

Indeed, the more manifest type of relational dynamic that I could observe, which links the selected civil organisations with public institutions is one of informal delegation on the part of the latter towards the former. Manifold have been the accounts about it from organisations' members, which complained the frequency with which institutional of-

fices and services orient asylum seekers and refugees towards them, because of their incapability or unwillingness to assist them, as well as the perceived absence of reciprocity in supporting them:

It is frustrating because they rely on us, but then when the request of support is on our part... they never stretch what they can do, or better what they decide that they can do. For example, sometimes it happens that I call the CASC⁴, maybe when I meet a 100% disabled homeless person and I do not have available places at the *Rifugio*⁵, and there it often comes the answer: "sorry, but the '*Emergenza Freddo*'⁶ is closed for this year. He has his residency in *Lissone*⁷, send him there". And if I try to push telling that he is too weak to live in the street, they just answer: "Ok, but we cannot take care of him. We take care only of people that have their residency in Milan". It was not like this some years ago, but now, there are so many constraints, so many knots, so many "no, we do not do this" that it is almost useless to try. Finally, we often find ourselves supplying the public service when our objective is precisely to orient people towards such service. If it was up to them, they would address everyone here. But we cannot, it is not fair (Fieldnotes, SAI, March 2018).

However, precisely because of the unidirectionality of the relation and in the absence of an inclusive process of sharing of objectives, tools and roles, the existence of contacts between public institutions and civil organisations in Milan cannot be considered in terms of institutional governance. What I could observe has taken more the shape of a chaotic bouncing of responsibilities characterized by a top-down dynamic of delegation, where civil organisations try not to become the crutch of the system, while securing at the same time the assistance needed to asylum seekers and refugees. Here's where what I have been reflecting about in terms of a 'civil dilemma' starts to take its contours, represented by the seldom win-win choice between the valorisation of civil organisations' counter-hegemonic

⁴ (Centro Aiuto Stazione Centrale): Municipal help centre for the first orientation in Milan of people in need.

⁵ "The Shelter": SAI's own dormitory for homeless people.

⁶ A Municipal plan that on an annual basis, from the beginning of November till the end of March, organises a number of social interventions and structures (mainly functioning on volunteering) to provide to homeless people some shelter from the winter cold.

⁷ Municipality in the suburbs of Milan.

power vis-à-vis institutional policies and practices and/or the concrete and punctual satisfaction of asylum seekers and refugees' contingent needs. Indeed, building my empirical observation on Maurizio Ambrosini's proposition about the '4 Ps' categorisation (Ambrosini 2016) concerning the specific typologies of action carried out by non-institutional intermediaries offering help to asylum seekers and refugees, i.e. Protest, Promotion of networks, Provision of advocacy and Production of services, I could understand that each observed organisation mobilises some nuanced and multi-faceted approaches that challenge widely conveyed social and political representations concerning their motives and ways of acting and that implies the implementation of more than one 'P' at a time.

If on one side, this certainly witnesses a capacity for adaptation and a degree of ideological flexibility that I wouldn't have expected, it also and often confronted organisations with the hard but existential choice between resistance to the institutional system and norms or alignment with them. Indeed, net of ideological orientations specific to each civil organisation and driving their way of relating to public institutions, together with the degree of their legitimation in the eyes of the latter, the observed civil organisations seem to struggle to find a balance and they often find themselves in privileging sometimes one, sometimes the other extremes of the dilemma, caught in a vicious circle according to which the accomplishment of an objective normally corresponds to failing the other.

Furthermore, the ceaseless rhythm of requests for functional and material assistance on the part of asylum seekers and refugees, frequently addressed to them by public institutions themselves, often squashes civil organisations on an immediate operability that demeans the social and political engagement of their actions and provokes at the same time high levels of distress and frustration among organisations' members which risk depersonalizing their intervention and detaching them from asylum seekers and refugees' conditions and requests, as per account of a volunteer of the association Naga-Har:

I am tired, sick of all this serial information one after the other, and always the same. We look like an office. The *sportello*⁸ takes away from me the pleasure of

⁸ Naga's help desk concerning asylum procedures and potential troubles with reception centres.

living this place like when it was born, which is how it should be, because even when I take a break and I have some tea I am immediately surrounded by some pleading eyes asking for something, and it's always something linked to procedures or accommodations or whatever. I have this feeling of [she sighs as if she couldn't breathe]...that makes that I have never a quiet moment to enjoy this place and to make sure that they enjoy it too (E.B., Naga-Har, May 2018).

Hence, besides differences among organisations and despite their unanimous insistent claim about the non-willingness to substitute public services and institutional responsibilities, all of them finally end up focusing mainly on producing services to put some temporary patches to institutional holes. This raises what Niamh Gaynor has called “the ‘what’ problem” of associative democracy, which, she argues, often includes “only distributional issues, with all other nonmaterialist issues remaining exempt” (Gaynor 2011, 503). The latter seems to erode organisations’ conflictual energy thus hindering a collective counter-hegemonical discourse about reception and inclusion powerful enough to influence the dominant public sphere and to produce some social change. At the same time, they also seem to usually fail in offering to asylum seekers and refugees some structured long-term solutions for their inclusion as they lack the resources, and sometimes the willingness, to equip themselves with the necessary professional competences and internal organisation, as shown by the following account:

As you know, the main objective of the association is to lobby for the existence and well-functioning of public, but even private, services through which migrants can concretely enforce their rights. We don't want to be those services; we want to make pressure on them. If the Naga was structured in the form of a social cooperative with its own services and its own professionals, this tension towards extinction would have disappeared. I know that many services that we provide here would be better provided by paid professionals, but this would not be the Naga. This is what we are, a volunteer association aiming at disappearing. Then of course, we screw many things up. Obviously this is not your job, you do it one afternoon every week, you don't have so many competences... In addition, while being a profession you would maybe solve a situation in five minutes, we need dilated times to intervene (D.B., Naga-Har, October 2018).

Hence, no matter how civil organisations struggle against this, their daily interaction with different kinds and levels of institutional entities and offi-

cers makes them non-immune from the powerful and subtle action of structural representations, which push them in quite unconsciously reiterating those same relational dynamics that they firmly condemn when it comes to examine the institutional reception machine. Though, they always and however relate to it trying to get some distance. To go even further, it is precisely thanks to the way CSOs represent themselves and their relationship with institutions that they are able to keep an off-setting role and to implement actions, each in their own way and nuances, to contrast, challenge or modify the institutional impact on asylum seekers and refugees' life. In this sense, it is possible to consider CSOs as actors of a complex battleground, refuting the hypothesis of their complete absorption into institutional governance dynamics. Hence, the element of autonomy characterizing conceptually civil society seems to be secured by CSOs' ways of acting. To get started, all the selected civil organisations have wished from the beginning to underline that they consciously and repeatedly chose to stay out of "the market of reception and immigration" (Fieldnotes, January 2018). The crystal-clear and rational choice not to take the place in public institutions and services clashes though, in some cases, with the frequently mentioned eternal dilemma of civil organisations. Indeed, if on one side they wish to keep their position of "historical blamers" (D.B., Naga-Har, October 2018), on the other side the social and humanitarian feelings that feed their action sometimes force civil organisations to soften their political integrity in order to immediately increase asylum seekers and refugees' resources and to concretely improve their conditions. The following excerpt from fieldwork explains this tension quite well:

During the assembly, volunteers discuss the possibility to organise some leafleting moments in front of the CAS⁹ to spread the information about the new national directives and the consequent restrictive attitude of the *Questura*. Some of them are against it, as it would mean to replace the municipality, which is responsible for giving information to asylum seekers and refugees hosted within the centres in a clear and prompt way. Some argue that a dose of realism is needed: information often lacks, and asylum seekers and refugees pay the price of it. At the end, they decide to do it, considering it in terms of an action reinforcing asylum seekers and refugees' capacity to self-defend (Fieldnotes, Naga-Har, November 2018).

⁹ Extraordinary Reception Centres.

This episode is particularly interesting as it shows how civil organisations succeed in keeping their claimed position, objectives and ideals untouched by modelling the conceptual representation and the external communication of their action, while not modifying its content. The collective representation and explanation of the reasons for acting justifies in this sense even those interventions that could be otherwise considered as substitutive, collaborative or compliant with institutions, restoring among civil organisations' the intrinsic and deep sense of their engagement.

Hence, the social and political choice lying at the heart of their actions allows civil organisations not to limit themselves to passively work as the crutch of the system, but to imagine alternative paths and solutions that often challenge institutional functioning and norms. For these reasons, I claim that, despite the fact that CSOs do not succeed in representing a concrete and encompassing counter-hegemonic force that balances and opposes the institutional mechanisms of reception and inclusion, they do keep a partisan attitude alive. In this sense, it may be said that they swing between attitudes of alignment with the system and resistance to it.

5. An implicit system of partisan civil governance to be strengthened

Despite the recognition of CSOs' ability to stem the co-opting power of institutional governance, as I have anticipated, the reflection about the inexistence of a disruptive countercultural collective civil discourse about reception and integration has encouraged me to investigate the relational mechanisms among civil organisations. In this sense, thanks to my transversal observational position, I could remark the traces of what I have called 'an implicit system of civil governance': an off track intricate and lively civil network, where different collective actors, despite their differences and apparent autonomy and isolation, influence each other and act chorally, even if implicitly, to provide exhaustive answers to asylum seekers and refugees' needs. This network, which is activated whenever is needed mainly through personal relationships, word-of-mouth and migrants' movement, is built on an implicit 'shared horizon of meaning', namely, to ensure asylum seekers and refugees with the right to reception, survival, autonomy and recognition beyond and in place of institutional structures.

Once I have decided to include the question of a possible network among civil organisations into my observation, the identification of the most recurring subjects was quite straightforward: CASC, *Saponaro*, *Opera San Francesco*, *Ortles*, *Tricolore*, *Casa della Carità* are just some of the names I could hear daily, while participating into the activities of the four selected organisations. Indeed, their action was frequently characterized by the mobilisation of other external actors through the redirection of asylum seekers and refugees towards them or by activating a direct communication with them on specific cases. It must be said that, although I could discern it thanks to my more or less foreign eye, no explicit reference has ever been made spontaneously about the actual existence of this hypothetical network. Nonetheless, questioned about it, the totality of interviewees confirmed the presence of a reticular pattern that serves as a base for most of their interventions and that allows to give an answer to the largest possible number of asylum seekers and refugees' needs. According to what I have observed and to what was claimed by interviewees, the mentioned reticular pattern seems to function through an ad-hoc activation on concrete cases that the first solicited actor cannot solve alone, as two workers at the SAI have witnessed:

The network exists only if you activate it. I know well who works where and how, I know Milan's available services, so it happens that I say to the person that I am helping: "go there, try to ask them, they could be a resource in your situation". Sometimes, when it is possible, I directly call another service and I try to make a bridge, before sending them there (L.C., SAI, April 2018).

There is some kind of collaboration, but it is not systemic, it works on specific cases. However, in Milan there are many different realities and we often collaborate asking what they can do to help us, or we call saying: "We have this situation that needs legal support, what could you do?" (E.C., SAI, May 2018).

Based on the nature of the request and on their actual possibility of intervention, civil organisations activate dormant relationships in order to provide the best suitable answer to the expressed needs, by supplementing the already provided help or by functioning as substitutes in case of the impossibility of intervening on the part of other knots of the network. This reticular pattern which tacitly supports every single organisation is considered of vital importance in making their action more and more efficient, as per account of a volunteer of the Naga-Har:

It is fundamental that all volunteers understand the importance of external networks, even if only because if we know the networks and realities existing outside, our intervention becomes more efficient. For example, if an asylum seeker arrives to us from Sardinia, and we know that there it exists someone that do what we do here, then we can call and try to have more elements to solve the situation. But if we stay closed, if we don't know these networks, it is not possible (Fieldnotes, Naga-Har, September 2018).

This covered network seems though to limit itself to the satisfaction of concrete, basic needs. In fact, many interviewees claimed the lack of a collective cross-cutting reflection and project-design, as witnessed by the responsible of the SAI:

We are talking about a network that is mainly functional to the satisfaction of primary needs, such as accommodation, permits, health. There's no dialogical flow on a cultural level, nor a relation with subjects which are less oriented to the satisfaction of needs, at least speaking of the SAI (Fieldnotes, SAI, May 2018).

He was not alone in confirming my initial intuition about the existence of intense networked relationships among civil organisations, with an underlying lack of a stable structure of collaborations. According to much interviewees' accounts, in fact: "the actors are many, but more and more dispersed, without an overall vision" (L.C., SAI, April 2018). The "lack of common reflective spaces where different subjects doing the same thing on different fronts could talk to each other, communicate and discuss" (M.B., Anolf, April 2018) and "binding elements that may manage and stimulate collective reflections" (P.D., SAI, April 2018) are some of the common issues that were pointed out.

The issue of the dearth of reflective sharing dynamics has central importance as it could hinder that "shared horizon of meaning", identified as one of the fundamental elements for defining a governance scenario. It would thus risk to disclaim the hypothesis of "an implicit system of civil governance". Nonetheless, the observation of my research subjects' daily practices allowed to guess the existence of an unspoken "minimal comprehension about the models for the development and social change of society" (Pallottino 2007, 60), despite the absence of a formal regulative structure ordering and stabilizing civil inter-organisational relations. Indeed, all four organisations agree on the asylum institutional system's deficiencies and distortions and on the constant urgent need

for alternative supportive subjects. At the same time, despite inflected in different nuances, all four have a strong discourse about the importance and richness of intercultural miscegenation and about social justice in term of emancipation of the last of society. Nevertheless, the witnessed lack of a higher level of inter-organisational relations does not stop being a fundamental issue. In fact, if the daily practical work is not coupled with a shared forward-looking reflection, civil organisations risk to flatten themselves on the day-by-day patching of institutional holes, defusing that tension towards social change that characterizes them discursively and that keeps civil society's intrinsic autonomy untouched. On these lines, the chief counsel of the SAI has pointed to the difficulty of the observed civil organisations to actually “express themselves to a more general and indeterminate public” (Young 2000, 170), thus risking representing “only parochial separatist enclaves with little role to play in a process of solving problems that cross groups” (*ibidem*, 172), giving voice to something that preoccupies most of my civil interviewees:

Our biggest weakness is maybe that we are strongly engaged in the individual conditions of our users, maybe giving too much importance sometimes to what we can do in that specific situation. But the solving of a single problem should never be separated from looking for a more general social justice, which can hardly be achieved by simply giving an answer to individual and contingent needs. This is what concerns me the most (E.C., SAI, May 2018).

To be fair, though, since shortly before the beginning of my fieldwork, a blending of different membership areas has been arising. In this view, during an inter-organisational meeting about racism organised in February 2018, an activist of a well-known Milanese self-managed social centre claimed that “Solidarity is the only politics we need today” and that “we need to be able to find the lowest common denominator in order to communicate, even if through different languages, the same message. We need to break down our divisive barriers, because only networking different subjects we can try to deny prejudices and struggle racism” (Fieldnotes, February 2018).

The necessity of making unspoken networks emerge and to give voice and shape to the collective ‘shared horizon of meaning’ that already exists, even if hidden, has thus been recognized as the only way to point to a structural change of asylum seekers and refugees’ conditions in Italy.

Hence, it gives empirical substance to theoretical interpretations suggesting that “there must be a process of interaction and exchange through which diverse sub-publics argue, influence one another, and influence policies and actions of state and economic institutions” (*ibidem*). In this sense, what was quite transversally felt by civil interviewees is the urgency for keeping together the punctual supportive actions on a local and individual basis and the tension towards a more general change of the system, concerning not only asylum, but also other migrant categories and the issue of diversity in Italy more widely. At the same time, though, an explicit trespassing of the sharper borders between subjects pertaining to very different areas has not been mentioned as a real option yet.

We understand thus that to provide social services and to struggle to transform structural injustices and social dynamics at a time is way more complicated than sometimes theorised. As Jessop has stated, “‘invisible hand’ of mutual adaptation” (Jessop 1998, 29) does not seem to be enough to actually give life to an inter-organisation system of civil support and claim concerning asylum. A phase of deliberation or – better – of “integrative bargaining” (Baccaro 2006, 201) is needed. Indeed, in contrast to deliberation, where actors find an agreement “for the same reason” and whose outcome is unanimity and agreement, integrative bargaining “thrives on uncovering differences among the parties and exploiting these differences to create joint value”. Hence, with respect to integrative bargaining “there is no attempt by the parties at cancelling their differences, but an effort to understand them for the purposes of exploring mutually beneficial options” (*ibidem*).

In the case of the studied fieldwork, a network certainly exists and lies on converged collective purposes, but it seems to be largely built thanks to individual actions and personal social capital and not triggered by a collective phase of ‘integrative bargaining’, which is something fundamental to valorise and act a transformative political pressure on institutional practices, policies and interpretations. For this reason, it should be interpreted as ‘implicit system of civil governance’ that is activated for the sole purpose of rendering asylum seekers and refugees’ conditions less precarious by improving and increasing their social and material resources.

6. Conclusions

In a quite inductive way, the research work on which this article is based has involved a multi-faceted reflection about the relational dynamics at play between CSOs and public institutions, as well as among CSOs themselves, concerning asylum seekers and refugees' reception and inclusion.

On one side, I have understood how for civil organisations to value and exploit their transformative conflictual potential, while providing some concrete assistance to asylum seekers and refugees, is a very complicated task. In this sense, I have shown that many contradictions and criticalities arise from the attempt of undertaking it, giving shape to what I have called 'the civil dilemma', i.e. the seldom win-win choice between the valorisation of their counter-hegemonic power vis-à-vis institutional policies and practices concerning asylum seekers and refugees' reception and integration and/or the concrete and punctual satisfaction of the latter's contingent needs. Indeed, the difficulty of taking a net position on one or the other extreme of the mentioned dilemma produces some distortions that end up undermining both objectives. Actually, the insistent claim about CSOs' unwillingness to substitute public services and institutional responsibilities – coupled with the economic and normative limits of their action – hinders CSOs to equip themselves with the adequate organisational structures and competences needed to relevantly answer to asylum seekers and refugees' concrete demands. At the same time, the attempt of putting some temporary patches to institutional holes ends up weakening civil organisations' conflicting potential, and it counteracts their eventual transformative capacity at the level of society. For sure, what just said is different according to every specific civil organisation. One of the biggest limits of this research work is not having accounted enough for what differentiates the observed organisations, sometimes falling into the error of considering civil society as a homogeneous entity, rather than a heterogeneous, multi-faceted one. Nonetheless, what resulted clear from fieldwork is that the civil dilemma is actually experienced by all of them, in different extents and different reasons.

To this is added the reflection about the network's dynamics among civil organisations that, if structured and made explicit could actually strengthen the counter-hegemonical potential of CSOs allowing their

exit from the mentioned civil dilemma. In this regard, I could guess the existence of what I have called “an implicit system of civil governance”, building on Bob Jessop’s proposal about “heterarchic modes of coordination” (Jessop 2013, 14). Indeed, I was able to recognise the existence of an intricate and lively network among civil organisations, which is activated whenever is needed mainly through personal relationships, word-of-mouth and migrants’ movement and built on an implicit ‘shared horizon of meaning’ – namely to ensure asylum seekers and refugees with the right to reception, survival, autonomy and recognition beyond, alongside and in place of institutional structures – which actually stands among them despite their differences. Nonetheless, Jessop’s mechanisms of “regulated self-regulation” (*ibidem*, 16) have proven not to be actually at work, at least in their ‘regulated’ component. The unspoken and uncoordinated nature of the observed reticular pattern has not yet allowed neither the organisation of an ordered and comprehensive inter-organisational supportive system nor the development of a collective civil discourse strong enough to influence public policies, discourses and practices. In this sense, it often confines civil organisations to be either crutches of a fallacious system or claiming antagonists unable to stimulate the social change.

For these reasons, and in terms of action research, I believe that attempts of stimulating the emergence and consolidation of already existing, though unspoken, imbrication and convergences among different actors of civil society would have beneficial effects both for asylum seekers and refugees’ chances of inclusion and participation and for the well-being of single organisations. Furthermore, although my theoretical propositions about an ‘implicit system of civil governance’ actually flow from a rigorous observation of reality, the inductive nature of these reflections, coupled with the limited time of fieldwork, has not permitted to broaden the analysis to the multiplicity of other civil organisations engaged in supporting asylum seekers and refugees. In this sense, future analysis should be focused on the entire reticular system of civil support, which would provide a wider understanding of informal reception’s potentialities.

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FRONTIERE LIBERALI

Critical Exchange | **Se fidarsi degli altri è un bene, non fidarsi degli esperti è un male?**

di Roberto Gronda

Uno dei problemi pubblici che la pandemia di Covid-19 – ma non solo, si pensi, ad esempio, al dibattito che ha condotto alla Brexit e alle numerose controversie sul cambiamento climatico che vanno avanti ormai da decenni – ha portato con forza alla ribalta riguarda la credibilità degli esperti scientifici e l'affidabilità delle conoscenze da essi prodotte. È un problema centrale perché le nostre contemporanee società della conoscenza si reggono sulla divisione del lavoro cognitivo e sulla molteplicità di canali di diffusione del sapere esperto formulato nelle sedi deputate (Nowotny, Scott, Gibbons 2001). Ma se sulla questione dell'affidabilità della conoscenza scientifica molto è stato scritto, insistendo sul carattere intimamente fallibile di ogni forma di conoscenza e sulla necessità di educare i cittadini a comprendere la natura del metodo scientifico e i suoi limiti², il primo corno della questione è rimasto finora relativamente inesplorato.

In un certo senso, questo relativo disinteresse non è difficile da spiegare – e, anzi, pare del tutto scontato: sembra plausibile, infatti, che una volta accertata l'affidabilità del prodotto conoscitivo a cui gli esperti scientifici giungono dopo un lungo processo di ricerca e verifica intersoggettiva, la credibilità di quegli esperti segua come corollario. Se quel-

¹ Nota critica e risposta dell'autore del testo *Di chi posso fidarmi? Autorità ed esperti nella filosofia analitica*, di Michel Croce (Bologna, il Mulino, 2019).

² Si veda, per esempio, Dorato (2019).

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le conoscenze sono affidabili, non c'è motivo per cui gli esperti scientifici non debbano essere considerati credibili, perlomeno da un punto di vista epistemico. E, in fin dei conti, su quale base *epistemica* si potrebbe poggiare la sfiducia dei cittadini nei loro confronti?

Questo modo di impostare il problema ha riscosso un certo successo – e con buone ragioni, peraltro (Collins, Evans 2002). D'altronde, il tentativo di far comprendere a un pubblico più vasto la specificità di quel particolare modo di vita che chiamiamo scienza è sicuramente meritorio, indipendentemente dalle ricadute pratiche che questo sforzo educativo possa avere. Tuttavia, la mancata tematizzazione delle diverse modalità in cui si può guadagnare la fiducia di un interlocutore conduce a sottostimare i problemi legati a una corretta comunicazione scientifica e le difficoltà che sorgono quando a una persona è richiesto di fidarsi di un'altra, senza che la prima possa avere accesso alle conoscenze necessarie per valutare i proferimenti della seconda. Com'è noto, la fiducia ha una componente di vulnerabilità che non può essere eliminata, pena il venire meno dell'atto fiduciario.

Come assicurare la fiducia dei cittadini negli esperti scientifici è un tema enormemente complesso che ha verosimilmente a che fare più con l'autorevolezza e credibilità delle istituzioni che dei singoli scienziati (Oreskes 2021). Più circostanziata è, invece, la questione di chiarire che cosa sia la fiducia, quali siano le forme in cui si struttura e quali concetti debbano essere messi in campo per coglierne correttamente le articolazioni interne. A questo secondo compito è dedicato il libro di Michel Croce, *Di chi posso fidarmi? Autorità ed esperti nella filosofia analitica*. Come il titolo rivela, è un testo che si iscrive interamente all'interno della tradizione epistemologica di matrice analitica; ed è un testo teoricamente ambizioso che non si limita a presentare al pubblico italiano i risultati di un dibattito già concluso, ma si propone invece di elaborare una cornice – che l'autore qualifica, giustamente, come pluralista – entro cui collocare le diverse tipologie di relazione di fiducia epistemica individuate dalla letteratura specialistica.

Procederò in questo modo. Nella prossima sezione, enucleerò le tesi più rilevanti dell'argomento pluralista di Croce, cercando in particolar modo di esporre le ragioni che motivano la distinzione concettuale fra esperti e autorità epistemiche. Dopo aver presentato la proposta di Croce, passerò, nella sezione successiva, a sottolinearne alcuni aspetti che

a mio avviso richiedono un'integrazione – un'integrazione che, in ultima analisi, deriva da un parziale allentamento dell'approccio epistemologico al problema della fiducia che ritengo auspicabile. Credo, peraltro, che un tale integrazione vada nella direzione suggerita da Croce, verso cioè un maggiore pluralismo delle categorie attraverso cui comprendiamo le forme dell'affidamento fiduciario.

Una teoria pluralista dell'autorità epistemica

Il nucleo centrale del lavoro di Croce è costituito dalla questione dell'autorità epistemica e dal problema della sua possibilità e legittimità all'interno di un paradigma, come quello della modernità, che privilegia l'autonomia individuale a discapito di ogni forma di dipendenza, sia essa epistemica o morale. È strano, infatti, che si possa attribuire un ruolo non tanto pragmaticamente quanto epistemicamente positivo a una relazione difettiva, che assume che uno dei suoi poli sia e rimanga in una condizione di inferiorità rispetto all'altro. Siamo abituati a pensare che il valore dell'autonomia sia superiore a quello della dipendenza e che l'uscita dallo stato di minorità debba rappresentare un fine per ogni essere umano adulto e nel pieno possesso delle proprie capacità fisiche e cognitive. Eppure, è altrettanto evidente che la nostra cultura e la nostra forma di vita associata sarebbero impossibili senza delle modalità affidabili di affidamento fiduciario a gruppi di persone più competenti di noi in certi ambiti.

Per quanto sia poco conforme alla concezione moderna dell'attività umana, l'autorità epistemica è, dunque, un fattore decisivo delle nostre società contemporanee. Ma quel concetto, che pure sembra intuitivamente chiaro, va precisato. Ora, per autorità epistemica si intende, di solito, «la capacità dell'esperto di influire su altri individui "imponendo" loro l'adozione di una credenza sulla base della sua autorità epistemica» (17). È una definizione che, come vedremo, Croce assume in via provvisoria, al fine di rimarcare con chiarezza la differenza principale fra l'autorità epistemica e quella pratica: mentre quest'ultima può imporre l'esecuzione di una certa azione (essendo l'azione l'oggetto proprio dell'autorità pratica), la prima non può imporre l'acquisizione di una credenza – com'è noto, non si può credere a comando. In questa

misura, l'autorità epistemica è riconosciuta, anche da un punto di vista analitico, come un fenomeno autonomo e ben demarcato da altre forme di autorità. E, d'altronde, questa distinzione coglie bene la nostra intuizione che sono diversi i modi e le ragioni di "sottomissione" al potere politico o al sapere scientifico.

Ciò detto, esiste comunque una struttura comune a ogni forma di autorità, che consiste in cinque elementi distinti: l'autorità a) è una relazione ternaria che «coinvolge un soggetto *portatore* di autorità, un soggetto *subordinato* e un ambito all'interno del quale il portatore è considerato autorevole»; b) è una relazione asimmetrica; c) richiede la capacità del portatore di influire sul subordinato; d) richiede il *riconoscimento* del ruolo del portatore da parte del subordinato; e) è relativa ad azioni o credenze. Quando si parla di autorità, in ogni sua forma, si fa riferimento a questo insieme di proprietà internamente articolato.

È importante notare, in questo contesto, come il subordinato non possa, *per principio*, pesare le ragioni offerte dall'autorità: se potesse farlo, infatti, sarebbe in condizione di fare a meno di quell'autorità, negando di fatto lo scenario di dipendenza imposto dalla relazione. Per questa ragione, l'autorità si configura come *servizio*: come osserva Croce, facendo riferimento ai lavori di Zagzebski, «il servizio che l'autorità epistemica svolge è quello di fornire al soggetto dipendente ragioni decisive per accettare una particolare credenza» (91).

L'approccio funzionalista che, sulla scorta dei lavori di Goldman, Croce adotta richiede che le definizioni di esperto e di autorità epistemica riflettano la funzione che essi svolgono all'interno della comunità epistemica. In questo senso, per comprendere la natura di quelle figure e la differenza che sussiste fra esse è necessario fare riferimento, appunto, alla funzione che sono chiamate a svolgere.

È questo l'aspetto originale della proposta di Croce. Già Zagzebski aveva avanzato delle buone ragioni per resistere l'assimilazione dei due concetti. In primo luogo, l'autorità epistemica ha una natura comparativa che manca, invece, nel caso dell'esperto: per essere un'autorità epistemica per qualcuno è sufficiente essergli epistemicamente superiore, fosse anche per il semplice fatto di essere meglio posizionato rispetto all'accadere di un determinato evento; per essere considerato un esperto, al contrario, è necessario soddisfare criteri più rigorosi, come, ad esempio, il possesso di un ampio bagaglio di conoscenze e, verosimilmente, di una qualche forma di certificazione. In secondo luogo, l'auto-

rità epistemica richiede una relazione personale, di fiducia, tra l'autorità e il subordinato, mentre si può essere esperti senza per questo riuscire ad ottenere la fiducia di nessuno.

Su questi due punti fa leva Croce per formulare la propria teoria pluralista dell'autorità epistemica. Si è detto del ruolo centrale, metodologicamente ed euristicamente, svolto dal concetto di funzione. Ora, se ci concentriamo sulla funzione che l'autorità epistemica deve svolgere è facile vedere come il compito dell'autorità epistemica si distingue da quello dell'esperto. La funzione dell'autorità epistemica è, infatti, *no-vice-oriented*; è rivolta, cioè, a fornire un servizio a chi è in posizione di dipendenza epistemica. In quest'ottica, un soggetto A è definito come autorità epistemica per un soggetto S in un campo D se e solo se a) A è meglio posizionato epistemicamente di S; b) A e S condividono una relazione personale di fiducia; e c) A è sensibile ai bisogni epistemici di S. L'autorità epistemica può poi essere rivolta alla verità o alla comprensione: nel primo caso, la funzione dell'autorità epistemica è di comunicare delle conoscenze a chi è epistemicamente subordinato; nel secondo caso, di aiutare chi è epistemicamente subordinato a comprendere le ragioni per cui qualcosa è in un certo modo.

Diversa la funzione dell'esperto, che è quella di acquisire nuova conoscenza in uno specifico campo di competenza. Per essere esperti nel dominio D, dunque, non è necessario ottenere la fiducia di chi è epistemicamente subordinato – anzi, è del tutto indifferente. Bisogna, piuttosto, avere una maggiore comprensione dell'argomento rispetto alla maggioranza delle persone e avere la capacità di far progredire in modo originale la ricerca. L'esperto ha, quindi, una funzione *research-oriented*. Si può essere esperti in una certa materia – questa l'intuizione che Croce, correttamente, vuole preservare – anche se non si è capaci di acquisire la sensibilità per i bisogni epistemici di un soggetto epistemicamente subordinato e, di riflesso, non si è capaci di istituire con lui una relazione fiduciaria (172).

Oltre l'epistemologia?

La teoria pluralista di Croce ha molti meriti, primo fra tutti quello – riconosciuto peraltro dall'autore stesso – di offrire una tassonomia ragionata delle diverse forme di interazione fra soggetti epistemicamente diseguali alternativa a quelle attualmente presenti in letteratura. Un altro merito è

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di aver esplorato le potenzialità euristiche di un approccio funzionalista alla competenza e all'autorità. Un ulteriore merito, infine, è di aver messo in luce come, molto spesso, alcune scelte terminologiche – come, ad esempio, l'equiparazione di esperti e autorità epistemiche – non solo non rispondono ad alcune importanti intuizioni di senso comune, ma tradiscono anche la complessità delle pratiche sociali in cui siamo immersi.

Quest'ultimo aspetto mi pare, fra tutti, quello più rilevante. Allargando per un attimo la prospettiva oltre gli aspetti tecnici delle questioni epistemologiche, un'impostazione funzionalistica *à la* Croce rivela un utile potere diagnostico. Nel dibattito pubblico si chiede spesso perché venga meno la fiducia dei cittadini negli esperti. Ora, per quanto questa affermazione non sia realmente supportata da evidenza empirica, rimane il fatto che la resistenza verso il sapere esperto costituisce un fenomeno per certi versi sorprendente. Facendo però attenzione a non sottovalutare la complessità di questo fenomeno: ciò che è sorprendente, perlomeno da un punto di vista di epistemologia sociale, non è tanto che i cittadini preferiscano non deferire agli esperti, quanto che preferiscano deferire a presunti esperti, che mancano di qualifiche formali e riconoscimento da parte della comunità scientifica di appartenenza. Se alcune sacche di popolazione comunque deferiscono, perché deferiscono a esperti che riteniamo illegittimi? Con un esempio concreto e recentissimo: perché un certo numero di persone ha deciso di non vaccinarsi ma ha accettato di assumere ivermectina, fidandosi dei consigli di un gruppo di medici e specialisti critici delle linee guida ufficiali?

La distinzione fra autorità epistemica ed esperti consente di impostare una spiegazione soddisfacente di questo comportamento. Per avere efficacia a livello pubblico, come detto, non basta che gli esperti presentino certificazioni accademiche o facciano riferimento ai risultati che hanno conseguito nei loro settori di specializzazione; devono, piuttosto, riuscire a sviluppare quelle capacità che consentano loro di acquisire la fiducia dei cittadini. È necessario, in particolare, che dimostrino di possedere delle abilità di comprensione di quelli che Croce chiama bisogni epistemiche di chi è epistemicamente dipendente.

È a questo punto, però, che l'approccio epistemologico che Croce persegue credo debba essere arricchito e integrato da altri e diversi approcci. Richiamando innanzitutto l'attenzione su un punto che, a mio giudizio, ha una certa rilevanza per l'argomento. Croce sembra assumere che sia nell'ordine delle cose che un esperto possa essere estremamente

competente nel proprio settore di specializzazione e, allo stesso tempo, incapace di far parte di una rete di relazioni personali tali da consentirgli di sviluppare – fra le altre cose – relazioni fiduciarie con i cittadini. Per esempio, il Prof. Ivory Tower – questo il nome finzionale scelto da Croce per identificare questa figura – è un esperto perché soddisfa la funzione *research-oriented* che definisce quel ruolo sociale, per quanto viva e lavori isolato da tutti gli altri membri delle varie comunità di cui fa parte.

Il Prof. Ivory Tower è certamente un'idealizzazione, per cui i caratteri che Croce gli attribuisce sono estremizzati. Rimane, però, il fatto che una definizione di esperto che si proponga di includere come proprio rappresentante legittimo il suddetto professore assume esplicitamente che il compito dell'esperto o dello scienziato – Croce non distingue i due concetti che, invece, a mio giudizio dovrebbero essere tenuti separati – consista principalmente nella produzione di nuova conoscenza e nell'avanzamento dello stato della disciplina. Questa assunzione è sicuramente plausibile – e, anzi, di fatto è una descrizione corretta dello stato delle cose – ma è bene osservare un punto: che proprio quella sia la funzione che definisce l'esperto non dipende soltanto dalla natura di quella figura, ma anche dalla particolare struttura sociale entro cui l'esperto è chiamato a svolgere la propria funzione. Non è difficile, infatti, immaginare una diversa organizzazione del lavoro intellettuale in cui la funzione dell'esperto includa, come proprio tratto distintivo e non eludibile, la capacità di comunicazione e interazione con il pubblico. E non solo questa diversa organizzazione è immaginabile; in un certo senso è uno dei modelli di *governance* della ricerca scientifica che, sotto il nome di *Responsible Research and Innovation* (RRI), sta prendendo piede a livello europeo.

Mi pare, dunque, che il problema dell'autorità cognitiva, della natura dei bisogni cognitivi di chi è epistemicamente dipendente e del compito che spetta all'autorità epistemica nel comprenderli e articularli, assuma un profilo diverso da quello presentato da Croce. Certo, il nipotino fa bene a fidarsi della nonna e assumerla come autorità epistemica quando questa gli spiega la respirazione dei pesci (150). Il legame fiduciario è qui fondato su una relazione affettiva profonda che rende la scelta del bambino di fidarsi tanto naturale quanto razionale. Dal canto suo, la nonna – in un caso semplice come quello presentato – può facilmente individuare il bisogno epistemico del nipotino e altrettanto facilmente comprenderlo e soddisfarlo.

Ben più complicata, invece, la situazione quando le autorità epistemiche non sono amici o parenti, ma figure istituzionali. Eppure, anche

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in questo contesto – che è poi il contesto in cui si vengono a costituire i problemi più significativi rispetto alla funzione dell'autorità epistemica – si strutturano comunque rapporti fiduciari, grazie ai quali è possibile per chi non ha alcuna *expertise* in un determinato campo acquisire conoscenza o migliorare la propria comprensione di fenomeni complessi.

Sono due, qui, gli aspetti da sottolineare, che mi paiono fare problema per la proposta di Croce. In primo luogo, in un caso standard di deferenza epistemica agli esperti, sembra poter darsi autorità epistemica anche in assenza di relazioni personali fra chi è epistemicamente dipendente e la persona ritenuta autorevole. Porto un'esperienza personale, che credo però sia condivisa: quando ho deciso di vaccinarmi contro il Covid-19 mi sono semplicemente fidato della comunicazione istituzionale e non ho sentito il bisogno di integrarla con altre informazioni provenienti da persone più competenti di me e di cui potevo avere fiducia, come ad esempio il mio medico di base. In casi di questo tipo, quindi, sembra che sia sufficiente che chi si rivolge agli esperti o è interpellato da essi *ritenga* che quest'ultimi abbiano a cuore gli interessi di chi si fida – o, ancora più debolmente, che non abbiano a cuore interessi personali in contrasto con quelli di chi si fida – per riporre fiducia in loro. Pertanto, se questo è corretto, una delle condizioni che Croce pone per avere autorità epistemica – la presenza di relazioni personali fra l'autorità epistemica e chi si affida ad essa – non è in realtà necessaria.³

In casi di complessità maggiore di quelli presi in considerazione da Croce, dunque, i meccanismi fiduciari verso le autorità epistemiche sembrano funzionare in modo leggermente diverso da quanto previsto dalla teoria pluralista. In particolar modo, sembra – ma occorrerebbero studi empirici per provare questa tesi e per questo è meglio muoversi con grande prudenza – che la convinzione che gli esperti hanno a cuore i bisogni cognitivi di chi è epistemicamente dipendente possa sopperire

³ Questa conclusione è ovviamente resistibile. Per esempio, si potrebbe sostenere che è sufficiente avere a che fare con una persona – ad esempio, tramite il mezzo televisivo – per istituire una relazione personale. Oppure, con un argomento filosoficamente più raffinato e più solido, si potrebbe sostenere che, in casi come quello da me presentato, si dovrebbe parlare di *reliance* piuttosto che di fiducia (*trust*) vera e propria. In entrambi i casi, tuttavia, confesso che le alternative non mi paiono attraenti; non dubito però che si possa fare molto meglio e trovare delle vie d'uscita ben più plausibili.

all'assenza di una relazione personale fra le parti in causa. Ma se così è, e veniamo al secondo aspetto che volevo sollevare, l'ascrizione di autorità epistemica agli esperti non dipende tanto dall'esistenza di rapporti personali fra essi e chi è da loro epistemicamente dipendente quanto dalle qualità morali incarnate da quel particolare tipo di forma di vita che identifichiamo sotto il nome di scienza e dalla convinzione che gli esperti siano sensibili ai bisogni epistemici di chi ad essi si rivolge da una posizione di inferiorità proprio in virtù di quelle qualità morali che si suppone essi incarnino.⁴

Se quanto osservato è corretto, il pluralismo che Croce giustamente propugna deve essere radicalizzato, in una direzione che tenga maggiormente in conto la cornice istituzionale entro cui l'attività di ricerca è condotta nelle nostre società contemporanee. Detto in altri termini, più diretti: credo sia necessario che l'analisi epistemologica sia supportata da considerazioni di sociologia della conoscenza, nell'ottica di una prospettiva esplicitamente critica e normativa, affinché la ricerca e l'ascrizione di proprietà a determinati ruoli sociali non sfoci in una essenzializzazione di caratteri contingenti e, peggio ancora, nocivi *in the long run*.

Ritorniamo, per rendere più concreto questo punto, al Prof. Ivory Tower di cui si è parlato in precedenza e introduciamo un nuovo idealtipo, il Dr. Dirty Hands, ovvero un professionista che svolge il proprio lavoro all'interno di aziende o centri di ricerca privati, in assenza di una corrispettiva figura che svolga quella stessa indagine in un contesto di ricerca pubblica. Così come il Prof. Ivory Tower, anche il Dr. Dirty Hands costituisce un caso paradigmatico di esperto: in fin dei conti, non c'è dubbio che sappia contribuire in prima persona alla ricerca nel suo campo di competenza. Inoltre, come il Prof. Ivory Tower, anche il Dr. Dirty Hands non costituisce un caso di autorità epistemica, sebbene per ragioni opposte: infatti, mentre il Prof. Ivory Tower non è in grado di entrare in relazioni personali con nessuno, il Dr. Dirty Hands sconta la sua eccessiva prossimità a gruppi di potere e a logiche di capitale che ben difficilmente gli consentono di guadagnare la fiducia di chi è epistemicamente dipendente. In questo senso, l'incapacità di entrare in relazioni

⁴ Sulla scienza come forma di vita che incarna valori morali che dovrebbero essere promossi e difesi nelle società contemporanee si veda Collins ed Evans (2017).

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personali che caratterizza il Prof. Ivory Tower sembra essere meno compromettente della disponibilità del Dr. Dirty Hands a farsi finanziare da agenzie private.

Questo è un problema. Sempre di più, infatti, i professori come Ivory Tower sono rimpiazzati da dottori come Dirty Hands – il che vuol dire che sempre di più la conoscenza scientifica, prodotta in contesti ibridi, in cui la separazione netta fra pubblico e privato è venuta meno, è incapace di dar vita a forme di autorità epistemica. E questo pone un problema per una teoria come quella di Croce che mira a chiarire i rapporti fra autorità epistemica ed esperti. Infatti, se si opta non soltanto per mantenere la distinzione analitica fra i due concetti, ma addirittura per fondarla in una pretesa differenza nella natura delle funzioni che le due figure dovrebbero svolgere, si finisce, credo, per offrire degli argomenti a favore di una sostanziale deresponsabilizzazione di chi fa ricerca e, più indirettamente, per la formazione di autorità epistemiche non realmente affidabili perché non coinvolte nei concreti processi di formazione della conoscenza.

Non che questo sia ciò che Croce sostiene, ovviamente. Fra l'altro, come già osservato, la distinzione fra le due funzioni – quella di esperto e quella di autorità epistemica – è del tutto legittima e va pertanto preservata, non fosse altro perché fornisce importanti elementi diagnostici per comprendere alcune storture nel rapporto fra cittadini ed esperti scientifici di cui facciamo esperienza ormai quotidianamente. Il punto è un altro, anzi due: in primo luogo, se la definizione funzionale di esperto viene assunta come caratterizzazione normativa della professione di scienziato – come, mi pare, Croce lasci intendere con l'esempio del Prof. Ivory Tower – allora si rischia di darne una rappresentazione che finisce per legittimare pratiche e modalità di ricerca e formazione che andrebbero invece perlomeno sottoposte a critica e valutate alla luce dei loro effetti complessivi. In secondo luogo, se invece si decidesse di tenere ferma quella definizione, si avrebbe per le mani uno strumento concettuale che fatica a rendere conto della pluralità di forme che la professione intellettuale ha assunto in una società scientificamente e tecnologicamente avanzata come la nostra, in cui a molti esperti è richiesto, come condizione strutturale per poter condurre le proprie ricerche, di trovare punti di accordo fra vari *stakeholders*, mobilitare gruppi di pressione, coinvolgere l'opinione pubblica su temi eticamente controversi, e così via.

Insomma, per riassumere e concludere, un'analisi accurata delle nozioni di esperto e di autorità epistemica non dovrebbe limitarsi alla mera

constatazione della fisionomia che queste hanno assunto nelle nostre società contemporanee, ma dovrebbe, credo, avere l'ambizione se non di proporre una ricostruzione migliorativa di quei concetti e di quelle pratiche, perlomeno di metterne in luce la dipendenza dalle strutture sociali e istituzionali profonde e, così facendo, di rivelarne il significato e la portata sociali. È in quest'ottica che il lavoro epistemologico si lega necessariamente a quello nel campo della teoria della competenza scientifica, della sociologia della conoscenza, e così via.

Un'integrazione in questa direzione, peraltro, contribuirebbe a soddisfare quell'esigenza di pluralismo e di attenzione ai diversi contesti in cui le diverse funzioni vengono esplicate che Croce rivendica e fa propria. In questo senso, non si tratterebbe che di continuare e approfondire il lavoro impostato – a mio modo di vedere, molto correttamente – in *Di chi posso fidarmi? Autorità ed esperti nella filosofia analitica*.

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La replica

di Michel Croce

Nella sua ricca e accurata recensione del mio libro *Di chi posso fidarmi? Autorità ed esperti nella filosofia analitica*, Roberto Gronda offre una notevole quantità di spunti di riflessione critica e di integrazione della teoria dell'autorità epistemica che ho proposto. Trovo tali spunti davvero appassionanti: senza dubbio meriterebbero un approfondimento maggiore di quanto io possa permettermi in questa risposta. Lungi da me utilizzare questa premessa come alibi, cercherò di affrontare in maniera sintetica e quanto più dettagliata possibile quelli che ritengo essere i punti centrali delle osservazioni critiche che mi sono state fatte.

Vorrei iniziare da una questione che Gronda solleva nelle prime battute della sezione *Oltre l'epistemologia*, portando un esempio molto attuale: perché, chiede Gronda, certe persone si rimettono al giudizio di esperti che riteniamo illegittimi, come nel caso di coloro che hanno scelto non vaccinarsi contro il nuovo coronavirus e "curarsi" con ivermectina, fidandosi di medici e specialisti che non condividono le linee guida ufficiali? Secondo Gronda, l'elemento decisivo in un caso del genere è, appunto, il legame di fiducia che si instaura tra il cittadino e l'esperto – o presunto tale. Intercettando i dubbi e le prese di posizione ideologiche anti-vacciniste, alcuni specialisti sono riusciti a fare presa su una certa parte della popolazione e a convincere molte persone che un farmaco utilizzato per combattere i vermi parassitari intestinali negli esseri umani – e, più comunemente, negli animali – sconfiggerebbe il virus Sars-Cov2 evitando così la vaccinazione.

Nella prospettiva di Gronda, la teoria funzionalista dell'autorità epistemica che difendo nel libro avrebbe, almeno sulla carta, le risorse per ren-

dere conto di casi come quello dell'ivermectina. L'aspetto importante del funzionalismo che propongo, secondo Gronda, sta nella distinzione tra la funzione di chi viene incontro alle esigenze epistemiche di una persona o un gruppo di persone (quella che definisco funzione *novice-oriented*) e la funzione di chi si dedica al progresso di una determinata disciplina, cercando di risolverne i problemi aperti (funzione *research-oriented*). I sedicenti esperti che hanno guidato le persone a trattare il Covid-19 con ivermectina hanno dimostrato di avere – almeno in certi casi rilevanti – le abilità necessarie a svolgere la prima funzione. In uno scenario del genere, non possiamo permetterci di avere esperti legittimi che mancano della capacità di intercettare i bisogni epistemiche dei cittadini, perché acquisire la loro fiducia è un elemento decisivo nella “guerra” contro falsi esperti e cattive fonti di informazione.

Da una parte, quindi, la mia proposta funzionalista avrebbe il merito di offrire le risorse concettuali per indicare come la nozione di esperto debba essere ampliata; dall'altra, tuttavia, avrebbe il difetto di non sfruttare le sue stesse potenzialità, dal momento che propone condizioni non sufficientemente stringenti per la definizione dell'esperto. Più precisamente, per essere esperti, nella teoria che offro, è sufficiente essere in grado di soddisfare la funzione *research-oriented*, quindi raggiungere i livelli più elevati di conoscenza e comprensione in un determinato ambito, senza tuttavia possedere particolari capacità di intercettare i bisogni epistemiche delle persone inesperte. È invece necessario soddisfare la funzione *novice-oriented* per essere *autorità epistemiche*, ovvero soggetti che magari non soddisfano i requisiti di competenza epistemica degli esperti ma sono comunque epistemicamente meglio posizionati di noi in un certo ambito e in grado di cogliere i nostri bisogni specifici.

Al di là delle etichette che ho attribuito a queste due figure – che sono in realtà due modi di contribuire agli svariati bisogni epistemiche della collettività – rimango convinto della necessità di mantenere distinte le due funzioni, per almeno due ragioni che hanno a che fare con altre importanti osservazioni di Gronda. La prima ragione – su cui forse anche Gronda potrebbe concordare – è che ritengo fondamentale riconoscere il dovuto spazio in una teoria dell'autorità epistemica a quelle figure che ci consentono di imparare qualcosa senza avere particolari titoli o riconoscimenti in un determinato ambito. Indubbiamente, il contributo di queste autorità epistemiche deve avere confini ben precisi e spesso

è reso possibile da un legame di fiducia fondato su una relazione personale, ma rimane – almeno in certi ambiti e stadi del nostro sviluppo epistemico – un elemento fondamentale.

La seconda ragione è che anche se nella maggioranza dei casi rilevanti, gli esperti a cui le nostre comunità si affidano hanno o dovrebbero avere quelle abilità necessarie per interagire efficacemente con le istituzioni e i vari *stakeholders* e per comunicare con il grande pubblico, non sembrano tuttavia esservi ragioni per imporre la soddisfazione della funzione *novice-oriented* come requisito del possesso di *expertise*. Perché negare che il Prof. Ivory Tower sia un esperto, una volta riconosciuto il contributo che offre al progresso della sua disciplina e il possesso delle dovute credenziali epistemiche? Il fatto che Ivory Tower sia privo delle capacità comunicative e di interazione con le istituzioni e i cittadini, elementi fondamentali nel modello europeo di *Responsible Research and Innovation* citato giustamente da Gronda, lo rende un *esperto* difficilmente utilizzabile come *autorità epistemica*, se non nel senso lato dell'autorità conferita dai risultati stessi del suo lavoro⁵, ma non per questo meno esperto.

Uscendo dall'idealizzazione di Ivory Tower, mantenere la distinzione tra esperti e autorità epistemiche richiede quantomeno di spiegare come la conoscenza prodotta dai primi possa raggiungere i membri inesperti nella comunità e trasformarsi in sapere collettivo. Anche qui sembra emergere qualche divergenza tra la posizione di Gronda e la posizione che difendo nel libro – e intendo articolare più precisamente in lavori futuri. Laddove Gronda suggerisce un ampliamento dell'orizzonte delle competenze dell'esperto in direzione *novice-oriented*, volta a garan-

⁵ Faccio qui riferimento all'idea secondo cui il fatto stesso di contribuire al progresso epistemico di una determinata disciplina dimostrerebbe che l'esperto è in un certo senso anche autorità epistemica, in quanto soddisfa i bisogni epistemiche della comunità a cui appartiene, come richiesto dalla funzione *novice-oriented*. In realtà, il requisito di questa funzione è posto al livello di chi sa riconoscere i – e rispondere ai – bisogni epistemiche dei singoli membri della comunità. In questo scenario si capisce perché Ivory Tower non possa soddisfare i requisiti dell'autorità epistemica, dal momento che è privo delle abilità necessarie per interagire con i soggetti inesperti nel suo ambito di competenza e comprendere i loro bisogni epistemiche.

tire il rafforzamento del legame di fiducia tra gli esperti e il resto della comunità, l'impostazione funzionalista e *pluralista* della teoria che offro sembra fare spazio ad una soluzione alternativa.

Anziché rischiare di escludere dalla classe degli esperti quanti fossero deficitari sul piano comunicativo, l'approccio pluralista consente di ampliare lo spettro di figure che svolgono una funzione precisa nell'economia della conoscenza all'interno di una comunità. Più precisamente, consente di individuare figure dalla competenza trasversale, dotate di un bagaglio sufficiente di conoscenza per comprendere i passi in avanti fatti in un determinato ambito del sapere e, al contempo, delle abilità *novice-oriented* necessarie per rendere quelle informazioni accessibili agli *stakeholders*, alle istituzioni, e al grande pubblico. Indubbiamente, la caratterizzazione che sto abbozzando necessita di molti affinamenti, ma in senso molto generale non vedo ragione di preferire una prospettiva più gravosa per la definizione dell'esperto ad una che consente di diversificare le funzioni, permettendo agli eventuali Ivory Tower di fare il loro lavoro e ad altre figure competenti di *divulgatori* – o simili – di fare da raccordo con le altre parti in gioco.

Mi sia permesso precisare che non sto auspicando questo scenario come modello ideale per la produzione e diffusione di conoscenza nelle nostre comunità. Anzi, sono convinto che il suggerimento di Gronda sia in larga parte compatibile con una specificazione dell'approccio funzionalista e pluralista nella direzione a cui ho appena fatto riferimento. Ciò che intendo resistere è semmai l'uniformazione e la fusione delle funzioni che una persona può ricoprire in campo epistemico ad una concezione dell'esperto troppo ambiziosa. Anche l'attuale esperienza degli scienziati quotidianamente presenti sui mass media ad aggiornare commenti e previsioni sugli sviluppi della pandemia di Covid-19 sembra insegnarci che non tutti gli esperti sono competenti nella diffusione di informazioni al grande pubblico. Alcuni di loro sono indubbiamente più dotati; altri sembrano imparare strada facendo, incappando in scivoloni mediatici di varie proporzioni; altri, infine, rifuggono la presenza pubblica e si concentrano sul loro lavoro di scienziati, lasciando che a divulgare sia chi ha maggiore predisposizione e competenza, quindi minore probabilità di fare danni.

Per essere efficace, a mio avviso, una teoria dell'autorità epistemica dovrebbe riconoscere il possesso di *expertise* nelle rispettive discipline a

tutte e tre le categorie di scienziati in questione, a prescindere dalla loro capacità di gestire le domande di politici, giornalisti e altri membri della società civile. Una teoria che limitasse l'attribuzione di *expertise* solo a qualcuna di queste categorie starebbe conducendo l'epistemologia sociale in una direzione a mio avviso sbagliata.

Prima di concludere, intendo affrontare brevemente ancora due punti importanti che emergono dalle riflessioni critiche di Gronda. Il primo riguarda la necessità di una relazione personale tra soggetto autorevole (A) e soggetto dipendente (S) come requisito della nozione di autorità epistemica. Gronda nota giustamente che un requisito di questo tipo può funzionare in certe situazioni in cui la fiducia che lega i due soggetti dipende da un rapporto affettivo profondo, ma sembra inutile in molti altri casi in cui l'autorità epistemica a cui deferiamo è un esperto che non ci conosce personalmente.

L'unica via d'uscita plausibile da questa obiezione sarebbe quella – a cui anche Gronda fa cenno in nota – di distinguere tra i concetti di *trust* e *reliance* e argomentare che l'assenza di una relazione personale implicherebbe l'assenza di autentica fiducia (*trust*) tra i due soggetti, configurando la loro interazione come una relazione in cui S si affida alla testimonianza di A (nel senso inteso dalla nozione di *reliance*). Questo secondo scenario metterebbe in crisi il processo con cui S acquisisce credenze giustificate da A e richiederebbe una revisione della *Preemption Thesis* (94), secondo cui il fatto che A creda che P o affermi P dà a S una ragione per credere che P che sostituisce le altre ragioni a disposizione di S⁶.

Volendo rimanere fuori dai tecnicismi ed evitare una difesa “a qualunque costo” della teoria, concordo con Gronda nel ritenere che il requisito della relazione personale in molti casi rilevanti di relazione tra A e S costituisca più un problema che una risorsa e, pertanto, varrebbe la pena considerarne l'eliminazione dalla definizione dell'autorità epistemica o la sostituzione con una condizione più inclusiva.

Il secondo e ultimo punto a cui vorrei fare un breve cenno è l'esempio del Dr. Dirty Hands, che Gronda propone per gettare luce su casi di

⁶Per dovere di accuratezza, è opportuno notare che l'idea originaria di Zagzebski (2012), secondo cui il potere *preemptive* della testimonianza delle autorità epistemiche dipenderebbe dalla relazione personale tra A e S, è già stato messo in discussione, ad esempio, in Constantin e Grundmann (2021).

esperti che lavorano in ambiti principalmente finanziati da aziende private e che, in certi casi, non pubblicano neppure i loro risultati a causa di vincoli di segretezza. La distinzione tra esperti e autorità epistemiche sembra adattarsi male a situazioni di questo genere. Da un lato, gli esperti potrebbero essere privati di uno dei metodi più affidabili per valutare la loro capacità di soddisfare la funzione *research-oriented*, ovvero la pubblicazione dei loro risultati. Dall'altro, la possibilità che questi esperti soddisfino la funzione *novice-oriented* sembra in qualche modo preclusa dal fatto che lavorano per conto di agenzie private.

L'esempio del Dr. Dirty Hands pone un problema alla teoria dell'autorità epistemica che ho difeso in *Di chi posso fidarmi? Autorità ed esperti nella filosofia analitica contemporanea* e, al contempo, apre una finestra sulla dimensione relativa al legame tra *expertise* e strutture sociali/istituzionali che qualsiasi concezione di chi siano gli esperti e cosa significhi possedere autorità in campo epistemico dovrebbe prendere in considerazione. Pertanto, sebbene le ambizioni del libro – come il titolo suggerisce – siano in certa misura limitate alla discussione della *expertise* nell'attuale dibattito in campo analitico, condivido il suggerimento e l'auspicio generale di Gronda: che la discussione in epistemologia sociale non chiuda la porta alla sociologia della conoscenza – e, aggiungerei, viceversa.

Il mio di auspicio è che, grazie anche alle critiche e agli spunti integrativi che hanno contraddistinto la significativa recensione di Gronda, il libro susciti nei lettori un maggiore interesse per l'epistemologia della *expertise* e per la sua relazione con altre discipline filosofiche e con le scienze sociali. Poche questioni filosofiche mi sembrano più attuali e urgenti di questa.

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Ilaria Cozzaglio

Concept and Conceptions of Legitimacy: Political Realism Between Contextualism and Universal Principles

Political normativity has traditionally been anchored to the idea that moral principles represent the touchstone for evaluating and guiding political phenomena. In contrast, political realists maintain that the foundations of political normativity must be searched not in moral theory, but in the traits of politics itself.

In the last years, theorists belonging to these different camps have engaged in an intense debate. On the one hand, critics of political realism have maintained that realists' notion of legitimacy is status quo biased and unable to offer any distinctive political normativity. On the other hand, realists have argued that their notion of legitimacy can be normative while still avoiding reliance on moral theory, by distinguishing political from moral values.

The aim of this article is to show that realism has room for offering a distinctive political normativity, one that accommodates both universalist and contextualist vocations. I propose to develop such normativity by splitting the notion of legitimacy into concept and conceptions, where the former provides us with universalist considerations while the latter guarantees the context-dependent character of normative standards.

James Humphries

The Social-Relational View of Recognition Respect

In this paper, I focus on recognition respect as a component of Anderson's democratic equality – specifically, how it places certain requirements on the way political institutions such as states treat both citizens and non-citizens.

I argue for two claims: that recognition respect is a plausible political (as well as ethical) value, and that it should be understood in large part as a matter of an agent's material relational standing rather than as their merely being regarded in a certain way by others. In particular, I argue that the second-personal emphasis of recognition respect, the conceptual requirement that recognising somebody as an agent involves recognising them as somebody to whom you are in principle accountable, requires that agents actually be able to hold you to account rather than merely that you see them as being the right sort of being to do so. In turn, this implies that recognition respect requires non-vulnerability.

Together, these claims go some way towards further fleshing out democratic equality as a philosophical ideal, and determining what implications this ideal has for matters of theory and policy.

Caterina Giacometti

Civil Society Organisations and the Local Governance of Asylum. Resistances, Alignments and Unspoken Imbrications

The article aims at dusting the never-ending question concerning the borders between the different classical spheres of society (the State, the Market and Civil Society) off applying it to the domain of migration and asylum studies. Indeed, while reference to the important role of civil society actors is usually made by most of the literature about the local governance of migrations, the latter usually approaches the issue from a strict institutional and overtly optimistic conception of it, only rarely accounting for dimensions of conflict and power that should not be excluded from the analysis of governance mechanisms. To fill this gap, it is argued that civil society organisations (CSOs) frequently find themselves in dealing with a 'civil dilemma', i.e. the seldom win-win choice between the valorisation of their counter-hegemonic power vis-à-vis institutional policies and practices and/or the concrete and punctual satisfaction of asylum seekers and refugees' contingent needs. Subsequently, it is argued that although the existence of dynamics of institutional governance should be refuted and a resistant modality of action on the part of CSOs recognised, their being reluctant about officialising the implicit inter-organisational relations among them hinders the collective organisation of a transformative pressure on the in-

stitutional interpretation of the responsibilities concerning reception, integration and multiculturalism. The article flows from a PhD thesis submitted in October 2020 and based on an extended period of participant observation within four different CSOs in Milan and through in-depth interviews to both CSOs' members and asylum seekers and refugees turning to the latter.

Antonella Zarra, Silvia Favalli, Matilde Ceron

Algorithms and Prejudice? Covid-19, Contact Tracing and Digital Surveillance in the EU

The health crisis arising from the coronavirus pandemic has revamped the debate over algorithmic surveillance. As several countries have released artificial intelligence (AI)-enabled applications to complement manual contact tracing, it is worth critically assessing the ethical concerns of contact tracing via algorithm, particularly in light of the heterogeneous policy response as well as the severity of the outbreak of Covid-19 within the European Union (EU). The contribution considers the human rights implications of contact tracing against well-established challenges in the use of automated decision-making systems, identifying problematic aspects of the pandemic digital surveillance. The analysis scrutinizes theoretical challenges and provides evidence through selected case studies within the EU, displaying shortcomings such as privacy and data protection violations, bias and/or discriminatory outcomes, limits to accessibility. Even if the relevant EU legal system is far more advanced comparatively, the analysis shows how – especially in the arena of unofficial tools which may however shape the ability to access essential services – problematic use cases remain. The discussion is extended to the EU proposal for an AI Act, indicating that as it stands it may provide insufficient safeguards, especially in the domain of biometric systems.

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Caterina Giacometti – having recently earned a PhD in Sociology and Methodology of Social Research at the Network for the Advancement of Social and Political Studies, in the framework of a joint supervision between the University of Milan and the University of Poitiers (France) – has been investigating for some time different issues relating to the presence of asylum seekers and refugees in France and Italy, focusing in particular on asylum seekers and refugees' multi-dimensional integration processes and on the role of civil society in this regard. Her works usually deploy qualitative methods of investigation such as in-depth interviews and participant observation, with some important space left to the direct involvement of the subjects of research on the definition of her role and of fieldwork. She has been participating to many international conferences, and contributed to some reports such as the *Atlas des Migrations en Europe. Approches critiques des politiques migratoires*, of the Migreurop network (Armand Colin, 2017).

Roberto Gronda, MA Philosophy, PhD Philosophy of Science, is Assistant Professor in Logic and Philosophy of Science at the University of Pisa. His main field of study is the philosophy of scientific expertise, which he approaches from a pragmatist perspective. He has writ-

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James Humphries works in political philosophy, with a particular focus on autonomy, authority, republicanism and democracy, and political institutions and political obligations. He has recently published a chapter on domination and the state in Mathis and Langensand (eds, 2021), and less recently an article on autonomy and intimate relationships (*Journal of Applied Philosophy*, 2018).

Antonella Zarra is a doctoral researcher at Hamburg University within the European Doctorate in Law and Economics (EDLE), a joint program by Erasmus University Rotterdam, Bologna University and Hamburg University. She is a Fellow at the Jean Monnet Centre of Excellence on Digital Governance (DIGOV). She holds a MSc in Economics of International Institutions and a BSc in Economics and Management from Bocconi University, Italy. Previously, she worked as a researcher in the field of policy evaluation for the European institutions at the Centre for European Policy Studies, Brussels. Her doctoral project deals with the regulation of artificial intelligence (AI) and automated decision-making systems. Through the lenses of law and economics, in her dissertation she scrutinizes the incentives that justify policy interventions in the field of AI, with a focus on liability, data ownership and algorithmic trustworthiness.



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