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DEMOCRACY FOR DEVILS.
DEMOCRATIC AUTHORITY AND POLITICAL
OBLIGATION

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Abstract

In current Western societies, democracy is taken to be a legitimate political authority. This means that it rightfully holds and exercises coercive power, while we have a duty or an obligation to obey its directives. In this work I intend to focus on each of these elements, in turn: political obligation, legitimate authority and democracy. My aim is to provide a democratic justification of political obligation, by showing that democracy is a legitimate political authority and that it has the right to impose obligations on us. This means that the legitimate authority of democracy grounds a political obligation towards it, while the content of such obligation is given by what is needed for democracy to work. All in all, this may seem not to take too much distance from traditional approaches. Nonetheless, I will argue that these other accounts fail to address properly the relation between legitimacy and obligation and, consequently, the real content of obligation itself.

Indeed, traditional democratic theories have focused mainly on the justification of democracy as a valuable political regime, either per se or comparatively, and have drawn from such justification the legitimacy of democratic authority. However, the relationship between justification and legitimacy is not as straightforward as it may seem, as A. John Simmons has pointed out. I take into account Simmons's challenge and provide a general understanding of how to conceive of legitimate authority in the first chapter.

To properly deal with Simmons's challenge, I argue that one cannot limit the justification of democracy to its value according to a certain conception of justice, because in order for these justifications to be effective they ought to be accompanied either by an account of citizens' natural disposition to accept said justification as sound or by an account of citizens' natural duty of justice to respect said justification. John Rawls's and Thomas Christiano's theories of democracy attempt to do precisely these things, respectively. I address both endeavors and show how they fail in the second and third chapter.

Finally, I come back to general theories of democracy and in particular to the main approaches to justify democracy: instrumentalism and proceduralism. I argue that both approaches fail in some relevant way to properly account either for democratic procedures themselves, as they are taken to be of value only through reference to outcomes, or for the way democratic procedures are employed by citizens. I contend that a successful justification ought to be not only independent from outcomes, but also from

the disposition with which citizens address democratic institutions. Yet this can be done only if citizens are allowed to bring into the democratic game various and diverse inputs, which ought to conform neither to one particular conception of justice, nor to other purely moral motivations. Therefore, I devise a justification that can answer to prudential reasons: beyond moral and epistemic reasons, the fact that democracy represents a good way to pursue one's own interests makes it a legitimate authority. In turn, if this justification is sound, citizens have a duty not to undermine democratic institutions, because they are legitimate, and to do what is required for democracy to work properly. This includes the duty to obey the law and the conditional duty to get informed before voting.

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INTRODUCTION

“Which brings me to my final point - our democracy is threatened whenever we take it for granted. All of us, regardless of party, should throw ourselves into the task of rebuilding our democratic institutions. [...] And all of this depends on our participation; on each of us accepting the responsibility of citizenship, regardless of which way the pendulum of power swings”.

Barak Obama, Farewell Speech, January 10, 2017

“As hard as it may sound, the problem of setting up a state can be solved even by a nation of devils (as long as they possess understanding)”.
Immanuel Kant, Perpetual Peace. First Supplement (Kant 1991, 112)

We live under democratic regimes. We don't live too badly. We think this depends (in part) on the fact that we live under democratic regimes. Hence, we may find those regimes good in this respect. When we ask ourselves whether democracy is good or bad, we are questioning the *value* of democratic procedures. There are reasons to think that we should “want, or establish, or maintain democratic institutions” (Kolodny 2014a, 197) and these pertain to democracy's value or worth. However, many take these reasons also to show that democracy is a legitimate authority and hence that we ought to obey to democratic decisions (Christiano 2008, Estlund 2008, Peter 2008, Kolodny 2014a, 2014b, Viehoff 2014). Despite extensive debates about the grounding of democracy's value, accounted for in instrumentalist or in proceduralist terms, one common point has been shared by supporters of both sides: the idea that a proper justification of democracy's value would also lend democracy's legitimate authority. Once it is shown that democratic procedures produce good outcomes or that they embody moral principles of equal respect and mutual justifiability, their legitimacy seems to follow. We thus have to obey to democratic directives because democracy is itself good or just. I do not think that such an implication is so smooth as it is made appear.

Therefore, the aim of this work is twofold. On one hand, I intend to argue that we ought to obey democratic directives because democracy is a legitimate authority. The connection between legitimate authority and citizens' political obligation is preserved. However, democracy is such a legitimate authority because there is a complex justification, which includes prudential considerations, that makes it acceptable to all citizens. On the other hand, the content of such obligation is wider than the mere duty to

comply with the law, because it requires citizens also to play their role within the democratic game. Since democracy is primarily a decision-making procedure in which all citizens can take part, their role is instrumental in bringing about good outcomes. Yet, insofar as citizens disagree over the quality of these outcomes it is at least quite hard to assess the value of democratic procedures on the basis of a publicly shared standard. Thus, the two intertwined questions I aim to answer are: 1) Is there a *minimal* and *universal* duty all citizens ought to discharge which is necessary for the functioning of democratic decision-making procedure? 2) Is there a proper justification for democracy that can ground such a duty?

In order to answer these two questions and show their relevance, let us focus on the reasons why the traditional value-based justification of democracy might not be enough. First, the fact that something is right is not *eo ipso* a conclusive reason to do it, although it might be a reason for doing it. We all agree that helping one in need is right, but if I go around helping others without focusing once on what I really care about, could we really say that spending my whole time helping others is what I *ought* to do¹? Here one might remark that there is a relevant difference between obligatory and supererogatory actions, according to which dedicating one's whole life to others qualifies as an excessively demanding moral requirement, whereas saving a life is a positive natural duty that applies to all. Yet, the distinction between what counts as supererogatory and what does not is a matter of ongoing dispute, as we have seen with cases like abortion or animal rights.

Moreover, the same problem resurfaces with equally obligatory actions we may be asked to perform. We all agree that helping one in need is right, but is it really what one ought to do regardless of the circumstances? There seems to be little agreement over the issue. Think for instance about the long-lasting debate on global justice and its implication concerning migration: is really a duty of justice we have to help migrants in dire need as we ought to help Peter Singer's kid in the shallow pond (Singer 1972, Pogge 2008, Carens 2013)? Or should we accord priority to our fellow citizens, insofar as they are members of social cooperation that principles of justice regulate (Nagel 2005, Blake 2001, Sangiovanni 2007)? It can be that we have duties towards other human beings and

¹ There seems to be a difference between 'obligation' and 'ought', such that the former concept refers to something I have a reason to do, while the latter points to what I have most reasons or *conclusive* reasons to do. For the distinction between duty and obligation, on one hand, and 'ought' on the other, see (Simmons 1979, 10-11, Brandt 1964, 378). I have framed the question with reference to reasons in the text and in the rest of this work I will speak of duties and obligations as reasons, for which see Joseph Raz (1990, 25-33). For a more accurate analysis of duties and obligations see the first chapter.

duties towards fellow citizens and that these duties conflict. Although troubling, it is a common experience that we happen to run into and that is often highlighted by philosophers, as with Philippa Foot's notorious trolley problem (Foot 1967). The pre-theoretical experience of conflicting duties requires us to make choices among two things that seem both equally right and equally obligatory¹. Despite the fact that hopefully the consequences of choice are not as tragic as for Sophocles's *Antigone*, is this a choice that is up to us or is it up to the state we belong?

Apparently, the fact that something is right seems a valid reason to impose it on others as their *duty* and to threaten to coerce them into doing it. If I strongly believe that killing animals is wrong and that we all have a duty not to do it, the use of state coercion to uphold this requirement of justice seems only straightforward. On the other hand, there are wrongs that we do not think it is up to the state to redress, as for instance cases of broken promises between friends. Here we have two different questions intertwined. On one hand, the fact that a specific action is right does not necessarily mean that it is also a duty to perform it². On the other hand, the fact that something is right and that I have a duty to do it is not sufficient to give someone else a right to coerce me into doing it. For instance, I surely have a duty to keep a promise given to a friend, but does this mean that the state should have a right to force me to? It does not seem so. Clearly, there is wide disagreement over what is right, what qualifies as a duty or not, how these duties ought to be balanced and what are the circumstances under which people may be legitimately coerced into discharging their duties.

Approaches directed to highlight the value of democratic decision-making procedures are certainly instrumental to see whether we should praise these procedures or not. Yet, to argue that democracy is the right way of taking decisions is not enough to conclude that we ought to obey to democratic directives issued within our existing democracies and that these ought to be forced upon us in case of non-compliance. The problem is not only one of resemblance: to say that all current self-styled democracies truly correspond to ideal procedures philosophers acclaim would be quite an exaggeration. The problem is that such approaches blur the line between two close, but separate questions: the justification of democracy and its legitimate authority. A. John

¹ While this is not the focus of this work, it shows that it would not be enough to state that democracy is right; it ought to be clarified either that there are conclusive reasons to obey democratic outcomes or what are the limits of political obligation. This is the aim of dualistic justifications of democracy as the one offered by Thomas Christiano (2004, 2008).

² The dispute over obligatory and supererogatory actions refers to this problem, but I will not address it in this dissertation.

Simmons is the first to highlight the distinction between something being justified and its having a right to rule, which is what legitimacy is generally thought to mean (Simmons 1999). While the former enterprise concerns giving reasons and considerations in favor of something as morally permissible, the latter is properly a right to impose duties and coerce those unwilling to discharge them. Therefore, although a state can be perfectly justified in the former sense, this fact says nothing about its having a right to rule on those purportedly subject to it.

We can perhaps rephrase Simmons's observation with Jeremy Waldron's distinction between the two major tasks of political philosophy. While justification pertains to the domain of "theorizing about justice", questions of political legitimacy, authority and obligation are instantiation of another domain: the theory of politics (Waldron 1999, 3). Political legitimacy consists in the so-called right to rule, which can be interpreted in different ways, depending on whether it correlates with a duty to obey on subjects' part or not. As such, it constitutes the fundamental feature of any political state or order, which exists only insofar as it is able to exercise its coercive power and exact compliance with its laws. Thus, political legitimacy and obligation intertwine with the theme of political authority, which refers to the state's moral power to require action from its subjects (e.g. Raz 1986). The relation among these three concepts is not straightforward and the way it is spelled depends on where the focus goes. Nevertheless, these have been the main focus in modern political philosophy, when the social contract tradition has attempted to provide a consent-based account of state's political legitimacy and individuals' obligation towards it. Since then, a large part of political philosophy has revolved around these issues and have offered diverse answers concerning whether and why we ought to obey the states we live in and whether and why these states can demand that we comply.

Naturally, democracy represents a special kind of state, or regime. As a matter of fact, it is the only one which qualifies as self-government by the people and for the people. To be sure, there are various types of democracy, which range from direct ones, to representative, from majoritarian to constitutional, or national or federal. Despite diversity, they all share two features: political equality and popular sovereignty (Dahl 1959). Democratic citizens have equal political rights and they together decide who gets to rule. Yet, why do these facts give to the democratic process as a whole the right to impose binding laws? If I am in the majority, I ought to obey to the winning candidate basically because I consented to be governed by her. However, what about if I am in the minority that did not win? Moreover, one can also question that I did not really make a

choice between democratic way of decision-making and other alternative options. Thus, when democratic theory intends to argue for democratic legitimate authority these are the questions it ought to answer.

Actually most political philosophers argue that the reason why we ought to obey to democratic directives has nothing to do with the content of these directives but derives straightforwardly from the fact that these decisions have been taken democratically. In so doing they introduce an important distinction between the reasons we have to take collective decisions as justified and the ones we have to take them as binding or legitimate (Christiano 2008, Estlund 2008, Peter 2008, Pettit 2012). What most of them say is that we ought to obey, *regardless* of the soundness or correctness or reasonableness of the decision itself¹. It is its democratic pedigree that speaks in favor of the bindingness of a law.

However, this stance simply shifts the problem, rather than answering it. If the reason why we ought to obey to a law is that it has been issued by a democratic procedure, the next question we ought to respond to is why the fact that a decision-making procedure is democratic makes its outcomes legitimate. Some of them have simply take democracy to embody a kind of fairness which “speaks for itself” and needs no more justification (Waldron 1999). So-called minimal proceduralism exactly takes democratic procedure to boil down to a neutral and anonymous procedure, that is a perfectly fair procedure with respect to the parties involved. Nevertheless, there are different other ways to explain why democracy lends to its outcomes the central feature of legitimacy and why democratic citizens are under an obligation to obey the law. On one hand, proceduralism takes legitimacy to hinge on the intrinsic value of procedures themselves. On the other, instrumentalism recognizes democratic authority in virtue of its average outcomes or by-products themselves.

In both cases, we again stumble upon the problematic relationship between justification and legitimacy, since we attempt to argue for the latter on the former’s grounds. Perhaps what is troubling is not justification per se, but how justification is framed. In fact, there are at least two ways to respond to Simmons’s criticism we saw earlier. First, we could address justification to a specific audience of people, whom we know would be sensitive to moral reasons in favor of democracy. For these people,

¹ This is clearly the stance of Tom Christiano, David Estlund and Philip Pettit, while it is not as overtly shared by theorists of deliberative democracy. In fact, insofar as deliberation is conceived of as an instrument that helps reaching better decisions and which eventually would lend only consensual decisions, the deliberative democratic process ought to guarantee both justification and legitimacy of collective decisions. See for instance Habermas 1996, Cohen 1997, Gutmann and Thompson 2004.

democracy would then be acceptable and hence they could consent to its legitimacy. What we would have is a quasi-voluntaristic justification of citizens' duty to obey and democratic right to rule, in line with traditional social contract approaches (Rawls 2005, Estlund 2008, Quong 2011). Second, we could provide a justification of democracy that refrains from customizing audience and instead purports to be valid regardless of what citizens seem to think. This would make democratic legitimate authority conditional on the supposedly right theory of justice, which in turn can be grounded on a principle of public equality, autonomy, equal respect or mutual justifiability (Buchanan 2002, Christiano 2008).

My hypothesis is that both paths go astray. While the former wrongfully restrains the amount of people for whom democratic institutions would be justified, the latter ultimately hinges on implausible premises, like the existence of a natural duty of justice which ought to establish political obligation. This work attempts to show how the former approach makes democratic authority conditional on citizens' reasonable disposition towards it, that is how citizens engage with the democratic process, whereas the latter is wholly insensitive to this aspect. As a result, both approaches fail because they lose sight of the two intertwined questions I previously mentioned concerning the content and the ground of democratic political obligation. The reason because it is crucial that citizens be given a justification of democracy they all can accept flows from the way democracy works. Since it is a decision-making procedure to which all citizens can join and since they come from different environments, with diverse conceptions of the good and the right, as well as heterogeneous life plans and final ends, the way their role as citizens ought to be framed cannot hinge on a specific conception of justice, which runs the risk of not being shared by all. If democracy has to work properly and to keep on working, the main rules of the game ought to be followed. Yet, this means that we ought to deliver a player's handbook that works for all. To be sure, the set of moves that are available to citizens is more or less the same, as we all have the same political rights. Nevertheless, the intentions with which citizens approach democracy are diverse and they ought to be taken into account. To accept only one kind of player or to disregard the fact that the value of a game depends on how players behave constitute two different, but equally misleading approaches to the justification of democracy's legitimate authority. Insofar as we are concerned with justifying its authority, rather than its value, the way democracy is and ought to be played in real life matters.

The structure of this work is as follows. The first chapter focuses on the concepts of legitimate authority and political obligation. On one hand, I take the former as

specifying a claim-right to rule, which entails and grounds a duty of obedience on those subject to it. Hence, I endorse a qualified version of the Correlativity Thesis, which conceives of legitimacy and obligation as entailing each other. On the other hand, I offer an account of political obligation and of the specific kind of reasons for action that it provides. I conclude with two challenges that A. John Simmons makes against the Correlativity Thesis and one answer to the first challenge. While such answer consists in a qualification of the Correlativity Thesis itself as unidirectional, from legitimacy to obligation, I introduce two possible replies to the second challenge, which will be explored in the two ensuing chapters.

The second chapter addresses John Rawls's account of reasonableness, which I propose as a tentative answer to Simmons. As a matter of fact, Rawls restrains the audience of citizens for which public justification of democracy¹ is acceptable and demands that these citizens be reasonable in order to fulfil their role as both subjects and law-givers. Hence, his proposal qualifies as the first route for justifying the democratic right to rule that we encountered earlier. I end the chapter by arguing why Rawls's idea of political obligation as reasonableness fails, as he does not explain why democratic citizens ought to be reasonable.

The third chapter takes up Tom Christiano's account of democracy's legitimate authority and its related natural duty of justice. According to him, the authority of democracy proceeds directly from his egalitarian principle of justice, whereas political obligation rests upon individuals' universal and pre-existing duty to act in accordance with (the true theory of) justice itself. Obviously, this represents the second route to justify the democratic right to rule and I claim that it fails with the duty of justice being an inadequate grounding for political obligation.

Finally, last chapter is divided in two parts. The first part introduces a definition of democracy as a decision-making procedure characterized by political equality, inclusion, existence of political alternatives and accessibility to information and analyzes the two major approaches to its justification, instrumentalism and proceduralism. Once I have gone through their merits and flaws, I conclude this part by showing that normative proceduralism displays the very shortcomings I dealt with in the previous two chapters, that is, it is either disposition-dependent or disposition-insensitive. The second part outlines my proposal, which consists in a prudential justification of democracy. I do not

¹ John Rawls does not intend his theory to address directly democracy, but his public conception of justice aims to justify the constitutional essentials according to which authoritative and legitimate decisions ought to be taken. See Rawls 2005.

think that such justification is the only one suited for grounding democracy's authority, as it is compatible with other normative proceduralist accounts. Nonetheless, the prudential argument specifically targets all those people who are left behind by these accounts, either because they do not share a reasonable disposition, because they are unmoved by justice-based considerations, or because their conceptions of justice is too far away from the liberal family. The aim of prudential justification is thus to win their allegiance and to show that they can accept democracy as a legitimate authority, on the basis of their interests, regardless of how heterogeneous they may be. The novelty of this approach is that it attempts to identify a properly prudential justification that can be addressed to each democratic citizen and convincingly justify the legitimate authority of democracy to her. In order to do that, I also put forward a conception of interests that, albeit clearly not new, is sufficiently broad to encompass different motivations people might have without filtering anything out. In particular, the notion I offer qualifies as moderately subjectivist and epistemic, insofar as interests are those things that a rational and informed counterpart of ours would define as such. Put it simply, democracy is justified in the eyes of all insofar as it is necessary for people to get their interests right according to their own views.

Furthermore, I outline the content of political obligation, which follows from political legitimacy, as we have seen in the first chapter. Unfortunately, this is only a sketch of what the prudential justification may argue for, but it will nonetheless shed lights on some features of democratic citizens' political obligation. Notably, said obligation does not consist in the sole compliance with the law, but concerns also a distinctively disjunctive duty to vote when informed and not to vote when uninformed. I argue that such a duty is necessary for the correct functioning of the democratic game and that it is instrumental in order to prevent democracy from taking undemocratic decisions that might jeopardize its very existence. If the line of reasoning is consequential, democratic citizens have a distinctive political obligation, the fulfilment of which determines the silhouette of a "good citizen" and her duties, regardless of her conception of justice and consistent with a correct understanding of her interests.

Before starting, two caveats are in order. First, since my focus is on democracy as a decision-making procedure I leave aside issues pertaining the distinction between direct and representative democracy or between majoritarian and proportional representation. To be sure, these are relevant matters, but it is not up to this dissertation to address them. Given the aim of grounding citizens' political obligation on democracy's legitimate authority, I will generally refer to what ordinary citizens should be required

to do, rather than the specific obligations that public officials, representatives and politicians have.

Second, I assume that prudential considerations are intuitively normative. I do not defend this assumption here, but I employ the concept of interest as a motive of individuals' action. Hence, I consider that people are generally guided by instrumental rationality in accordance with what they think constitutes their interest. As with anything in philosophy, this is not an uncontroversial claim, as there have been both supporters and detractors of the normativity of rationality¹. Nonetheless, the idea that individuals are normally guided by instrumental rationality and that they ought to be so guided for their own good seems a starting point many can accept. Thus, I trust that a thesis about how individuals should behave as citizens based on the idea that they are and want to be instrumentally rational will not appear as strikingly resting on extravagant grounds.

Two worries may remain. One is that the traditional assumption of self-interest, albeit unquestioned by political scientists for decades, is recently fading in its credibility. To this worry, I reply that, on the characterization of interest employed here, material advantage and narrow self-interest are not taken to be the sole motive of human action. They can be one, depending on the diverse life plans, worldviews and conceptions of justice citizens may endorse, but a proper understanding of individuals' interests goes beyond this traditionally strict characterization. The other is the fact that interests might be some kind of reason for action, but they do not always represent *good* reasons, particularly not against weightier normative reasons, like those based on considerations of justice. I do not argue that they do. The aim of this dissertation is to enquire into the possibility of a justification of democracy's legitimate authority that is neutral with respect to a distinctive theory of justice, and as such compatible with various takes individuals might have on the matter, without also claiming that these takes are all equivalent. If the following pages will provide a convincing argument, no part of it will hinge on a subjectivist thesis of morality and thus a prudential justification of democracy is reconcilable with the moral one provided by normative proceduralism.

The aim of this dissertation is to provide democratic citizens with prudential reasons to take democracy as a legitimate authority. Said legitimacy in turn entails that citizens are also under a political obligation, which requires them more than simply

¹ Most recently think of the debate between Nico Kolodny and John Broome (Broome 2001, 2007, Kolodny 2005, 2008).

compliance. If this argument is convincing, democracy may prove to be a political regime whose legitimate authority and functioning are secured with citizens that might be less reasonable, less just and more devil-like than we might think, provided that they are rational.

FIRST CHAPTER

1. Introduction

If political philosophy has more than one task and can serve different purposes, among these the question of legitimate authority has a special relevance. Not only it appears to have a direct impact on our lives (if any such impact is possible for philosophy in general), but it also represents a domain where political philosophy can, in a way, lose itself. While social cooperation and a certain amount of order seem necessary for anyone's life, political philosophy cannot lower its standard to the point that all authorities are legitimate for the simple fact that they exist. On the other hand, if there is no such thing as legitimate authority, it seems that we have no political obligation towards our states, hence no duty to obey their laws. To be sure, according to someone, this is not a concern (Wolff 1970, Simmons 1979, 1999, Green 1988, Huemer 2013). Yet, the idea that following the rules is up to people's personal conscience and judgment might be perplexing, to say the least.

To set the proper conditions for political legitimacy is then a hard task, in precarious balance between complacency and hypercriticism. This consideration concerns all political regimes and democracy is no exception. Given the general aim of this work, the idea that democracy can be a legitimate authority serves to ground the existence of a political obligation on citizens' part. Thus, it is particularly relevant to give a closer look at these fundamental notions of political legitimacy, authority and obligation. This chapter is dedicated to this analysis, with a special interest for its implications in the democratic theory. It is organized as follows. First, I will provide an introduction to the problem of legitimacy and obligation, which the social contract tradition has elected as the main issue political philosophy is confronted with. Meanwhile, I will also propose preliminary definitions for the concepts of political authority, legitimacy and obligation that I will employ in the rest of my work. Second, I aim to tackle two challenges that Simmons has addressed to the relationship between justification, legitimacy and obligation and which are problematic also for democratic theories. The first challenge focuses on the relationship between legitimacy and obligation and is mainly built on Simmons's 1979 attempt to undermine any justification of political obligation, while the second challenge regards the implication from

justification to legitimate authority, and corresponds to what Quong dubs the *Simmons's challenge* (Quong 2011, 109) to political authority. Finally, I will lay out my criticisms to Simmons's account and introduce the next chapters of my work.

2. In Search for Political Obligation

The fact that democracy is a legitimate authority entails that we ought to obey to decisions issued from it. This sentence has an intuitive plausibility. Generally, when we say that a law is legitimate, we mean exactly that we ought to obey it and we mean it irrespective of the content of the law, which might be unjustified. But why is it so? The duty to obey the law that most of us think to have at least *prima facie* has been made the target of various philosophical attacks throughout human history, and especially since so-called philosophical anarchist positions have made it through the second half of the XX Century, in correlation with the spreading and flourishing debate on civil rights movement and civil disobedience (Wolff 1970, Simmons 1979, 2002). Indeed, if there are no reasons to think that we have a general duty to obey the law in the first place, defending disobedience becomes much easier. There could still be good moral reasons not to entertain in civil disobedience, which is not automatically permissible from a moral point of view (Simmons 1979, Raz 1981), but we should not act on the *presumption* that we are in any way obligated towards the state we live in, no matter how just it is. Therefore, even democracy, albeit morally just, would not be able to issue effectively binding directives, for the simple reason that no state can. To better understand the upshots of the anarchist challenge to legitimate authority, a preliminary inquiry over its meaning and its relation to obligation is in order.

When we address the problem of legitimate authority, we ought to draw a line between two related, yet distinguished, questions. The first is properly the problem of political legitimacy, that is the conditions under which a state or regime can have a right to rule, while the second is a problem of political obligation, that is the conditions under which we have a duty to obey to our institutions. Intuitively, it seems that those two questions are just two sides of the same coin, insofar as a right to rule appears to imply that someone ought to obey these rules, while a duty to obey can be owed only to someone who has that right. When I say that democracy is a legitimate authority I mean both that it can issue binding directives and that those subject to it ought to comply with these directives. It is more or less the same when we think of parents and children

relationship, for children are expected to abide by parents' demands not because these demands are justified, but because they are their parents' (Enoch 2014). And conversely, children owe that duty of obedience to their parents, as when they contravene to parents' orders they are to some extent wronging them. Does political authority work in the same way? Let us focus first on the political obligation bit.

The problem of political obligation traces back to the very beginning of philosophical practice, as we can find a pilot approach to the issue in Plato's *Crito*, where Socrates, offered an easy escape by his pupil Crito, decides to stay in Athens and die by drinking hemlock, as his fellow citizens sentenced him to. Here Socrates gives a various array of reasons for his decision and he mixes up together a duty of gratitude that he owes to the city that raised and nurtured him much like parents would, a duty of justice to obey just institutions, and the presence of a tacit contract he has made through residence (Plato 1997)¹. These different reasons represent different answers to the same question: "Why does one ought to obey the law?".

Moving fast-forward, after a centuries-long period of religious grounding for political authority, the problem of providing rational and secular reasons to obey the law loomed out again for Western societies with the modern age and its related rupture of the Christian-Catholic faith. Religious wars questioned the traditional foundation of political authority, requiring another way to persuade, convince and bind people to compliance with the directives that growing-up states were imposing on them. Under these circumstances, many relevant and influential theories made use of a simple and striking idea already mentioned by Plato: the social contract. In order to justify the state and its claim to receive people's obedience, contractarian theorists construct, in different yet similar ways, a sort of counter-factual argument according to which people living in a pre-civil state as free and equal, the so-called state of nature, would necessarily come together and agree on a set of principles to give rise to and regulate civil society where to live and cooperate in peace².

¹ For further insights see Soper 1996.

² There are two issues that I do not clarify, although they are very problematic. First, the distinction between traditional social contract theories, that concern the establishment of political authority, and the XX century revisited versions of contractualism and contractarianism, which on the contrary pertain to the foundation of justice as fair terms of social cooperation and morality (Rawls 1971 and Gauthier 1986). Since I am interested in the issues of legitimacy and obligation I will leave these latter accounts aside. Second, since this is meant to be only an introduction to the problem, I leave unspecified the way consent ought to be read here, whether as some sort of contract, promise or convention. The only important element is that it is an act of will. For a thorough and specific analysis of the differences and their implications see Green 1988, Gaus 2013.

It is not up to this work to reconstruct the history of this tradition, to trace its historical roots or to assess its worth and impact, together with the working of its main concepts¹. However, the social contract tradition proves useful because it shares similar assumptions that characterize most of the approaches to the problem of political obligation even nowadays, at least all of those belonging to liberalism. As Jeremy Waldron pointed out (Waldron 1987), liberalism and the social contract tradition are equally committed to individuals' freedom, however intended², and hence share negative and positive aspects.

First, there is "the denial that being governed is natural to human persons" (Waldron 1987, 135), which naturally flows from the idea that human beings are born free and equal and which is exemplified by the very counterfactual notion of a state of nature. Despite different scenarios³, all social contract theorists depict such a condition as untenable and requiring a formal establishment of civil society in order to ensure peaceful cooperation. This is done by making a covenant, to which all agree, that specifies how political authority is exercised. Political authority is thus taken to be a sort of artificial entity whose task is to ensure social cooperation and solve coordination problems (Schelling 1960, Olson 1965, Hardin 1982)⁴. However, despite fulfilling such a task, the reason because individuals ought to obey to political authority does not depend on its objective merits, but on the fact that they have consented to it. As a further consequence, the positive side of this approach is that the basic structure of civil society is "best represented as something which will have been chosen by people under it" (Waldron 1987, 135).

The social contract theory, in its different versions, has thus the merit of shedding lights on the main issue related to political obligation in the modern age: if we are all free and equal, how come some ought to obey to others? There is a constitutive difference between parents-children relations and political ones, because the latter but not the

¹ For a general analysis of the social contract theory and their foundation of political legitimacy, see Riley 1982.

² While traditionally liberalism has been connected with the idea of negative freedom, rather than positive, recent approaches to political liberalism takes also positive and collective freedoms into account. See for instance Bobbio 1955, Berlin 1969, Carter 1999 and Flickschuh 2007.

³ Differences range from the depiction of the state of nature, whether taken to be solitary and nasty (Hobbes) or already characterized by socialization and private property (Locke and Rousseau), to the motives of wars that would plague such condition, whether competition in the provision of goods, distrust and glory (Hobbes) or moral and epistemic fallibility (Locke) or massive inequality (Rousseau 1755, 122-124).

⁴ For an account that grounds political authority also on its capacity to solve coordination problems see Raz 1986, 2006. On the contrary, for a criticism see Green 1988, who follows Hume's own remarks on the social contract tradition and in favor of conventions (Hume 2007).

former concern free and equal individuals who by assumption do not owe obedience to anyone and who are equal to anyone else (Locke 1988). The answer social contract theorists offer is that consent determines both the authority's right to rule and subjects' duty to obey (Simmons 2002, 21). As Waldron states, "the idea of individual choice here performs two related functions: it may serve as a basis for political legitimacy or it may serve as a basis for political obligation (or it may do both)" (Waldron 1987, 136). Since I give my explicit consent to the political authority which rules over me, that authority has a right to my obedience, because that is what I granted it with my consent. Therefore, social contract theories maintain legitimacy and obligation as strictly entangled and grounded together on the idea of individual consent.

Now, a first evident complication arises for any consent-based theory of political obligation: few happen to actually consent to political authorities. It seems that there are two alternative paths to follow then. One remains attached to the idea that actual people ought to choose for there being a political authority; whereas the other loosens its connection to expressed consent for the sake of hypothetical and rational agreement over political authority that a certain kind of more or less idealized people are assumed to reach. Social contract theorists represent both these options, with Locke and Rousseau more ambivalent over the actuality of consent, while Hobbes and Kant propose perspicuous, yet opposed, accounts of what rational people would agree to when constituting civil society¹. Hence, the legitimacy of political authority and individuals' duty to obey are thought to be ensured by the idea that either people implicitly consented to authority through residence (Locke), or they should consent periodically to the laws governing them (Rousseau)², or it would be prudentially rational or morally justified for them to consent to be so governed (respectively Hobbes, Kant).

Both tendencies are attempts to get over expressed, intentional and voluntary consent, either by appealing to tacit or implicit consent or by relying on hypothetical consent from rational people³. This clarifies the peculiar status of social contract theories, for they keep together appeals to the normative charm of freely and knowingly given consent and justifications that explain why and how we still talk of consent although no one, or at least very few people, actually have expressed this consent to the

¹ If Kant even qualifies the social contract as an "idea of reason", Hobbes unmistakably takes it to be a counterfactual experiment that proves the necessity of an absolute sovereign in order to avoid the war of anyone against everyone. See Kant 1991 and Hobbes 1998.

² Rousseau is ambivalent, since on one hand he requires periodical assemblies to solicit citizens' consent to both the form of government and people in office, each time, while on the other the very existence of political authority is not questioned. See Rousseau 2002, 226.

³ For the difference between tacit, implied and indirect consent, see Simmons 1984, 797ff.

authority they have. As such, these theories occupy a halfway position between voluntarist and non-voluntarist approaches to political obligation and legitimacy. While the former make obligation depend on consent or on the principle of fair play¹ (e.g. Simmons 1979, Green, 1988, 2012), the latter do not require an act of will or some sort of proxy for it and offer rational justification for subjects' duty of compliance, irrespective of what subjects have or would have consented to (e.g. Raz 1986, Dworkin 1986, Christiano 2008).

Contrary to traditional social contract theories, contemporary consent-based accounts do not make use of hypothetical and rational consent, but generally refer to some kind of tacit or implicit consent (Plamenatz 1938, Beran 1987). These approaches have been scorned, because it seems particularly difficult to prove that all people, even under democratic regimes, have really and knowingly agreed to the existence of political authority and to the way it is exercised (Simmons 1979, 75-100). On the other hand, insofar as hypothetical consent approaches assume that what our rational counterpart would decide is binding for us, it seems that they cannot appeal to the normative force of expressed consent² and pertain more properly to the non-voluntarist strand of obligation. The resulting consequence is that many of those who do endorse a consent-based theory of obligation reject all existent authorities' legitimacy on this very ground (Smith 1973, Simmons 1979, Green 1988)³. Since no consent has been given, not only individuals are not obliged to their authority, but authorities themselves are not legitimate. It seems that we have gone back to the anarchist challenge, at least insofar as we accept that only actual and intentional consent grounds obligation and legitimacy. Should we then say that there is no way to defend political obligation?

¹ The principle of fair play has been subscribed to by Hart, Klosko and partly by Rawls. It counts as a voluntary account insofar as it requires free acceptance of the benefits from social cooperation, which gives rise to the obligation towards other fellow members of society (Hart, Rawls). For this reason, Simmons has argued that it falls prey of the same problems of consent-based theories (Simmons 1979), while one of the most famous attacks to it has been put forward by Nozick. To these objections, George Klosko has answered by stripping the idea of free acceptance out and making fair play a non-voluntary account of obligation (Klosko 2004, 2005).

² I cannot treat the question in depth here, but for criticisms addressed to Rawls's idea of original position, see next chapter. For a criticism of contractualist approaches to political obligation see Huemer 2013 and Greene 2016, among others. There is a third strategy which is Estlund's normative consent, but this is even more evidently a non-voluntarist strategy. See Estlund 2008, and for comments Christiano 2013 and Edmundson 2011.

³ Nowadays, those who endorse a consent-based theory of legitimacy and obligation do so while admitting that actual states do not enjoy legitimacy and hence qualify for more or less philosophically anarchist positions. See Simmons 1979, 1999, Green 1988. For an opposing approach to consent, taken to establish legitimate authority, see Greene 2016.

3. The Right to Rule

Perhaps the cause is not lost as it seems. According to the interpretation of legitimacy and obligation we employed so far, they appear as logical correlates. Whilst obligation identifies more or less a general duty to obey the law, legitimacy consists in a so-called right to rule, that is to impose commands people ought to obey (Simmons 2002, Christiano 2004). It seems that one implies the other, because the idea of having a right to rule seems intuitively to entail that others ought to obey to these commands. And conversely, if we have an obligation to obey to someone, we are acknowledging that he has authority over us.

If we think of request, which are pretty similar to obligations (Raz 1981, 116), when one grants a favor to a friend that requested it, one also gives him the right to exact that favor. To be sure, this does not make it morally permissible for the friend to punish the other if she fails to keep her word. But it would be odd for her to say that her promise to help the requesting friend did not give to said friend any right to demand her help. This is how consent works with legitimacy and obligation, insofar as the two entails each other. My consent gives to political authority the right to my obedience, which is owed specifically to it.

However, this might not always be the case. In fact, we can take the state to be simply morally justified in enforcing laws, generally with the aim of realizing a higher good, as justice or social order, without that implying any requirement on our part. Under this reading legitimacy consists in the moral justification of the state to act in a certain way and says nothing about what citizens of that state ought to do. This is Waldron's insight concerning the hypothetical version of social contract:

If so, hypothetical consent at least makes a difference to the wrongness of interference, even though it may not always in itself be enough to make that interference legitimate. (It is worth noting that nothing similar happens in case of obligation. A hypothetical promise by itself does not ass a scintilla of even prima facie obligation to a person's moral position). (Waldron 1987, 139)

Hypothetical consent qualifies at least as necessary, albeit perhaps not sufficient, condition for taking the authority's interference with individual's actions as morally permissible, while it fails to obligate someone who did not really made a promise towards that authority¹. For this reason, some have argued that hypothetical consent

¹ Waldron's account is more radical, as he thinks that legitimacy and obligation come apart in the social contract tradition, contrary to what I stated earlier. However, this can be the case only to the extent that one drifts away from the idea of actual consent, hence from a properly voluntary account of obligation, towards hypothetical consent that at least qualifies as something in between voluntary and non-voluntary

cannot qualify as a properly voluntarist account, because it makes no reference to what people really want and hence cannot but lose the normative power that truly expressed or meant consent give to political authorities (Greene 2016). Nonetheless, hypothetical consent may still work as a non-voluntarist account, which justifies the legitimacy of political authority by reference to what people would agree to, were they rational, correctly informed and/or under suitably idealize circumstances (Rawls 1971, 2005). In this case, though, legitimacy would be achieved alone, without obligation. As Waldron observes, it is simply ridiculous to say that I am obligated towards someone because I would have bound myself towards him under counterfactual circumstances where I was rational and reasonably informed. My friend can have a right to my help only if I myself promise to help her, not because if I were a more sensitive and empathic friend I would have given her my help¹.

These two ways of putting the problem trace back to Wesley Hohfeld's analysis of the concept of right (Hohfeld 1917). I cannot thoroughly dwell on these issues here, but the main point is that the word 'right' can be taken to refer either to a 'liberty-right' or to a 'claim-right'². If in the first case, said right does not correlate with any other person's duty, in the second it does. That is, a liberty-right only signals the person's status of being under no duty whatsoever, and hence free to act as she pleases, without saying nothing about what other persons ought to do with respect to that right. For instance, I have a liberty-right to stare in the face whomever crosses my eyes³. This is surely not polite and would probably make the other persons angry or at least annoyed, but it is a right of mine, in the sense that I am under no duty (if not of courtesy) not to stare. Nevertheless, this does not mean that those people ought to let me act in this way. They are in turn perfectly free to do whatever they can to prevent me from staring them in the face, because mine is a liberty-right that correlates with no duty on their part. They can put

accounts. Moreover, if one's promise to obey does not firmly ground his obligation to do so in whatever circumstance ("hardship, oppression, mortal danger, and even death", Waldron 1987, 136), this is also true of actual consent to the permissibility of state's interference. The point touches on the normative force consent brings in. If one does not think that consent is necessary or sufficient to make *whatever* action morally permissible (except under specific circumstances which is up to a theory of justice to identify), this is true for both individual's obligation to obey to very unjust regimes and those very unjust regimes' right to interfere.

¹ Interestingly, Rawls would disagree, as he takes his parties in the original position to deliberate also over the kind of political obligation democratic citizens in a well-ordered society should have. According to Rawls, this is required in order to solve the assurance problem and guarantee all citizens that they all have the same duty to support just institutions. Insofar as the ideal-theoretic approach Rawls employs is convincing, his idealized counterparts of actual people take decisions that bind these people. For more on this see next chapter.

² See also Hart 1955, Whitely 1952-53, Brandt 1964 for general analysis and Feinberg 1966 and Lyons 1970 for the claim that at least not all rights correlate to duties.

³ The example is taken from Hart 1982.

the hood on their head, open a newspaper in front of me or simply leave. Yet, if they punch me in the face to stop me from glaring at them they do violate my right. Not my right to stare, though. What they are infringing is another right I have not to be punched in the face (unless I start first, maybe). This is a claim-right and as such it correlates with others' duty not to punch me.

Now if we translate all this discussion to the question of the right to rule, we see that two theses are available. Either we take legitimacy to qualify a claim-right to impose and enforce commands on others, which inevitably correlate with others' duty to obey; or we conceive it as a liberty-right to enforce commands without the the normative requirement on the part of those subject to said legitimate authority. We can call the former 'Correlativity Thesis' (henceforth CT) and the latter 'Non-Correlativity Thesis' (henceforth NCT) (Edmundson 1998). What Waldron seems to say is that we can content ourselves with a justification of states' liberty-right to impose order and justice upon their subjects without also worrying about their obligations towards said states. In such a way, the two questions we introduced in the former section maintain a separate answer. While any working theory of legitimacy as a liberty-right can respond to the problem of justification and explain the ground and conditions under which the state can exercise its authority, there seems to be no answer for the problem of subjection, or at least all eventual answers are not entangled with the first problem. This is what supporters of NCT hold (e.g. Ladenson 1980, Waldron 1987, Buchanan 2002, Estlund 2008, Huemer 2013, Kolodny 2014b). However, things are not so smooth, insofar as the focus is still on the legitimacy of political *authority*.

4. Political Authority and Legitimacy

Let us start with a proviso: it is striking how the concepts of legitimacy and authority have been and still are entangled in a way that makes it particularly difficult to draw a line between them. Separately as predicate, both can apply to the state, to political institutions in general, to laws and policies or to the decision-making procedures that issued them. Together, they refer to a very peculiar thing: a political entity that issues binding laws and wields coercive power to back up those laws (Raz 1986, Christiano 2008). There are conflicting theories explaining why such entity is labeled *political*, whether because it bears monopoly of coercive power (Weber) or because it is the one which issues authoritative directives (Green 1988). But leaving the problematic relation

of authority, power and politics aside, that is to what extent we can talk of politics without authority or without monopoly of power, the main point for us revolves around the relationship between legitimacy and political authority. The problem is that both 'political authority' and 'political legitimacy' are presented as a 'right to rule' and this engenders some confusion when one tries to understand which of the two is doing the normative work¹.

Concerning legitimacy, we have so far distinguished between CT and NCT and, since consent-based accounts of CT fail to achieve both legitimacy and obligation, we turn to NCT approaches. Stripping the necessary reference to obligation from legitimacy comes at a price, which is easy to see when we consider what political authority means and how it is taken to work by those who employ it. If we take the best known and most influential account of political authority, which is the one offered by Joseph Raz, it sounds difficult to think of it as merely instantiating a liberty-right to enforce rules over people. He specifies political authority as a kind of broader category of practical authority, which consists in a moral capacity to provide reasons for action². I cannot offer a proper reconstruction of Raz's conceptual analysis as well as substantive theory of what authority is and under which conditions it is justified³. For the current purpose, I will skip on his service conception of authority and in particular the so-called Normal Justification Thesis and it will suffice to explain what are the reasons authorities provide. Indeed, political authority gives binding directives in the sense that it provides reasons for action that, insofar as they are qualified as content-independent and pre-emptive, are reasons that trump and defeat other moral reasons subjects of authority might have⁴.

According to Raz's recast of duties in terms of reasons for action, content-independence stands for the idea that authority's directives are binding because they come from the authority (Raz 1990). Thus, it is not due to their content or substantive merit that they count as reasons for action, which a person at least ought to take into consideration, but due their pedigree: they are issued from political authority. This is

¹ For instance, on the Stanford Encyclopedia of Philosophy, Fabienne Peter and Tom Christiano seem to inquire the same thing, although the former wrote the article on political legitimacy, while the latter on political authority. See (Christiano 2013, Peter 2016).

² Practical authorities thus differentiate from theoretical authorities insofar as the former give reasons for action, while the latter reasons for belief. For this account see Raz (1986, 2006), while for the opposed theory that reads political authority as providing also reasons for belief (for believing that there are reasons for action) see Hurd 1991.

³ See first of all Raz 1986, 1990, 2002, 2006. For criticism on his service conception and his Normal Justification Thesis see Alexander 1990, Hershovitz 2003, 2011, Perry 1989, 2012 and Christiano 2004, 2008. For a rendition of Raz's conception of authority in democratic theory see Viehoff 2014.

⁴ We can find a similar interpretation of authoritative directives as content-independent and peremptory (which is different from pre-emptive, though) in Hart 1982.

quite a common experience, for when we strongly disagree with a specific law, we sometimes say exactly that said law is wrong, albeit legitimate. In fact, the possibility of political authority or legitimacy is conditional on the existence of content-independent reasons for action¹. Nonetheless, if we merge content-independence with pre-emptiveness we also find out one of the main problem of any account of political authority. Pre-emptive or exclusionary reasons are reasons that *replace* other reasons. That is, they are reasons that cannot be weighed against other reasons in any rational calculation about what to do, but simply apply to some of those reasons in the calculus and exclude them. In this sense, they are second-order reasons, because they do not refer to the real world, but to reasons themselves and neutralize those reasons that could count against following the authority's directive².

The link between political authority and legitimacy is easily explained. Philosophers whose perspective starts with authority draw a line between de facto and legitimate authority (e.g. Raz 1986, Green 1988, Christiano 2008)³. Their idea is that a de facto authority is something that claims to be a legitimate authority⁴, while legitimate authority is something which truly is an authority⁵. This means that a de facto authority has the power to impose duties on people who do recognize it as legitimate and are hence disposed to obey it. However, the fact that an authority is obeyed does not mean that it is also legitimate, because its legitimacy depends on the justification that can be given of its right to possess such power. Therefore, when authority is indeed legitimate this means that it has a right, and not only an effective capacity, to rule⁶.

However, to the extent that one applies legitimacy to authority there is no way to avoid CT. Authority stands exactly for a capacity to bind others and to impose duties on them, and this entails reference to political obligation, whether directed towards the

¹ One could object that if political authority were a kind of theoretical authority, then its reasons would be the right reasons by assumption, since theoretical authorities know best. However, they would still be content-independent reasons, as those subject to authority would comply with them because they are issued from the authority and not because of their merit. The problem of the relationship between theoretical and practical authority is troubling and it is not even clear whether such a thing as properly theoretical authorities exist (Enoch 2014).

² I do not mean to assess the credibility of Raz's pre-emption thesis. Although he tries to defend it (Raz 2002), I do not think he can be successful. For criticism see Hershovitz 2011 and Shapiro 2004.

³ See also Hershovitz 2003, 2011, Hurd 1991 and Enoch 2014.

⁴ The concept of legitimate authority has thus priority over de facto one. See Raz 1981, 106.

⁵ Thanks to what Edmundson calls the "warranty thesis", Edmundson 1998.

⁶ Effectiveness has a mixed status in authority-based accounts. According to Raz, for instance it is not thought to be necessary for authority, as there can be a legitimate authority with wicked people who do not recognize it as such and refuse to obey. The reference to de facto authority applies to all those states that, although illegitimate, claim to people's allegiance and are also, to a certain extent, successful in getting it. However, many others, including Green or Buchanan, take effectiveness to be at least necessary if not sufficient for political legitimacy.

authority itself or not (Christiano 2004, 2013). Hence, it is simply logically impossible to draw a line between legitimacy and obligation, as NCT would require, in authority-based accounts¹. This is not the case for coercion-based accounts of legitimacy (Buchanan 2002, Ripstein 2004, Perry 2012, Peter 2016). These theories do not start with authority, but rather with the justification of political power, meant in Weberian terms as the monopoly of coercive power. In this case, whatever wields political power is legitimate because and insofar as it can be morally justified (Buchanan 2002).

This is the understanding of much part of the literature on public justification (e.g. Rawls 2005, Gaus 1996, 2011, Quong 2011). Within this domain, in fact, public justification is conceived to be what grants to political power the right to interfere with individuals' plan of action on the basis that said interference is publicly justifiable to all of them. Since I am not interested in dealing with this literature here, let us only say that these theories apply the concept of legitimacy to state's use of coercive power and hence seem to subscribe to NCT². They are not alone, as also many democratic theories endorse a similar position by drawing a line between authoritativeness and legitimacy (e.g. Buchanan 2002, Estlund 2008, Kolodny 2014a, 2014b). Those who do so conceive a democratic law to be legitimate when it is morally permissible to enforce it on those subject to democratic authority, whilst they call authoritative the law that binds individuals subject to said authority to obey³. The compelling intuition of these accounts is that they clearly distinguish between what it takes to justify the exercise of coercion from what it takes to justifiably submit to another's commands. In so doing, they give different answers to the problem of justification or 'agent-justifiability' (Buchanan 2002, 694)⁴ and the problem of subjection or reasons-for-compliance (Buchanan 2002, 694).

Yet, NCT has its own troubles, for there are two ways to read it. Either a NCT supporter restricts herself to the justification of legitimacy and does not bother defending political obligation, or she takes two independent grounds to justify the

¹ One attempt to do that is Edmundson's (1998). However, since he just replaces an obligation to obey the law with an obligation not to interfere with authoritative directives that he calls administrative prerogatives, he still endorses CT, although with a very limited account of political obligation.

² Against the idea that public justification applies only to coercive exercise of power see Bird 2014. Although he refers legitimacy to the exercise of coercive power, Rawls endorses a more complex theory concerning the general duty to obey the law, which he makes depend on a duty of justice. More on this in the next chapter.

³ All these approaches generally start by the justification of authority's right to coercive intervention and *eventually* achieve also the authority's right to impose duties on its subjects. For a similar account in the legitimacy and obligation literature see Ripstein 2004. For an account that is overtly limited to a liberty-right to coerce see Ladenson 1980.

⁴ Perry talks of a problem of justification (Perry 2012, 9) but he relates it to the exercise of authority, thus assuming authority's right to impose commands and distinguishing it from individuals' duty to obey.

former and the latter. The first option, albeit intuitively plausible, fails to stand to a closer analysis. Irrespective of the specific justification provided, here the wielder of political power is legitimate as under no duty not to use coercion over those subject to its authority. Since coercion qualifies as a wrong between private individuals, the state has a privilege single human beings lack. It can be because of hypothetical consent or for other reasons, as the realization of justice or protection of human rights, but still the point of NCT first version is that the state has a right to which no duty correlates. In this case, the state is justified according to a principle that poses no obligation on individuals, because by assumption a liberty-right conception of legitimacy answers only to the justification question and leaves unanswered the subjection question.

This seems odd, for at least three reasons. First, it dissociates with the way states generally present themselves¹. When we talk of political legitimacy, we usually associate it with a certain degree of bindingness and this is even more evident with democracy. Normally, when we say that a democratic law is legitimate we mean more than simply 'permissibly enforceable', as we take it also as a law that we ought to obey. It is not merely a justified threat, but something that calls on us to respect it. If what really mattered were only the state's right to coerce, it would make no difference obeying the law or disobeying and accepting the consequences (Hart 1982). Also, it would make no difference between a private individual's justified act of coercion, for instance for self-defense, and the state's justified right to impose its non-binding directives upon us.

Yet, this goes against our intuitions about the moral wrong of non-compliance, with respect to which accepting deserved punishment seems to be *the least* we can do. And it goes also against our common interpretation of laws as something more than justified threats (Hart 1982). Moreover, if political legitimacy had really nothing to do with any duty on our part, why should we accept legitimate coercion, at all? We would be in the 'right to stare' case and we would be perfectly free to interfere in whatever way we can think of with legitimate directives, as long as we are able to get away with it.

This brings us to the second problem of this version of NCT: that it is unable to answer to Hobbes's problem of the fool, nowadays known as the free-rider problem (Hardin 1982, Tuck 2008). By assumption, individuals are free from obligations and duties and hence their only reason for compliance is the possibility to be caught. Insofar as they can avoid it, they have no reason to obey and thus it is plausible to think that the

¹ According to anarchists this is enough to fail the task of properly justifying the state, for it would not account for the way the state presents itself. See Simmons, Green 1988.

total amount of non-compliance would quickly raise. But if that were the case, any attempt to keep order or realize justice by the state, which are by assumption the things that justify its right to rule, would be doomed to fail, for the state would be unable to punish all those who infringe its laws. Hence, without a clear answer to the subjection question, also the justification question becomes troubling, even for legitimacy as a liberty-right.

Nonetheless, one could object that the way the state presents itself and the way we are usually taught to think of it are wrong, because they hinge on the mistaken assumption that the state has a claim-right to issue binding commands – and this is exactly what NCT denies. Furthermore, the second point seems quite empirical and it is not self-evident that any state would collapse if people understood that they are not under an obligation to obey.

Finally, the last objection to the NCT without duties or obligations on subjects' part concerns its compatibility with a properly normative perspective. If the realization of justice or the defense of individuals' rights were morally inert principles with respect to individuals' actions, they could not grant to a state the moral right to exercise coercion. A quick example may be of help. If a friend of mine started controlling my calories intake and preventing me from eating more than what is on the diet plan I subscribed to, there are two possible justifications for her doing. Either I asked her to help me lose weight, hence I consented to her right to coerce me into respecting the diet, or I really need to lose weight, whether I like it or not, for health reasons. In the first case, we are dealing with a voluntarist account of CT, because presumably the fact that I gave my friend the right to stop me forcefully when she sees me eating also includes a duty on my side to respect the diet myself, so far as I can. The second case, instead, is a case of non-voluntarist account and could work with NCT, as my friend could be justified in making me follow the diet despite the fact that I have no duty to obey as I never committed to losing weight. Yet, even in this case, the reason why she is justified is that I *ought to* lose weight, whether I like it or not. If her reason to control my meals were that I look prettier when I am thin, presumably she would have no right at all to force me to follow a diet¹. The same goes for the justification of a liberty-right to rule on the basis of individuals' rights protection or the realization of justice (Ladenson 1980, Buchanan 2002, Ripstein 2004). On this account, individuals themselves are under a duty not to harm others or

¹ Notice that the problem is not that she thinks that I would be prettier, as the example is not cast as a problem of objectivity versus individuals' subjective perspectives. Although my friend is right that I am prettier when I am thin, she still has no right to force me into a diet.

wrong them or to realize justice¹. Insofar as NCT really makes no reference to any normative requirement or duty on individuals' part, it just fails to achieve any normative justification of legitimacy, even as a liberty-right to rule².

As we have seen, there is a second version of NCT, where the existence of certain moral requirements or obligations is taken to complete the justification of legitimacy. The difference with CT remains and consists in the fact that legitimacy and obligation are not logical correlates here. This means that the reasons for accepting state's liberty-right to rule are independent from the reasons for subjects' to obey to state's directives and that although people are under an obligation to abide by said directives, they do not owe it to state itself. When people obey then, they do it on the basis of other normative requirements binding on them that demand them to comply, regardless of whether the state is legitimate or not. In this version of NCT we would have two complementary theories: one aimed at justifying political legitimacy as a liberty-right, while the other pointed to justifying a kind of obligation on subjects' part, however broadly intended³. NCT stands if these two theories are independent of each other and equally successful.

Let us think to a very usual case whereby we have to deal with a democratic law that we think is wrong, but we see as legitimate. It is a quite common case that happened to anyone at least once. If we really looked at this law as merely coercive, albeit rightfully so, there would be no reason for compliance unless the law itself was right. We would still keep accepting the state's right to force on us its decisions, but we would feel obligated to obey only on the merit of the law and not because of the state's political legitimacy. This has two consequences. One, given a certain amount of pluralism in our democratic societies, there would be many laws that some consider right, while others wrong. Each of us would feel obliged to abide only by those she thinks are right. The state

¹ One could add another basis for the justification of political legitimacy, which is the necessity of social cooperation for everyone to thrive. In this case, it sounds weird to talk of a duty to establish and respect a social order, although Kant must have had something similar in mind when he described the social contract as an idea of reason and something people in the state of nature would have been under an obligation to commit to. Yet, it suffices to think that said duty can be cast in terms of normative prudential considerations, as Hobbes did.

² One could object that we would still have a duty to respect others' rights and hence that the state's right to coerce those who do not would still be justified. In this case we would have natural duties that do not pertain to political obligation, as the duty not to kill, and the NCT without duties on subjects' part which justifies the state for protecting individuals' reciprocal rights. However, the problem with such an account is that it is not clear which natural rights and duties people have, how they relate to each other and how to apply general principles of rights and duties to particular cases. Therefore, insofar as the state is necessary to promote one public and shared interpretation of the rights and duties we owe to each other, we should be under an obligation to obey to its directives if we want to follow our natural duties. But then we fall into the second version of the NCT, which connects with subjects' political obligation.

³ Here and throughout the chapter so far I have used political obligation unreflectively, but I will specify what are the conditions that characterize it in the next section.

would be legitimated to coerce us into respecting all laws, but we would have compelling reasons to obey only those laws we deem just¹. Two, even the argument that our independently founded obligation would require us not to undermine a state which is, for instance, legitimate because minimally just, would work only for those laws that jeopardize the stability of the state. Hence, only a very limited set of laws would give us weighty reasons to comply with legitimate directives and strong account of obligation, as the duty of justice, would demand us to disobey to legitimate and unjust laws.

Perhaps political authorities are wrong in thinking that we ought to abide by their rules, but surely the fact that they are legitimate at least entails that we are under a duty not to *interfere* with their orders and not to resist to their use of power upon us, since it is legitimate (Ladenson 1980, 143, Edmundson 1998, chapter 2, Ripstein 2004, 32-35). But this duty correlates with legitimacy. The fact that our institutions are legitimate not only entails that they have a liberty-right to rule, but also at least a duty on our part not to interfere. So, there is one obligation, however weak, that is conditional on political legitimacy. This duty depends on legitimacy, but apparently is not a duty of compliance, but rather a duty of non-resistance or non-interference with the state's action².

If said duty has to distance itself from the more traditional and stronger duty to obey, it should be possible to identify cases where we disobey to authority without resisting it. The only case that I can think of is civil disobedience³, which consists exactly in infringing a law because it is unjust without resisting to eventual punishment according to said law (Rawls 1971). I cannot properly treat civil disobedience in this work, but it is worth noting that so conceived, civil disobedience is consistent with taking political legitimacy to entail a duty not to interfere, while rejecting any more demanding duty to obey. According to this reading, civil disobedience requires people to comply with substantially just laws because this duty is independent from the question of political legitimacy, whereas the duty not to interfere, which asks of disobedient to accept punishment, correlates with political legitimacy.

¹ Incidentally, this would entail a piecemeal account of legitimacy and obligation, so that not all people are obligated to obey to legitimate authority in the same way in all questions. This idea is present, for instance, in Raz 1986 and has been criticised by Christiano 2004.

² Edmundson tries to distinguish between laws and administrative prerogatives, so that the duty is not owed with respect to legitimate authority's directives, but with respect to administrative prerogatives, but I find his account quite unconvincing for reasons I cannot explain here. See Edmundson 1998. Simmons 2002 talks also about the duty those subjects to legitimate authority have not to appeal to independent and competitive coercive apparatus, in order to preserve the state's monopoly over the exercise of power.

³ To my knowledge there are no other cases where the two can be taken apart. I am eager to know if someone can think of a counterexample here. In the case it is found, I think my argument would still stand, with the proviso that all the time I refer to political obligation as minimally entailing a duty to obey I also refer to an even weaker duty not to interfere with legitimate authorities.

Whether political obligation is taken to consist in a duty to obey or not to interfere with legitimate laws, the basic point remains that these duties are established by political legitimacy, that is, it is because laws are legitimate that we have these duties. Hence NCT as an account that sharply distinguishes between the answer to the justification question (which state or authority is legitimate, under which conditions) and the subjection question (whom I ought to obey, under which conditions) fail. These two issues have at least the idea of a duty not to interfere that connects them and make the legitimacy of political authorities more than a simply liberty-right, but a claim-right with a correlated duty.

If this is the case, we are back to CT, whether applied directly to political authority or to the wielder of political power which is endowed with legitimacy as a claim-right to rule and issue binding duties on those subject to it. From now on, since both these versions require some sort of obligation, I will not make any specific distinction between a coercion-based and an authority-based account of CT, but I will refer interchangeably to political authorities and states. From CT a troubling question ensues: since consent-based approaches fail, how are we to ground obligation with respect to legitimate authorities?

5. Designing Political Obligation

It looks like we made the whole circle and are back to the same problem. Nevertheless, we now have more information to offer a tentative account of what political obligation is. First of all, a disclaimer: as it will be clear by now, I do not make any difference between the concepts of obligation and the one of duty. I take them to identify the same thing and to refer very generally to the existence of some normative requirements that befall on people under legitimate political authorities¹. Accordingly, political obligation represents a normative requirement on people living in a given society and under given political institutions. It has been qualified as a moral relationship that links individuals to their political authorities (Green 1988) and as “something like the obligation to be a good citizens in a fairly minimal sense” (Simmons 1979, 155). As

¹ I follow the lead of Simmons and many others (Simmons 1979, Brandt 1964, etc..) and leave aside Rawls's proposal to draw a line between them and to take duty as expressing some form of natural requirement that we all have as human beings and obligation as some artificial requirement we undertake ourselves through our voluntary actions, like consent and promise. See Rawls 1971 and next chapter.

such, the problem of political obligation is halfway between concerns of stability and citizenship.

Trivially, if everyone sees oneself as bound to abiding by the laws of the state he lives in, the resulting society will be a stable one. On the other hand, it seems intuitive that in order to be a good citizen one ought to fulfil certain requirements the most basic of which seems to be compliance with the laws of one's state¹. Both intuitions lie underneath Thomas Hobbes's project to justify the sovereign authority of the state, which represents the first modern account of social contract (Hobbes 1998). If any political arrangement aims to be stable, it needs to be complied with. Hence, to the extent that keeping such arrangement in place is either prudentially rational or morally required, to respect the directives issuing from it seems necessary. Hobbes reduces the idea of citizenship and the one of political obligation to the general duty to obey the law and ties this last to legitimate authority. In so doing he highlights the strength of the CT: insofar as I am reckoned as a subject to the law whose determination is only in the sovereign's hands, the sole thing that is asked of me is to comply with this law and not to resist to sovereign's will².

However, if political authority is organized differently and its legitimacy is conditional on such organization, then I may have to play a bigger role³. This is the case of democracy, as under such arrangement citizens are required to play both the role of the subjects and the one of legislators, albeit indirectly. Here, political obligation as the correlate of democratic legitimacy might include other normative requirements on citizens apart from compliance. To be sure, the success of any democratic theory depends on its capacity to account for both and it might be more hard to achieve the more demanding is the idea of political obligation to which one appeals. In any case, to reduce political obligation to a mere problem of compliance with the law would be wrong (Raz 2006, 1004, Brandt 1964). Political obligation can refer both to a general duty to obey the law, which establishes our specific obligations to obey particular laws issued within the polity, *and* to a set of *broader* commitments we have with respect to the

¹ At least this is true on average, as one can conceive of civil disobedience as a duty citizens have with respect to their political institutions when they go astray. See Rawls 1971.

² I won't take into account here the difference between conformity and compliance with the law. While the former amounts to an action that formally accord to the existing law without the agent's intention to accord with said law, the latter is taken to refer to substantial obedience, that is acting according to a law *because it is the law*. For more about this see Kant on legal and moral conformity to the categorical imperative, Perry 2012, 17 and with a slightly different terminology Green 2012.

³ See Quong, who endorses a duty of justice: "The natural duty of justice is also not necessarily exhausted by following the directives of our own reasonably just state—it may entail further duties to support just institutions abroad" (Quong 2011, 130).

political community we are part of, out of loyalty (Stilz 2009), for a sense of associative membership (Dworkin 1986, Horton 1992, Gilbert 2006)¹ or a duty of gratitude (Klosko 2005, Walker 1989).

For the time being, we can sum up five questions that political obligation raises and to which any account of it, including this work, attempts to answer². First, why do we have such obligation? This issue regards the specific *grounding* of the normative relation between citizens and the state. The distinction between voluntary and non-voluntary categories of obligation refers to such a problem. As we have seen, voluntary approaches cannot really get off the ground to the extent they are anchored to actual consent, whereas the more one drifts away from expressed and intentional consent, the more one loses its normative force and would better break in the non-voluntaristic strand, instead. There are four possible grounds for political obligation that do not appeal to individuals' will and choice: the duty of gratitude, the principle of fair play, membership or associative ties and the duty of justice (Rawls 1971, Buchanan 2002, Christiano 2008, Quong 2011).

Since democratic theories have focused mainly on the last one, I will take it as exemplar of this approach³. Indeed, different versions of non-voluntary approaches to political obligation can fit with democratic justification, but the natural duty account shows more effectively than others the connection between justification and legitimacy. Along these lines, in fact, democracy is generally taken to be legitimate because it is minimally just, and hence obligation to obey to democracy relates to a duty to do what is just, which is in turn expressed by the natural duty of justice.

Second, what does it mean to have such obligation? That concerns the content of obligation, all those particular requirements that obligation consists in and that I will argue include and exceed the duty to obey the law. Evidently, there is a special connection between ground and content of political obligation on one hand, and the content of political obligation and legitimacy on the other.

As for the latter, we have seen that depending on the reasons we have to take authority as legitimate, we will be required to fulfil more or less demands that are

¹ I do not properly take into account associative accounts of political obligation for three reasons. First, I am quite convinced of Simmons's criticism of them (Simmons 2001, chapter 4). Second, this type of grounding is not common as a complement to democratic legitimate authorities. Finally, insofar as associative ties could relate to democracy, they would do so via the concept of citizenship, which is something I aim to address through political obligation. Hence, this would mean to beg the question.

² Three of them are mentioned by Simmons in his work from 1979, the other two can be easily found in the whole literature.

³ See also note 1 on this page.

connected with such authority. As for the former, the reasons why I am bound to a legitimate authority have a bearing on what I am effectively required to do for such authority. Conversely, the content of political obligation may render the effort of justifying its grounds even harder. If all I have to account for as political obligation is a duty not to actively try to destabilize legitimate authority through violence, probably my duty not to kill another human being is sufficient to restrain me. Yet, if political obligation really amounts only to *that*, the kind of duties I have with respect to other human beings bar me from acting in such sense independently from the legitimacy of political authority. In such a case we could not talk of *political obligation* anymore, but only of natural duties we have in whatever circumstances and under whatever regimes.

Yet, if the legitimacy of political authorities we face is justified and truly gives us reasons at least not to interfere, if not to obey, with their directives, then legitimacy entails political obligation. All in all, the content of the latter bears on the justification of the former. Under CT, the legitimacy of political authorities correlates to our political obligation towards them. However, does CT relate also to the direction of political obligation, that is, the fact that said obligation is due *to* the authority? Does it imply that those who are under an obligation to obey owe said obligation to the legitimate authority?

So, third, to whom do we have this obligation? Although I use the term of duty and obligation as synonyms, there is a relevant difference: while there are duties which have no directionality, according to how we use our language, obligations generally do. They are meant to be owed to someone, to a person or a group or even a fictional entity. For instance, I have a duty not to kill, which refers to anybody, and an obligation to discharge a promise, which I owe to the promisee. And although, I can say I also have a duty to respect a promise, it would be weird to talk of obligations not to kill.

In any case, it remains to be seen whether political obligation as well possesses a directionality or not. While Christiano takes citizens' obligation to obey to be directed towards legitimate democratic authority (Christiano 2008), Raz and Buchanan for instance, even from very different perspectives, do not take said duty to be owed to legitimate institutions (Raz 2002, Buchanan 2002). It might seem that the direction of the obligation is a necessary element of CT and hence is conditional on obligation being a correlate of legitimacy. This problem brings us to the fourth question.

Fourth, what does political obligation entail? We have seen the opposition between CT and NCT and I argued how NCT cannot stand. Yet, if we are stuck with CT, it seems that the answer to the third question must be that the obligation is owed to the

legitimate authority and this would in turn disqualify various accounts I presented as endorsing CT. This would be the case if CT required political legitimacy and obligation to be directed to each other. Nevertheless, it does not need to. The only fundamental feature of CT is that political legitimacy and obligation entail each other, but this does not require that they are owed to each other.

Let us take Buchanan's example of political legitimacy and natural duty of justice (Buchanan 2002). While I will discuss more thoroughly the duty of justice in the third chapter, here I just employ it to show how the direction of obligation towards legitimate authority is not necessary in order to qualify an account as CT. Buchanan's main thesis is that political authority is superfluous to the justification of both legitimacy and 'authoritativeness', as he calls Raz's conception of authority. On one hand, he starts by defining political legitimacy as the moral justification in wielding political power (Buchanan 2002, 689), whose task is to answer to the 'agent-justifiability' question by providing a set of conditions the fulfilment of which is both necessary and sufficient for the wielder of political power to have legitimacy, hence the right to enforce decisions over people.

On the other hand, the question of authoritativeness consists in whether individuals have compelling reasons to abide by whatever directives are imposed on them by the wielder of coercive power. Buchanan's claim is that political legitimacy does not entail political authority, as the latter is made up by political legitimacy itself and also by "the right to be obeyed by those who are within the scope of its rules" (Buchanan 2002, 691). Said right to be obeyed, which authorities have by assumption according to Buchanan, is missing in his account and he claims to read legitimacy as a liberty-right to enforce coercive laws. Thus, according to the scheme I have proposed, he should endorse NCT, for he does not think that any obligation draws from his account of political legitimacy¹. Yet, this is possible only because authoritativeness is granted by a 'Robust Natural Duty of Justice' that Buchanan posits.

Here I am not interested in assessing whether such account of political obligation is sound or not, but I only observe that his justification of political legitimacy is complemented by the existence of such a duty of justice to comply with legitimate laws. The duty of justice is necessary in order to defend both questions, the one of justification

¹ What he calls political authority, that is the conjunction of political legitimacy with authoritativeness as a right to be obeyed on the part of the wielder of political power itself, would resemble my idea of CT. However, as I try to argue, the fact that obligation is not directed to the wielder of political power is not enough to defend legitimacy as wholly unrelated with obligation.

and the one of subjection (Buchanan 2002, 703) and in my reading this is sufficient to endorse CT rather than NCT. This in turn entails that a same ground serves to account for both political legitimacy and obligation: the duty of justice that makes coercion by the wielder of political power legitimate demands also that citizens comply with its directives. Moreover, although our obligation is not owed to the legitimate state, we would have no political obligation if the state were not legitimate. If this reasoning is sound, the fact that obligation is not owed to the legitimate authority does not constitute a valid objection to CT and one can consistently endorse CT without taking obligation to be owed to authorities.

Finally, how much binding such obligation is? This last question affects the whole way we look at the problem and has an intuitive impact on it. Insofar as political obligation is perceived to be offering conclusive reasons always to obey, the degree of reliability of such a thesis drops down. Certainly most of those who are concerned with political obligation refer often only to just institutions, and this is true especially for those who wish to deny that such a duty with respect to authority has ever existed (Wolff 1970, Simmons 1979, Green 1988). Nevertheless, even in case we know that our regime is just, it seems hard to think that all its decisions are as well. And if political obligation requires us to abide by each and every directive that are issued by the state, no matter how long one deprecates the well-known *reductio ad Hitlerum* fallacy (Strauss), the case of Nazi Germany is right behind the angle of everyone's conscience.

Therefore, part of the struggle to defend the possibility of political obligation consists in dealing with such an issue and has a bearing on how we conceive of the normative relationship between the legitimate authority and its citizens. Furthermore, the issue of bindingness sheds lights on the distinction between obligation and 'ought to' questions. While political obligation represents a normative requirement, a compelling reason or a duty one might have, it is not immediately the case that said duty is what one ought to do under all circumstances¹. If I normally have an obligation to keep my promise, few would think that no other event could *legitimately* bring me to break this promise. For instance, if I promised my boyfriend to go watch the new Star War series film on Monday and on that night I come across a friend of mine who is visibly shaken because a tragedy just happened to her, it would be difficult to think that my promise to watch the film still binds me, *all things considered*. On the other hand, it is not like I did

¹ Even Raz distinguishes between exclusionary or pre-emptive reasons and *conclusive* reasons. See Raz 2002.

not promise, as I have. Put it simply, in case of conflicting duties I ought to choose what is best¹. This resonates with what I just said concerning the possibility that democratic decisions, despite perfectly legitimate, and as such binding, might be so unjust that we cannot in conscience comply with them².

Simmons and Green have proposed a set of conditions to identify obligation and most philosophers subscribe to at least most of them. According to this set, a political obligation is:

1. A moral reason for action³;
2. A content-independent reason;
3. A binding (Buchanan 2002), or peremptory (Shapiro 2004) or exclusionary or pre-emptive (Hart, Raz 1990) reason;
4. A particular reason, which bind us to our own states and not to whatever other existing authority (Simmons, Green, Christiano 2008)⁴;
5. A general reason, that is a reason that binds most of citizens most of the time (Simmons)⁵.

Of course, the more stringent the interpretation of these conditions is, the more difficult will be to argue in defense of political obligation. The idea that when we talk of political obligation we at least have to refer to moral and content-independent reasons for action is quite shared.

On the other hand, the other three conditions have prompted most debates in the literature. Consent-based accounts, for instance, cannot answer to the last condition of generality, exactly because those who have not consented to authority are under no obligation to obey to its directives⁶. Certain non-voluntary accounts score better on this point, but are at pains to explain the particularity condition that requires obligation to connect us to the specific state we are citizens of. This is especially true for approaches based on the duty of justice, which intuitively ought to ask that human beings abide by

¹ I share Simmons's analysis and criticism of Ross's distinction between prima facie and actual duties. See Simmons 1979, 24-28.

² As I already noticed, I cannot deal properly with the issue of civil disobedience in this work. I only aim to offer a general account of democracy's legitimate authority and I am forced to leave some essential issues aside.

³ Against reason for action see Hurd 1991.

⁴ Quong rephrases it as the 'specificity objection', 2011, 110-111.

⁵ Green talks of a universal rather than a general reason, and hence according to him political obligation ought to be valid for all citizens and all laws issued by a legitimate authority (Green 1988, 228ss). This seems an overly demanding feature, though, especially because it would exclude by assumption any justification for civil disobedience. I will try to argue that democratic legitimate authority binds all citizens, but not with respect to all laws.

⁶ This is true also for Raz's account of legitimate authority, which in fact is piecemeal.

just institutions wherever they are (Simmons 1979)¹. Finally, the exact way political obligation is binding is uncertain. Raz and Hart argue for pre-emptive or peremptory reasons, respectively, but others object to the soundness of such account (Perry 1989, Alexander 1990).

The concern that arise from the conjunction of the pre-emptive thesis with content-independence is that also under really just regimes, as democratic ones are more or less thought to be, there can be chances of very unjust laws. Hence, no one wants to say that we ought to comply with whatever decision democracy might produce. For instance, in Raz's case, content-independence and pre-emption make even clearer and more striking the problem we already encountered about obligation: how is it possible that free and equal individuals ought to obey to someone else? Given Raz's Normal Justification Thesis about authority, which basically holds authority as legitimate only insofar as it helps people complying with independent reasons they already have, the problem of political obligation becomes a proper paradox. If something qualifies as a legitimate authority when complying with its directives makes it easier for us to abide by whatever reasons we already have, then either these pre-emptive directives are substantially justified or they do not really help us satisfying these independent reasons for compliance with authority we have. Hence, authority is either redundant or simply wrong (Shapiro 2004).

Nonetheless, contrary to what Simmons and Green seem to think, it is not clear why any account aiming at defending legitimate authority and political obligation cannot deal with the problem by weakening the bindingness condition. To be sure, the moral requirements of political obligation cannot be too weak, otherwise there would be no point in trying to argue for it. But at the same time, good reasons for this move can be presented and they can respond to the very plausible objection from philosophical anarchists that we would not talk of political obligation anymore, if it were too weak a requirement in the end. I will come back on this issue while addressing the justification of democratic authority I offer in the fourth chapter. For the time being, we still have to deal with the problem of the grounding of political obligation, as we have seen that consent-based accounts are unavailable and CT leaves us with the question: why do we have to obey to legitimate authorities?

¹ To this question Waldron has a surprising answer, which is a plain yes. See Waldron 1993.

6. Simmons's Challenges

6.1 The First Challenge

In his well-known *Moral Principles and Political Obligation*, A. John Simmons famously attacked the concept of political obligation by systematically undermining all the grounds that have been proposed to support it. Together with Robert P. Wolff's *In Defense of Anarchism*, Simmons's work has contributed to building a solid account for the so-called philosophical anarchism¹. Considering Simmons, philosophical anarchism is an explicit threat for CT because it contends that no political authority is legitimate because no defense of political obligation stands to rigorous analysis. Recall that CT consists in the idea that political obligation and legitimate authority are correlates and entail each other. As we have seen, liberty-right readings of legitimacy fail and we are left with CT, which requires us to account for a claim-right to rule, that is for political legitimacy and obligation together. CT answers to both the question of justification and the one of subjection in a related way, as the one entails the other.

However, this brings in a conspicuous complication. Insofar as legitimacy and obligation constitute two sides of the same coin, both have to be successful in order for CT to stand. Hence, it suffices to tear down one of them to break the other as well. This is what Simmons has done with his 1979 work. Once all possible grounds to justify obligation have been dismissed, he inevitably inferred the conclusion that no state is really legitimate (Simmons 1979, 196). Although he reckons that this has no immediate implication bearing on the problem of civil disobedience (Simmons 1979, 193), his result apparently represents the end of the game for the legitimate authority of the state. Call this the first Simmons's challenge².

As any battle worthy of the effort, many replies have been thrown at Simmons's challenge, either reinstating one of the approaches that he undermined or merging them together in a composed set of different political obligations (Klosko 2005, Gilbert 2006). The answer I intend to offer identifies a different strategy and goes in the direction followed by a number of democratic theories. These accounts, to the extent that they are concerned with democracy's legitimate authority (Christiano 2004, 2008, Estlund 2008,

¹ Simmons's and Wolff's arguments are, however, very different, as the former contests the grounds for political obligation, while the latter contends that authority inevitably conflicts with autonomy.

² Quong coins the term concerning what I define the second Simmons's challenge. See Quong 2011, 109.

Kolodny 2014, Viehoff 2014, partly Quong 2011), ought to be worried with Simmons's challenge and think of a good explanation for its puzzle. Yet, I think that both the cause and the solution to this puzzle rests in CT and its intuitive plausibility. I have not questioned it so far, because it seems so evident that to a right to rule ought to correspond a duty to obey and vice versa. But such bi-implication comes into troubles if we look at it closer.

If a legitimate authority has the right to create new duties on me, is it also true that if I have a duty to do something, then there is also a legitimate authority with a right to my due actions? We are used to think of democracy in that way. Let us think of other duties or compelling reasons we have: do all of them correlate with claim-rights? For instance, I am walking with a friend of mine, who is a doctor, and we happen to stumble upon a badly wounded lady¹. My friend, who knows what to do, starts giving me orders and I know that if I want to save that lady, I ought to obey to what my friend commands. Perhaps I have a duty to help the lady who is in need, because it would not cost me too much and together we could save her. Nonetheless, my duty to help is towards the lady, while my obligation to obey towards my doctor friend.

The fact that I am under a duty to obey does not imply that the person or group of persons I have to obey to is also a legitimate authority with my respect. This is even more evident if we think that legitimacy is always a right also to enforce duties on those who refuse to abide by them. And it sounds odd to think that my friend would have that right². Suppose, because of health reasons, or because it is something I really want to do, I want to lose weight. My doctor friend wants to help me and I have content-independent reasons to do as she says, even though it might go against what I would myself do, because I know that by abiding by her directives I can comply better with my independent reason to lose weight (Raz's Normal Justification Thesis). My duty to obey to her does not immediately translates in her right to forcibly impose a dietary plan on me. It might do so, but only if I explicitly consent for her to have this right, for instance by giving her all my money to buy only healthy grocery³.

¹ A similar example is given by Quong to argue against Raz's account of authority and his Normal Justification Thesis (Quong 2011).

² Perhaps my friend would be justified in forcing me to help her if she saw that I did not want to abide by her directives. Yet, this is only a liberty-right that makes it permissible for her to do something that would otherwise count as a wrong. And such moral permissibility depends again on the duty presumably also my friend has towards the dying lady.

³ For a similar criticism against Raz's service conception, see Quong 2011, Darwall 2006 and Hershovitz 2011. For a related argument see Estlund's expert/boss fallacy, Estlund 2008.

As we can see from these examples, insofar as the duty of obedience is not directly owed to the person or group whom we should obey, this person cannot count as a legitimate authority, although I am bound to do what she says. If this reading is sound, the problem consists in what Perry calls the ‘reverse entailment problem’ (Perry 2012)¹. I cannot properly take it into consideration here but the bottom line is that the implication from obligation to legitimacy, although quite recurring in the literature, is very difficult to maintain and ends up hiding the real issue, which is the justification of legitimate authority. Plenty of examples occur to mind, where the existence of duties to do something does not correlate with the existence of a legitimate authority that imposes these duties. All cases of epistemic authority follow in this category: my doctor friend has no right to rule simply because she is right to tell me what to do, but at the same time I may have very good reasons to do as she says.

Simmons’s attacks to obligation works because he assumes this ‘reverse entailment problem’. His argument has the line of modus tollens arguments: since legitimacy entails obligation and vice versa, if it is not the case that obligation exists, it is also not the case the legitimacy exists. To the extent that he can prove that there is no valid ground for political obligation, he thinks he is also proving that no legitimate authority exists. Nevertheless, if we replace CT with a unidirectional CT (UCT), we can see how obligation is conditional on legitimate authority but not the other way around. Hence, legitimate authority is what creates political obligation and this ground for a general duty to obey is not counted among all those that Simmons discusses and sabotages.

Here is a table that sums up all four approaches I mentioned. While horizontally there are accounts of the relationship between legitimacy and obligation, vertically there are the duties that are implied by these accounts.

¹ It is important to observe that Perry employs this argument to attack all accounts of political authority in terms of right rather than moral power. Hence, according to him legitimate authorities possess a moral power to require action, to which subjects’ liability to that power correlates. Since, these issues do not affect my thesis, I leave them aside.

	First NCT	Second NCT	CT	UCT
No duty at all	Yes	No	No	No
Duty not to interfere	No	Yes	No	No
Duty to obey	No	No	Yes	Yes

6.2 The Second Challenge

However, things are not so simple, as now we have to defend the idea that there are legitimate authorities, and in particular that democracy is indeed such. In fact, Simmons, after addressing the bi-implication between legitimacy and obligation, tackles the question of the justification of the former in a well-known article *Justification and Legitimacy* from 1999. Although he refers to the justification of the state, his argument can be easily readdressed to any defense of political authority, be it conceived as specifically democratic or not. His main point is that any kind of justification consists in “the impersonal presentation of objectively good reasons or good arguments to a conclusion” (Simmons 1999, 762). Hence, when justifying a political regime, we must conceive of ourselves as engaging in the enterprise of giving reasons to take such regime as “prudentially rational, morally acceptable, or both” (Simmons 1999, 740). On the contrary, to argue for the legitimacy of a state entails a very different conclusion, whilst requiring a very different activity. In fact, since political legitimacy concerns a “complex moral right to be the exclusive imposer of binding duties to its subjects, and to use coercion to enforce these duties” (Simmons 1999, 764), it cannot be vindicated without reference to individual subjects’ consent to it.

Therefore, while justification asks only for objective considerations that are true or false irrespective of what people feels about it, the legitimacy of a political regime cannot uncouple from people’s effective consent to the regime’s ownership and exercise of such a right. If this analysis is sound, then democracy might fall prey to the same criticism: once we argue for its being the most just kind of state, we do not really grant it

political legitimacy. Political philosophers may be right in taking it to be just or generally justified, but they fail to provide it with the right to bind its subjects unless these very subjects have consented to it. Call this the second Simmons's challenge.

This thesis aims to respond to such challenge and to argue that democracy is a legitimate authority, to which a certain set of duties on citizens' part corresponds. I agree with Simmons that a justification of the democratic worth and value is not *eo ipso* a justification of its authority over democratic citizens. This aspect has been overlooked in various accounts of democracy that focused on its moral qualities and assumed that these would have been sufficient to grant democracy a right over people.

In the next chapters, I will inquire John Rawls's and Thomas Christiano's works, since they exemplify two different ways to argue for the connection between justification of democracy and its legitimacy. Despite their divergent qualification of political legitimacy¹, both philosophers can be taken to offer an answer to Simmons's challenge by providing a moral justification that in their eyes can go through and achieve obligation on the part of democratic citizens. Since these citizens are taken to be naturally disposed to justice or to have an objective duty of justice towards liberal democratic institutions, once we show that such institutions are indeed just, then they acquire an obligation to compliance. At least, this is what both Rawls and Christiano attempts to argue, I think.

I start with Rawls's theory of reasonable citizenship, which focuses on citizens' capacity and willingness to be reasonable as fundamental precondition for political legitimacy to obtain. While he sets forth conceptualizing a duty of justice in his first 1971 work, he openly switches to reasonableness as a disposition democratic citizens are taken to develop and exercise in well-ordered societies. Given this characterization as reasonable, citizens are able to accept and endorse the moral justification for a shared conception of justice, which grounds a constitutional democratic state and lends it both legitimacy and stability. Yet, I intend to argue that Rawls fails to account for such a normative requirement to be reasonable.

Afterwards, I will engage with Christiano's full-blown theory of natural duty as the only source of political obligation to obey the law. He sets aside the idea of reasonableness and grounds citizens' commitment to compliance on a general duty of justice. At the same time, democracy qualifies as the only political arrangement that

¹ Whereas Rawls takes political legitimacy to identify a justifiable use of coercive power, Christiano ties it to the notion of authority and defines it as a right to rule. The reference to coercion rather than authority is not relevant for this chapter aims, because here I am only concerned with showing the relationship between legitimacy and obligation. As Christiano, also Rawls employs the concept of political obligation, although in disguise as a capacity for a sense of justice.

realize social justice as public equality. Hence, he claims to respond to Simmons's challenge, because his intrinsic justification of democracy as public realization of equality triggers a natural duty we all have to uphold just institutions. Again, I aim to argue that he fails in his attempt.

With these chapters, I hope to get two takeaways. First, that a moral justification of democracy can entail political legitimacy only by either assuming some form of reasonableness or something like the duty of justice. This is why I turned to Rawls's and Christiano's proposals. Second, that both proposals fail because they cannot account properly for the kind of political obligation they ask of democratic citizens. They are right in devising a tight connection between the idea of legitimacy and that of political obligation. However, they are wrong concerning the ground and content they associate with it – or at least so I try to argue. What both models show, I think, is that we cannot grasp the legitimacy of democratic authority if we do not properly account for obligation, because the latter is entailed by the former. Conversely, and more importantly, what we have seen with UCT is that we cannot ground political obligation without reflecting on the kind of political regime individuals are subjected to, hence legitimacy.

SECOND CHAPTER

1. Introduction

Throughout history, many philosophers have given us systematic theories of justice, but in recent times the most known is certainly John Rawls. Perhaps this is true only in Western countries and perhaps it is so only for English-speaking philosophy. Yet, it makes sense to start with Rawls for very diverse issues in normative political theory and the reason for this is only partially due to the gratitude we may feel for Rawls's Frankenstein-like effort to bring political philosophy back to life (Laslett 1956). The other, more relevant motivation to start with Rawls is that he has given us a vast framework to confront with, concerning the role of political philosophy, its scope and aims, furthering it from moral philosophy and other philosophical domains, while firmly grounding it on a theory of justice. As a consequence, many criticisms arose against this compelling framework and I am afraid I am going to add myself to this long list. However, as most of them, my aim is neither purely critical nor reconstructive. I intend to focus on the vexed question of Rawls's theory of reasonable citizenship in order to tackle my research subject matter, political obligation. Indeed, despite Rawlsian account of political obligation as grounded on a natural duty of justice, I intend to show that reasonableness is a much more perspicuous key to understand how individuals should behave with respect to political authority in a well-ordered society. I will thus deal with reasonableness in order to spell out what moral requirements citizens are asked to fulfil for a just society to be stable "for the right reasons" (Rawls 2005, xli).

First of all, I will address the way Rawls conceives the natural duty of justice in *A Theory of Justice* and I will shed lights on the connection between it and the sense of justice he starts conceptualizing there. Secondly, I will deal with *Political Liberalism* and its full-fledged theory of reasonableness as one of the two most fundamental moral capacities of human beings. Finally, I will attempt to illustrate the specific circularity this account prompts and argue that it succeeds only by paying a high price, as it constitutes no viable normative guide for our current democratic societies.

2. A Theory of Justice: From a Natural Duty to a Sense of Justice

It might come as a surprise to discuss Rawls as a relevant contribution to the debate over political obligation. Indeed, since he famously argued that “There is, I believe, no political obligation, strictly speaking, for citizens generally” (Rawls 1971, 98), he may seem to set the whole question aside. However, this is done by taking advantage of a distinction between natural duties we have as human beings, on one hand, and specific obligations we enter in through voluntary actions, on the other. This distinction traces back to H.L.A. Hart, as Rawls himself acknowledges on a footnote (Rawls 1971, 97)

¹, and he builds on him to highlight those commitments we take voluntarily by fairness versus those we have as human beings. I will start by introducing Rawls’s distinction between the principle of fairness and the natural duty of justice. After addressing the reasons why Rawls does not take the former as a good ground for political obligation, I will discuss the latter, its justification and its content. Finally, I will take the role of civil disobedience into consideration and attempt to show how the sense of justice, rather than the duty of justice, is much more needed and sufficient for a society to be well-ordered in Rawls’s sense.

2.1 The Principle of Fairness

First of all, Rawls tackles the question of political obligation as a second step in the discussion of the principles of justice. Indeed, once clarified the principles that constitute the conception of justice applying to the basic structure of social and political institutions, the second task of a theory of justice is to devise the way these principles apply to individuals as well². Rawls provides a chart of how the concept of right applies to three different domains: (1) the law of nations; (2) the social system; and (3) individuals (Rawls 1971, 94). As I will focus only on the last category, I will take the principles of justice devised by Rawls for granted and assume that they are agreed upon

¹ In the footnote, Rawls names also Whitely and Brandt. Apparently though, Whitely does not draw a clear distinction between duties and obligations as Rawls does. He distinguishes duties and obligation in the ordinary sense from the same meant in moral philosophy. While the latter identifies a duty as the equivalent of “the best thing to do”, the former conceives it mostly as the consequence of undertaking a commitment through voluntary choice or by taking advantage of a mutual relationship with others. See (Whitely 1952-53, 96). Similarly, Brandt focuses on the different common usage meaning between expressions of ‘obligation’, ‘duty’, ‘wrong’ and ‘ought’, rather than on the simple distinction between the concepts of obligation and duty.

² See Rawls 1971, 95: “a person’s obligations and duties presuppose a moral conception of institutions and therefore the content of just institutions must be defined before the requirements for individuals can be set out.”

in the well-ordered society. Since I do not intend to attempt a critical reconstruction of Rawls's theory, I will not discuss its general framework. I hope that the following few words will be enough.

As it is widely known, Rawls takes his theory of justice, dubbed 'justice as fairness', as a generalization of the social contract theory (Rawls 1971, 3,10). This means that Rawls employs certain ideas belonging to the tradition of the social contract, which focused on the justification of the state and its political authority, to outline a conception of social justice. Firstly, Rawls defines political society as "a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them" (Rawls 1971, 4). Insofar as society is a scheme of cooperation, it needs rules regulating such cooperation that all individuals are to follow. Insofar as this scheme of cooperation is "designed to advance the good of those taking part in it" (Rawls 1971, 4), these rules ought to be such that they ensure both the benefits and the compliance of cooperating members. The conception of justice Rawls offers aims to specify fair terms of social cooperation among free and equal individuals.

More precisely if "justice is the first virtue of social institutions" (Rawls 1971, 3), its primary subject is the basic structure of society, that is "the way the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation" (Rawls 1971, 6). Therefore, the major function of the principles of justice is to provide criteria: (1) for assigning rights and duties, benefits and burdens of social cooperation to individuals; and thus (2) for the assessment and evaluation of actual institutions we live in (Rawls 1971, 8). Secondly, these terms are just insofar as they would be the object of a free agreement: "they are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association" (Rawls 1971, 10).

The original position, as it is the equivalent of the state of nature of social contract theories, represents a condition of choice of the principles of justice between free and equal parties, but it models some circumstances that Rawls considers appropriate to a concept of justice¹. Among them, the symmetry of parties and their being under a 'veil of ignorance'. By this, Rawls means that parties have only general information about

¹ For diverse criticisms of the original position device see the compendium edited by Hinton 2015, as well as G.A. Cohen 2008.

cultural and economic features of societies, but they do not know their position in it, their wealth, talents or even psychological propensities. Parties represent rational, free and equal individuals who are to agree on a conception of justice under circumstances that are fair to all (Rawls 1971, 118-130)¹. Since from the fairness of these circumstances derives the fairness of the principles chosen, Rawls frames his account as a purely procedural theory of justice (Rawls 1971, 74-75). This means that whatever principles parties happen to choose in the original position will count as just, because they will be the outcome of a rational decision, made by free and equal individuals under conditions that are fair to all. In this way, the original position neutralizes social and economic contingencies, whose effect ought to play no role when people are to agree on what counts as justice². Finally, parties are expected to select a conception of justice that is also stable, in the sense of being able to win the support of society's members³. Stability and justice contribute to the definition of a well-ordered society as a society whose basic structure is regulated by the principles of justice selected in the original position and whose citizens comply with just institutions⁴. This relates to what Rawls defines as the 'strict compliance assumption', which means that citizens are assumed to generally comply with terms the parties have agreed upon.

Therefore, the priority of the principles of justice applying to institutions (the basic structure) over the prescriptions made for individuals can be easily explained. Since "obligations presuppose principles for social norms" (Rawls 1971, 93), it is possible to determine people's obligations towards social and political institutions only after identifying what the principles of justice regulating these institutions ought to be. Hence, firstly we need criteria to see whether a social basic structure qualifies as well-ordered, and then, once we have assumed one correct and agreed-upon conception of justice, we can establish what sort of behavior we are entitled to expect from individuals in such well-ordered society. For this very reason, Rawls starts by the principle of

¹ For a criticism of parties' rationality and more generally of the way Rawls frames their reasoning in the original position see Harsanyi 1975.

² For a similarly contractarian approach which does not neutralize contingencies, but take people from their real bargaining position when dealing with moral principles they all can accept see Gauthier 1986.

³ The stability of the well-ordered society depends on the so-called "strains of commitment", according to which parties "cannot enter into agreements that may have consequences they cannot accept" (Rawls 1971, 153). For more on the strains of commitment and their relation to stability and publicity see Freeman 2007, 180ff. and Waldron 2015.

⁴ See Rawls 1971, 4: "a society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles". See further Rawls 1971, §69, 397-405.

fairness¹, which he ties to obligations, in contrast to natural duties, as this principle is the one that hinges on the quality of social institutions it applies to. The principle of fairness, in fact, holds that “a person is required to do his part as defined by the rules of an institution” (Rawls 1971, 94), given the fulfilment of two conditions: the justness of these very institutions and the voluntary acceptance of the benefits these institutions provide. To ascertain the justness of institutions is prior to any talk of political obligation on the part of citizens, because no one can be reasonably held to obey unjust institutions². The two conditions outlined are strictly connected, as any voluntary act can have normative value only insofar as it is freely performed. Therefore, since obligation requires voluntary acts and these require freedom, any really unjust social system that forces or threatens people into obedience is ruled out (Rawls 1971, 97)³. The principle of fairness characterizes obligations as something individuals voluntarily undertake. However, such principle does not collapse into a consent-based account because rather than a clear act of consent, it requires people to accept the benefits they have obtained through cooperation.

Here Rawls draws explicitly on Hart, who takes obligations to be grouped with so-called ‘special rights’, which “arise out of special transactions between individuals or out of some special relationship in which they stand to each other” (Hart, *Are There Any Natural Rights?* 1955, 183). Hart quite sensibly interprets ‘having a right’ as “having a moral justification for limiting the freedom of another person and for determining how he should act” (Hart, *Are There Any Natural Rights?* 1955, 183). Therefore, the way in which such justification is used determines the distinction between general and special rights. While the former are asserted defensively “when some unjustified interference is

¹ In fact, Rawls introduces the principle of fairness first in the second chapter of part one. However, he flips the order of presentation in the sixth chapter of the second part, where he discusses at length the question of natural duties and obligations.

² See Rawls 1971, 96: “It is not possible to have an obligation to autocratic and arbitrary forms of government. [...] Obligatory ties presuppose just institutions, or ones reasonably just in view of the circumstances.”

³ It is interesting to note, as Simmons does, that unjust societies do not necessarily threaten their subjects or force them to consent, as there can be unjust people who spontaneously give their free consent to very unequal social arrangements. Conversely, it is possible that just societies do not obtain their subjects’ consent, because said subjects are morally flawed. Any consent-based theory does not call for the moral worth of individuals in order to be valid and it excludes as invalid only circumstances where consent is forced. However, it is plausible to think that very unjust social arrangements would not be agreed to by anyone, especially the worse-off. Therefore, either such society would not enjoy the free consent of all (but only of the better-off) or it would have to force or threaten the worse-off to give their consent. Yet, some cases would still be excluded: a society of sadists and masochists would be perfectly consented to by those involved, while perhaps being highly unjust, as it would allow for wrongdoings, torture and enslavement over a part of the population. Here Simmons’s criticism seems to depend on his having a purely objective conception of justice, as independent from people’s attitudes, while Rawls has a much more complex view. Nonetheless, Simmons’s observation that sometimes the principle of fair play may call for compliance even under unjust circumstances seems to hold. See Simmons 1979, 1109-114.

anticipated or threatened” (Hart, Are There Any Natural Right? 1955, 187) and the person who claims the right has to object against someone else’s unjustified interference, special rights are concerned when the person who claims to have a right has a moral justification for interference with another’s freedom because of the special relationship they are in. As a consequence, the obligee acquires a special right that only she has with respect to the obliged. They might have incurred in such relationship in different ways: because the obliged has promised to do something for the obligee; because the obligee has been authorized to act in a certain way by the obliged; or, finally, because the obligees have submitted to restrictions on their liberty in a cooperative venture, which has benefited also other people that have thereby an obligation to do the same. In any case, a distinctive relation in which both the obliged and the obligee are, in contrast to all other individuals, and that is of neutral moral value, characterizes special rights. This does not mean that all special rights concern only morally neutral actions, but rather that the obligation does not arise from the moral quality of the action itself. It is the fact that a commitment is freely and voluntary undertaken by someone towards someone else and with respect to a certain set of actions which makes it an obligation and gives it normative value. Hence, obligations are ‘triadic’ relations among one person that obliges herself with respect to a certain action, the specific action whose performance is due and another person towards whom she is obliged and who has a related right to that performance. Contracts and promises are classic examples, to which Hart adds authorization through consent and said ‘mutuality of restrictions’ (Hart, Are There Any Natural Right? 1955, 183-186).

Rawlsian principle of fairness is a further elaboration on this last way of assuming an obligation. It ensures that, as Rawls declares, “we are not to gain from the cooperative efforts of others without doing our fair share” (Rawls 1971, 301). Individuals who gain benefits from the cooperation of all are thus under an obligation to reciprocate, by repudiating the free-rider move and spontaneously cooperating instead. To free ride is morally impermissible because, and only if, one has taken advantage from the cooperation provided by others, thus accepting its benefits and the costs so far. Voluntary acceptance plays a different role in Rawls and Hart. While the latter seems to consider it an alternative ground for obligation with respect to fair play, so that one can embark on an obligation either through consent and promise *or* through said ‘mutuality

of restrictions'¹; the former clearly sets voluntary acceptance as a condition for the principle of fairness to apply. Therefore there cannot be benefits imposed on people against their will and forcing them to enter in an obligation they do not want to discharge, as Robert Nozick denounces (Nozick 1974)². On the contrary, benefits ought to be accepted by cooperating members of society in order for them to be obliged. Two elements matter here: (1) that people who are advantaged by cooperation know and accept the rules to which all others submit; and (2) that to receive some benefits is not enough to count as cooperating members in a joint venture, be it a political society or another form of association. Taken together, these two facts have prompted Simmons to argue against the principle of fairness as a valid ground for political obligation (Simmons 1979, 101-142).

Indeed, Simmons devises different shortcomings of this principle, the major of which concerns the distinction between accepting and receiving benefits. Whereas the mere fact of receiving some benefits, when taken to ground a moral obligation, qualifies as 'outrageous' according to both Simmons and Nozick, Simmons highlights that voluntary acceptance has a different normative status. In cases where individuals do know about the rules of cooperation to which others submit and are aware that they enjoy benefits produced by such cooperation, it is quite natural to recognize the validity of a principle of fairness. Think about someone refusing to make her part in a camping trip: all people went there voluntarily and everyone else is either building the tent or cooking dinner or grabbing wood sticks for the fire, while the free-rider just sits down and waits for others to prepare everything. Of course, she would have a moral obligation by fairness to do her part, because she wanted to go camping and she takes advantage of others' efforts. Nonetheless, while here both voluntary acceptance and membership in the cooperative venture are clearly stated, that they are similarly present among members of a political society is not as obvious. Indeed, there are so-called open benefits that are distributed among the whole society without individuals trying to get them or knowingly accepting them. Think for instance of a healthy environment, or roads, or

¹ Whether Hart had really in mind to separate the principle of fairness, or 'mutuality of restrictions' as he called it, from voluntary acceptance of received benefits is controversial. On one hand, he clearly distinguishes fairness from promising or consenting (Hart 1955, 186); on the other, he appears to make fairness conditional on belonging to a certain "*joint enterprise*" (Hart 1955, 185), in which one presumably enters freely. For more on this see Simmons 1979, 101-142.

² All examples given by Nozick, in fact, are examples of benefits received by individuals without their acceptance. See for instance the neighborhood example, Nozick 1974, 90-95.

drinking water. All these goods are public, as they are enjoyed by everyone, without anyone previously and overtly declaring to accept them¹.

Moreover, the very definition of membership is at stake: if you have to be a member of the cooperative scheme in order for you to be bound by the principle of fairness, it is such membership that grounds your obligation, by triggering the fairness principle. Now, if membership depends, as Simmons claims, on the voluntary acceptance of benefits received and on conceiving the whole political society as a cooperative venture, actual political societies appear to fall short of that (Simmons 1979, 136-142). As a consequence, Simmons disavows the principle of fairness as a sound ground for political obligation, because it fails to be generally applicable, since people in actual societies have not willingly accepted benefits of social cooperation and do not take themselves to be in any kind of cooperative venture.

2.2 The Natural Duty of Justice

Some similar thoughts must have passed Rawls's mind, because he neatly changes his account from his first article on the matter to *A Theory of Justice*. Indeed, while in 1964 he conceived the principle of fair play to be the sole ground of political obligation (Rawls 1964)², he works out a much more nuanced account in 1971. Not that he abandons the principle of fairness, but he makes it play a smaller role. In fact, the principle here applies only to two classes of specifically better-off democratic citizens: rich people and public officials, who have clearly enjoyed the benefits of cooperation, and voluntarily so³. On the other hand, average citizens have no political obligation, in the sense of an obligation of fair play undertaken through voluntary acts and owed to cooperating members of society. They do have a duty to comply with just institutions, though. Henceforth when I will be referring to Rawls's idea of political obligation as pertaining only to rich citizens and public officials, I will dub it 'political obligation*', so that it will not be confused with my broader account of political obligation, as entailing at least the duty to obey the law.

Rawls's awareness of the difficulties with the principle of fairness probably regards the incompatibility of the voluntary acceptance condition, which he states

¹ More on public goods in the following pages.

² He talks about a duty of fair play in such article and finally calls it as a principle in *A Theory of Justice*.

³ See Rawls 1971, 100: "The principle of fairness, on the other hand, binds only those who assume public office, say, or those who, being better situated, have advanced their aims within the system".

clearly for it, with the characteristics of political society. Contrary to what he will explicitly assert in *Political Liberalism*¹, in *A Theory of Justice* Rawls does not really take distance from the conceptualization of society developed by the social contract tradition, as he defines society as a “more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them” (Rawls 1971, 4). Yet, although this characterization is in line with the social contract ideas (as it is the blurring distinction between mutual advantage and common good), Rawls contests that any *explicit* voluntary acceptance of social benefits have ever taken place, since we find ourselves in a political society from the moment we are born (Rawls 1971, 296). Hence, neither consent nor the principle of fair play can work as a normative ground for political obligation, because they cannot ensure that citizens are aware of their mutual obligations. If as a cooperating member of society, I need to know that my fellow citizens have actually accepted social benefits in order to be sure that they will cooperate with me and respect the principles of justice that underlie our shared political institutions, then a so-called problem of assurance would arise again within the well-ordered society itself.

This problem is discussed by Rawls in relation to the notorious free rider issue (Olson 1965, Hardin 1982, Tuck 2008), which highlight all the difficulties concerning collective action. In particular, this is crucial when the supply of public goods, that is, goods that are available to all and that cannot be divided among different individuals, is at stake. Since these benefits, such as security, roads or water supplies, are necessarily enjoyed by all if they are to be enjoyed at all and since one man’s action does not affect the collective outcome and hence the enjoyment of the benefits produced, there is a big incentive not to pay the price for a service one would still get, because he cannot be excluded. Concerning this issue, Rawls follows Amartya Sen (Sen 1967) and distinguishes between the isolation problem and the assurance one (Rawls 1971, 237-8). The former concerns situations where the outcome of many individuals’ decisions is worse than it could be because these decisions have been taken in isolation; whereas, the latter is about knowing that other people will respect and carry out the agreements that have been made.

¹ Here Rawls defines society as a non-voluntary system of cooperation we find ourselves in by birth and that we exit only by death. Moreover, he draws a line between political society on one hand, and community and association on the other, hence clearly distancing himself from the social contract tradition. See Rawls 2005, 40-43.

Only the latter then is related to what Rawls calls 'second-order instability', which happens when people are unsure that others are really cooperating and hence stop abiding by the rules in a precautionary way. Here we notice the relevance of both ideas of reciprocity and publicity that Rawls insists upon throughout all his works: "Each person's willingness to contribute is contingent upon the contribution of the others" (Rawls 1971, 238). This is why the conception of justice, upon which parties in the original position agree, ought to be publicly known in its content, as well as in its bindingness on each cooperating member.

Thus, in the original position, parties cannot accord on a principle of fairness as a basis for political obligation, because this would not properly assure cooperating individuals in the well-ordered society that others are indeed required to comply with their same rules. As we have seen, the selection of principles of justice for social and political institutions is prior to any definition of individuals' specific obligations towards them and to one another. They constitute the criteria for preliminary discrimination among possible principles for individuals' conduct. It is no wonder then that Rawls justifies political obligation through the lenses of the original position procedure. Parties would "*acknowledge* the natural duty of justice" (Rawls 1971, 296) as the fundamental requirement for individuals in order to assure all individuals that they are all subjected to the same rules. Even though compliance is always backed up by sanction (Rawls 1971, 236-237), the publicly known existence of a natural duty to follow the principles of justice selected in the original position seems necessary to Rawls in order for social arrangements to be stable, because it is something that binds all human beings - and *publicly* so.

In fact, this so-called natural duty of justice possesses, as all other natural duties, two major characteristics. First of all, "they apply to us without regard to our voluntary acts" (Rawls 1971, 98); and, secondly, "they hold between persons irrespective of their institutional relationship; they obtain between all as equal moral persons" (Rawls 1971, 99). These two features are fundamental to identify the kind of commitments natural duties entail. For we are basically born with such commitments, that we have as moral persons, i.e. human beings. Contrary to obligations, which are triggered by the voluntary acceptance of cooperation benefits and are owed only to other cooperating members of society (thus requiring just institutions to be in place), natural duties hold irrespective of what people do and who they are. All human beings have natural duties of justice towards all other human beings and it is so regardless of whether they have accepted benefits, given their consent or nothing of the kind.

To appeal to the existence of a natural duty of justice in order to explain why citizens ought to obey just institutions has two immediate effects. On one hand, it seems plausible to think that there are such things as duties we happen to have as human beings and that justice ought to impose duties upon us. Hence there should be nothing bizarre in our having a natural duty of justice, as well. On the other hand, recourse to such a duty seems to make the whole debate about political obligation redundant, because a duty to obey the law naturally follows from a society's being just. Moreover, this move might also have another consequence. Since citizens' political obligation depends on the duty citizens have as human beings, not only their membership in their particular society would be left aside¹, but also their qualification as good citizens (citizens respectful of laws) would be conditional on their being just men.

That said, for the time being let us explore Rawlsian account of the natural duty of justice. First of all, the idea that we have pre-existing duties regardless of what we want or have done is easy to understand considering really intuitive. Think for instance of all those so-called negative duties we have not to interfere or impinge on others' rights to do what they want: we normally take ourselves to be under a duty not to kill, not to (intentionally) harm and not to coerce (without justification) others. Negative duties are generally said to be the correlative of claim-rights (Hohfeld 1917, Hart, *Are There Any Natural Rights?* 1955), that is, duties we have because we cannot and ought not infringe others' freedom to act. Since a thorough discussion of the nature and grounding of rights lies far beyond the aims of this chapter or dissertation, I will only notice that insofar and to the extent that claim-rights exist, the existence of negative duties to respect these rights is logically implied². So when we say that we have a claim-right to be free, we are also saying that others have a duty not to interfere with our freedom and it is in virtue of such duty that our freedom is limited as well. However, this seems to work also for those duties that are dubbed as positive, because they do not concern what we ought to refrain from doing, but what we should actively do in favour of others. The most convincing example is the duty to help those in need; and it seems but a sensible implication of a

¹ This is Simmons's well-known particularity objection towards the natural duty of justice approach to political obligation. I will treat it extensively in the following pages.

² I do not want to hold the stronger thesis that any right correlates with and entails the existence of a duty. Here I only posit the existence of some claim-right (that do not necessarily exhaust the domain of rights, as according to Hohfeld there are also liberty-rights, for instance) and the logical correlation between these and duties. For a different view see Lyons 1970 and Feinberg 1966.

claim-right to life that when others' life is threatened we ought to intervene, at least if it does not cost us our own life in turn¹.

So far then, we have negative and positive natural duties that require us to perform certain actions in order to respect others' claim-rights, that is, at least, rights to be free and alive. Rawls adds to this category another type of natural duty, which he labels 'a natural duty of justice'. Such duty demands that we *support* and *further* just institutions, and splits up in two parts: (1) the duty "to comply with and to do our share in just institutions when they exist and apply to us"; and (2) the duty "to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little costs to ourselves" (Rawls 1971, 293-294). For the present work, I focus on the first part, which is the one related to political obligation, because it entails that, when the basic structure of society is reasonably just, each is bound "irrespective of his voluntary acts" to do "what is required of him". It is clear that this natural duty of justice fulfils the function of fundamental political obligation, in the sense of general obligation to obey the law. In fact, Rawls continues the sixth chapter on 'Duty and Obligation' by tackling the general duty to comply with unjust laws in section 53 (Rawls 1971, 308-312). Here, he argues that insofar as the society is reasonably just, that is well-ordered, we have a duty to obey all laws, even those that may appear unjust to us, provided that they do not exceed a certain threshold. As long as we live under a just constitution then, and because of our natural duty to support and uphold just institutions, we ought to pass over certain degrees of injustice in the laws, "or at least not to oppose them by illegal means" (Rawls 1971, 311).

Rawls is not more specific about other possible contents of the natural duty of justice: on one hand, it binds us to do whatever is required of us and to support just institutions (whatever this support may entail); on the other hand, Rawls explicitly discusses only the general duty to obey even unjust laws and policies, as long as they are issued within a context of a just constitution. He also introduces another natural duty, one of civility, which will gain a greater relevance in *Political Liberalism*², and explains it as imposing "a due acceptance of the defects of institutions and a certain restraint in

¹ Interestingly enough, the natural duties Rawls refers to while introducing the concept are both positive. The first is a duty of mutual respect and the second is exactly the one of mutual aid, already addressed by Kant. The duty of mutual respect, in particular, will provide at least part of the content for the further reformulation of the duty of civility in *Political Liberalism*. See Rawls 1971, 297.

² The duty of civility will also be characterized in a slightly different and more detailed way in *Political Liberalism*. I will deal with this question in the next section.

taking advantage of them” (Rawls 1971, 312). Subtle distinctions between a natural duty of justice, one to comply with unjust laws and one of civility are not obvious.

However, following Rawls’s line of argument, the duty of compliance would seem to ensue from the duty of justice and to be one of its specifications, leaving aside what else supporting just institutions could require. On the other hand, the role of the duty of civility is not as plain. If it is about obeying unjust laws, then it is nothing more than said specification of the duty of justice; whereas if it binds us to accept more than simple unjustified laws and policies, it remains to be explained what this ‘more’ concerns. Perhaps, what Rawls has in mind are two distinct parts of one unique duty of justice, which demands not only that we comply even with unjust laws (provided that the general constitution is just), but also that we refrain from taking advantage of the system flaws. If we imagine that social and political institutions might have various shortcomings, which nonetheless do not put their overall justice into question, then the duty of civility would require us not to use these shortcomings as excuses to free ride¹. While proper obligations would bind richer citizens and public officials to honestly do one’s fair share in virtue of the principle of fairness and the greater benefits accepted, the duty of civility would obtain the same result not to free ride for ordinary citizens². In this way no one is really entitled to avoid cooperation, but the reason and the degree of bindingness for such moral requirement are different from citizens to citizens.

2.3 The Role of Civil Disobedience and The Sense of Justice

So far, it seems that the content of the natural duty of justice is constituted by a general duty to obey the law, even when unjust, and by a duty to respect social and political institutions even when they fall short of justice, as defined by the two principles. However, Rawls does not appear satisfied with such description, as he starts section 55 by asserting that he will “illustrate the content of the principle of natural duty and

¹ This is clear if we think of what Rawls says about the duty of civility covering “a wider range of situations” with respect with the mere duty to comply with just laws. See Rawls 1971, 312.

² One could ask what are the reasons for assuming the principle of fair play and political obligations in the first place, since the duty of justice in its specification as duty of civility already covers the matter. If democratic citizens already have a natural duty not only to comply with just institutions, but also to do their part without using injustices as an excuse to avoid cooperation, then the existence of an obligation to do so appears redundant. However, Rawls answers to this objection by highlighting the appropriateness of such distinction: “It seems appropriate to distinguish between those institutions or aspects thereof which must inevitably apply to us since we are born into them and they regulate the full scope of our activity, and those that apply to us because we have freely done certain things as a rational way of advancing our ends” (Rawls 1971, 302). It remains to be seen to what extent this is convincing.

obligation by sketching a theory of civil disobedience” (Rawls 1971, 319)¹. The subsequent treatment of civil disobedience aims to analyse whether and when disobedience does not violate the duty of justice, which as we have seen demands us to comply also with *unjust* laws and to cooperate in spite of certain kinds of injustice we witness in our democratic societies. Because of this very duty, we might find ourselves in quite unjust social arrangements or in presence of explicit violation of the principles of justice within our otherwise “nearly just” society. Therefore, there is a question of threshold that needs to be entertained: “At what point does the duty to comply with laws enacted by a legislative majority (or with executive acts supported by such a majority) cease to be binding in view of the right to defend one’s liberties and the duty to oppose injustice?” (Rawls 1971, 319). Since it concerns the right way to treat with injustice, this part qualifies as non-ideal theory, rather than the ideal theory that is the subject matter of Rawls’s work.

The difference between these two parts of philosophical enterprise is very controversial, as it is controversial the possibility and value of ideal theory per se². While I cannot take the whole debate properly into consideration here, the distinction in itself matters also in my analysis of political obligation. According to Rawls, ‘ideal theory’ is the name for the part of political and moral philosophy engaged in outlining a conception of justice, when it is realized and complied with by individuals in a well-ordered society. Its aim is to find out how individuals are to order their conflicting claims, according to what principles they are to confer rights and duties on each other and on what terms to cooperate. Thus, it assumes that everyone “acts justly and does his part in upholding just institutions”. On the contrary, non-ideal theory “studies the principles that govern how we are to deal with injustice” (Rawls 1971, 8), that is what to do when our social institutions fall short of the ideal well-ordered society and ought to be changed. Civil disobedience is a case in non-ideal theory because it prescribes how to oppose unjust laws or policies while maintaining one’s allegiance to the overall political system, which

¹ Rawls also draws a line between civil disobedience and “conscientious refusal”. I do not take the second into account. See Rawls 1971, 323ff. and Brownlee 2016 for the distinction between civil disobedience and similar concepts.

² A widespread debate over ideal and non-ideal theory has grown and light up political philosophy since Rawls’s introduction of the distinction. While some part of that debate might have been an inspiration for the present work, especially concerning the observation that ideal theory unwarrantedly explains non-compliance away, a proper treatment of this debate lies far beyond the aim of this work. On the ideal theory side, besides Rawls, see at least G. A. Cohen 2003, 2008, Simmons 2010, Estlund 2011. For criticism of ideal theory, see for instance Sen 2006, Schmidtz 2011. The debate over ideal and non-ideal theory intertwines on one hand with the one over desirability and feasibility and, on the other hand, with the one over moralism and realism, for which see: Williams 2005, Galston 2010, Sleat 2014. For a useful conceptual map see: Valentini 2012.

is still “nearly just” (Rawls 1971, 335). I am not interested in assessing Rawls’s theory of civil disobedience and its content, in spite of its evident relevance for any theory of political obligation, but some of it matters for the present chapter. In fact, under conditions that justify civil disobedience, when the first principle and the first part of the second principle of justice are violated, the same duty of justice, that requires us to obey whatever law, demands us also to oppose these violations. Thus, “the difficulty is one of a *conflict of duties*” (Rawls 1971, 319), because both compliance and (a certain practice of) non-compliance are grounded on the same natural duty of justice.

First of all, civil disobedience is possible only in so-called ‘nearly just’ societies, which are defined by Rawls as societies where a “more or less just democratic regime” is established and citizens do recognize its general legitimacy as such. This condition is fundamental in order to allow the act of civil disobedience to fulfil its role, which is basically one of reviving fellow citizens’ conscience. That is, when the majority approves laws that contradict the first principle, hence qualifying as gross violation of justice, the minority may use civil disobedience as a more functional alternative to either submission or resistance. While the former cannot but legitimize some unjust arrangements and threatens the *justice* of democratic societies, the latter “cuts the ties of community” (Rawls 1971, 337) and jeopardizes the *stability* of democratic societies. Either way, the stability of just society as such is compromised unless citizens have the chance to resort to civil disobedience as a third way that fights injustices back while preserving the democratic order. However, this opportunity, which “serves to inhibit departures from justice and to correct them when they occur” (Rawls 1971, 336), requires the existence of a distinctive moral capacity of democratic citizens: the sense of justice¹.

Rawls describes parties’ “capacity for a sense of justice” in the original position and citizens’ sense of justice in a well-ordered society as a disposition to “adhere to the principles eventually chosen” (Rawls 1971, 126) and as a “normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree” (Rawls 1971, 442), respectively. The sense of justice is assumed by Rawls to be a disposition all human beings have such that parties can take it into account when deliberating over the principles of justice. Hence, the sense of justice is not linked to any specific theory of justice, but is a sort of dispositional correlate for any such theory, since it “insures that the principles chosen will be respected” (Rawls 1971, 125).

¹ See also Rawls’s former article on the subject in 1963 and Bates 1974.

For now, I intend to show the role the sense of justice plays in connection with the duty of justice. Indeed, I aim to argue that Rawls treats the sense of justice ambiguously. Not only something very similar to the sense of justice replaces the duty of justice in *Political Liberalism*, where there isn't any talk of natural duties a part from the duty of civility, but it already works as a ground for political obligation in *A Theory of Justice*. Remember that while Rawls's characterization of political obligation* pertains only to rich citizens and public officials and is grounded on the principle of fairness, political obligation in the broader sense concerns all human beings and is grounded on the natural duty of justice, as a duty to comply with unjust laws and a duty of civility not take advantage of the system's shortcomings.

The ambiguity of the sense of justice appears clearly if we focus on its relation to civil disobedience. On one hand, it is necessary that fellow citizens do possess a certain amount of sense of justice in order for civil disobedience to make sense. In fact, the very act of civil disobedience constitutes an attempt to "address the sense of justice of the majority and to serve fair notice that in one's sincere and considered opinion the conditions of free cooperation are being violated" (Rawls 1971, 335). Therefore, a widespread sense of justice among the majority of citizens is necessary if the act of civil disobedience is to work with fellow citizens. On the other hand, it is exactly because political society is only nearly just and not enough well-ordered that unjust laws pass and require the recourse to civil disobedience. For, if citizens displayed a proper sense of justice, they would not vote laws that contradicted the two principles and "the question of whether to comply with unjust laws and policies would not arise" (Rawls 1971, 311). It can be objected that Rawls describes nothing contradictory: any political society may be nearly just to the point that it makes sense to appeal to others' sense of justice, *and* it can fail to be properly well-ordered, so that injustices still happen and need to be dealt with. However, this unveils the proper role that the sense of justice plays, as it is both necessary and sufficient for the society to achieve perfect justice.

First, the sense of justice is necessary because it is the only way to achieve a really well-ordered society. A little step back may be of help. A society is defined well-ordered when its basic structure realizes justice, to a certain extent. The imagine of the well-ordered society constitutes the main focus of ideal theory, as it illustrates how justice would work in political societies, were people to act justly. Apparently, it is a matter of degrees. Societies might be more or less well-ordered (and later Rawls will classify most

of them¹), but there is a threshold above which they get to be labelled ‘nearly just’ and this means that they are working democracies. When this is the case, they normally have a constitution, which puts the principles of justice in practice, and then a democratic legislative system that issues laws and policies by some kind of decision-making procedure. Ideally whatever rule respects the principle of equal say will be good; normally we deal with majority rule (more or less qualified depending on the issues at stake)². To be sure, any such procedure has to satisfy certain conditions of ‘background justice’, which ensure that said decision-making procedure respects the first principle of justice, and political freedom in particular.

However, to satisfy these conditions is necessary, but not sufficient to guarantee that democratic outcomes will also be just and not only procedurally correct. If we take legitimacy of democratic outcomes to be their procedural correctness, without any reference to the substantive quality of outcomes, said legitimacy might come to conflict with its justness. Democratic results depend on the way people vote, on considerations they have in mind when they cast their vote. If the majority of representatives or citizens did always act as impartial legislators, who ask themselves what is the most correct decision according to the principles of justice, then we would have good reasons to accept the result as just³. Nevertheless, “there is no assurance that just legislation will be enacted” (Rawls 1971, 313), because we cannot be sure that people will always vote according to the principles of justice, either because they may not want to, or because they are not enough knowledgeable. For this reason, Rawls conceives constitutional democracies as cases of imperfect procedural justice, rather than perfect or even pure procedural justice.

Contrary to the ideal market, which is a perfect procedure with respect to efficiency, any idealized legislative procedure qualifies as an imperfect procedure, because there is no assurance that justice will be the final result of the procedure, even in its idealized version. As a consequence, when confronted with actual constitutions’ outcomes, citizens may retain their judgment concerning the quality of the outcome

¹ See Rawls 1999.

² Interestingly, Rawls does not seem to be concerned with the justification of majority rule among all decision-making procedures. He only observes that it possesses “a certain naturalness” that any minority rule would not possess. Unanimity, although required in the original position, is not even contemplated under the ordinary circumstances of justice for political matters. See Rawls 1971, 196, 314.

³ We would have good reasons, but not necessarily conclusive reasons to think so. In fact, impartial legislators may be wrong in good faith, and democratic outcomes will be wrong as well. In section 54 Rawls discusses the well-known Condorcet Jury Theorem, which roughly asserts that the more people choose one of two alternatives, the more likely it is that said alternative is correct, provided that certain conditions are satisfied. Among these, there is the average competence of voters and their independence. Rawls contests the latter – whether rightly or not, I will not inquire here.

achieved: it is not necessarily the case that said outcome will be just, because of citizens' ignorance or unwillingness to vote according to the principles of justice. Actual constitutions are "bound in practice to fall short of what is just" (Rawls 1971, 316)¹. The imaginary Rawls displays here is seemingly Rousseauian: justice in democratic outcomes can be guaranteed only insofar as citizens are able and willing to go for the General Will, that is, to decide what best suits to the principles of justice. But to be impartial in such a way means exactly to act out of a sense of justice, as a disposition to act justly when it is needed. Therefore, the sense of justice is necessary for democratic decisions to respect, fulfil and realize the principles of justice and to make the society we live in truly well-ordered². Moreover, the more citizens are reasonable in such a way and vote accordingly, the more majority rule will be instrumentally justified, as an imperfect procedure, because it will achieve just legislation (Rawls 1971, 203). On the contrary, the duty of justice is not enough, because it only prescribes us to comply with democratic laws or eventually to oppose injustices. It does not ask us to vote in any particular way, it does not demand any peculiar disposition of us. It only requires us to comply and not to take advantage of society's flaws for our own self-interest. And this request, although appropriate for subjects that ought to obey, is not sufficient when citizens ought to act as legislators and to enact just laws.

Second, the sense of justice is also sufficient for a well-ordered society to thrive. For if to possess a sense of justice actually means to be able and willing to act according to the principles of justice, then such sense of justice requires us to follow these principles not only when approving laws, but also when these laws are to be obeyed. The same disposition that helps us acting as impartial legislators helps us also to behave properly as subjects, thus abiding by the rule. One could object that the duty of justice

¹ There is quite a debate over how to interpret public reason, and hence democratic procedures, in Rawls. If democracy is conceived as a case of purely procedural justice, then it is justified insofar as it respects the procedural values it embodies, such as autonomy or political equality. On the other hand, if democracy is taken to be a case of imperfect procedural justice, then it will be justified only insofar as it is indeed able to enact just legislations most of the time. According to *A Theory*, both readings seem to be true, as a just constitution is required to satisfy two conditions. First, a procedural requirement of equal liberty; second, a substantial requirement of likelihood of producing "a just and effective system of legislation" (Rawls 1971, 194). At the same time, equal political liberty enjoys both instrumental and intrinsic value (Rawls 1971, 204-206). The only clearly excluded example of procedural justice is the perfect one: "The constitution is regarded as a *just but imperfect* procedure framed as far as the circumstances permit to insure a just outcome. In political affairs perfect procedural justice cannot be achieved" (Rawls 1971, 311). However, for a stronger assessment of the instrumental view in Rawls, see Rawls 1971, 202: "The fundamental criterion for judging any procedure is the justice of its likely results". For a proceduralist interpretation of Rawls see Peter 2008.

² See Rawls 1971, 314: "just laws and policies are those that would be enacted by rational legislators at the legislative stage who are constrained by a just constitution and *who are conscientiously trying to follow the principles of justice as their standard*".

requires us to comply also with unjust laws, while our sense of justice would be frustrated, were unjust laws to be enacted. If this were the case, then the sense of justice would be necessary for us to be good legislators, while the duty of justice would retain its importance for us to be good subjects. However, this reading loses sight of the basis for our duty to comply with unjust laws. In fact, as Rawls makes clear, under nearly just democracies, “we normally have a duty to comply with unjust laws *in virtue of our duty to support a just constitution*” (Rawls 1971, 311). It is because we have a natural duty to uphold just institutions that we also have an entailed duty to comply with some laws that are unjust, provided that they do not exceed a certain threshold and are effectively issued by an otherwise just constitution. But we have seen that a just constitution is one that embodies the principles of justice, and the first one especially. Thus, our disposition to act in accordance with these principles is sufficient for our compliance with all laws, including unjust ones.

Therefore, the sense of justice is both necessary and sufficient for justice to be realized in a truly well-ordered society. It characterizes citizens’ actions and dispositions as subjects and as legislators, when they are to abide by the rules and when they are to enact these rules so that they be just. The duty of justice may provide sufficient basis for obeying the law, but not for producing it according to principles of justice. To be sure, this is the case insofar as the duty of justice is interpreted only as a duty to comply with unjust laws and duty of civility. We have seen that these two are all the content Rawls offers to substantiate such ‘duty to support and further just institutions’. Hence, it seems that the duty of justice covers only the subjects’ side of citizenship, the one concerned with compliance. Hence, parties’ stipulation of a duty of justice in the original position seems redundant¹.

It is in virtue of these considerations, then, that we can look at the third part of *A Theory* as rightly explaining how the sense of justice would develop in a well-ordered society, given certain basic facts of human psychology. Rawls devotes one third of his 1971 work to this explanation and to an argument meant to prove that the sense of justice is compatible with our own good. While I am not interested in analysing Rawls’s congruence argument, it is relevant, I think, that he recognize how “to ensure stability

¹ A possible line of argument might be that while not all citizens are actually guided by their sense of justice, a proper duty of justice applies to all, nonetheless. However, since we are considering the duty of justice as a *moral* (rather than legal) duty, I do not see how people that are unwilling to act on the principles of justice would respect their duty of justice grounded on those very principles. For these individuals, the only convincing argument seems to be coercion, which in fact cannot be eliminated, as we have seen.

men must have a sense of justice” (Rawls 1971, 435)¹. The assumption that parties display a formal capacity for a sense of justice (Rawls 1971, 125-126) fits nicely with the idea that the sense of justice is both necessary and sufficient for democratic citizens’ political obligation. Yet, there are at least two objections that can be moved against this reading.

First, I did not consider the second part of the natural duty of justice, which prescribes that “we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves” (Rawls 1971, 294). This part may be taken to cover exactly the law-producing part of citizenship that I think can be encompassed only by the sense of justice. This is not the case, though. In fact, the second part of the natural duty of justice is qualified in a way the first part is not, as it is valid only insofar as it does not cost us too much. Such duty requires us to assist in the establishment of just arrangements, but it does not specify how to work out this assistance or the extent to which satisfying this duty becomes too costly. Moreover, it does not demand us to contribute in the production of just laws, especially where a just constitution is already in place. Individuals have a general duty to help establishing just constitutions (and indeed such part is generally taken to concern matters of global justice), but once they already have a just constitution, they ought to do nothing else, according to this duty. Furthermore, if we were to read this duty as a duty to take active part in political life and in the democratic process, we would misinterpret its function. In fact, when Rawls treats the principle of participation, which is how he calls the principle of equal liberty “when applied to the political procedure defined by the constitution” (Rawls 1971, 194), he asserts that it regards specifically institutions and not individuals. Such principle demands that institutions guarantee equal rights of participation to all willing individuals, but it does not set down “a duty requiring all to take an active part in political affairs” (Rawls 1971, 200). Neither the sense of justice requires that we engage in the democratic process, but it does demand that we vote and think on the basis of the principles of justice when we decide to do so.

Second, one can contend that any moral requirements concerning the production of laws and the relevant considerations according to which we ought to vote outline a theory of citizenship that is a quite different thing from a theory of political obligation. On these terms, the latter would deal only with compliance, irrespective of how the law individuals are to abide by is produced. However, even though I did not engage with the

¹ On the congruence argument see Freeman 2003 and Weithman 2010, chapter 2.

content of political obligation so far, I think that a very rough account of it can be arranged. Here I follow the same line Simmons lays down and I will attempt to provide good arguments for it in the third chapter. If political obligation concerns the moral bond that connects citizens of a state to that state they are a part of, it must be “something like the obligation to be a good citizen in a fairly minimal sense” (Simmons 1979, 155). If this makes at least provisionally sense, then political obligation covers all what is required in order to be a good citizen and this includes also the active part of citizenship, at least under a democratic regime. For we have a duty to comply with just institutions only if their laws and policies are not too unjust and this in turn can be guaranteed only if we vote, either as ordinary citizens or as representatives, according to the principles of justice. The sense of justice fulfils in Rawls this double function; in a way the duty of justice cannot do. I now turn to analysing it in its later formulation as reasonableness.

3. Political Liberalism: From the Sense of Justice To Reasonableness

In his 1993 work, Rawls comes back to the main topic he dealt with in 1971 from a different perspective. It has been greatly debated whether continuity or discontinuity with respect to *A Theory* characterizes *Political Liberalism* more¹. I cannot and will not dwell on these issues, nor will I take into consideration all the relevant criticisms, objections and defenses that this work raised (see for instance compendium edited by Young 2016). My primary concern, though, lies at the heart of Rawls’s theory, because identifies the sense of justice as the main feature that democratic citizens ought to display in order to be good citizens. As I said, I am leaving the specific content of political obligation on a side for now, but if it is plausible to take it as a sort of normative requirement to be a good citizen, or a good subject, depending on the regime under which one lives, then the sense of justice, as we have seen, surely is the core of political obligation in Rawls’s theory.

Yet, in *Political Liberalism* Rawls focuses on another concept, which becomes fundamental: the one of reasonableness. On one hand, reasonableness and the sense of

¹ For a well-known and quite harsh attack on *Political Liberalism* as even betraying the aspirations of *A Theory*, see Barry 1995, while for a recent explanation of the continuity of the last part of *A Theory* and its search for stability with *Political Liberalism* see Weithman 2010. Moreover, for a first and not completely thought through elaboration of the argument in *Political Liberalism* see also Rawls’s Dewey Lectures, (Rawls 1980).

justice look like two very similar ideas, as they both refer to a distinctive disposition, which citizens in a well-ordered society are assumed to possess, to act according to the principles of justice. On the other, the capacity for a sense of justice is now clearly described as a “moral power” all human beings have together with the other moral power to rationally follow their conception of the good (Rawls 2005, 34), whereas reasonableness is a specific disposition that citizens in a well-ordered society develop *starting from their sense of justice* and it is much more articulated in this work (Rawls 2005, 48ff.).

Firstly, I will start with a brief reconstruction of *Political Liberalism's* different perspective to ‘justice as fairness’ as a freestanding political conception of justice. Secondly, I will examine the definition of reasonableness Rawls offers and the way it connects to the political notions of society and person, on one hand, and to the ideal-theoretic notion of well-ordered society and to the original position, on the other. Then, I will address more clearly the idea of public reason and its relation to legitimacy and stability of a well-ordered society. Finally, I will spell out my objection to Rawls’s account, which is not new, but I hope it sheds more lights on the role reasonableness attempts but fails to play with respect to political obligation.

3.1 A Change of Perspective: The Political Conception of Justice as Freestanding

First of all, in *Political Liberalism*, Rawls explicitly offers his account of political liberalism as answer to two fundamental political questions: (1) “What is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?” (Rawls 2005, 3); and (2) “What are the grounds of toleration understood in a general way, given the fact of reasonable pluralism as the inevitable result of the powers of human reason at work within enduring free institutions?” (Rawls 2005, 47). If the first question does not substantially differ from the way Rawls framed its topic of discussion in *A Theory*, the second one states more clearly the role and value¹ of reasonable pluralism, which the previous work

¹ Rawls does not explicitly acknowledge pluralism as a value, but he takes it to be more than a simple fact, as it is the necessary and inevitable consequence of the free exercise of reason under free institutions. See Rawls 2005, 37ff.

disregarded. Rawls starts from three 'general facts'¹ of democratic societies that need to be accounted for, which are well known and pertain to the state of pluralism we find ourselves in and its consequences: (1) the fact of reasonable pluralism as an unavoidable outcome of the free human reason and permanent feature of the public culture of democratic free institutions (Rawls 2005, 36); (2) the fact of oppression, which shows that no shared conception of the good can obtain without an oppressive use of state power (Rawls 2005, 37); (3) the fact that stability of a democratic regime requires to be supported by "at least a substantial majority of its politically active citizens" (Rawls 2005, 38), which connects to the so-called overlapping consensus I will tackle more thoroughly later in the text.

Many pages have been devoted to the new setup of Rawls's theory of justice and to whether and how this move has been prompted by his acknowledgment of *A Theory's* shortcomings concerning stability, given the 'fact of reasonable pluralism'². In any case, the line of argumentation is changed, as Rawls abandons any universalist whim and explicitly aims at an enterprise of reconstruction and reconciliation of our considered judgments and the main ideas of our political culture in a coherent conception of justice that regulates societies where these very ideas are already publicly shared (Rawls 2005, 8-10)³. Again, I cannot analyse such a shift, its grounding and the reasons that led Rawls to it⁴. However, to bear in mind the different perspective from which this discourse unfolds is relevant because Rawls unambiguously provides a justification for his theory of justice that purportedly works only with people who already share its main ideas. *Political Liberalism* addresses democratic citizens who live under constitutional democracies and who participate in the same political culture, whether knowingly or not. Thus, since the only justification that it can achieve is internal to democratic regimes

¹ To the three facts Rawls assesses two more can be added, considering the political democratic culture and the burdens of judgment: (1) the fact that the political democratic culture itself "normally contains, at least implicitly, certain fundamental intuitive ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime" (Rawls 2005, 38); and (2) the fact that "many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion" (Rawls 2005, 58).

² Reasonable pluralism according to Rawls is not only a bare fact, but also a normative one: since it derives from the free use of reason under free institutions, it is a normatively relevant consequence of the well-ordered society. See Rawls ...

³For the method of reflective equilibrium political philosophy utilizes in order to assess the plausibility of conceptions of justice, see Rawls 2005, 8, 28, 45, 72, 381-399. On the public role of political philosophy, see Rawls's *Reply to Habermas*, here p. 426. See also Daniels 1996.

⁴ Whether it is a point conceded to communitarians, a limited universalism or simply a clearer version of the same reflective equilibrium Rawls employs also in *A Theory*, I cannot say. See for instance Mulhall and Swift 2003 and for a communitarian criticism of Rawls see Sandel 1984.

themselves, it cannot offer proper reasons in favor of democracy to those who do not yet see democracy as “reasonably just, workable and worth defending” (Rawls 2005, 39)¹.

Here the ambiguity with which Rawls treats the relationship between the well-ordered and actual societies comes to play. In fact, as we have seen, on one hand well-ordered society serves as an ideal model for actual societies, thus guiding our “desire for change” (Rawls 2005, 285). On the other, however, it apparently has a declared more modest aim, as it simply clarifies and systematizes certain ideas that are already present in a democratic political culture (Rawls 2005, 78). While *A Theory* overtly addresses the ideal-guiding function of the well-ordered society and its principles of justice, as well as its validity for all moral persons, *Political Liberalism*, because of its different aim, remodels it as a way, together with the device of the original position, to make sense of certain political ideas and values that we already happen to share in our actual democratic societies. Therefore, our standpoint here and now constitutes not only the perspective from which Rawls’s proposal of ‘justice as fairness’ has to be assessed through the mechanism of reflective equilibrium, but also the starting point for it. Justice as fairness intends to offer a feasible answer to the “fundamental political question” that characterizes *our* democratic societies (and our western political tradition).

From this understanding two important things follow. On one hand, political liberalism qualifies indeed as *political*, which Rawls takes to mean that it is separate from any religious, philosophical or metaphysical conceptions of the world, which in turn are dubbed as *comprehensive*. The kind of allegiance that political liberalism requires is maybe stronger than people’s comprehensive views of the world and life plans, but more limited: it does not purport to offer a complete understanding of human life and its worth, but it applies only to the political domain of social cooperation and its requisites. The ideas political liberalism appeals to are political in a double sense: while they are restricted to said domain (whatever that is), they are also agreed upon in democratic political culture. On the other hand, the political conception of justice that political liberalism works out is taken to be *freestanding*, that is, independent from any religious, philosophical or moral comprehensive doctrine: “it is not presented as depending upon,

¹ Since Rawls, public justification theorists have maintained this idea that a justification ought to be internal with respect to the set of beliefs and values of democratic citizens. The major divide concerns how to define the audience of these citizens. On one hand, convergentist approaches refer to all individuals in pluralist society and do not require them to share the same conception of justice (Gaus 1996, 2011, Vallier 2011, 2014), consensus-based approaches address public justification only to reasonable citizens (Macedo 1990, Quong 2011).

or as presupposing, any such view” (Rawls 2005, 376), but rather starts “from the fundamental ideas of a democratic society” (Rawls 2005, 40)¹.

3.2 The Fundamental Political Ideas of Society and Person

The premises Rawls relies upon for his argument basically consist in a set of political values and ideas widespread and “implicit in the public culture of a democratic society” (Rawls 2005, 15). The first is the idea of society as a ‘fair system of cooperation’, while the second is the conception of the person as “someone who can be a citizen, that is, a normal and fully cooperating member of society over a complete life” (Rawls 2005, 18). Both ideas are already included in the framework of the first fundamental political question, which seeks a conception of justice capable of providing *fair terms of cooperation* for people who are *willing to cooperate as free and equals*. Political liberalism, as Rawls understands it, attempts to give an account of freedom and equality that settles historical disputes over these two values, by starting from the idea that society is a cooperative venture among individuals who are to decide and honor fair terms of cooperation (Rawls 2005, 35). In particular, it does so by sketching the ideal theory of a well-ordered society, which connects both ideas of fair terms of social cooperation and individuals as free and equal cooperating members in an image of a perfectly just society, where institutions are just and people normally comply with them.

However, as we have seen, it is not only compliance with the law that citizens of a well-ordered society achieve, but something more deep and demanding. These citizens, in fact, act out of their sense of justice when they are to abide by the law and also when they are to create it. To be more precise, there are three features that characterize a well-ordered society, which are also the three conditions whose satisfaction provides an answer to the fundamental political questions, as the well-ordered society *is* the answer to such questions, as an ideal of society just and stable. These are: (1) that the basic structure of society is regulated by a political conception of justice; (2) that said conception is the focus of a reasonable overlapping consensus, which means that “everyone accepts and knows that everyone else accepts the very same principles of justice” (Rawls 2005, 35); (3) that public discussion of constitutional essentials and questions of basic justice are conducted in the terms of said conception of justice (Rawls

¹ I will not discuss whether Rawls is right in devising such a strategy and whether it is possible for political philosophy to avoid truth. Concerning this point though, see Raz 1990, Hampton 1989, Besussi 1996, Estlund 1998. In defence of Rawls’s position see Quong 2011.

2005, 44) and that “citizens have a normally effective sense of justice and so they generally comply with society’s basic institutions, which they regard as just” (Rawls 2005, 35). As we have seen, the third condition includes both compliance, as a result of acting on a sense of justice, and the capacity to think, discuss and decide according to the principles of justice, at least when certain issues are at stake¹. While the former point is the main topic of *A Theory*, especially of its first part, the latter two are extensively treated in *Political Liberalism*, which focuses on all the relevant conditions that ought to be fulfilled if the well-ordered society is to be not only just, but also *stable*.

Since Rawlsian democratic citizens are viewed as free and equal, these features imply in turn the fact that they possess to a certain minimum degree “the moral, intellectual, and physical capacities that enable them to be fully cooperating members of society over a complete life” (Rawls 2005, 183). Left aside the logical capacities for correct inferences and deductions, the main focus is constituted by the two moral capacities for a conception of the good, which belongs to the *rational*, and for a sense of justice, which relates to the *reasonable* (Rawls 2005, 19). In order for the basic structure to be just, it must treat people as free and equal, but in order for them to be free and equal they have to be rational and reasonable. Most of the criticisms directed to Rawls after *Political Liberalism* was published are concerned with the last category, which indeed represents an important clarification with respect to *A Theory*, where the two were not explicitly distinguished. I cannot account for all those criticisms, as I intend to treat this issue only in relation to the idea of democratic citizenship developed by Rawls. However, it seems important to point out how much the normative characterization of citizens as rational and reasonable is necessary for Rawls in order to make sense of the idea of a shared conception of justice effectively and stably regulating the basic social structure. In fact, the more normatively demanding is the required description of citizens, the more realistic can appear the claim that fair terms of cooperation, as described by Rawls, are feasible. Citizens’ reasonableness carries almost the whole weight of the declared stability of the well-ordered society: principles of justice are adequate insofar as they have the capacity of “winning the support” of citizens, as Rawls

¹ These features, although related to, are different from the three levels of publicity Rawls discusses in II.4. In fact, if a well-ordered society is taken to satisfy all three levels of publicity, yet these three concern the extent to which the conception of justice is justified, whether (1) “on the basis of commonly shared beliefs confirmed by methods of inquiry and ways of reasoning generally accepted as appropriate for questions of political justice”; (2) or on the deeper basis of “the general beliefs about human nature and they way political and social institutions generally work”; (3) or finally to a full extent, including “everything that we would say – you and I – when we set up justice as fairness and reflect why we proceed in one way rather than another”. In this last case only the full justification of the conception of justice is publicly known, or “at least publicly available” (Rawls 2005, 66-67),

attempts to prove with the idea of a 'reasonable overlapping consensus'. However, this support is not given by actual citizens, but by the rationally and reasonably idealized citizens of the well-ordered society. Or, actual citizens are assumed to possibly give their assent to a publicly shared, liberal conception of justice, because their sharing the political values of freedom and equality entails their being rational and reasonable to a certain degree.

The connection between freedom and equality on one hand, and the two moral powers is the following: democratic citizens can be said to be free "in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the powers of reason (of judgment, thought, and inference connected with these powers)" (Rawls 2005, 19). To be more precise, the ascription of two moral powers to citizens depends on their being fully participating members of society. In this way, the political conception of person, which lies at the basis of our shared political culture, describes citizens as fully cooperating members, while the corresponding conception of society presents it as a scheme for cooperation. In order to uphold their role as citizens, individuals are thus assumed to possess two moral powers that make them free and equal, since they are possessed to the requisite minimum degree by all¹.

These moral powers constitute the content of freedom, at least as citizens are taken to interpret it, while thinking of themselves and their fellow citizens as free. Freedom so conceived is characterized by three aspects: first, "they conceive of themselves and of one another as having the moral power to have a conception of the good" (Rawls 2005, 30); second, "they regard themselves as self-authenticating sources of valid claims" (Rawls 2005, 32); third, "they are viewed as capable of taking responsibility for their ends" (Rawls 2005, 33). Weren't citizens capable of a conception of the good and of a sense of justice, which allows them to recognize "the independent validity of the claims of others" (Rawls 2005, 52), they would not be free. However, Rawls's argument goes, in democratic societies we do see each other as free and equal.

Therefore, if we start from such conception of the person, we ought to analyse what we mean by taking each other as free and equal² and this leads us to the two moral

¹ Even though Rawls has abandoned any metaphysical interpretation of moral personality as constituting the proper nature of human beings as such, and hence of the two moral powers as *natural* capacities, the argument for equality that he provided in *A Theory* still applies. Since moral capacities are range properties, it is sufficient to possess them to a defined minimum degree in order to count as possessing them entirely. See Rawls 1971, §77, 444-445.

² As we have seen, Rawls does acknowledge that the interpretation of freedom and equality is controversial and takes his own account as an effort to provide a good interpretation of these political values. However, since the final justification of the conception of justice depends on ideas that should be implicit in the public culture and shared by democratic citizens, it is not clear on what basis we should endorse Rawls's

powers. The first thing to notice is that these two moral powers corresponds to the reasonable and the rational as “two distinct and independent basic ideas” (Rawls 2005, 51), which are complementarily at work to specify the political ideas of society and person¹. While the capacity for being rational comprehensibly stands for our rational ability to form, revise and pursue the fundamental aims and ends in our life plan (Rawls 2005, 50-51)², the reasonable is a bit more complicated.

3.3 The Capacity For a Sense of Justice and the Reasonable

Rawls presents the definition of the sense of justice many times throughout *Political Liberalism*. Even though he slightly changes the wording, the core of this notion is the capacity and willingness “to understand, to apply and to act from the public conception of justice”. Moreover, he defines reasonableness, which corresponds to the developed sense of justice of citizens of a well-ordered society, as the capacity and willingness “to act in relation to others on terms that they also can publicly endorse” (Rawls 2005, 19). Rawls further divides reasonableness in two parts: the first, which will be later identified as the moral part, consists in the “willingness to propose fair terms of cooperation and to abide by them provided others do”; while the second, considered the epistemic part, is the “willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime” (Rawls 2005, 54)³.

interpretation of freedom and equality as the best one, unless we already do so. The fact that, perhaps, it is indeed the most *reasonable* conception of justice makes Rawls’s account coherent, but not justified, not even in Rawls’s sense of publicly justified.

¹ This distinction, which Rawls traces back to Kant (Rawls 2005, 49), represents one of the points where *Political Liberalism* differs from *A Theory* the most. In fact, if in the former work Rawls interpreted his own theory of justice as “a part, perhaps the most significant part, of the theory of rational choice” (Rawls 1971, 15), in the latter he explicitly takes distance from such interpretation. As a consequence, he holds that no conception of justice can be fully derived from the sole rational and he reformulates the constraints of the original position, and in particular the veil of ignorance, as representing the reasonable (Rawls 2005, 305). This is why the original position loses its justificatory role and is downplayed to a “device of representation” that merely helps us understanding what a political conception of justice would require us.

² Since the capacity for a conception of the good needs not be confused with egoism or self-interest, or with means-ends reasoning, it may be of help to clarify it by highlighting what it is not. As Rawls puts it, “what rational agents lack is the particular form of moral sentiment that underlies the desire to engage in fair cooperation as such and to do so on terms that others as equals might reasonably be expected to endorse” (Rawls 2005, 51). Thus, a rational agent is one who sees social cooperation only on instrumental terms, as a tool for something else, without enjoying its value as such.

³ For a different interpretation see D’Agostino 1996. He does not include the recognition of the burdens of judgment within the bulk of reasonableness and he downplays reasonableness itself to a general disposition to listen to others and not to expect others to abide by political arrangements one is not prepared to abide by oneself. However, this is a much weaker notion of reasonableness that does not identify Rawls’s, according to the reading I propose. Notice also that to propose terms of cooperation that others might be expected to accept (reasonably) is quite different and more demanding than proposing terms of cooperation that one thinks oneself capable to accept and abide by.

As for the moral side of reasonableness, this attitude towards others expresses the idea of *reciprocity*: as long as others do the same, reasonable citizens are willing to agree and subsequently act on the basis of “terms that others as equals might reasonably be expected to endorse” (Rawls 2005, 51). Here Rawls uses the term ‘reasonable’ in a recursive way: *reasonable* people are those who are ready to “propose fair terms of cooperation that others may *reasonably* be expected to accept” (Rawls 2005, 54). As we can see, the term ‘reasonable’ appears again within its own definition, in order to qualify the kind of expectation that we legitimately have on others. It may be interpreted in a purely probabilistic way: “terms that other people are *likely* to accept”. But in this case, the probability of others’ acceptance would be strictly contingent on the kind of people we deal with.

However, for Rawls, the acceptance of our proposed terms of cooperation by others is neither actual (it would be contingent and dependent on the people I am entering in society with), nor generally possible (it would be *possible* also a coerced acceptance). The sort of expectation that I may *reasonably* cultivate towards others is not merely coincident with the idea of “common sense”; rather it is normative. We can safely say that I couldn’t *reasonably* (meaning *commonsensically*) expect a racist to accept some perfectly fair terms of cooperation, but I could *reasonably* do so in the normative, Rawlsian sense. Then, the kind of fair terms of cooperation we propose look like terms that *induce* other people to accept them. In turn, these people can supposedly accept them because they do not put in danger their conceptions of the good.

Yet, if it were exactly so, Rawls would have written about terms that other people may *rationaly* be expected to accept. In this case we would have a kind of Hobbesian interpretation of reasonableness and reciprocity, quite close to the idea of *modus vivendi*: I am reasonable only insofar as I am ready to propose terms of cooperation such that other people, if rational, would be rightly expected to accept, because those terms do not put their rational plans of life at risk. This is not the case with Rawls, though. Since the terms of cooperation ought to be such that other people are *reasonably* expected to accept, they are expected to do so out of their own reasonableness, rather than because they are rational¹. Thus when I, as a citizen, am proposing certain terms of cooperation,

¹ Indeed, it might happen that the principles of justice chosen in the original position do not suit all conceptions of the good, and hence for some people to have a sense of justice is not rational, in the sense that it is not congruent with their life plans. The only thing Rawls says about such case is that, were most people like that, no well-ordered society would be possible. See Rawls 1971, 504-505.

I have to propose some terms that I think other people will accept, provided they are reasonable as well.

As a result, my being reasonable depends on others' being reasonable, because I can only propose terms of cooperation that others can accept, if I am dealing with likewise reasonable people. Hence, the idea of reciprocity represents a condition that works only with reasonable people, rather than the content of reasonableness itself¹. This condition qualifies always the capacity for a sense of justice that is expected from citizens and thus seems to be necessary for the willingness to propose and act on fair terms of cooperation to emerge². What does it mean to give reasons that others may *reasonably* be expected to accept, then? One possible interpretation is that the capacity to acknowledge the burdens of judgment, which represents the second part of reasonableness, ought to be used to replace the adverb. In this way, citizens would prove to be reasonable if they were able to propose terms that accord with the burdens of judgment and their consequences.

The so-called burdens of judgment are due to the difficulties we encounter while we are using our theoretical, moral and practical powers of reason and judgment. Therefore, as we experience conflicting evidences, disagreement about the weighting of relevant considerations, the vagueness of our concepts, the contingency and context-dependence of our values, complexities of overall assessments of all the relevant normative considerations, the impossibility of achieving all existing values in the same social institutions, we come to understand that our disagreement has deep, irremovable sources and that it does not depend on some of us being unreasonable (Rawls 2005, 56-57)³. Weren't we able to grasp those facts about the common use of reason under free

¹ Is reciprocity a condition or the content of the moral side of reasonableness? In the latter case I am ready to propose and act on principles of justice because other people do the same. But this can mean three different things:

The fact that others will act on principles of justice makes me (causally) want to act on principles of justice. Then I am a conformist, passive agent that does what others do. Moreover, why should others act on principles of justice? Because they know that I do, as I know that they do? Then we would have an infinite regress.

I want it because I know that the fact that I will act on principles of justice implies that also others will. But this is an unwarranted causal effect of what I do on others.

I want it because I know that the fact that a person like me does so implies that other persons like me will do so as well (ex. voting paradox). But still this does not explain why a person like me should *want* it.

² Basically, this is the idea behind the interpretation of Hobbes that Rawls himself provides: the laws of nature that rule human behavior are identified with the reasonable and are externally binding only as long as other people follow them too. For the same reason the publicity condition is so relevant in Rawls's argument, which I will discuss later. See Rawls 2005, 53-54.

³ The burdens of judgment are not the same as fallibilism or scepticism. While both these positions are metaphysical stances concerning human capacity to gain perfect knowledge about the world, natural or moral, or God, the burdens of judgment only regard our impossibility of reaching a "reasonable and workable political agreement in judgment on the truth of comprehensive doctrines" (Rawls 2005, 63). This evidently

social institutions, we couldn't accept the fact of reasonable pluralism and we would be ultimately *unwilling* to agree and act on fair terms of cooperation. There are two kinds of understanding of the relationship between this second capacity, which is generally thought to be epistemic, and what constitutes the moral side of reasonableness. One option is to conceive the moral part as resting on the epistemic one: it is because people acknowledge the burdens of judgment that they become morally reasonable, thus accepting and acting on the basis of fair terms of cooperation. In this case, one would argue that the burdens of judgment allow for the inference from the theoretical premise, that is the capacity to propose terms of cooperation that are fair to all, given the fact of reasonable pluralism, to the practical conclusion, that is the capacity and willingness to act on those fair terms¹. Since I acknowledge the burdens of judgment, I am disposed to *act* on those terms of cooperation I *reckon* to be fair, because I know that I cannot impose my comprehensive doctrine, in the sense that it would not be fair to do so, as people honestly and inculpably have diverse comprehensive doctrines.

In this interpretation, the burdens of judgment ground the moral side of reasonableness, as the burdens of judgment show us how it is impossible to have comprehensive doctrines "to serve as basis of lasting and reasoned political agreement" (Rawls 2005, 58). The line of the argument would be the following: (1) we experience reasonable disagreement, namely disagreement that it is not due to our wilfulness or bias, but to the ordinary free functioning of human reason; (2) we infer from it the *logical* impossibility of a comprehensive agreement among all free and equal citizens; (3) from this logical impossibility, we draw a practical impossibility, that we cannot ground the terms, which are going to regulate our social cooperation, on some comprehensive doctrine; therefore (4) we are willing to propose, accept and act on those fair terms of cooperation that issue from the original position, because they are political and not comprehensive. This would explain the reasonableness of proposing, accepting and acting on the principles of justice: the burdens of judgment (the acknowledgement of)

relates to the fact that 'justice as fairness' is a political and not a comprehensive conception; hence it leaves aside all metaphysical matters, in Rawls's intentions. See also Rawls 2005, 152-153: "By avoiding comprehensive doctrines we try to bypass religion and philosophy's profoundest controversies so as to have some hope of uncovering a basis of a stable overlapping consensus". For a criticism of the burdens of judgment see for instance Lecce 2003.

¹ See Rawls 2005, 58: "Our individual and associative points of view, intellectual affinities, and affective attachments, are too diverse, especially in a free society, to enable those doctrines to serve as the basis of lasting and reasoned political agreement. [...] Some conflicting *reasonable* judgments (especially important are those belonging under peoples' comprehensive doctrines) may be true, other false; conceivably all may be false. *These burdens of judgment are of first significance for a democratic idea of toleration*" (italic added).

*determine*¹ the political content of the kind of terms of cooperation we accept, namely the two principles of justice as we know them, instead of, say, a religious conception of justice and social cooperation.

The problem with this interpretation is that it does not provide us with a reason why people should have this willingness and be so disposed to reach and honour an agreement on fair terms of cooperation. In fact, it only shows how citizens should be willing to agree and act on those terms of social cooperation and not on *others*. The impossibility of a comprehensive agreement, given the fact of reasonable pluralism, entails that social cooperation cannot work on comprehensive terms without an unjustified and unconsidered use of force. To acknowledge the burdens of judgment helps democratic citizens seeing how terms of cooperation ought to be political and not comprehensive. Hence, the reason for which (3) rightly devises the practical impossibility of grounding social cooperation on comprehensive terms, whatever these are, is that democratic citizens are assumed to be willing to cooperate. It is not the case that the theoretical impossibility implies the practical one. On the contrary, it is because democratic citizens are already willing to cooperate, and not to subdue and oppress their fellow citizens, that the theoretical impossibility of grounding an agreement on comprehensive terms has a practical implication. The same assumption about willingness allows also the inference from (3) to (4): it is because citizens are willing to act on terms of cooperation that can be perceived to be fair by all their reasonable fellow citizens, that they refrain from imposing their comprehensive views. They agree on terms such as the ones proposed by 'justice as fairness', because those are terms that can be fair to all, because they do not depend on comprehensive doctrines.

If we look at the characterization of the unreasonable, we may get some clarification on this point. Unfortunately, Rawls never provides us with taxonomy of unreasonable citizens, so that we are left without a precise account of the ways people can behave unreasonably. However, in many cases, Rawls describes unreasonable people as persons that "plan to engage in cooperative schemes, but are unwilling to honor, or even to propose, [...] any general principles or standards for specifying fair terms of cooperation. [...] And ready to violate such terms" (Rawls 2005, 50). Moreover

¹ Or maybe better: constitute the external condition under which the mental experiment of the original position and the veil of ignorance brings about the two principles of justice, as we know them.

he observes that unreasonable doctrines are those which want “to use the sanctions of the state power to correct, or to punish, those who disagree with us” (Rawls 2005, 138)¹.

As such, unreasonable people have two faults. On one hand, they fail to acknowledge the burdens of judgment, since they do not understand that pluralism and disagreement are nobody’s fault. On the other, while they could perhaps be perfectly able to see how only the principles of justice can serve as fair terms of social cooperation and to agree on them, their flaw is the *unwillingness* to honor such terms and thus to act accordingly even if it is against their interests. The fact that I can reckon the principles of justice as right without being moved to act accordingly calls for another explanation of the relationship between the two sides of reasonableness.

Therefore, it seems that the willingness to cooperate with others on terms that can be agreed upon as fair by all, given the reciprocity condition, is the first and prior part of reasonableness. It is because we are already willing to cooperate as free and equal that we search for principles of cooperation that can be fair to all. The moral side of reasonableness ensures the willingness to propose, accept and act on fair terms of cooperation, while the epistemic side sheds lights over what sort of terms are actually fair. Naturally, those attitudes tend to converge and are mutually supportive: once democratic citizens accept the burdens of judgment, it is easier for them to be willing to agree on those principles of justice formulated by Rawls, because they know that it is impossible to find a comprehensive agreement on which to ground and fairly regulate their social cooperation. However, it is the willingness to cooperate on fair terms that does the main part of the job and needs in turn to be explained or justified.

Democratic citizens are supposed to be *moved* by the political conception of justice on which they agree: “the capacity for a sense of justice is the capacity to understand, to apply, and *to normally be moved by an effective desire to act from (and not merely in accordance with) the principles of justice as the fair terms of social cooperation*” (Rawls 2005, 302, italic added). They ought to act out of their respect and intimate acceptance of the principles of justice; otherwise, they would only be moved by prudential considerations, whose validity would depend on diverse, contingent circumstances². Consequently, they have not only to externally act, but also to internally desire to act from the principles of justice, “even at the cost of their own interests in particular

¹ I do not explore further the distinction between unreasonable people and unreasonable doctrines or the different ways in which citizens can be unreasonable. For these points, see Kelly and McPherson 2001 and Sala 2013. Against these accounts, see Quong 2004, reprinted in Quong 2011.

² See Rawls on *modus vivendi* as opposed to reasonable overlapping consensus, Rawls 2005, 146-147. On the development of *modus vivendi* see McCabe 2010.

situations” (Rawls 2005, xlii). Full compliance is the direct consequence of this account: since democratic citizens act from principles of justice even in absence of any coercive power, a well-ordered society cannot but display full compliance of its reasonable citizens. It is easy to see, then, how reasonableness is the real and effective ground of political obligation in Rawls’s *Political Liberalism*, in a more evident way than the sense of justice in *A Theory*. It is not by chance, in fact, that Rawls abandons any natural duty talk in his 1993 work¹, exactly when political obligation appears to be even more relevant to his argument, since he deals with the problem of stability. Rather than duty, he takes reasonableness as a fundamental feature of democratic citizenship, whose widening in a well-ordered society constitutes a necessary condition for its stability, as we will further see with the case of reasonable overlapping consensus.

Let us take a step back to the content of the moral part of reasonableness. I think Rawls puts together two distinct aspects of the reasonable: (1) the capacity to understand fair terms of cooperation; (2) the willingness to act on those fair terms (Rawls 2005, 302)². When Rawls is concerned with the sense of justice, he defines it as both a capacity and a disposition, without noticing a difference that is quite relevant, in my opinion. Actually, Rawls employs the term ‘reasonable’ to identify *more* a sort of attitude than a proper capacity: it marks the possession of a certain *disposition* towards others and towards social cooperation with them. Moreover, Rawls defines reasonableness also as a proper political virtue (Rawls 2005, 139, 147, 157, 163, 195-206): although he never clarifies what he exactly means by the term ‘virtue’, it seems plausible that Rawls conceives it as something *at everybody’s reach*, but that we need to cultivate³. However, the fact that I am *able* to do something does not entail that I am *willing* to do so. While the acknowledgment of the burdens of judgment justifies citizens for believing and affirming the priority of the right over the good, it does not clearly explain why citizens should be willing in the first place to agree on certain terms of cooperation and to act on them. It looks like there is a gap in the argument: from the

¹ He still mentions one duty, the one of civility, with a different meaning with respect to *A Theory*. I will deal with it further in the text.

² Actually, it is possible to distinguish a further element, which is the capacity to apply fair terms of cooperation, as distinct from the capacity to understand or act upon them. However, since any action based on fair terms requires the capacity to apply them correctly, I leave it aside.

³ While an attitude refers to something all human beings may be supposed to have, a virtue generally appears to be a “excellent trait of character”, whose possession is a matter of degree and which is not necessarily possessed by all (See Hursthouse and Pettigrove 2016). Hence, Rawlsian account of reasonableness as a political virtue looks at least ambiguous.

capacity to understand what fair terms of cooperation are, the *willingness* to propose such terms to others and then to honor them in the well-ordered society does not follow¹.

In a way, to assume such willingness on the part of citizens is in line with the social contract framework of Rawls's theory. If parties in the original position ought to agree upon fair terms of cooperation, it is perfectly natural for them to imagine a certain disposition to cooperate: were individuals completely unwilling so to act, no society whatsoever would be possible². That is why they assume strict compliance. This means that they "can rely on each other to understand and act in accordance with whatever principles are finally agreed to" (Rawls 1971, 125). In fact, as any social contract theory, also the original position works only if parties taking agreement can be sure that citizens whom they represent will honor the agreement they settle down³. So, willingness to cooperate, taken as *compliance*, corresponds to the traditional way of framing the question of social cooperation in social contract theories.

However, these theories generally employ the idea of contract to ground political obligation to the authority of the state, rather than to construct a conception of justice which is to regulate the whole basic structure of society. Therefore, they are theories that aims to *justify* such obligation, and hence compliance. If we take compliance with authority's directives as a way, perhaps the most important, to cooperate with fellow society's members, then any social contract view purports to give arguments for

¹ I leave aside here the more general problem concerning any social contract theory: the fact that I consent to the political authority and promise to obey does not entail that I will also do so. Or, it does so if I am trustworthy, which is exactly something individuals generally cannot count on with strangers – as their fellow free and equal individuals in the social contract are. This relates to the first-order instability problem Rawls mentions in *A Theory* and to the free rider problem generally. See Rawls 1971, 236-296. The traditional solution of this problem has always been connecting laws with sanctions ensuring compliance, since, as Hobbes nicely suggests, "Covenants, without the sword, are but words" (II.17.2). Rawls recognizes such a need ("The need for the enforcement of rules by the state will still exist when everyone is moved by the same sense of justice", Rawls 1971, 236), but his real answer to the free rider problem is offered by the sense of justice itself: "If a person wants with deliberative rationality to act from the standpoint of justice above all else, it is *rational* for him so to act" (Rawls 1971, 498, italic added).

² As it is well-known, the original position changes its meaning in *Political Liberalism*, for it is turned down to a simple "device of representation", which both the philosopher and democratic citizens may use in order to undertake the enterprise of "public reflection and self-clarification" concerning "what justice requires when society is conceived as a scheme of cooperation between free and equal citizens" (Rawls 2005, 26). Still, despite such a change, it helps understanding the way 'justice as fairness' works.

³ And in fact Rawls describes the parties in the original position as possessing both the "capacity to enter into an agreement with others" (Rawls 2005, 72) and "a capacity for justice *in a purely formal sense*" (Rawls 1971, 126, italic added). Since they are only rationally autonomous, and not reasonable, this last capacity does not assume any specific conception of justice, whose blueprint is the object and outcome of the original position procedure. However, in order for parties' agreement to be effective, it has to suppose that citizens, whom parties represent, will display a properly functioning sense of justice in accordance with the principles of justice parties devise. This is also required by the so-called the finality condition that constrains the concept of justice (see Rawls 1971, §23, 116-117).

compliance to individuals. In this case, cooperation as compliance is generally argued for by making reference to the quality of terms of cooperation¹.

It may be of help to draw a line between what we may call the 'why' question and the 'how' question of fair terms of cooperation. The former concerns the reasons we have to enter in a scheme of social cooperation with others, while the latter regards the quality of the cooperation itself, whether it is fair or not. Social contract theories generally put these questions together: the way we are going to cooperate under political authority, which is the answer to the 'how' question, constitutes a good reason to cooperate in the first place, hence answering to the 'why' question. However, what Rawls does is exactly to separate these two questions. He is explicitly interested in answering the 'how' question, by providing a good description of how his principles of justice would make society well-ordered. His aim is to argue for 'justice as fairness' as the best, or at least a reasonable account of social justice. This is why he perhaps assumes that individuals want to cooperate in order to offer good reasons for the way they should cooperate and set aside the 'why' question².

However, if the two questions are driven apart, the kind of terms chosen in the original position do not take part in justifying why individuals ought to cooperate and comply³. Furthermore, not only do Rawls's parties assume citizens to be willing to comply without giving reasons for them to, but they also take democratic citizens to be capable of a sense of justice. And whereas the sense of justice implies compliance, the opposite is not true. Compliance does not entail reasonableness, as we have seen: citizens can comply with the law, as the duty of justice asks of them, but this does not include their capacity to act on the principles of justice also as lawgivers. By assuming reasonableness, Rawls does not only suppose that citizens desire to live in a society and

¹ If we think of Jean-Jacques Rousseau, for instance, he conceives the terms of contract as corresponding reasons for individuals to leave the state of nature for the civil state. On the other hand, Thomas Hobbes's arguments for compliance concern more the awfulness of the state of nature, where individuals could not live but a short and brutish life. See Rousseau 2002 and Hobbes 1998.

² Parties in the original position do take the so-called 'strains of commitment' into account. But these concern the form that the agreement takes, more than its content and the normative quality of its terms. Strains of commitment prevent parties from making agreements whose duration is too small, that are not publicly known or that can be publicly violated, as they would not constitute sound and stable settlements. See Rawls 1971, § 29.

³ This may also relate to the fact that Rawls, since he interprets social justice as fair terms of cooperation, equalizes the two notions of justice and cooperation. In so doing, he lifts up the latter, because he refrains from considering forms of cooperation that are not just, yet are stable. In fact, a part of cooperation, he conceives only unwilling submission or resistance and both systems are unstable (Rawls 1971, 321, 337). However, it seems hardly true that unjust systems of cooperation have all been unstable throughout history. This has been the main criticism Rawls raised from the strain of thought of political realism (Galston 2010). On the other hand, other more idealistic philosophers attacked Rawls for lowering the concept of justice to the one of social cooperation and tying it to stability (Barry 1995, Cohen 2008).

are ready to some kind of compromise to achieve social cooperation and its benefits. The sense of justice, whose citizens are taken to be capable of, is a more demanding quality, since it asks citizens to act on the principles of justice when they are to comply with the law and when they are to vote the law, at least when constitutional essentials and matters of basic justice are at stake. In Rawls's account, then, the willingness to cooperate corresponds to the sense of justice as "a normally effective desire to apply and to act upon the principles of justice" (Rawls 1971, 442). Therefore, on one hand, Rawls's willingness to act on fair terms of cooperation is more demanding than the simple obligation to comply with political authority's directives, as we have already seen; on the other, this sense of justice is not properly accounted for, as parties in the original position reason starting from citizens' capacity and disposition to be reasonable.

This fact is even more evident if we think of the new account of parties' motivation that Rawls offers in *Political Liberalism*. Here, he specifies the distinction between the reasonable and the rational within the original position in a clearer way: "while the original position as a whole represents both moral powers", parties are assumed to be only rationally autonomous and all the "various restrictions to which the parties are subject" represent the reasonable (Rawls 2005, 305). Since they are under the veil of ignorance, they need to make use of a list of primary goods, as "all-purpose means" that allow individuals to pursue whatever conception of the good they may have. However, in *Political Liberalism* Rawls clarifies that parties do not only take citizens' possible determinate conception of the good into consideration, but also the good they would enjoy by developing and exercising their two moral powers (Rawls 2005, 187, 307). Therefore, parties devise conditions of social cooperation that are suitable for citizens that display both a capacity for a conception of the good and a capacity for a sense of justice. This is why Rawls's argument in favor of reasonableness begs the question: it is because citizens are assumed to be reasonable that parties decide on the two principles of justice, which in turn are conceived to be *good* for citizens who already possess a sense of justice. In such a way, Rawls also offers a circular answer to the 'why' question: the fact that terms of cooperation are fair is a good reason to comply for people who are reasonable and willing to act on fair terms of cooperation.

One could object that this is not really the case, since Rawls may take citizens to be only capable and not necessarily willing to act on the principles of justice. If reasonableness required also effective and actual willingness so to act, it would become more of an exclusive virtue, which only virtuous citizens display, rather than a capacity that qualifies the very nature of democratic citizens as free and equals. However, two

problems still arise: (1) a problem of inclusiveness; (2) a problem of justification. In the first case, if reasonableness requires that democratic citizens be only *capable* to act according to the principles of justice, it sounds like a very plausible assumption, especially considering the connection the capacity for a sense of justice enjoys with freedom and equality¹.

Indeed Rawls interprets reasonableness as specifying at least part of the content of these major political values of democratic public culture. It is because citizens possess a sense of justice to a minimum degree that they can exercise their freedom and take each other as equal and free. If the second Rawls abandons the Kantian interpretation of 'justice as fairness', because it is inconsistent with its political nature as a freestanding conception, still the political ideas of person and society entail a certain reading of democratic citizenship, whose core is given by the two moral powers that allow citizens to be fully cooperating members of society (Rawls 2005, 79). As it is known, fully autonomous persons "publicly acknowledge and act upon the fair terms of cooperation moved by the reasons specified by the shared principles of justice" (Rawls 2005, 306): they are thus both rational and reasonable. If we think of full autonomy, the difference between capacity and willingness determines two possible readings of the sense of justice.

The first possible reading is stronger: democratic citizens are reasonable in the sense of capable *and* willing to act on the public conception of justice. If this is the case, we can notice, first, that not all actual citizens are really so well disposed. But second, from the fact that citizens are free and equal their desire to act *as if* they were free and equal does not follow. I can be free and able to be free without any intention to exercise my freedom. And if at least part of the justification of 'justice as fairness' depends on its grounding on political ideas and values we all share, the value of freedom is not so shared, when and to the extent that it is interpreted as willingness to act as a fully autonomous moral person². The second reading is weaker: democratic citizens are assumed only to be capable of a sense of justice, without the willingness to be reasonable³. But this reading as well would not do, because citizens' capacity for a sense

¹ See Rawls 2005, 302: "The next step is to take the two moral powers as the necessary and sufficient condition for being counted a full and equal member of society in questions of political justice".

² Full autonomy is "realized by citizens when they act from the principles of justice that specify the fair terms of cooperation they would give to themselves when fairly represented as free and equal persons" (Rawls 2005, 77).

³ This would seem the preferable interpretation, if we look at this passage: "all citizens' sense of justice is equally sufficient relative to what is expected from them" (Rawls 2005, 80). However, since these are citizens in a well-ordered society, their sense of justice counts as both a capacity and a willingness to act on principles of justice.

of justice does not suffice to make 'justice as fairness' stable in the way Rawls wants it to be. One could object that Rawls is only concerned with illustrating the conditions of possibility for the existence of a well-ordered society, rather than with its actual feasibility. Yet, even these conditions ought to take into account that a well-ordered society would not be stable for the right reasons unless the majority of its citizens are both capable and *willing* to act reasonably. Otherwise, such society, although statically possible, would not be self-enforcing and able to endure across generations. Therefore, it seems that either reasonableness is both a capacity *and* an effective willingness, so that it counts as a very exclusive notion; or it is only a capacity, so that it is very plausible and inclusive, but it cannot account for citizens' effective desire to act on the principles of justice.

The second problem concerns the way reasonableness is accounted for. In fact, the question of inclusiveness comes into play only if we think that most people would not be motivated to act according to the publicly shared conception of justice. But, even though actual societies differ from the ideal well-ordered one, this is unwarranted. What if Rawls had been right in thinking that democratic citizens are both capable and willing to act on fair terms of cooperation in actual societies? In order to argue for the plausibility of reasonableness, Rawls ought to provide us with an account of its justification, its genesis and development, because the idea of the original position alone does not suffice, as we have seen. Here it is where the first and the second Rawls greatly differ.

A Theory provides the well-known congruence argument and a description of human moral psychology, with the Aristotelian principle, according to which, in a well-ordered society, members would normally develop a properly functioning sense of justice, because Rawls's conception of justice is perfectly compatible with people's conception of the good. In fact, when Rawls discusses the good of justice, he does not aim to justify "being a just man to an egoist" (Rawls 1971, 497). The way human moral psychology would develop under just institutions together with the idea of the well-ordered society as a social union of social unions already explain how citizens would spontaneously mature a well-functioning sense of justice. Rawls's aim is thus only to show how the sense of justice, members of society already have, is indeed congruent with their good and he does so by citing: (1) the ties of affection that individuals would develop in a well-ordered society; (2) the Aristotelian principle; and (3) the Kantian interpretation (Rawls 1971, 500-501). Nevertheless, this move is unavailable in *Political Liberalism*. For, as Rawls himself acknowledge, his 1971 work aims to ground a

comprehensive moral theory that does not take the fact of reasonable disagreement into account. To the extent that citizens cannot share the same comprehensive theory of the good, the argument from congruence has to be left aside¹. Rawls replaces it with the ideas of reasonable overlapping consensus and public reason, to which I now turn.

2.4 Reasonable Overlapping Consensus, Public Reason and Legitimacy

In *Political Liberalism*, Rawls famously presents his argument for ‘justice as fairness’ in two stages. While the first stage concerns the definition of fair terms of cooperation among free and equal citizens and the elaboration of the political conception of justice as freestanding, the second stage deals with problems of unity and stability. Rawls holds that these issues emerge only after a freestanding conception of justice that corresponds to the political ideas of society and person has been ascertained, so that stability does matter in parties’ deliberations, but does not enter in the definition of justice itself (Rawls 2005, 64-65, 134). The question of stability concerns the capacity of the political conception of justice to work as a *public basis for justification*: it has to provide a “publicly recognized point of view, from which all citizens can examine before one another whether their political and social institutions are just” and “a basis of a reasoned, informed, and willing political agreement” (Rawls 2005, 9). The circumstances are even harder than in 1971, as the fact of reasonable pluralism kicks in, because it entails that democratic citizens have different comprehensive doctrines. As we have seen, Rawls defines such doctrines as outcomes of the exercise of theoretical and practical reason covering all the major aspects of human life and normally belonging to a tradition of thought (Rawls 2005, 59). Since they may be conflicting, the function of the political conception of justice is even more fundamental: despite their disagreements, democratic citizens ought to be able to uphold a shared perspective that can be perceived by all to be objective. The kind of objectivity political liberalism works with calls for a specific account of political constructivism, but I cannot deal with it here (see for instance Nussbaum 2001). It will suffice to say that any political conception of justice fulfils its task insofar as it provides a public framework of thought, which supplies the necessary standards that specify what a valid judgment is, outline an order of reasons and define

¹ See his *Reply to Habermas*, note 21: “This conception depends, however, on everyone’s holding the same comprehensive doctrine and so it is no longer viable as a political ideal once we recognize the fact of reasonable pluralism, which characterizes the public culture of the political society required by the two principles of justice” (Rawls 2005, 388).

an objective point of view, which can be distinguished from the agent's personal one (Rawls 2005, 110-112).

The reason why the conception of justice is called to this task hinges on the particular political relationship that pertains to democratic citizens under a constitutional regime. This is characterized by two main features: first, it takes place within the basic structure, where citizens are born and are to lead a complete life; second, it demands that citizens exercise political coercive power as a collective body of free and equals (Rawls 2005, 136, 216, 445). These properties are rooted in the two political ideas of society and person, for it is easy to see that if citizens are to see themselves and each other as free and equal, they also ought to exercise political power as such¹. Here we see how Rawls takes democratic citizenship to include two roles: on one hand citizens are subject who ought to comply with policies that are based on the public conception of justice; on the other, they are legislators who are required to issue policies that be in accord with such a conception.

This is more evident if we think of the liberal principle of legitimacy Rawls lays out: "our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational" (Rawls 2005, 217). Such account of legitimacy demands that political power, which is always coercive, be exercised according to principles of justice all citizens can share. The conception of justice hence works as a common ground for citizens, because it constitutes a store of reasons citizens can give to each other in order to justify laws and policies. Rawls understands the political process along the lines of deliberative democracy (Rawls 2005, 448), as citizens are imagined to reason together proceeding from "what is, or can be, held in common" (Rawls 2005, 100), that is the

¹ However, Rawls does not cover the justification of the existence of political power. It seems intuitive in his account that, since individuals cooperate in social schemes and since sanction is necessary for cooperation, despite the sense of justice, as we have seen in *A Theory*, social cooperation requires an entity able to sanction those individuals who do not do their fair share. Nonetheless, this does not require democracy: as long as a political authority ensures cooperation of all according to the two principles of justice, the political idea of society as a social scheme of cooperation would be satisfied. This would not be the case with the idea of person, though: if people are to see themselves as free and equal, they presumably ought to exercise political power in such a way. Here as well, though, we can raise questions. For, if freedom and equality entail the sense of justice and this calls for the respect of 'justice as fairness', as long as power would be exercised, no matter by whom, but according to the principles of justice, citizens would find it *reasonably acceptable*. If such speculation is sound, then, the only element that calls for democracy is the fact of reasonable pluralism and its related burdens of judgment: it is because even the political conception of justice is not one and only, but there are many reasonable conceptions of justice, and many interpretations of them, that democracy is asked for. One objection could be that rational and reasonable citizens would find no political system reasonably acceptable apart from democracy. But Rawls gives no reasons for that.

political conception of justice, which in turn elaborates on shared ideas of society and person implicit in the public political culture. This understanding of legitimacy relates to the well-known and widely debated idea of public reason, which Rawls takes to specify “at the deepest level the basic moral and political values that are to determine a constitutional democratic government’s relation to its citizens and their relation to one another” (Rawls 2005, 441-442). I am not interested in providing extensive arguments for the most correct or loyal interpretation of public reason, nor I will try to defend it or attack it here as a ground for political legitimacy. While I will come back to it in the next chapter, here I am concerned only with its functioning within Rawls’s theory.

The requirement of public reason involves a double dimension, because it regards horizontal relations of citizens to each other and the vertical relation between citizens and their government. This means that those citizens who hold public offices as representatives or judges ought to respect public reason and its principle of legitimacy, as well as citizens when they vote on fundamental political issues and want to give each other reasons they all can understand and accept (Rawls 2005, 218-220). Rawls takes the criterion of reciprocity to ground the idea of public reason and liberal legitimacy, as these ideas demand that citizens do not offer reasons they do not think others would reasonably accept¹.

To be more precise, Rawls assigns two limits to public reason: on one hand, it applies mainly to government officials, rather than ordinary citizens (Rawls 2005, 216); on the other hand, it concerns only questions of constitutional essentials and basic justice (Rawls 2005, 214-215). The former restraint depends on the distinction Rawls draws between background culture, which is the domain of non-public associations as universities and churches, and public political culture, where public officials and candidates act². The latter restraint recommends constitutional essentials as the specific topic of application for public reason, as also the principle of legitimacy does not require that all laws and policies be acceptable to all, but only constitutional essentials according to which laws and policies are determined³. Also the appropriate scope of this restriction,

¹ See Rawls 2005, 447: “Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions – *were we to state them as government officials* – are sufficient and we also reasonably think that other citizens might also reasonably accept those reasons” (italic added).

² In *The Idea of Public Reason Revisited*, Rawls introduces a third domain, which is the nonpublic political culture that corresponds to media in general and where open and full discussion is allowed. See Rawls 2005, 443.

³ Here there may be room for a procedural interpretation of Rawls’s theory. If only the constitution ought to be acceptable to all, rather than any single policy, then for sure the requirement of public reason seems more plausible and less demanding. For a pure proceduralist interpretation of Rawls’s requirement of public reason see Peter 2008. I will contest this interpretation further in this section.

as (ironically enough) anything else concerning public reason, has generated controversies and disagreement¹. For the time being, let us notice that Rawls apparently takes the constitutional level to be only the most evident case where public reason ought to be respected, without holding that it must be so only there².

However, if the idea of public reason is so limited, this is not the case for the *ideal* of it. In fact, Rawls states that the ideal of public reason is realized when everyone, including citizens who are to think of themselves “as if they were legislators”, follow the idea of public reason and explain to other citizens their reasons for supporting determinate laws and statutes *only* in terms of what they think the most reasonable political conception of justice to be (Rawls 2005, 444). When this is the case, everyone is taken to fulfil his duty of civility, Rawls claims. It is interesting how duty talk comes back into play here. While, as we have seen, Rawls abandons the idea of a duty of justice in *Political Liberalism*, he still retains this duty of civility, even though formulated differently. Rather than as requiring us not to take advantage of society’s flaws, Rawls seems to interpret the duty of civility as the specific content of public reason. Such duty demands that we follow public reason and be ready to justify our political actions and positions with reasons that pertain to the political conception of justice. The reappearance of a duty sheds lights on how this part of Rawls’s discourse relates to political obligation. In fact, here Rawls provides an account of political obligation that boils down to the requirement of being reasonable. Not only does the sense of justice qualify as a moral power free and equal citizens are assumed to possess, but it also constitutes a moral requirement they ought to discharge in their political life. If they fail to do so and violate public reason, the outcome is that no law is legitimate, because none is accounted for with reasons all citizens may reasonably be expected to accept³.

¹ There are many lines along which Rawls’s idea of public reason has received conflicting interpretations and created divides among both supporters and critics. For a demanding conception of public reason see Quong 2011; for criticism from within the domain of public justification see Vallier 2011, for a general criticism of the public justification approach see Wall 2002. See also Brower 1994, D’Agostino 1996, Boettcher 2012, Wenar 1995.

² See Rawls 2005, 215: “My aim is to consider first the strongest case where the political questions concern the most fundamental matters. [...] Should they [limits] hold there, we can then proceed to other cases. Still, I grant that it is usually highly desirable to settle political questions by invoking the values of public reason”. Against the limitation in scope of public reason see Quong 2011; while in favour see Gaus 2011.

³ Rawls draws a line between true or correct outcomes, which cannot be seen as such by all citizens, given the fact of reasonable pluralism, and reasonable or legitimate outcomes, which are based on the public conception of justice (Rawls 2005, 481-482). However, the mere being issued from a justified procedure is not sufficient for legitimacy, if we endorse a substantive interpretation of public reason. In fact, in his *The Idea of Public Reason Revisited* Rawls states that despite citizens’ disagreement over particular issues and even over what is the most reasonable conception of justice, still they can see how democratic outcomes are legitimate “provided that all government officials, supported by other reasonable citizens of a reasonably just regime, sincerely vote in accordance with the idea of public reason”. Although particular statutes can be

Nevertheless, if democratic citizens ought to display a sense of justice as both a capacity and a disposition, it is still unclear what arguments Rawls has for grounding it.

The idea of overlapping consensus may appear to play a role. If the conception of justice aims at providing a public basis for justification, despite the fact of reasonable pluralism, the unity and stability of a well-ordered society can be affirmed only if there is a consensus on the political conception of justice and if “politically active citizens” have comprehensive doctrines that make up such consensus (Rawls 2005, 134). When perfectly realized, overlapping consensus describes a situation where each comprehensive doctrine supports the political conception “for its own sake and on its own merits” (Rawls 2005, 148) and is characterized by two features. First, it is broad in scope, because it concerns all the social and political institutions that compose the basic structure; second, it is deep, as it does not cover only principles regulating the political process, but it touches on the very fundamental political values and ideas of society and person, with their corresponding conception of justice¹. As a result, the political conception of justice becomes the focus of comprehensive doctrines’ convergence and in this way stability is ensured. Rawls is very attentive to the kind of stability is generated, though. In fact, only stability for the right reasons, which means on moral grounds, qualifies overlapping consensus, that hence is different from a “mere modus vivendi”, where individuals accept the conception of justice only contingently and to the extent that this is not against their interests. Although Rawls acknowledges that the presence of too profoundly conflicting interests may prevent overlapping consensus from being achieved (Rawls 2005, 168), he considers actual circumstances of reasonable disagreement amenable to the right kind of consensus². But since sharing political ideas that are implicit in the public political culture is conditional for overlapping consensus to obtain, ‘justice as fairness’, Rawls claims, ought to be “expressly designed to gain the reasoned support of citizens” and is not fully reasonable unless it can do so (Rawls 2005, 143).

accounted for by citizens with reference to non-public reasons, the fact that a certain law is effectively backed up by public reasons seems necessary for it to be legitimate. This would explain also Rawls’s proviso that non-public reasons can be given insofar as they can be replaced by public reasons in due course (Rawls 2005, 462-463).

¹ This is why Rawls distinguishes the overlapping consensus from what he calls constitutional consensus, which is neither broad, nor deep. To call for overlapping consensus rather than merely constitutional shows how the liberal principle of legitimacy is really satisfied only when the consensus covers more than democratic procedures. Rawls also supplies an account of how constitutional consensus can develop in an overlapping one. See Rawls 2005, 163-168.

² See *The Idea of Public Reason Revisited*: “For once we accept reasonable principles of justice and recognize them to be reasonable and know, or reasonably believe, that our political and social institutions satisfy them, the second kind of conflict need not arise, or arise so forcefully” (Rawls 2005, 487).

In *Reply to Habermas* Rawls comes back to overlapping consensus and outlines a connection with three different levels of justification of political liberalism. While the first concerns the way the political conception of justice is justified through reference to ideas implicit in the public culture (Rawls calls it *pro tanto* justification), the other two relates the public conception of justice to comprehensive doctrines. Full justification intervenes when citizens are able to accept the public conception from within their own standpoint, hence making it compatible with the comprehensive views they held. Public justification instead defines a political society where all citizens are able to reasonably endorse the common conception of justice and thus embodies the realization of full justification to its maximum extent. What is interesting in Rawls's discussion is that overlapping consensus, although necessary for the public justification of the conception of justice to occur, cannot be argued for from the standpoint of political liberalism itself. In fact, any political conception of justice is bound to depend only on political principles that are shared by citizens, without offering any comprehensive perspective from which the overall balance between political and other values of human life can be drawn. Therefore it is up to citizens to correctly weight political values so that they are more relevant than others. Rawls states:

Thus it is left to each citizen, individually or in association with others, to say how the claims of political justice are to be ordered, or weighted, against non-political values. The political conception gives no guidance in such questions, since it does not say how non-political values are to be counted. This guidance belongs to citizens' comprehensive doctrines. (Rawls 2005, 386-387)

Political liberalism gives up the task of arguing in defense of the political conception of justice and is contented with the reasonable faith that democratic citizens will perform it spontaneously¹. As a matter of fact, since they are required to be reasonable, they hold comprehensive doctrines that do endorse the political conception of justice and hence develop their views of the good within the boundaries set up by the conception of justice itself (Rawls 2005, 483)². I cannot dwell on the debate concerning the justification of 'justice as fairness', nor can I fully discuss whether it is circular or not³.

¹ See also Rawls 2001, where he describes among the four features of political philosophy the reasonably utopian one. See also Pasquali 2013.

² See also Rawls 2005, 175, 450, where he outlines three features that all conception of justice ought to satisfy in order to be reasonable. Once they recognize a list of rights, freedoms and opportunities, assign the correct priority to these rights and ensure that citizens possess the adequate all-purpose means necessary to use these rights, they count as reasonable. Hence, any comprehensive doctrine compatible with a similar conception of justice is reasonable in turn.

³ It may seem that Rawls's political liberalism is question begging. One kind of circular argument is the one concerning parties' motivation in the original position. If they are thought to be merely rational, it is at least weird that they do care for both citizens' higher moral powers, hence for their capacity for a sense of justice. This argument is sound only if citizens already have a sense of justice whose compatibility with

The same goes for the distinction Rawls draws but hardly argues for between what counts as political and what is comprehensive¹. In fact, overlapping consensus occurs only when the conception of justice is the focus of a convergence of reasonable doctrines, but political liberalism does not explain how this may be the case². The only thing we know for sure is that in the well-ordered society, such kind of consensus obtains, because citizens are reasonable, as well as their comprehensive views³.

However, overlapping consensus is a result of a widespread and effective sense of justice, rather than its cause. Indeed, Rawls thinks that the problem of stability involves two questions: first, whether people would acquire a “normally sufficient sense of justice” so that they can comply; second, whether the conception of justice can be the focus of a reasonable overlapping consensus, given the general circumstances under which a democratic public political culture may appear (Rawls 2005, 141). Thus, the possibility of overlapping consensus is just one answer to the problem of stability and critically hinges on the chances we have to respond to the first question about reasonableness⁴. As the congruence argument in *A Theory* comes in only when democratic citizens of well-ordered societies have already developed a sense of justice, overlapping consensus as well requires that citizens already possess the necessary political virtues, which make stability possible. So, the only justification for the sense of justice, if we take it as a requirement for democratic citizens, is that it would spontaneously spring up in a well-ordered society, according to the characterization of human psychology that Rawls offers in *A Theory*.

The role society plays in human life and the effect it has on individuals' chances and opportunities, characters and personalities is a topic where Rawls mostly diverges from the social contract tradition. If there the starting point of reflection were free and equal human beings abstracted from any social life, Rawls's democratic citizens are

their determinate conception of the good needs to be shown. This in turn entails that citizens' having a sense of justice is beyond doubt and works as a premise for Rawls's theory. However, this calls for a second form of circularity, which concerns the justification of political liberalism itself. In fact, since political liberalism purports to be grounded on political ideas that are shared among democratic citizens, rather than on metaphysical accounts of human nature (Rawls 2005, 482), the idea of the person as rational and reasonable can work as a premise for Rawls's argument only if it is in fact shared, for no other kind of justification would work without having the political ideas of society and person as a common ground. See also Besussi 1996.

¹ Rawls answers to a possible objection that the political conception of justice itself is comprehensive. Whether he does so convincingly is a different question. See Rawls 2005, 154-158.

² Rawls talks of 'reasonable hope' and presents a possible development of overlapping consensus from constitutional one, and first emergence of this last from a first condition of 'reluctant acquiescence'; but this cannot count as a proper justification. See Rawls 2005, 158-168.

³ On the distinction between reasonable doctrines and reasonable persons see...

⁴ See Rawls 2005, 142: "Given certain assumptions specifying a reasonable human psychology and the normal conditions of human life, *those who grow up under just basic institutions acquire a sense of justice and a reasoned allegiance to those institutions sufficient to render them stable*" (italic added).

persons who are bred and born in the well-ordered society¹. The role of background justice, which the basic structure of society has the task to preserve, cannot possibly be exaggerated. Rawls indeed asserts:

Now everyone recognizes that the institutional form of society affects its members and determines in large part the kind of persons they want to be as well as the kind of persons they are. The social structure also limits people's ambitions and hopes in different ways; for they will with reason view themselves in part according to their position in it and take account of the means and opportunities they can realistically expect. [...] More generally, the basic structure shapes the way the social system produces and reproduces over time a certain form of culture shared by persons with certain conceptions of their good. [...] Among the elements affecting the realization of natural capacities are social attitudes of encouragement and support and the institutions concerned with their training and use. Thus even a potential ability at any given time is not something unaffected by existing social forms and particular contingencies over the course of life up to that moment. (Rawls 2005, 269)

Given how heavily society affects individuals, the possibility of a well-ordered society hinges on the realization of background justice conditions, which in turn depends on how the basic structure is regulated. This is how citizens of a well-ordered society first develop and then can exercise their sense of justice and why they feel the willingness to propose and accept fair terms of cooperation, to acknowledge the burdens of judgment, to avoid the whole truth as they see it in public, to give reasons others can be expected to endorse, to tolerate different comprehensive views and meet halfway with their fellow citizens, who, they know, are reasonable as well (Rawls 2005, 163)². As a matter of fact, this is the most guaranteed, if not the only, way the majority of them have to acquire the necessary sense of justice that makes political and social institutions under which they live stable. Since for this to be the case the whole basic structure of society ought to be well-ordered, overlapping consensus is deep and broad, for it demands that citizens' agreement on the conception of justice covers the whole basic structure and is not limited to political democratic procedures³.

Given these considerations, the special status Rawls assigns to constitutional essentials with respect to principles governing social and economic inequalities in public reason seems even more difficult to understand⁴. Apparently, constitutional essentials

¹ See also Rawls's reply to Hegel's criticism, where he explicitly addresses the importance of background justice and the role of society in citizens', although not parties', education and development, Rawls 2005, VII.4.

² Such fundamental importance of society also explains the strict, and nowadays almost implausible, condition Rawls puts on the idea of democratic citizenship, that citizens be born and lead a complete life within one particular society (Rawls 2005, 136, 216, 445). However, this cannot be a fair criticism to Rawls, as long as global migration is conceived to be a matter of non-ideal theory, while leading a complete life within the same society characterizes only the well-ordered society.

³ Also the importance of children's being educated to political values derives from the general role society plays in every individual's life. See Rawls 2005, 199.

⁴ If Rawls actually claims that a certain institutional division of labour between the basic structure and "rules applying directly to individuals and associations and to be followed by them in particular

specifying the way political power is acquired and the limits of its exercise are more urgent, easier to ascertain and to find agreement upon¹. Nevertheless, although Rawls may think that this is already “of enormous importance”, he seems to lose track of the consequences of such limitation. For if firm agreement on constitutional essentials is sufficient so that “willing political and social cooperation between free and equal citizens can normally be *maintained*” (italic added), it is not enough for it to be brought about. In fact, the main argument Rawls has to account for citizens’ effective sense of justice is their being bred and born in a well-ordered society.

Yet, the basic structure cannot ensure conditions of background justice unless it is informed by *both* principles of justice, because a fair political procedure and a fair way to exercise the political power can guarantee only a formal kind of equality and are compatible with people’s lacking the necessary all-purpose means to make effective use of their freedoms. This is why I think that a restricted interpretation of public reason would be incompatible with the establishment of a well-ordered society and, by preventing that, it would end up hindering the emergence of an adequate sense of justice on citizens’ part².

In the end, Rawls remains trapped by the very same circularity that entangled Rousseau: we cannot have good citizens or reasonable ones unless we have just institutions, but we cannot have just institutions unless good citizens build them³. If we reason from the point of view of the well-ordered society, as parties do, it may seem a self-enforcing and virtuous mechanism, because it ensures (or at least attempts to ensure) that, once just institutions are in place, people will be able and willing to keep them that way. However, from the perspective of a less ordered society such account leaves us with many questions and unclear plans of actions. It would seem that being reasonable would help making society’s basic structure just or at least nearly just, so that the self-enforcing mechanism would ought to start from persons’ change in motivation.

transactions” is necessary, this concerns individuals’ non-public sphere of actions and not what they should do as democratic citizens when voting and addressing political questions.

¹ Rawls offers similar argument for limiting the justification of civil disobedience to the first principle and the first part of the second one. See Rawls 1971, 327.

² See *The Idea of Public Reason Revisited*: “Without citizens’ allegiance to public reason and their honouring the duty of civility, divisions and hostilities between doctrines are bound in time to assert themselves, should they not already exist” (Rawls 2005, 485).

³ See Rousseau 2002, 182: “In order that a newly formed nation might approve sound maxims of politics and observe the fundamental rules of state-policy, it would be necessary that the effect should become the cause; that the social spirit, which should be the product of the institution, should preside over the institution itself, and that men should be, prior to the laws, what they ought to become by means of them”. Rousseau’s solution is to call for a legislator who gives the right constitution to individuals, thus making them proper citizens enlightened by the General Will.

In this case, we look at reasonableness as a moral requirement, hence a form of political obligation, whose justification depends on its necessity for achieving just and stable political institutions. As the argument would go then, democratic citizens are asked to be reasonable because it is necessary for justice, in the very same way the duty of justice demands to comply with and uphold just institutions. This is the track chosen by Thomas Christiano and I will tackle it in the next section.

Nevertheless, it does not seem the proper reading of Rawls's endeavour, since it loses track of the sense of justice being conditional on reciprocity. Such condition of reciprocity has two consequences. On one hand, it restrains the requirement of reasonableness pending on each individual to cases where other citizens are reasonable, so that each citizen is expected to be reasonable only provided that others are as well. To be sure, this condition is easy to be satisfied in the well-ordered society, but it is hardly so in actual democracies. Thus, unless one gets rid of it, it neutralizes the political obligation generated by the sense of justice. One possible objection is that, while in ideal theory such condition makes reasonableness more plausible and hence political liberalism self-enforcing, in non-ideal theory the reciprocity condition falls. If this were the case, though, Rawls (or any other Rawlsian with more interest for non-ideal theory) would have to show that being reasonable while others are not is not only conducive to and necessary for establishing just institutions, but also fair to the people who make the effort of exercising their sense of justice in the right way, while others take advantage of them.

On the other hand, the reciprocity condition does not work alone, but is always connected to the sense of justice. When Rawls grounds the liberal principle of legitimacy on reciprocity, he states that the exercise of power is legitimate only insofar as it is justifiable according to principles that all can reasonably endorse. Here again the adverb 'reasonably' ought to make us think, because it is not the case that whatever principle actually accepted by citizens is fine. As a matter of fact, if actual citizens were all libertarians, they would agree on principles that would be quite different from Rawls's and his parties' in the original position; and if mutual agreement were enough, their conception of justice would be reasonable and stable, since it would work as public basis of justification. This is not the case, though; for the content of 'justice as fairness' is not affected by the problem of stability (Rawls 2005, 64-65, 134)¹.

¹ If the justification of 'justice as fairness' requires that certain political ideas be shared in political society and stops there, it would seem that in a society of libertarians, their conception of justice would appear as justified, because the main political principles implicit in their public culture would accord to that

Hence, the political conception of justice can be *pro tanto* justified in virtue of ideas implicit in the public political culture, but these ideas in turn ought to be shared by *reasonable* citizens. As Simmons rightly argues, Rawls here collapses the concept of legitimacy on justification¹. Indeed, the use of political power is legitimate insofar as it is justified. Nevertheless, it is not objective justification that Rawls has in mind, but justification to reasonable people. So long as people are reasonable, they endorse ‘justice as fairness’ or whatever reasonable political conception of justice there might be and take it to be publicly justified, so that it can in turn be the premise for all the reasons they give to each other for settling political affairs. Therefore, if it is true that legitimacy fades into justification, the reverse is also true. Justification loses its character of being open to all and is directed only to people shaped in a certain way in order to be effective, hence convincing. The result appears an unbreakable circularity: the conception of justice is justified because it is acceptable to reasonable persons and these persons would accept only a conception of justice tailored in a certain way (that is, amenable to social cooperation on fair terms, as defined in the original position)².

To conclude, Rawls leaves aside a proper theory of political obligation and attempts to set the conditions under which, given perfectly just institutions, citizens would spontaneously comply and generally be guided by a shared conception of justice. So they would act out of the reasonableness they would develop in a well-ordered society. Rawls claims that the aim of ideal theory is not to guide us through existing injustices, but to mark the right direction where to go and to offer the right standards on which assessing actual institutions. Therefore, a theory of how to respond to actual and specific political authority, why and to what extent to support it, might fall outside his range of interest. Nonetheless, even well-ordered society’s democratic citizens would not find in Rawls’s theory a satisfying answer concerning their *duty* to be reasonable and why they should *want* to be so. And in turn, their being reasonable in the stronger sense of willingness to act on the principles of justice and to cooperate as free and equal is

conception, rather than to ‘justice as fairness’. Rawls would probably object that such society would not be stable because citizens would not be able to develop and exercise the according sense of justice.

¹ See Simmons 1999, 759: “Justification is now justification to a particular set of persons, not justification “simpliciter,” so that “justifying” is now more like “legitimizing” the state with respect to those persons (i.e., more like explaining how a state could have rights over some individual). And legitimacy is now grounded not in what those persons actually accept or do (by consenting or by taking benefits, say), but in what it is reasonable to expect them to accept — that is, in their hypothetical endorsement. So ‘legitimizing’ is now more like ‘justifying’”.

² This does not mean that reasonable people are those who would accept only justice as fairness, for in this case Rawls’s account would really be question-begging. Yet, reasonable people are those who accept only a political conception of justice amenable to fair cooperation and this rules non liberal conceptions of justice out. See Wall 2014.

conditional for the right stability of the well-ordered society over time. Rawls would object that if society is really well-ordered, its citizens already feel this urge. Yet, since the stability of the well-ordered society is both an intrinsic and instrumental good for them, it would seem that something more than the mere possibility of developing reasonableness is required. To be sure, this is especially true if we abandon Rawls's ideal-theoretic perspective and we ask what political obligation democratic citizens of actual societies have with respect to their democratic institutions. We need to search further.

THIRD CHAPTER

1. Introduction

Thomas Christiano's justification of democracy is one of the most prominent and challenging moral defenses of democracy that have recently been provided. In his 2006 book, *The Constitution of Equality*, he aims at defending both democracy and liberal rights on the same egalitarian ground. The main idea is that democracy is the only intrinsically justified way of taking collectively binding decisions respecting the principle of equal advancement of the interest of all within a context of disagreement. From such a justification of democratic authority, Christiano infers a moral duty all democratic citizens have to uphold democratic institutions and comply with them. The fact that democratic governments are minimally just entails that they have a right to rule over those subject to these authorities. Their being legitimate authorities in turn implies that those subject to them have a duty to obey. Political legitimacy and political obligation are entangled in the concept of political authority, for the formulation of which Christiano manifestly builds on Raz¹.

Christiano's account is particularly compelling for two main reasons. First, he is one of the few who explicitly connects democratic legitimacy with political obligation and argues that the fact of being under democratic authority constitutes a good ground for obeying to its directives. By doing this, he explicitly takes arms against Simmons's thorough demolition of all possible grounds of political obligation, as well as against Simmons's distinction between legitimacy and justification (Simmons 1979, 1999). Second, Christiano openly employs a natural duty-based account of political obligation, and thus connects citizens' duty to obey to justice: citizens have a duty towards their social and political institutions as human beings and insofar as these institutions are enough just. The idea behind this account of political obligation is the same of first Rawls's: that we are born with a duty of justice to uphold just institutions, no matter what our preferences, interests, social status and position are. Nevertheless, with a Rousseauian twist, Christiano explicitly links this duty to democratic institutions, so that

¹ What associates Christiano with Raz is the idea that a legitimate political authority is one which is able to give content-independent and at least weighty reasons to act in a certain way, so that legitimacy represents more than mere justified coercion. Yet, they of course have very different accounts of its justification.

the specific way democracy works plays a fundamental role in grounding citizens' duty to obey.

Christiano's argument has two parts, then. On one hand, the justification of democracy accounts for its right to rule, thus for our duty to obey to democratic directives, as they are legitimate. On the other, such duty depends on a deeper and prior duty of justice we all as human beings have. Such latter duty is 'activated' once we find ourselves under just institutions and hence triggers our political obligation with respect to democratic governments. The section devoted to Christiano is thus organized as follows. I firstly introduce his justification of democratic authority and its grounding on the principle of equality. Then, I analyse more in depth the idea of a natural duty of justice and the way it should work in order to account for political obligation. Finally, I lay out my criticism, which touches on both halves of Christiano's argument: I contend that his justification of democracy does not achieve its legitimacy and that his duty of justice cannot account for what Christiano gestures at.

2. Democracy, Equality and Justice

The point from which Christiano's justification of democracy makes a start is an explicitly egalitarian account of justice. He provides a conception of the person based on dignity that grounds both the principle of well-being and what he calls the principle of public equality, which is a specification of the two basic ideas of justice. Since I am not interested in discussing metaethical and moral assumptions¹, for the sake of the argument I will accept Christiano's account of what the principles of justice are and how they are grounded. He lays the first stone with the idea that human beings are "authorities in the realm of value" (Christiano, *The Constitution of Equality* 2008, 15) and hence gifted with a special moral standing, the recognition of which demands that they be treated in a certain way and is violated when they are used as mere means or sacrificed for other intrinsic goods. This way is defined by two traditional ideas of justice, which are the principle of propriety and the so-called generic principle of justice. While the former prescribes that everyone ought to be given her due², the latter requires that

¹ Here I leave aside all issues that pertains to the moral part of Christiano's argument, which may be of help in understanding how the principle of equality works and relates to other moral principles, as desert or productivity, but is not fundamental in analysing the connection between liberal democracy and justice.

² See Christiano 2008, 16: "The only way to acknowledge the special status of human beings as authorities in the realm of value is to make sure that what happens to them and what we do to them be responsive to their special worth when we deal with them. In other words, it is the status in virtue of which

“relevantly like cases be treated alike and unlike cases unlike” (Christiano, *The Constitution of Equality* 2008, 20). As Christiano’s compelling thesis regards the inference *from equality to democracy*, rather than any tentative philosophical grounding of equality, let us also accept the idea that people have an *equal* moral status as “a well-established premise” (Christiano, *The Constitution of Equality* 2008, 18). Since human beings possess the same moral standing, given their dignity, these principles together spell out the main requirement of justice: that people are owed that well-being be distributed equally¹. Christiano’s idea of social justice derives from this primary principle of the equal advancement of the interests of all, which is more assumed than thoroughly argued for in the book. Like Rawls², Christiano defines social justice as concerning the distribution of rights and duties, benefits and burdens of social cooperation, and pertaining to all those institutions, rules and interactions that matter when people attempt to “establish justice” among themselves. Yet, such principle of equality may define a first understanding of social justice and provide a range of laws and policies the realization of which is consistent with it, but does not explain why liberal democracy ought to have special value among all possible collective decision-making procedures. In order to see this, we need to take the so-called principle of weak publicity into consideration.

First of all, Christiano wants us to understand the specific circumstances that characterize social life and that have a great impact on how we think of justice and its role. He calls them ‘facts of judgment’ and they serve, as the most renowned ‘burdens’, to identify a set of factual conditions that call for recognition and acceptance by human beings, despite their cognitive limitations, and that constitute the factual starting point for political philosophers³. First, there is the fact of diversity, which means that we grow

we must make sure that we give each his or her due. And what is due to this kind of being is that it be enabled to exercise its enormously valuable authority, or so I shall argue”.

¹ See Christiano 2008, 20: “the fundamental characteristic of human beings in virtue of which justice is owed them is their dignity”; and 25: “the conception of the equal dignity of persons grounds the fundamental value of well-being and the generic principle of justice (which includes the principle of propriety)”; “The generic principle of justice coupled with the equal status of persons and the no relevant difference thesis and the principle of well-being give us all the necessary premises for defending this principle. They are the grounds of equality”.

² See Rawls 1971, 4: “A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of *assigning rights and duties* in the basic institutions of society and *they define the appropriate distribution of the benefits and burdens of social cooperation*” (italic added).

³ An important similarity concerns the kind of pluralism Christiano’s ‘facts of judgment’ entail. Christiano’s pluralism, much like Rawls’s, is weak or epistemological. Despite his idea of cognitive bias and the impossibility of accessing to so-called God’s perspective, Christiano does think that there is one correct take on justice and equality, but simply that we are epistemically situated in a such a way that we cannot see

up and live in different surroundings, lead different lives, have different aspirations and understand well-being in different ways. Diversity can be seen to contribute to disagreement, but it is not equivalent to it: possibly, we could be all different and all agree on what constitutes, for each of us, a good life. Nonetheless, the less homogeneous society is, the more varied the ideals of life, the more difficult will be to agree on which ones contribute to one's well-being¹, deserve to be realized and are compatible with each other. This is especially the case if we think of the second fact: universal fallibility. Men go astray and make mistakes. Although we can be in the best of faith and conscience, still we happen to be wrong and the degree of certitude with which we believe something, especially in the normative realm, means nothing to its truth. Third come cognitive biases: our thoughts, impressions and beliefs are crowded with perspectival mistakes. That is, despite our attempts of impartiality, we cannot but end up seeing things our way. As Christiano puts it:

Individuals' judgments of what is just or unjust are in two main ways more sensitive to their own interests than those of others. One, persons understand their own interests better than the interests of others. And so they tend quite reasonably to interpret the interests of others in the light of their understanding of their own interests. [...] Two, individuals are more sensitive to the harms they undergo than to those of others, so they may inadvertently unduly downplay harms to others. [...] The principles by which one compares and balances the interests of different persons are highly likely to be affected by cognitive bias. (Christiano, The Constitution of Equality 2008, 59)

All these things together contribute to the condition of deep pluralism that characterizes our social, political and moral life and account for the pervasive disagreement we face. It looks like a gloomy picture, but not an unrealistic one. To be sure, all these circumstances come in degrees and we are not always and invariably wrong concerning others' and even our own interests and conceptions of justice. Moreover, Christiano notices, this does not mean that we should forsake objectivity, for our difficulties in understanding others' needs and interests do not translate in there being nothing *real* to understand a part from their perceived whims. Yet, when we are to balance our rights and duties towards others we might be incapable of getting the answer right and disagreement turns out to be pervasive, despite our good faith and

the whole truth as it is. Hence, pluralism does not qualify as strong or ontological. For the distinction between ontological and epistemological pluralism see D'Agostino 1996, 7.

¹ Diversity does not imply subjectivism concerning values. See Christiano 2008, 57: "Notice, that these conditions of diversity with respect to well-being do not in any way presuppose a subjectivist account of well-being. This diversity of conditions implies that people's capacities to achieve objectively valuable states are quite diverse and clearly their abilities to appreciate and enjoy these states are likely to be extremely diverse. Of course, to the extent that there is a subjective element to well-being, which consists in the appreciation and enjoyment of intrinsic goods, there will be a great deal of diversity in capacities for well-being".

sincere concern for justice¹. Since these are the circumstances we face, the public dimension of social justice gains unexpected relevance. As Christiano frequently repeats throughout the book, “justice must not only be done, it must be seen to be done” (Christiano, *The Constitution of Equality* 2008, 8, 45, 46, 47, 56). Two kinds of argument are offered in support of this claim. The first is formal and concerns the coordinating function social justice plays. Since it has to offer a kit of regulations and rules for the social game, the principle of equality cannot be but accessible to all. Otherwise, we could not make claims on each other – or if we did, we would not find any shared criterion according to which to assess rights and duties and to distribute benefits and burdens of cooperation². Nevertheless, the fact that justice ought to be public in order to fulfil such coordinating function presupposes that this is a role justice ought to satisfy alone.

Yet, it is not clearly so. Justice might well depict how a well-ordered society should look like and how rights and duties would be assigned there, but it is not intuitive that it ought to do so *openly*. For we could always envisage a Platonic-like society where justice is realized without that most of the people are aware of it. It seems that the connection between justice and publicity can be worked out in two ways: either it is required by the kind of authority put in place to realize justice, so that a democracy would need publicity, but any autocracy would not; or it hang on the specific content of justice. Since the public dimension of justice contributes to *account for* democracy, Christiano chooses the latter option, as he states that publicity “is not a separable component of social justice” (Christiano, *The Constitution of Equality* 2008, 51). In particular, his idea is that different degrees in publicity affect the relative degree of justness of an action or institution, so that a public act of justice is more just than a secretive one, as well as public injustice worse than non-public one. However, the formal argument cannot be employed to defend such a thesis, whose plausibility is not immediate, as it presupposes that publicity already is part of the content of justice. Hence, let us skip to Christiano’s substantive argument in support of weak publicity.

Since Christiano’s reading of justice identifies it with the principle of the equal advancement of interests, it comes as no surprise that justice concerns primarily a set of

¹ Christiano 2008, 76: “The problem is that there are numerous good faith disagreements about what justice actually requires even if we confine ourselves to accounts of justice that are meant to realize equality”.

² Christiano mentions Raz’s idea that morality underdetermines the law as support to his argument that justice underdetermines a system of rules we ought to uphold (Christiano 2004, 281; 2008, 53-54).

fundamental interests for all human beings¹. He lists three such fundamental interests, which turn out to be *political* higher-order interests whose satisfaction is conditional for the realization of any other interest people may have. The first is an interest in correcting for one's cognitive bias we have already seen to be quite widespread. The second concerns the common social world where we live and where we ought to feel at home. The third interest is to be recognized as possessing an equal moral standing before others (Christiano, *The Constitution of Equality* 2008, 60-63). These interests emerge under conditions of pluralism and disagreement and their validity relies on such conditions.

The first two interests, for instance, serve to defend people from unconscious subordination to others' conceptions of justice, equality and well-being. The idea is that people attempt to shape the social world they live in and they do so according to their own judgment of what is right and appropriate. Yet, since they happen to be misguided by their interests in formulating judgments, it might well be that the winning and dominant conception of justice or equality, to which everyone is asked to conform, happens to be the wrong one, due to all people's biases². If this is the case, everyone, especially those belonging to minority groups, is under the threat to look at his or her own life through others' lenses and hence to subdue to values and norms that fall short of the correct principle of equality³. Likewise, the third interest serves to prevent that one's interests be set back, due to a lack of social recognition for one's equal standing and received treatment as an inferior.

¹ Christiano's is welfarist account of justice, which differs from Kantian readings grounded on rights rather than on interests. Nonetheless, interests are thought to ground here both liberal and democratic rights, so that Christiano's position can be made sense of through the same lenses.

² Christiano 2008, 64-65: "The interest in correcting for cognitive bias emerges in these circumstances because the fact of cognitive bias threatens to make efforts to shape the world by a particular group highly oppressive to the other groups in society. One group's efforts to shape the social world threaten to turn that world into one that reflects their interests and that is hostile to the interests of other quite different groups. So each group has a distinctively political interest in correcting for those cognitive biases. The interest in being at home in the world also emerges as a salient interest in a pluralistic world where each is trying to shape the world in accordance with her best understanding. [...] The fundamental importance of the interests in correcting for cognitive bias and in being at home in the world derives from the basic fact that they are conditions for the realization of all one's other interests in a pluralistic social world. The first interest protects one from having one's life dominated by considerations that serve only another's interests. The second interest gives one the ability to pursue one's own well-being by ensuring that the world around one makes sense to one".

³ It is interesting to notice how the fact of cognitive bias applies both to us and to others. While as a fact of judgment it represents something we ought to take into account when addressing others' interests, because our judgment will inevitably be, at least partly, biased; when included among the fundamental interests we have, it is *others'* cognitive biases we ought to be concerned with, because they may jeopardize our own understanding of our well-being and of justice. In any case, Christiano reminds us that "all persons' views (including our own) reflect their interests, backgrounds, and other sources of distorting bias in some degree or other" (Christiano 2008, 77).

Christiano claims that these interests are universal in the sense that all rational persons have them under conditions of pluralism and that they are also fundamental and compatible with all other interests persons may have¹. However, although these three fundamental interests are depicted as a condition for the realization of all other interests, still they do conflict with those aspects of one person's well-being that are at odds with equality. Therefore, we ought to keep in mind that these fundamental interests people are taken to have not only derive from the principle of equality, which firstly ground them under condition of pluralism and disagreement, but also assume that the primary and foremost interest people always have is an interest *in that very equality*. In such a way, since and insofar as people are thought to aspire to be equal with, not superior to, others, they are also ascribed these fundamental interests, which in fact are connected with "the interest each person has in being treated in accordance with social justice and in knowing that she is treated in accordance with social justice" (Christiano, *The Constitution of Equality* 2008, 65)².

The underlying idea is that those facts that characterize pluralism, like diversity, disagreement, fallibility and cognitive bias, makes individuals' judgments necessary in order to track their real interests. Hence, the fundamental interests in judgment hold because they guarantee that people be able to pursue their own interests as *they* understand them and to shape their world according to *their* conception of justice and well-being. The consequence of this line of reasoning is that the principles of social justice must be public, for people ought to know that they are being treated as equals when they attempt to establish justice among themselves. According to Christiano, any workable conception of equality, given disagreement, demands publicity exactly because we disagree over what equality really requires. Even though equality is the benchmark of justice, and we take it for granted, still we disagree over what it entails. But then, how is it possible for people to see that they are being treated as equals if they disagree over

¹ Christiano 2008, 65: "These three interests are universal human interests in pluralistic societies in the sense that all rational persons have these interests in pluralistic societies. The first two are universal because they are general conditions for the advancement of well-being under conditions of pluralism. The third is universal because it is tied to the fundamental principle of justice as equality"; 67: "These interests are fundamental in the sense that they are deep conditions of well-being in social life and they are compatible with all the other fundamental interests in social life. For, as we will see in what follows, these interests cannot be satisfied if one's basic material well-being is not satisfied and one's basic capacities for pursuing one's good are not realized".

² But the principle of equality and an interest in being equal are two different things and even though the former might be the true interpretation of justice, still it does not seem to imply an interest or a motivation to desire equality. To be sure, one can endorse a Korsgaard-like internalist position according to which if something is just we are motivated to do it, but it is far from obvious that this is the case and Christiano ought to spend a few more words on it.

what counts as realization of equality? Christiano offers the idea of an egalitarian or public standpoint as an answer.

The idea of an egalitarian or public standpoint lays at the core of Christiano's theory of democracy, as it constitutes the perspective through which we can see that democracy has intrinsic value because of the way it publicly treats people. Thus, such standpoint presupposes the principle of equality to work: it shows us how it can display its public dimension, that is, how it is to publicly treat people as equals and proves that democracy is the best and only way to take collective decisions that is consistent with public equality. He defines the public standpoint in different ways:

It is the one standpoint that genuinely treats each one of us as equals that we have as a society on the issues that come before a society. (Christiano, The Constitution of Equality 2008, 69)

The public standpoint from which we attempt to argue for and against principles of social justice is the deepest standpoint we can occupy as equals. (Christiano, The Constitution of Equality 2008, 72)

What I want to say is that the public standpoint is the position from which the basic principles of social justice are justified, and these principles establish the framework in which more particular conceptions of justice may be advanced among citizens. [...] The public standpoint is the standpoint of the group of persons who are involved in the effort to establish justice and pursue the common good among themselves. [...] It is a standpoint one occupies when one tries to take everyone's views into account and discern a principle that everyone can agree treats them as equals given the facts and interests described above. (Christiano 2015, 244)

The public standpoint is a peculiar perspective individuals are asked to uphold when they want to establish justice among themselves and to know how to treat each other as equals. Hence, it is a sort of thought-experiment offered to settle political matters. The goal people should pursue when undertaking such a standpoint is to answer a specific question:

So the question to be asked of the egalitarian standpoint is, what principles of equality are such that everyone can agree that they are treated as equals by the realization of those principles when they take into account the facts of judgment and the interests in judgment? (Christiano 2008, 70)

The question the public standpoint helps to answer is when is it that people can see that they are being treated as equals? (Christiano 2015, 245)

As we have seen, the principle of the equal advancement of interests is presupposed and the standpoint helps understanding how to implement the public dimension of equality¹. In particular, to occupy such a standpoint, individuals ought to

¹ See Christiano 2008, 70: "The principles that are justified from this public standpoint are the principles of *public equality*. And the just institutions and states of affairs that satisfy these principles are called the *public realization of equality*".

recognize the ‘facts of judgment’, as well as the interests in judgment that derive from them¹. This public standpoint, which sounds a lot like Rousseau’s General Will², is the prescribed point of view one has to engage with if one wants to avoid both his individual standpoint, which is one we are in a way condemned to, and god’s perspective, to which unfortunately we have no access.

Christiano does not challenge moral realism or moral objectivity³. Rather, he endorses it, but argues that it cannot play a role in the justification of democracy. In fact, without the public standpoint, we are stuck in an opposition between things as each of us sees them and things as they really are, which is the perfectly objective perspective that only god would have. We do not have much metaethics to rely on here. But it sounds plausible that, concerning justice and equality, there is indeed one correct way to interpret these concepts and to realize them. The problem is that we cannot know for sure. Of course, there are people who know more about these matters, people who are more competent, because if there is objective knowledge, there can always be objective knowers. However, since the true knowledge perspective is beyond reach, they inevitably make appeal to their own views and judgments when claiming their superior competence⁴. Christiano employs this division in three perspectives to ground the intrinsic value of democracy, as the only decision-making procedure that is properly responsive to all individuals’ judgments concerning justice and their well-being. The

¹ See Christiano 2008, 70: “Third, individuals decide what equality demands when informed by the background facts of disagreement, diversity, fallibility, and cognitive bias and the fundamental interests people have under the circumstances where they are trying to establish justice among themselves”; Christiano 2015, 244: “As I am understanding it, persons are concerned with the public standpoint when they are concerned that everyone can see that they are being treated as equals in light of the facts of cognitive limitations such as cognitive bias, fallibility, disagreement and diversity of interests, and the fundamental interests persons have”.

² Consider, for instance, how the public standpoint resembles impartiality, without being equivalent to it. In fact, persons are asked to step outside their perspective, but to enter the point of view of the community they are part of, rather than of all mankind (which would represent the morally impartial standpoint). See Christiano 2015, 246. Moreover, given this politically laden reading of the public standpoint, one may wonder whether it is appropriate to talk about impartiality at all. If the point of the public standpoint is to let us “advance our views in a way that is compatible with others doing the same”, why would not reciprocity be sufficient? On the distinction between personal and impersonal standpoint in ethics and politics see Nagel 1986.

³ See Christiano 2015, 243: “When a group of persons attempts to establish justice among themselves, they must do so on the basis of their own judgments. This is the case *even if there is, as I believe there is, an absolute conception of justice, the truth or objective validity of which is independent of people’s judgments*” (italic added).

⁴ See Christiano 2008, 73: “*We cannot do any better in attempting to realize equality than to do it publicly. It may not be the best we can do if we rank states of affairs according to a god’s eye point of view. It is by its nature the best we can do from our own point of view if we are to understand our point of view as an egalitarian point of view or that point of view that inherently treats the interests of each as equally important in the structure of the standpoint as well as in its content. There are no deeper or more fundamental standards in terms of which we can see that considerations of public equality are defeated*” (italic added).

public standpoint in fact requires that individuals adopting it “filter out all the controversial views of citizens” except the very idea of equal advancement of the interests of all on which it rests (Christiano 2015, 245). A part from equality then, which “ought not to be controversial”, Christiano tells us that agreement is what makes a certain proposal of realization of equality acceptable. Although he takes distance from Rawls’s conception of publicity as something (reasonable) people agree on¹, he still makes use of agreement. People who occupy the public standpoint and in good faith aim to discern what the principles of social justice are all have a veto power on the selection of these principles. As Christiano claims,

There is a sense in which the public standpoint embodies a version of the idea that persons’ judgments have equal claims to rational acceptance. Each person’s claim to see that they are treated as an equal is as important as anyone else’s claim. I will argue below that this will not require that each person’s beliefs are equally justified but only that each person’s judgment concerning how they are treated is necessary to establishing the appropriate justification. Each person has a kind of veto. If they don’t see themselves as being treated as an equal, they can deny that the relevant principle is public principle. The idea here is that each person’s view has a sufficient claim to rational acceptance in order to derive the veto for that person. (Christiano 2015, 245, italic added)

Once individuals uphold the public standpoint, they recognize each other as equal and every one of them has a kind of veto power to ban all those principles of justice and all those decision-making procedures which she thinks won’t recognize her as equal. Given pluralism and disagreement, democracy qualifies to be such procedure, because it provides everyone with an equal say to assess their interests and conceptions of justice and hence can be the focus of an agreement within the public standpoint. The three fundamental interests we encountered play an important role together with such standpoint: the interest in correcting for one’s bias, in being at home and in being publicly recognized as an equal are respected only if citizens are given the same political rights to participate in the process of collective decision-making, especially since we will have contrasting judgments about its outcomes. The only way people can see they are still being treated as equals, despite disagreement, is if they received their equal right to take part in that very same process and shape its results. In such a way, each person is given the same amount of political power, through which they can advance their interests (Christiano 2008, 95). A Christiano states,

From the public egalitarian standpoint, democracy is the best we can do to make sure that the society advances the interests of each equally. The standard by which we evaluate this

¹ Christiano dubs his notion of publicity weak because, contrary to Rawls’s, it does not require publicly known agreement on basic principles of justice and on the justness of social and political institutions embodying them (Christiano 2008, 48n). However, as we have seen, its notion does appeal to agreement when it requires that all people agree on what is to treat each other as equals.

situation from a public standpoint cannot go beyond the idea of an equal say, because any particular outcome standard is controversial. So the democratic process, by virtue of the fact that it gives each equal abilities to shape the common world in which they live and thereby equal abilities to advance their interests, is the only publicly clear and acceptable realization of equal advancement of interests in the light of the facts and interests in judgment. And since we do not justify it by reference to any other outcome principle, it is intrinsically justified.
(Christiano 2008, 96, italic added)

The justification of democracy provided is intrinsic insofar as it does not make reference to any outcome standard of evaluation, but relies on a prior principle of equality that democracy realizes by treating all publicly as equals in the process of decision-making. The idea of a public standpoint here is fundamental, because any attack to democracy as the public realization of equality withdraw from such egalitarian standpoint and ultimately conflicts with equality. Those who disagree with democratic outcomes, then, either are disinterested in equality, hence their position is taken out from the set of relevant ones, or have a different understanding of equality with respect to the majority of their own country. While in the former case, they step outside the public standpoint itself, in the second one they ought to recognize that democracy is still the best way to take decisions respecting people's public equality. Hence, they will find the final decision wrong or unjustified, yet legitimate. On the contrary they do not recognize the intrinsic value of democracy, they too are employing their own personal perspective to assess collective choices. As a result, they are embarking on a "deeply oppressive and inegalitarian project", as they deny other people who have participated in the decision-making the same right to advance their interest as they accord to themselves¹.

The public dimension of equality gives Christiano means to respond to elitists who takes moral competence to matter in the distribution of political power and to defend democracy on a basis which neither affirms individuals' equal moral competence, nor consider it to be irrelevant (Christiano 2008, 116-118, Christiano 2015, 254-255). Here I am not concerned with Christiano's thorough defense of representative democracy against other forms of decision-making, from libertarian minimal state, to direct democracy through lot, to a kind of epistocracy of the educated endorsed by John Stuart Mill. However, his defense from and counter-objection to the latter are interesting for my argument because they unveil a critical circularity that characterizes both

¹ See Christiano 2008, 69: "Recall that according to the arguments above, if one attempts to establish equality or justice from one's own individual standpoint alone and without regard for the points of view of others, one engages in a deeply oppressive and inegalitarian project. What publicity does is require that the principles of social justice be accessible to the points of view of everyone taken together". See also Christiano 2015, 248.

positions in favor and against democracy and that hinges on the role of publicity. Christiano himself points out the circularity,

The only apparent plausible rationales for taking each person's view equally seriously is that each has equal moral competence or that competence rankings ought not to count. [...] But those who suppose that political power ought to be apportioned to moral competence reject both these presuppositions. In any case, neither has been defended. It looks like the egalitarian standpoint itself presupposes the principle that is under discussion and which we have been trying to defend by invoking the egalitarian standpoint. This implies that using the egalitarian standpoint and the attendant principle of weak publicity to defeat apportioning power to competence seems to beg the question against the authoritarian and the elitist. (Christiano 2008, 121-122, italic added)

Democracy qualifies within the public standpoint as the only intrinsically just way to take collective decisions because it is the only one which can be acceptable to all, as no one would veto it. To be sure, no one among those who adopt the public standpoint. Hence, in order to have one's own judgment about one's interests taken into account, one has to uphold the public standpoint first and think what equality would generally demand. It is not that we ought to reason starting from this perspective on every single political issue we face; rather we are free to pursue our particular interests within the framework provided by the public stance, much alike any conception of the good would work as long as it is reasonable (Christiano 2015, 246). The egalitarian standpoint nevertheless is fundamental for justifying democracy as the general system of rules and decision-making procedures that regulate our allowed pursuit of well-being. For that, we ought to uphold it. And that is what the epistocrat does not do. However, the might have a point against democrats when they blame them to beg the question. For it is easy to see why from the public standpoint, where everyone who wants equality has veto power, whatever arrangement against an equal say would be rejected. The truth of the matter for epistocrats, though, is that not all have the same veto power, as this power depends on the moral competence one has. Thus, distribution of political power and democratic rights ought not to reflect everyone's interest to express one's judgment, but the level of competence people have. And advocates of democracy are in the end only assuming either that people have more or less the same moral competence or that such competence is politically irrelevant. Christiano's response goes along two lines. On one hand he objects to any competence test, both substantive and procedural, so that no publicly accessible ranking is available. On the other, he blames the same circularity on critics of democracy. In the end, the only way out is again through the public standpoint, which can justify democracy only. In his own words,

Anything but an equal right to judge for oneself would clearly violate the principle of equal advancement of interests in the light of the facts of judgment. An unequal right to judge would either be based on inequality of competence or it would be directly based on unequal consideration of interest. Either way, it violates equality of interests and publicity. (Christiano 2008, 127)

According to Christiano, the problem with any test of moral competence is that it cannot help relying on substantive moral standards, which are controversial¹. In this way, no result of such test can be accepted by everyone, hence there will always be someone rejecting it as wrong. Now, the epistocrat would say that if this person is in fact less competent, she simply has no veto power to oppose. However, Christiano objects, in such a way we lack responsiveness to her judgment and since her judgment is necessarily tied to her interests (given the ‘facts of judgment’ and individuals’ three interests in judgment) we ultimately forsake to advance her interests as well. This is why epistocracy would inevitably violate the very principle of social justice as equality it should realize by premise. Moreover, epistocracy also rests on the very same circularity, as it presupposes a “particular distribution of competence” based on objective facts that should in principle be at least *accessible*, since they are not *acceptable*, to all². Therefore, a proper justification of democracy from the public standpoint does not assume equal competence or equal claim to rational acceptance, as he more recently labelled it, nor does it presuppose that all views are equally justified or supported by reasons (Christiano 2015, 240). On the contrary, it merely states that “the public standpoint does not take a stand on who has the most abilities” and hence a different claim to rational acceptance (Christiano 2015, 254). So people do have different claims to rational acceptance, simply because there are views that are more objectively justified than

¹ Christiano does not explain why moral competence is the one that would matter the most here. Although he rightly claims that technical competence cannot be a proxy for moral one, so that formal level of education says nothing about people’s moral competence, it is not clear why technical knowledge, which is testable, would not qualify as a valid discriminating criterion. There can be two reasons, I think. Either Christiano takes it to be value laden, so that we cannot properly distinguish technical competence from moral one and the savants would end up squeezing their value judgments in when taking collective decision. This, however, would conflict with Christiano’s bigger account of representative democracy and moral division of labor, as parties and experts are exactly deemed able to provide only technical knowledge and means to people’s substantive aims. And they could not provide neutral knowledge in case the two are not fully distinguishable. Or Christiano takes technical knowledge to be morally neutral, so that it cannot help providing directions where to go or concerning what we ought to do (which is the subject matter of political decisions). However, in this case it is far from clear why technical knowledge could not help just taking out the very ignorant voters. What Christiano would object is that in this case their interests would not be taken seriously. Technical knowledge is thus morally insignificant before people’s interests in judgment.

² A very similar argument against epistocracy is offered by David Estlund. However, he requires regimes to be acceptable to a group of qualified people, claiming that epistocracy would fall out of the set of acceptable regimes, but does not explain who these qualified people would be, whether all democratic citizens or again a minoritarian set of the most knowledgeable. See Estlund 2008 and Christiano 2008, 121 for criticism. The same goes for Dahl 1989. On the distinction between accessibility and acceptability see Vallier 2011, D’Agostino and Vallier 2014.

others. The problem is that we do not dispose of a meter to adjudicate who has more abilities to take justified decisions than others. Or, we do not publicly dispose of such meter, that is, there is no way within the public standpoint to achieve an uncontroversial standard of competence¹.

However, as Christiano himself notice and then seems to forget, we are in an “*impasse of conflicting judgments*” (Christiano 2008, 124) here, as the fact that any defense of epistocracy relies on a circularity does not cancel the fact that justification of democracy also does. In fact, responsiveness to judgment is fundamental in order to reject elitists’ claim to inequality in democratic rights. But moral realists do challenge also responsiveness to judgment, intended as people’s actual judgment. Rather than the latter, they endorse a kind of respect for people’s rational agency that does not require to take seriously people’s particular judgments concerning their interests (Wall 2014). The very connection between judgment and interest is questioned, as people’s capacity for rational judgment is valued more than the privileged epistemic access they have to their interests². What guarantees this connection in Christiano’s theory are the three interests in judgment. These are interests we have in formulating our own judgments about our interests, since it is the best shot we have to come close to what these interests are, given the ‘facts of judgment’. Let us reconsider them.

The interest in correcting for cognitive bias clearly reflects the fact that we have an epistemically privileged access to our interests. Since Christiano has an objective conception of well-being, his point is not that we will always be the best judge of our interests, because we can be wrong and in fact we happen to be. Rather, he claims that on average, although our view might be biased, others’ views will be even more biased, as they will try to look at us through the lenses of their own interpretation of justice and well-being. So the point is double: not only do we have a special interest in devising what our interests are, but we are also in an epistemically privileged position to do so. A very

¹ See Christiano 2015, 255: “So the intrinsic value of democracy does not rest on a judgment that people are equally talented. It merely requires that from the public standpoint we take no stand on this and that in the absence of a stand, equality of say is the appropriate way publicly to realize equality among persons. [...] It is because there are no appropriate grounds from the public standpoint to determine who has superior claims to rational acceptance, at least once we have established the basic requirements of public equality. Any proposed grounds are going to be controversial and thus can be vetoed in the public standpoint. What this means is that, from the public standpoint, there is no stand on most of the claims to rational acceptance that people take”.

² See Christiano 2015, 248: “The epistemic access that each person has to her own interests and the cognitive biases that interfere with their understanding of others’ interests (along with the idea that equality involves advancing those interests) suggest that the epistemic differences between persons on these matters is not likely to be very great and that a person’s interests will be neglected if they do not participate”.

similar thought concerns the interest in being at home in the world, since it lends us the chance to shape the world according to our own lights¹. If we are the most concerned with understanding our true interests and realizing our aims, we ought to be given the chance to have a say about the world we live in and about political and social institutions we ought to comply with. Hence, Christiano takes these two ‘interests in judgment’ to ground a tight connection between our interests and our chance to express them publicly. However, both are to be limited by the principle of equality and be compatible with it. In fact, one could not appeal to these interests in favor of a political arrangement contrary to social justice. For instance, I cannot use the interest in being at home in the world to create a deeply racist community, neither can I use the interest in correcting for others’ cognitive bias to justify an autocratic system where I am the queen². But they cannot assume public equality, because these interests in judgment are exactly what grounds public equality given the circumstances of so-called ‘facts of judgment’. So, one could argue, they could eventually be compatible with nonpublic equality: were there savants, less prone or even immune to cognitive bias and knew they how best to advance the interests of all in an equal manner, these very two interests would ground an allegiance to epistocratic arrangements, rather than to democracy.

Thus Christiano seems committed to say either that no proper knower exists or that she as well would be cognitively biased in a way that prevents her from realizing equality. Both assertions are problematic, though. First, since moral truth of the matter exists, according to Christiano, there are more competent people. The fact that we disagree over how to select them, because we do not have publicly accepted standards, means that no expert will enjoy universal acceptance by all. But this in turn is not what the epistocrat expects, since universal acceptance does not matter if it is unjustified. Hence experts would be justified in imposing their views because they are right, even though others would complain they have not been listened to. Second, despite the pervasiveness of cognitive biases, as long as there is an objective take on justice and

¹ Here it is clear how this interest is similar to autonomy, in the sense of the capacity to shape one’s own world by obeying only those laws one has given to oneself. I do not know why Christiano prefers to call it an interest in being at home in the world, but it is clear that such interest is subordinated to equality. So perhaps, he takes autonomy to be a too formal concept to catch the substantive requirement of justice that his second fundamental interest entails.

² See Christiano 2008, 63: “The reason for this is twofold. One, the principle of equality of advancement of interests is the fundamental principle of justice. It is the principle that conditions our concerns for the interests of persons. So, we cannot invoke interests that are incompatible with that principle of equality when we are trying to lay out its implications. Two, since equality is the fundamental principle of justice and well-being consists in the appreciation of and enjoyment of intrinsic goods, being at home in an unjust world cannot, at least in that respect, be a contribution to one’s well-being”. For a similar criticism see Wall 2006, 92-93.

equality experts will be better suited to overcome those biases by assumption. Perhaps, democracy is still the best method to overcome one's bias, but only those with an amount of competence above a certain threshold should gain democratic rights. If we think about the well-known Condorcet Jury Theorem, that competence threshold should be a better than random likelihood of getting the right answer (Condorcet 1995). While above that threshold, democracy is indeed the best way to find out what is right and hence calls for a greater participation; under that threshold, the same mechanism will inevitably get the worse option chosen¹.

Apparently, the particular interest in correcting for others' cognitive bias is not enough to fight epistocracy back. There is a third chance to defend the public take of such an interest, though. Since Christiano's conception of justice is egalitarian and welfarist, the notion of justice serves to strike "the correct balance between the interests of individuals when they conflict" (Christiano 2004, 269). If to identify the correct balance we need to know exactly what all the affected interests are and we can know it in the best way only by hearing directly from the people who have them, then it seems that we ought to give an equal say to all. However, Christiano does not endorse a subjective reading of interests, so that it is not the case that my interests are what I say they are. Moreover, he does not even endorse an aggregative conception of justice, so that justice does not amount to the sum of the interests of all. If this were the case, the best decision-making procedure would be to vote on each single issue, like aggregative and economic interpretations of democracy state (Downs 1957; Dahl 1959, 1989; Riker 1982)². On the contrary, interests are to be assessed and evaluated, because not all what people claim is in their interest really is and some of these interests, like an interest in being superior to others, are to be ruled out (Christiano 1996, 131-164). What Christiano ought to argue in order to support his claim on the first fundamental interest public take is not the weaker claim that we on average have an epistemically privileged access to our interests.

¹ To be sure the Condorcet Jury Theorem has stringent conditions that may not hold in politics. It says that if three conditions obtain, then the more people will be for a certain option, the likelier will be that the option is right. The three conditions are: (1) the existence of a binary choice, where one option is right and the other wrong; (2) that people's likelihood of getting the right answer is on average better than random; (3) that people cast their vote independently from one another. If the second condition is not satisfied, then the mechanism reverses and the more people want option A, the likelier will be that A is wrong. All conditions are disputable in politics. For arguments in favor of and against the CJT as a good epistemic justification of democracy see: Grofman and Feld 1988, Estlund, et al. 1989, Goodin and List 2001, Estlund 2008.

² Strictly speaking, this kind of aggregative interpretation of justice would take representative democracy only as a second-best, because the best thing would be to give to each citizen the chance to directly express his interest. In fact, if individuals had a so thorough and unpaired privilege in accessing their interests, even the dynamics of representation would jeopardize a proper public expression of them. This would be a further reason for the unavailability of such interpretation for Christiano.

Rather, he ought to account for the stronger claim that our privileged access to our interests affects in a substantial way the content of social justice. And this is far from clear.

To be sure, we can still agree with one who objects that experts' competence does not guarantee their *willingness* to realize equality. However, this fact would give us only a contingent and instrumental justification of democracy: we should opt for it only because we cannot trust the experts; otherwise epistocracy would be better.

We forgot that there is the third interest in judgment, though, which requires that people be treated as equals and also recognize to be treated as such. This principle cannot be fooled by epistocracy, as under such political system certain persons would inevitably be reputed inferior, because less knowledgeable. They would enjoy equal material resources or equal opportunities, so they would indeed be equal. But they would *not* have the chance to participate to the decision-making process and hence to be accorded with the same *public recognition* of the same moral status as citizens¹. Therefore, I think that the third principle is the one who really does the job concerning the grounds of public equality. It is because we want to be and have interest in being recognized as equals and we also disagree over what equality entails that we ought to accord on a decision-making procedure that allows an equal say to everyone and in this way vote over what are the most equality-friendly outcomes, according to our own respective judgment. Democracy is intrinsically valuable because it is the only procedure that recognize such public equality and is truly responsive to individuals' interests.

However, this very idea of an interest in being recognized as having equal standing assumes publicity. The moral significance of being acknowledged as a moral person with a capacity for moral judgment and for understanding what is valuable in the world derives from the facts of disagreement and pluralism. But, this in turn can mean two things. Either, this interest for public recognition of one's own equal moral standing depends on the special link between our judgment and our interests; or it is one of its grounds. In the former case, the other two interests in judgment should guarantee the link, they should give us reason to think that we cannot get at justice without knowing

¹ It is interesting how the connection between moral standing and political rights is tight for adult and sensible people, but absent for children and insane. It makes sense for Christiano to bar these latter from participation in the democratic process, but he claims that this does not affect their moral standing as equal. The point is that they cannot ensure a connection between their judgment and their interests. Thus, they do not have a right to an equal say. But if this is the case, then also adult and sensible people who are "capable of elaborating, reflecting on, and revising ideas about justice" are being publicly treated as equals under epistocratic arrangements where the connection between their judgment and their interests is less tight than the experts'. Perhaps Christiano would object that above a minimum threshold, the connection is tight enough. But this is exactly what the epistocrat denies.

people's interest *from them*. But this is something the interest for correcting cognitive bias and the interest in being at home in the world do not do, since they are compatible with nondemocratic *egalitarian* political arrangements.

In the latter, the third interest in judgment should contribute to justify the special connection of judgment and interest from which Christiano infers the public value of equality and hence the intrinsic justification of democracy. However, here the public dimension of equality, which should have been the consequence of the tie between interests and judgment, is used as (the main) ground to justify such a tie. Therefore, Christiano's account as well happens to be caught up in the circularity, as he presupposes the public dimension of equality.

If this analysis is sound, then the line of the argument presented by Christiano fails to argue from equality the necessity of *public* equality. This is it:

1. Equality matters to justice.
2. We disagree over the correct interpretation of equality, but we agree that it matters (public standpoint).
3. It is important that we agree that it matters.
4. It is *more* important that we recognize that equality matters than single instances of outcome equality.
5. Given disagreement equality either is public or is not.

The problem with Christiano's account regards point (4): from the fact that equality must be important, which is the reason why only judgments from within the public standpoint have a right to be respected, the fact that the public recognition of equality is more important than equality itself does not follow. Or, Christiano might be taken to say that public equality is necessary for any other kind of equality to obtain, so that (4) would be rephrased in this way: 'It is necessary that we recognize that equality matters in order for any kind of outcome equality to be realized'. However, the interests in judgment cannot help to account for that either, because, as we have seen, they are compatible with nonpublic but egalitarian political arrangements.

Moreover, the third interest in judgment is also problematic, since in principle we could think that we are publicly treated as equals even without democracy (Wall 2006, 94). If it is only a matter of subjective understanding, to earn the same amount of money might well be enough for me to feel that I am being treated as equal. In this case, not even public equality would suffice to ground democracy. Here we have two different claims, though. The first is that publicity is necessary for equality to be realized. And I think this

is wrong, or at least Christiano's attempt to account for such a claim fails. The second is that democracy is necessary to realize public equality¹. In this latter case, the line of the argument would be as such:

1. Social justice requires public equality.
2. We disagree over how to treat each other publicly as equals.
3. Given disagreement, our different judgments are to be respected as equally valuable (although not equally justified or competent²).
4. Therefore, we ought to have an equal say about how to treat each other *publicly* as equals.
5. To have an equal say means that political arrangements ought to be responsive to our judgments.
6. Responsiveness to individuals' judgments can obtain only under democratic institutions.
7. Democracy is necessary to the realization of public equality.

When Christiano contests that moral realists like Raz or nonpublic egalitarians like Arneson do not take disagreement seriously as morally significant (Christiano 2004, 279-280), he has (3) in mind. If equality ought to be public, this can mean two things. First, that equality ought to be accessible to all, in the way positive laws people are expected to comply with ought to be public. Second, that the equality which is being realized is of a kind people can *accept as* equality. In the first case, for equality to be public it suffices that it is written somewhere and made be complied with. From this perspective there is no real difference in talking of equality or public equality, as the former would represent the ideal and the latter merely its effective realization. To be sure, it is possible that compromises be called for in order to properly realize equality and that stability issues affect the amount of equality that can be realized (Wall 2006). But this does not affect the kind of equality that is called for.

Yet what Christiano has in mind is exactly that the public dimension of equality calls for a specific interpretation, democratic, of it. In his account, that amounts to the

¹ Christiano mistakenly (to my mind) conflates the two questions when he says that: "Democratic equality has precedence over the other forms of equality that are in dispute in a political society, within the limits defined by public equality. The reason for this is because of its public nature. Public equality trumps other egalitarian considerations" (Christiano 2008, 250).

² See Christiano 2015, 247: "This does not require that we think of conflicting judgments as equally justified. It does not even require that we think that every person is as able and willing as every other person to devise good conceptions of social justice and the common good. *What it does require is that we think that appeal to every person's judgment is necessary if we are to treat them as equals*" (italic added).

second understanding of publicity, a certain form of agreement is unavoidable. While I will dig into this question further in the next chapter, here this distinction helps getting what Christiano means. When he objects to Rawls that his weak notion of publicity is not the same of agreement, he nonetheless asks persons, from within the public standpoint, to discern a principle “everyone can *agree* treats them as equals” (Christiano 2015, 244). Although agreement is required only from within the relevant perspective and disagreement cannot affect the principle of public equality that grounds such perspective, still people who wish to establish justice publicly ought to ask themselves what would be the least controversial way to do so. Hence, within the boundaries set by the principle of public equality, everyone is entitled to his own judgment, which in turn gives him an equal right to a public say. This is because equality in the advancement of interests is the only principle that matters more than respect for judgment, being indeed the ground of such a respect. Once the principle of public equality is satisfied and set as citizens’ goal, democracy is the best way to realize it, because democracy is the only procedure that already realizes it. This is why Christiano takes it to be intrinsically valuable and non-instrumentally justified although it serves, in a way, as a means to the realization of public equality. Democracy already is, by itself, a primary realization of public equality, because it takes all citizens as equal judges of the best way to understand and make real public equality.

However, to the extent that democracy is seen only as a means to realize something like public equality, we can always object that there are other ways to perceive one another as equals. And this is true. What I think Christiano’s account lacks is a general understanding of why procedures are at least as relevant as outcomes. To be sure, he reckons that outcome standards of equality are controversial from the public standpoint in a way democracy is not. The reason for it, though, is not simply that democracy is a public way to take decisions, as this would be question-begging. The reason is that when we disagree over particular decisions, we ought to follow a decision-making procedure to take binding decisions¹. Therefore, the problem moves from which decision to take to which procedure to adopt. Yet, there are aspects of the procedure that make it choice-worthy irrespective and even in spite of its outcomes. Democratic instrumentalists deny this can ever be the case. Christiano contends that it is, as long as outcomes are not to unjust. His justification of democracy represents a dualistic (Christiano 2004) or moderately procedural (Christiano 2008) account, which takes public equality to define

¹ Non sono sicura che questo sia un buon punto.

both the grounding and the limits of democratic authority. The next section of this chapter is devoted to understanding better what this means.

In conclusion, the intrinsic justification of democracy Christiano attempts to offer from the principle of equality fails, because he cannot account for the step from the principle of equal advancement of interests to public equality. Lacking this argument, there are two options. Either we justify democracy only instrumentally, because we cannot trust the experts. Or, we assume that equality ought to be public. But in such a way we cannot really answer to the epistocrat who contests the very idea that equality ought to be public. Unless we interpret social justice as public equality from the very start, Christiano's account does not achieve to justify democracy intrinsically. However, if we start by public equality, intended as equal realization of all's interests, democracy seems to be the implied way to go. As a consequence, the egalitarian perspective is less inclusive than Christiano would think, because it guarantees responsiveness only to the judgment of people who not only are interested in social justice, but also take it to require public equality. And this excludes epistocrats, but also moral realists and nonpublic egalitarians (R. Arneson 1993) from the very start. Moreover, such account of democracy makes it conditional on justice and hence vulnerable to mistakes about justice Christiano's account might make (Wall 2006, Estlund 2009).

3. Legitimacy and the Duty of Justice

As it is obvious, the justification of democracy plays a decisive role in Christiano's argument for democratic authority. Since his final aim is to show that democracy possesses the legitimate authority to impose binding decisions on its citizens, the thesis that democracy is a necessary requirement of justice represents the first step. The second step instead makes use of Raz's notion of political authority and contends that Raz's instrumental account of authority does not vindicate the proper role a legitimate democratic authority plays. Finally, Christiano employs his conclusion to argue, against Simmons, that people do have an obligation to obey to legitimate authorities, only as long as these do not violate the very principle they stem from. But let us proceed with order. Here is the task Christiano undertakes:

To say that democracy has authority implies that the citizen is required to go along with the democratic decision even in those cases where he or she thinks the decision unjust. But the authority is not unlimited; there are some cases in which the injustice of the result outweighs or defeats the justice of democracy. An account of the authority of democracy must explain how and when democracy can be authoritative even when it makes unjust decisions

and how and when certain kinds of injustice can defeat the authority of democracy. (Christiano 2008, 231)

As we have seen, Christiano's justification of democracy relies on social justice, and notably public equality. With these notions, it stands or falls, at least in its intrinsic, non-instrumentalist version. Here I intend to inquire what Christiano purports to justify when he says that democracy has legitimate authority *because* it is minimally just. Therefore, I will refrain from engaging with Raz's account, which Christiano criticizes, and leave it to the next chapter¹. However, it is important to understand how Christiano conceives of authority and he does so on relevantly Razian terms. In fact, authority stands for a right to rule, correlated with a duty to obey to be discharged by those subject to it. (Raz 1986, 23). A right to rule stands for a right to impose authoritative directives, that is, directives that bind those subject to them. These definitions may appear circular, as authority is defined as a right to issue *authoritative* directives. However, it is not, because this means that any authority or supposed one is such that it claims compliance on those subject to it. Without this claim, we have no authority. And if such claim is supported by reasons or justified, then the authority is called legitimate².

Legitimate authorities possess not only the capacity, but also the right to be obeyed, because they issue reasons for action of a specific kind³. Authoritative directives give content-independent and pre-emptive reasons for action to those subject to them. This means, as it is well known, that such reasons are binding irrespective of their content and exclude all those reasons and considerations against the authoritative directive itself. To name a classic example, when a mother, who has authority over her child, order him to eat vegetables, the child is expected to obey his mother's directive whether he likes it or not and without considering all the good reasons he might have not to eat them, like the fact that they are green and smell awfully. This case is easy, as

¹ Likewise, I will set aside what Christiano defines the 'desiderata of legitimate authority', because they serve to cast Razian conception of authority out of the relevant set, but do not really add anything to Christiano's account, as they are more or less built on it. See Christiano 2008, 232. Christiano's main criticism of Raz's account concerns the role of publicity under disagreement. He contends that the Normal Justification Thesis does not take disagreement seriously, because it "assumes, in contrast, that the basic standards for the instrumental evaluation of political institutions are not to be treated as proposals that people offer to each other as equals but rather as special truths that superiors impose on inferiors for their benefit" (Christiano 2008, 236), and hence refuses to adopt the public standpoint. However, as we have seen, the relevance of publicity is exactly what distinguishes Christiano from epistocrats and instrumentalists like Raz. However, it is also what he assumes rather than argue for in its account.

² This means that ideally there can be unjustified or illegitimate authority. Raz call it *de facto* authority, versus legitimate authority. While the former applies to people or institutions that claim a right to rule, in the sense that people subject to them wrongly consider their directive as binding; the latter concerns people or institutions that rightly possess such right to issue authoritative directives. See Raz 1986, 26, but also Christiano 2013.

³ For an opposite thesis, that the concept of authority is redundant with respect to legitimacy, see Buchanan 2002.

mother is right and so she has authority over her child and she is also right in having her child eating vegetables. So, what does it mean that reasons should be content-independent? The idea is that the fact that vegetables are good is not *the* leading consideration that ought to move the child. Quite the contrary, the child is to eat those vegetables *because his mother says so*. In a completely different but not less likely situation, if a girl tells her boyfriend to eat vegetables, we do not think he has a content-independent reason to eat them, although he could still have a content-dependent reason. This is because his girlfriend does not have authority over him and even if he may be drawn by instrumental considerations to obey her directive (for instance in order not to fight about it), we do not think that he has a *duty* or a particularly weighty reason to obey¹.

So, to say that democracy has authority means to say that it can legitimately issue binding directives over those subject to it and that those people are morally required to comply with them *whether they agree or not*. The content-independence of authority's reasons corresponds to the content-independence we have in mind when we say that 'a certain law is not just, but it is legitimate'. Generally, what we intend by it is that there are no good reasons in the content of the law to think it is justified. But at the same time, it is legitimate, meaning that we ought to obey because of the way it has been brought about. This is a specific kind of legitimacy, which pertains to procedures, and quite unsurprisingly is called procedural legitimacy. Democratic legitimacy is a form of procedural legitimacy, because it states that democratic outcomes are binding for citizens, whether they like it or not, because these outcomes have been made democratically, that is, because citizens have participated to a certain extent in producing them. Democratic authority then depends on democratic procedures, and is legitimate insofar as these procedures are justified. As Christiano states,

To inquire about the legitimacy of an authority is in the first instance to inquire into its right to make decisions for others. The demand for legitimacy arises when an agent has the power to make decisions for others and makes controversial decisions.

Therefore, on one hand an authority is legitimate when it possesses the right to issue content-independently and weighty binding directives. On the other, its legitimacy means that its directives ought to be obeyed even though we disagree over their

¹ To explain the pre-emptive quality of authoritative directives is a little harder, at least since its implications are not at all clear to me. However, since Christiano does not talk of pre-emptive reasons, but of "very weighty" or "especially weighty" reasons, I do not think pre-emptiveness matters here.

justification¹. More than that, Christiano claims that the very issue of legitimacy presupposes disagreement, as it presupposes that people might disagree over what to do. If we were to agree and to know that we agree on everything, no issue of legitimacy would arise. We would spontaneously coordinate over rules we all agree are the right ones. Perhaps, we would need no politics, either (see Waldron's circumstances of politics: Waldron 1999). Nevertheless, since we do disagree, we ought to coordinate on decisions we might think are wrong. The role of legitimate authorities is to give us reasons to obey irrespective of the quality of their decisions².

Christiano lists three possible accounts of legitimate political authority, which corresponds to different levels of authority a state, person or institution can have (Christiano 2008, 240-243). First, there is justified coercion, which means that a state is right in imposing something on its subjects, and which represents a minimal account of authority. In our example, it would be the girlfriend telling her boyfriend to eat vegetables because they are good for him. According to the authority as justified coercion account, since she is right, she would have a (minimal) degree of authority over him. The example Christiano makes is the one of a military occupation after a just war. Were the war just, the occupying state would have been justified in invading the other and would then be justified in maintaining law and order there (Christiano 2013). It is clear how little this account rules out, because it hinges completely on the justification of the action the supposed authority entertains. As a consequence, it is not even a proper account of authority, strictly speaking, if authority requires giving weighty and content-*independent* reasons for action. Second, there is political authority as the capacity to impose duties. Here 'authority' means a capacity, rather than a right, to impose duties on others, but these others do not owe the satisfaction of their duty to the authority itself. Christiano calls it an instrumental conception of the authority, because those subject to it have content-independent reasons to comply that depends on the author of the command, rather than on its content. However, the reason to obey is not that this authority has a claim right to which our duty corresponds. We might have other, completely different reasons to obey to the authority and these reasons are generally instrumental and

¹ Here I am interested only in internal legitimacy and I have no thesis concerning the relationship between internal and external legitimacy. To see what Christiano thinks about it, see Christiano 2008, 248-249. (Christiano, *The Authority of Democracy* 2004)

² See Christiano 2008, 244: "If democracy has authority then it implies a duty of citizens to obey the democratic decisions *because of their democratic provenance*. So the duties of democratic citizens are *content independent duties*. Citizens have duties to obey democratic decisions not because of the content of the decision or the consequences of their obedience but because of the source of the decision in the democratic assembly" (italic added).

contingent. Christiano identifies Raz's account of authority with this second type. Finally, there is authority as proper right to rule, that is a "valid claim" to be obeyed, correlated by a duty owed directly to the authority in question. Christiano declares, following Simmons's interpretation of political obligation as a *moral bond*:

The idea of legitimate authority as a right to rule to which citizens owe obedience gives each citizen a moral duty to obey, which it owes to the authority. So this form of legitimacy is grounded in a moral relationship between the parties that goes beyond the fact that they are fellow human beings. The establishment of a robust right to rule depends on the fact that each citizen rightly takes as a reason for obedience that it has a moral duty owed to the authority. (Christiano 2008, 242)

In the case of democracy, this kind of authority is possessed by the democratic assembly, which represents all citizens. Therefore, the right to rule democratic representative assemblies possess derives from the individual rights of citizens to an equal say. Since citizens have a right to "exercise equal control over their shared world" (Christiano 2008, 247) and since a representative assembly is the best institutional way to advance the interests of all, given the facts of judgment and the necessity for a moral division of labor, the democratic assembly collects individuals' right to an equal say and takes a right to rule out of them¹. How can a right to participate to the political process of decision-making as an equal confer to the democratic assembly collecting these rights to a say a right to rule? These two things seem quite different. My right to free expression does not mean that you have to obey to what I say. Yet, the right to a say is not merely expressive: it represents one's contribution to a collective decision-making process and an equal chance we all have to take active part in it, by discussing and voting on political issues or by running for office. But why do we ought to obey to final decisions taken democratically?

Now, the fact that the duty to obey is owed directly to the democratic assembly because of its right to rule seems to depend on the traditional thesis that claim rights and duties correlate. As we have seen in the first part of the chapter, there are certain well-known claim rights, like the right to freedom and life, for instance, that correlate to duties on others' part to respect those rights. These are generally thought to be negative duties. However, duties can be positive as well: if we think that a right to life implies also that I should save a life in danger, then I also have a positive duty so to act. Here I am not interested in the semantics and normative analysis of rights and duties. Suffice to say

¹ Christiano 2008, 248: "So because all citizens have rights to an equal say and because the democratic assembly is the institutional method by which these equal political rights are exercised, the democratic assembly has a right to rule".

that Christiano attempts to account for this correlation concerning the right to rule and the duty to obey from both sides. On one hand, he aims to show that a proper justification of democracy lends it legitimacy, hence the justified authority to impose binding directives, that is, duties on those subject to it. Apparently this is what he sets up to when he affirms:

The argument for the authority of democracy must proceed in two steps. The first step is to show why the democratic assembly has a right to rule that correlates with the duties of citizens to obey. The second step is to show that the duty to obey is preemptive or at least especially weighty. (Christiano 2008, 249)

Yet, when he sets forth the argument for the first step, he starts from the notion of duty of justice, rather than legitimacy. In fact, the justification of democratic legitimate authority is not enough. For it works only if we have a duty of justice that sets the whole argument in motion. Democracy has legitimate authority because it is intrinsically just (at least to a minimum extent) *and* we have a duty of justice to obey to minimally just regimes. In this way, as Rawls did before, Christiano establish a tight connection between legitimacy and justice¹. To be more precise, he makes legitimacy conditional on justice, hence democratic authority is legitimate only insofar as it does not violate justice². As we can see, this means that the very ground of democratic authority also determines its limits.

But in so doing, he reverses the order of priority between legitimate authority and political obligation (Perry 2012): the right to rule entails a duty to obey only because a duty to obey to just institutions was already there. To be more precise the democratic assembly's right to rule derives from the duty to obey each of us has towards her fellow citizens. It is because I owe you to abide by democracy and you owe me that democracy, collecting all these duties, possesses a right to rule³. And since democratic assembly represents individuals' aims and judgments, it also exercises such a right. This is how Christiano answers to Simmons's challenge⁴. Contrary to Rawls, Christiano does not envisage dispositions democratic citizens should develop and display in well-ordered democratic societies. Citizens are morally required to obey because the duty of justice

¹ Even tighter than Rawls's. See previous section in this chapter.

² This is why I left aside Christiano's desiderata for a conception of legitimate political authority. Indeed, the idea that legitimacy ought to hinge on justice does not seem so intuitive to me, as he takes for granted. And yes, this means that there may be occasions where a state is legitimate without being just, but this makes the concept of legitimacy more complex and applicable than the concept of justice.

³ Christiano 2008, 250: "So the duty to comply with democratic institutions is correlated with the right of the democratic assembly to rule. And since this duty is owed to each citizen and the democratic assembly embodies the equal political rights of all citizens, the duty is owed to the democratic assembly".

⁴ See the introduction of this chapter.

they objectively have as human beings demands them to do so. The only thing the philosopher ought to do is showing that democracy is enough just and then the duty to obey will be triggered. A proper justification of democracy, pointed at showing how democracy is minimally just, confers to democracy the right to impose binding decisions and coerce people accordingly *because* (not hence) they already ought to do what is just, that is to obey. If we take Christiano's argument from public equality to democracy to account for the first half of his thesis, we have to survey the second half from a duty of justice to a duty to obey to democratic directives.

First of all, Christiano postulates a duty of justice we all have, as human beings, irrespective of our consent, intentions or inclinations. Personally I already find it disputable. But here I am concerned whether such a duty, if existent, is a good ground for political obligation and especially for the obligation democracy requires. To begin with, it might seem an ad hoc solution, as it simply takes a vague idea as the one of a duty of justice and fills it with public equality in order to get obligation to democracy. If we look at George Klosko's criticism of Rawls's idea of natural duty of justice we can see how such idea is problematic as a basis of political obligation (Klosko 1994). As we generally see them, natural duties possess two features. One, they are perfect duties, that is, duties with a specifically defined content, as the duty not to kill. Two, they are conditional and qualified duties, that prescribe an action insofar as it is not too costly: I have a duty to save a child drowning in a shallow pond if it does not cost me my life (Singer 1972)¹. A duty of justice grounding political obligation seems to contradict both conditions. It is not perfect, as rather than prescribing a specific action, it depends on what conception of justice we have and whether it is correct. Moreover, it is not conditional, because it requires us to obey to just institutions even if it is onerous and it denies us the right to calculate how onerous it is before deciding whether to discharge it or not. It is not up to us to take such a decision. However, apparently Christiano's account of a duty of justice seems to fulfil both requirements. First, it is perfect, because it says one precise thing: we ought to obey to democratic institutions. Second, it is conditional, because it says that we ought to comply with them only insofar and to the extent that they realize public equality. The moment they violate the principle that justifies them, they are no longer

¹ To be sure, this is also controversial, as some would hold that I ought to do it irrespective of its costs. Yet, since it is that costly, I take the burden of proof to rest with the other side.

legitimate and we cease to have a duty towards them¹. What is the problem with such account, then?

There are at least three possible answers; let us start with the first. Christiano gives us a justification of democracy in terms of its necessity to realize public equality. Yet this necessity is not merely instrumental, for a democratic state is by itself a first realization of public equality in the way it works and functions. As we have seen, facts of judgment and interests in judgment fail to support the claim that if one wants to treat one's fellow human beings as equals one has to endorse public equality. However, if one directly intends to treat them publicly as equals, in a way all those interested in public equality can approve of, then democracy is the right decision-making procedure. The idea is that since we do not know precisely how to distribute benefits and burdens, rights and duties *in a way on which we all can agree*, we give to all a right to decide how the distribution ought to be done.

Yet, Christiano provides no reason to affirm that public equality in the way he interprets it is either more important or necessary in order to realize other conceptions of equality. As a consequence, those who think that agreement is not necessary in order to get the correct interpretation of justice are ruled out from the start, although they might be sincerely interested in justice and in how to achieve it in political society. Hence, Christiano's account is not as inclusive as he thinks. Therefore, even his criticism of Rawls's reasonableness seems misplaced. It is true that Christiano's citizens are allowed to display and reason starting from their own conceptions of justice, without subscribing to one publicly endorsed by all, but these conceptions ought to be compatible with and include the idea of justice as public equality. And since this reading of justice is but one among possible others, those who do not subscribe to it lose the chance to get their right to an equal say. And this happens even though they might still be egalitarians, albeit nonpublic ones.

Or, Christiano could say that it is possible that people appeal to their own conception of justice and discuss, deliberate and vote in the public sphere according to their conceptions even if these do not include public equality as a necessary or prior

¹ This qualifies as the countervailing consideration against democratic authority. Once democracy publicly violate equality, our duty of justice to obey disappears. On the contrary, undercutting considerations are those that shows how democracy is no longer justified in itself. See Christiano 2008, 265. It is worth noting that the kind of conditionality envisaged by Christiano does not concern how costly the action required by the duty is. On the contrary, the only consideration against compliance that citizens might take into account regards the violation of public equality itself. Hence, according to Christiano, it does not matter how costly compliance is: as long as it does not publicly violate public equality, I have a duty of justice to obey.

component of their conception of justice. Yet, this alternative view goes astray as well. If citizens are allowed so to act, the chances that democratic assembly will violate public equality increases. As we have seen with Rawls, the duty of justice intended as obligation to abide by the laws does not suffice to prevent democracy to choose badly. This is especially relevant for Christiano because the justice and hence legitimacy of the democratic society depends also on the quality of outcomes. Given his moderate proceduralism, democracy loses its intrinsic value once it publicly realizes injustice. But this crucially rests on citizens' capacity and willingness to make the right choices. Therefore, to require only compliance is clearly not enough. We need something heavier and more demanding if democracy is to *keep* its legitimate authority.

Secondly, Christiano's argument cannot properly answer to another aspect of Simmons's challenge, since to argue for the claim 'democracy is the only way to realize public equality' is different from arguing for 'democracy ought to be obeyed'. Let us examine this through. Simmons's point is that a valid justification for the moral necessity of the state does not amount to a justification of a duty to obey the state. But if the moral justification for democracy is that it realizes public equality and we have a natural duty to realize public equality, the consequence seems to hold: we ought to obey to democratic states. Notice that it must be the only way to realize public equality, otherwise the same duty would entail different things and it could not ground a political obligation to democracy¹.

Yet there are more than one democracies in the world. So, why should I obey to mine? This is the renowned particularity requirement that Simmons imposes on political obligation. Since political obligation concerns the specific moral relationship that I have with my specific state, as a citizen, the duty of justice cannot account for it because it would be due to whatever institution in the world, as long as it is just (Simmons 1979, 147-156)². Christiano attempts to answer by saying that democratic institutions are necessary to treat my fellow citizens as equals. However, the problem here is why my fellow citizens ought to enjoy priority over other human beings. What is the morally non arbitrary reason that I ought to treat justly my fellow human being by abiding by democratic laws, when my obligation might entail that I treat unjustly others outside my country? If my nation's democratic assembly decides to start an unjust war, which does

¹ Let us imagine that I have a duty of charity to help the poor and I have two different NGOs to which I can donate my money. Since my duty of charity only asks of me to donate to the poor, no one of these two NGOs has any right to my donation.

² For a 'biting the bullet' answer, see Waldron 1993.

not treat publicly as inferior no one of my fellow citizens, should I respect conscription? It is not possible to say that I do not have a duty of justice towards those other human beings, as it is a duty I have as human being myself.

Moreover, if it is a duty I owe only to human beings that happen to be under my same democratic regime, then it seems even a more ad hoc solution, because it gives no good moral criterion to discriminate between fellow citizens and human beings. Christiano might object that it does, since discrimination is due to the fact that my fellow citizens belong in my same common world and that we all morally need a state to establish justice. Insofar as justice morally requires a state to be established, we ought to obey to that state. However, the notion of common world is extremely vague and cannot help providing moral criteria of discrimination. If such a notion serves to delimitate a geographical space where “the fulfillment of all or nearly all of the fundamental interests of each person are connected with the fulfillment of all or nearly all of the fundamental interests of every other person” (Christiano 2008, 80), then globalization might represent a complicating issue. Moreover, the mere fact that someone’s interests are comparatively more entangled with someone else’s is not per se a moral reason to care more for the first person’s interests. “Well”, you could object, “that does not sound right. A child’s interests are more entangled with her mother’s and this gives a reason to the latter to care for the child”. But this is true only because we think that the relationship between a mother and a child is morally significant. And this is true wherever mother and child are¹.

Finally, Christiano fails to show that political obligation stemming from the duty of justice “pre-empts or at least normally outweighs” other duties, as he claims. In his words:

The pre-emption occurs because it is precisely in the context of disagreement on the substantive requirements of equality for law and policy that the principle of public equality requires democratic decision-making. The principle of public equality then directs us to subordinate one’s conception of equality and its implications for law and policy to democratic equality. (Christiano 2008, 254)

Since the pre-emption thesis on duties is conditional on the superior importance or necessity of public equality for realizing *any* kind of equality and also Christiano’s equal advancement of interests. However, if my argument so far is sound, this is exactly what Christiano’s justification of public equality fails to achieve. As a consequence, even if the duty of justice interpreted as a duty to realize public equality requires us to abide

¹ For an opposing view see Miller 1995.

by democratic rules, still it cannot be said to outweigh all other duties we may have, in the same way public equality itself does not pre-empt other considerations of equality. Notice that here we are not talking of other considerations alien to justice that can matter in politics in the same way justice matters. Even taking that for granted, there are no moral reasons to value the duty of justice that grounds political obligation more than other duties of justice “as nonpublic equality”. One could object that because the state is morally necessary, a duty of justice at the basis of political obligation, which in turn makes the existence of the state possible, would gain more importance and outweigh other moral duties. However, this would require all the ‘normative work’ from the concept of obligation rather than from the duty of justice. Christiano’s idea is that the state is necessary in order to establish justice, because it ensures a public and authoritative rule-maker that establishes the rule of law and make the realization of public equality possible under circumstances of pluralism and disagreement (Christiano 2008, 237-240). Yet these considerations may ground a general obligation to obey the law of whatever state that ensures order and the rule of law, according to Razian normal justification thesis for instance, and do not explain the specific justification that a democratic regime would obtain. In order to justify democracy and democracy only, we need to put another requirement on the state, which is the importance of public equality for social justice. Then again we assume a priority for public equality that is unwarranted.

In conclusion, it seems that both halves of Christiano’s argumentation fail. The first from social justice as equality to justification of democracy as realization of *public* equality fails because the only way Christiano argues for the priority of public equality over other forms is by assuming the public dimension of justice as necessary. The second from a duty of justice to political obligation fails because three reasons. One, the duty of justice strictly intended as a duty of public equality is less inclusive than what Christiano thinks and cannot account for what political obligation should ask of citizens if democracy is to maintain its legitimate authority. Political obligation as mere compliance with the rules does not suffice to ensure that final decisions won’t be unjust to the point of undercutting democratic authority. Hence if the duty of justice requires only to abide by the rules, it is a long-term self-defeating duty, as it cannot prevent democracy from losing its legitimacy and itself from requiring *not* to obey to democratic rules because unjust. Second, Christiano’s reformulation of the duty of justice cannot answer to Simmons’s particularity objection, because there is no moral reason to prefer to publicly treat as equal one’s fellow citizens with respect to other human beings. Finally, the duty

of justice cannot account for the pre-emption thesis, because public equality itself has not been shown to matter more than other nonpublic views on justice and equality.

4. To Sum Up

Rawls and Christiano represents two different, yet homogeneous accounts for justifying democratic legitimacy. The foremost merit they have, I think, concerns the link both envisage between legitimacy and obligation. While they take justification to ground a right to rule or at least to use coercive power on citizens, they also inquire what this entails on the part of citizens. In fact, democratic citizens are not only legitimate targets for the exercise of power, but they are also asked to fulfil a set of moral requirements, whose satisfaction is in turn necessary for the very legitimacy and stability of democratic institutions. As we have seen, they both propose a moral justification of constitutional democracy that aims at convincing those who have a sense of justice or binding all human beings, irrespective of their dispositions, in virtue of a duty of justice. Therefore, both accounts are possible answers to so-called Simmons's challenge against any relation between justification and legitimacy. In the first case, justification targets reasonable individuals and shows them how to be good citizens, given their assumed disposition towards justice. In the second case, justification merely argues for the objective and intrinsic value of democracy as a public realization of equality and triggers the duty of justice that all individuals have to comply with just institutions.

In this chapter, I attempted to shed lights on both approaches and to claim that both fail, although for different reasons. Rawls's account of reasonable citizenship cannot provide a ground for any normative requirement to be reasonable. Christiano's justification of democracy hinges on a restrictive premise concerning public equality, while his duty of justice proves both too much and too little. Since it is a natural duty all human beings have, it cannot be restricted in its application to one's fellow citizens only. And since it relies on an unwarranted superiority of public equality, it cannot defy all other duties human beings have. Moreover, by postulating a duty of justice, political obligation ends up being conditional on a moral duty to be just. This in turn assumes a substantial continuity between morality and politics, where the former determines the rules for the latter, quite similarly to what ideal theory ought to do for non-ideal theory in Rawls's account. Yet, it does not seem to me that being a good citizen and being a just man ought to rest on the same ground. While being a good citizen might require

individuals to act immorally, for example by going to war or by abiding by unjust laws, being a just man can demand the betrayal of one's nation and fellow citizens, when these are proving to be wrong. It is up to each of us to strike the balance and up to the philosopher to propose strategies and standards to do so. Here, this might seem just a personal intuition, but I hope to argue extensively for it in the following part of my work.

FOURTH CHAPTER

1. Introduction

Legitimate authorities can come in all shapes and sizes. Since my focus is on democracy, I am only concerned with the democratic path to legitimate authority and I leave open the question of whether there are other non-democratic kinds of legitimate authorities. At the same time, normative political theory has manifestly focused on democracy as the only legitimate political regime, to the extent that democracy figures among the possible grounds of political legitimacy, together with consent and beneficial consequences (Peter 2016). Contrary to these other two, democratic legitimacy pertains neither to the source of political authority, nor to its effects. While consent represents a viable basis of legitimate authority by authorization, so that authority is legitimate insofar as it has been authorized by those subject to it, beneficial consequences accounts detach legitimacy from authorization and translate it on positive results that legitimate authority achieves for those subject to it, regardless of their consent¹. As we have seen in the first chapter, the idea of consent is pivotal in all social contract approaches, including Thomas Hobbes's absolutist model of sovereignty, whereby the sovereign is authorized by its future subjects through the compact (Hobbes 1998)². On the other hand, all teleological justifications of the state generally assume that said state realizes certain values that in turn justify it instrumentally (Schmidtz 1990)³.

¹ Consent can be taken to ground both legitimate authority and political obligation. Although one thing entails the other, so that when I consent to legitimate authority I also oblige myself to obey to it and vice versa, bearing the difference between legitimacy and obligation in mind is relevant, since consent will appear in different categories. On one hand, consent for political *legitimacy* represents the only voluntaristic option, opposed to various non-voluntaristic approaches that diversely refer to beneficial consequences. On the other hand, consent for political *obligation* shares the voluntaristic stage with at least another actor, which is the principle of fair play, and they both are opposed to non-voluntaristic accounts, such as associative ties, the principle of gratitude or the natural duty of justice. Between the two opposed battlefields there are various degrees of quasi-voluntaristic accounts inspired by social contract and hypothetical contract theories. See also Scharpf's input/output legitimacy.

² In Thomas Hobbes's theory, the question of authorization relates to the question of representation, insofar as the sovereign is taken to represent the wills of all her subjects who have authorized her to do so. See Hobbes 1998, chapter 16. On Hobbes's theory of representation see at least Pitkin 1967, 14-37, Skinner 2005 and Runciman 2010. Naturally, Hobbes's theory of political obligation, as any other social contract theory, we have seen, may count as consent-based only loosely, insofar as individuals' consent is hypothetical and not actual. However, Hobbes's example is useful to see how authorization and consent-based models do not really care for the way political power is exercised and institutions arranged, as long as individuals give their consent.

³ For a similar distinction see also the opposition between input and output legitimacy in Fritz Scharpf 1999 and Charles Beitz's distinction between best results theories and popular will theories (Beitz 1989, 31-74).

Diversely from both, democratic approaches to legitimate authority are characterized by a focus on the way legitimate authority is exercised, that is to the specific decision-making procedure according to which authority works. Thus, if we talk of particular decisions that ought to be collectively binding, a democratic approach to legitimacy contends that these particular decisions pull their normative bindingness from the procedure that issues them. Hence, the legitimacy of outcomes derives from the issuing procedure and, as long as it is democratic, outcomes have binding force. The content of the decision is overlooked and its substantive merit does not contribute to its binding force, which relies entirely on its democratic pedigree.

Therefore, according to this third view, we can distinguish between decisions that are right or justified and decisions that are legitimate. While the former judgment concerns the specific content of democratic outcomes, the latter regards the way said outcomes have been brought about. This distinction is mainstream in the democratic tradition and has been identified with so-called democratic *proceduralism* as a characteristic interest for decision-making procedure, which represents a necessary condition for the legitimacy of outcomes¹. Rather than focusing on the substantive content of decisions, democratic proceduralists claim that we ought to obey democratic decisions in virtue their being democratic. The main problem with such account concerns the extent to which it allows for unjust, but still legitimate decisions to be put forward and implemented. If the substantive justice of outcomes ought to give way to their democratic pedigree and can be easily neglected, the inevitable result will be that democratic citizens will experience the unfortunate condition of being obliged to obey to very unjust laws. More than that, as long as outcomes do not matter, they can even be undemocratic and put the democratic government to an end.

Against such worrying out-turn, some defenders of democracy reply that its real value resides exactly in the kind of outcomes that democracy issues. Rather than being anxious about democratic decisions, citizens should be aware that democracy is exactly the kind of regime that on average produces better results. This approach is widely known as instrumentalism and take democracy to ensure legitimate outcomes, because these are correct or just outcomes more often than not. Instrumentalists can focus on

¹ There is a debate among those who stylize themselves as proceduralists concerning this point. Some of them take democratic procedures to be also a sufficient condition of political legitimacy (Habermas 1996, Urbinati 2006, Peter 2008, Ottonelli 2012), while others impose rational or substantive requirements as well (Beitz 1989, Estlund 2008, Christiano 2008, Pettit 2012). These latter accounts generally are defined as complex or dualistic versions of proceduralism, because they take democratic procedures to be only a necessary but insufficient condition for the legitimacy of outcomes. I will introduce them more carefully in this chapter.

political decisions or on their by-products, but the idea remains that democracy is a noteworthy decision-making procedure only as long as it allows for better decisions to be taken or because democratic participation makes citizens improve on certain valuable dimensions, such as autonomy, self-respect or critical thinking¹. In this way, democracy can be argued for and upheld even by people who do not share a sympathy for democratic decision-making, because they may know that despite their perplexities, democracy simply grants the best results over time. However, it seems difficult to think that in a diverse society the criteria of evaluation for the quality of outcomes can really be shared.

These are the two main approaches to the justification of democracy and both attempt to explain the legitimacy of democratic outcomes in terms of the value of democracy itself. Naturally, there are diverse accounts of what being democratic really means and, according to each account, we will have different models of democracy. If the former distinction concerns *why* democracy has value, this latter is about *what* democracy is². There are many versions of the democratic system and each of them underlines a different aspect or set of properties of this regime, to the extent that it is extremely difficult to settle on a shared and uncontroversial definition of democracy. The various amount of adjectives that can be paired with democracy is telling: we can talk of constitutional democracy, republican democracy, liberal or Madisonian vs. populist democracy, aggregative vs. deliberative, consensual vs. majoritarian democracy, epistemic democracy or radical democracy, each of these underpinning one or more distinctive trait of democratic regime. However, for the present work, the most relevant rift regards aggregative versus deliberative approaches to democracy.

While the former make democracy boil down to any voting procedure that respects the principle of one head one vote³ and that aggregates individual preferences in a fair way, the latter reject this reading as reductive and rather focuses on inclusive and rational deliberation among citizens. Certainly, these different accounts combine with proceduralism and instrumentalism in distinctive ways, so that what is valuable in

¹ While there are many advocates of instrumentalism and I will introduce them further in the chapter, it is useful to recall John Stuart Mill among them. He takes government to be essentially a means and popular government to be justified in virtue of these two principles: "human beings are only secure from evil at the hands of others, in proportion as they have the power of being, and are, *self-protecting*; and they only achieve a high degree of success in their struggle with Nature, in proportion as they are *self-dependent*, relying on what they themselves can do, either separately or in concert, rather than on what others do for them" (Mill 1977, 404).

² Robert Dahl presents these as the what and why questions in Dahl 1998, 35-61.

³ Together with other fundamental requirements that allows the democratic process to work fairly and properly, such as universal suffrage and the protection of political rights. See Dahl's definition of polyarchy, Dahl 1959.

democracy affects why democracy is valuable and vice versa. For instance, let us think of so-called minimal proceduralist accounts, that identifies democracy with a set of “rules of the game”, the proper functioning of which allows to treat fairly all participants to the democratic game (Bobbio 2005). This model may be aggregative, if it considers democracy to be primarily a voting procedure with the aim of taking a collectively binding decision, and it is proceduralist because it provides legitimacy to democratic outcomes on the basis of the virtue of fairness that the voting procedure has. No reference to the evaluation of outcomes is made, for minimal proceduralism justifies democracy only in virtue of how its way of working is neutral among all participants and fair to all. In such a way, minimal proceduralism represents a justification of democracy that shields it from disagreements inherent in society and that presents it as the lowest common denominator among all participants’ preferences (Ottonelli 2012, 82). On the other hand, deliberative accounts can be either proceduralist, when they take democratic deliberation to be valuable per se (Manin 1987, Cohen 1997), or instrumentalist, when it presents deliberation as a means to improve quality and consistency of democratic outcomes (Besson and Martí 2006, Pettit 2012, Landemore 2013).

First of all, I will offer a preliminary description of democracy that clarifies what we ought to have in mind when we talk of democracy. I will also contend that reference to voting procedures represents the heart of any democratic account. Secondly, I will introduce more in depth instrumentalism and proceduralism and in particular I will highlight their shortcomings in achieving a thorough account of democratic legitimacy. This relates to the role of justification within accounts of democratic legitimacy, which in turn calls for what we have dealt with so far concerning Simmons’s challenges to justification of legitimate authorities. Thirdly, I will offer a justification of democracy that incorporates Simmons’s criticism and aims to ground more firmly the legitimate authority that democracy has over its citizens, together with correlative duties on citizens’ part. This prudential justification aims to be supplementary with respect to proceduralist accounts and to tackle a specific issue left unanswered by normative proceduralism. Finally, I will outline what these duties are.

2. The Democratic Path to Legitimate Authority

2.1 Democracy as a Decision-Making Procedure

Democracy is a term that we have inherited from Ancient Greece and, as we all well know, literarily means “power of the people”, from *demos*, people, and *kratos*, power. Fifth century BC Athens firstly experimented this political regime, or at least here is where all our Western accounts of democracy traces it back (Dahl 1989, Dunn 2005). Despite this resounding legacy, our understanding of democracy differs from Ancients’ in at least two ways. First of all, Athens was a model of direct democracy, where most important decisions were taken by the assembly of all citizens (all free and male), while important public offices were allocated by lot, with few exceptions (notably military offices - *strategoí*). Secondly, the meaning of *demos* reveals a noteworthy ambiguity that affected ancient accounts of democracy, while it has currently disappeared. The word in fact refers to both the majority of people and those within the citizenry that were poor (Aristotle 1998). The opposition between the rich few and the many poor lies at the heart of both populist claims against elitist views of democratic republic¹ and intellectuals’ and elite’s attacks against democracy’s poor performance, as government by the ignorant many. Contrary to both these characteristics of ancient democracy, contemporary accounts generally take democracy to be the indirect government by the people, meaning by the whole citizenry and through the election of representatives. There is no uncontroversial take on the relationship between democracy and political representation, as the two have been considered as utterly inconsistent (Rousseau 2002, 220-223), somewhat ambivalent (Manin 1997) and a more complete realization of the democratic ideal with respect to direct democracy (Urbinati 2006). While the relevance of representation in our current democratic systems is sometimes overlooked by Anglophone normative political theory², even versions of representative democracy cannot forego the idea that democracy stands for citizens’ political participation to collective decision-making as free and equals.

¹ This transpires throughout democratic history, from Machiavelli’s defense of *popolo minuto*, to Rousseau’s advocacy for people’s legislative power and to anti-Federalist appraisals of people’s self-determination. For a modernization of this view see McCormick 2011.

² Albeit growing, normative accounts that explicitly attempt to defend democracy as representative, rather than direct, are still few. See Beitz 1989, Christiano 1996, Manin 1997, Richardson 2002, Urbinati 2006, Bohman 2012.

After Athens's experience, indeed, we have had but few epiphanies of democratic regimes, like spots throughout history, and democracy's first modern age champion shows this effective change of view. Jean-Jacques Rousseau not only offered an articulate account of democracy's authority and value, but conceived it as the self-rule by the people and for the people, which is something that resonates with our pre-theoretical understanding of democracy even now. Although his legacy is somewhat controversial¹, Rousseau has the merit of presenting democracy as the only viable answer to the liberal question of harmonizing political authority and individual freedom (Rousseau 2002, 163). If various social contract theories, a tradition that many equate to liberalism in its fundamental aim to justify political authority in a way that is respectful of individuals' freedom (Rawls 1971, Gaus 2013), only demand that political regimes be either consented to by citizens (Locke 1988) or rationally acceptable to them (Hobbes 1998, Kant 1991), and do not pay attention to the way authority is exercised, as long as it respects said requirements, Rousseau's approach to the problem shows how democracy is the only political regime that allows people to continuously take part in the process of decision-making and hence does not restrict people's chance to consent, actually or hypothetically, only to the creation of political authority, *whatever that may be*. In this respect, Robert Dahl's loose definition of populist democracy as a combination of political equality and popular sovereignty (Dahl 1959) comes in handy, as it pinpoints two basic features that democratic regimes ought to possess: a certain recognition of political equality and some sort of self-rule or collective self-determination by the people. Yet, both features, so spelled out, are quite general and abstract.

Minimal proceduralist accounts emerged with the descriptive intent to provide a clear and operationalizable definition of democracy as a set of procedures or rules for decision-making (Dahl 1959, 1989, Riker 1982, Sartori 1987, Bobbio 2005). A good description of what democracy is and how it works, as well as a useful and uncontroversial operationalization of the concept are in order for any empirical oriented research. In particular, this is true if we consider that, during last decades of the XX Century, the shared impression has been that democracy was winning: after a troubled history and despite it took a while, democracy was proving to be not only successful, but burgeoning, with the third wave of democratization (Huntington 1991). Discriminating between truly democratic and somehow non-democratic states requires that an apt

¹ He is presented as the supporter of totalitarian democracy (Talmon 1951, Chapman 1968), the forerunner of liberal (Cohen 2010) and representative (Fralin 1978) democracy and the advocate of republicanism (Viroli 1988).

definition of democracy fulfil certain desiderata, like the fact of being operationalizable and relatively uncontroversial. Democracy can be conceived accordingly as a set of “rules of the game” that primarily consists in a distinctive voting procedure to take collectively binding decisions according to certain formal conditions, such as anonymity and neutrality (May 1952, Arrow 1963, Rae 1969, Riker 1982).

However, these definitions are neither uncontroversial, nor sufficiently rich (Ottonelli 2012, 82). They are not uncontroversial as long as they make reference to the ideals of freedom and equality, that surely lie behind democracy, but the effective meaning of which is deeply contested (Riker 1982, 6-8). On one hand, if the mere adoption of elections qualified as democracy, very tyrannical regimes could count as democratic. On the the other, to the extent that something more than elections is required, for instance actual and free options among which to pick, political freedoms of expression and association and the protection of equal fundamental rights, the conception of democracy becomes more enriched and articulated, so that it is no longer univocal. Moreover, as the principles of equality and freedom are called into question, it seems that a more complex set of civil, political and social rights ought to be counted in for determining whether and to what extent a political regime qualifies as properly democratic¹. At the same time, though, the protection of civil and social rights is analytically distinguishable from the democratic process itself. Even if these rights may empirically count as precondition for the proper working of democracy (Beetham 2004) or as derivable from the same principle of equality which underpins democracy (Christiano 2008), to take them as perfectly consistent with democratic procedures obscures one of the main problems affecting democracy, which is the possibility to take deeply unjust decisions, that threaten these rights. This question opens up the long standing debate between democracy and constitutionalism: does democracy entail or threaten the protection of fundamental liberal rights? The answer to this question determines the way one conceives of the role of constitution and rule of law within democratic system, whether as a corrective mechanism that prevents democracy from going too astray (Rawls 1971, Dworkin 1996, Michelman 1997, Ferrajoli 2007, Urbinati 2014,), or as a way to reinforce something that constitutes the prerequisite for the proper working of democracy itself (Cohen 1997b, 2009, Habermas 1996), or finally as

¹ For a compelling analysis of the normative and orienting functions that an ideal standard of democracy ought to perform, see Pasquali 2015, especially chapter 3.

a wrongful way of constraining people's freedom to self-rule (Waldron 1999, 2006, Bellamy 2007, McCormick 2011).

A complete and uncontroversial definition of democracy, if possible to be given, goes beyond the aim of this work. Although, as we have seen, minimal definitions of democracy have their flaws and blind spots, there are still good reasons to identify democracy with any decision-making procedure that involves all citizens and respects the principle of equality (Christiano 2003). I thus take democracy as essentially an egalitarian procedure to take collectively binding decisions on matters that are relevant to all citizens. Although there are many decision-making procedures that conform to said definition, majority rule is by far the most used, and hence, it plays a paradigmatic role¹. What matters is that, although majority rule is not sufficient to fully describe what democracy stands for, it still is an unavoidable element of democracy. Therefore, since there is no democracy without majority rule², any mortal attack to majority rule is necessarily a mortal attack to democracy as well. And conversely, if we want to justify democracy we need first of all to account for majority rule.

However, even majority rule is itself meaningless under certain circumstances. If a political regime proclaims elections with one only candidate or where the majority of citizens are not allowed to vote or are forced to vote one candidate over others, then it is difficult to see how majority rule makes sense or is defensible. Therefore, there are certain undeniable normative requirements that majority rule ought to satisfy and which are generally assumed in the literature. These requirements define a set of conditions that make majority rule normatively meaningful and prevent it from being abused and manipulated in ways that are alien to the sense of democratic practice. They identify

¹ Riker claims that democratic procedures are underdetermined with respect to minimal proceduralist justification of democracy, which is the only one he accepts. Yet he also notices that different outcomes correspond to different social welfare function, that is, different decision-making procedures, all of which are democratically justified, determine different outcomes even if individuals' preference rankings remain unchanged. This is not an objection to my approach, though. In fact, even if different decision-making procedures may affect the final outcome, citizens that employ said procedure are well aware of the role institutions, and hence decision-making procedure, play in the political game. Citizens know how their ballots will be aggregated when they cast them, hence if strategical behavior is possible, it is not anti-democratic. See Cohen 1987. For a defense of majority rule as the only truly fair and responsive procedure in binary choices see May 1952 and for a similar argument about majority rule providing equal ex ante chance of affecting outcomes see Rae 1969. For a recent defense see McGann 2006. In this work, however, I leave aside the question of which voting rule is the best, as well as the distinction between majority rule and supermajority procedures (for instance attacked by Waldron 1999, Christiano 1996, 2008 and Bellamy 2007, and defended by Dahl 1989, Beitz 1989 and Kolodny 2014b) and between general elections to put representatives in office (which might admit of plurality rather than majority voting in proportional systems) and voting procedures among representatives sitting in parliament (which generally work on the basis of majority rule, except for special constitutional cases, where supermajority might be called for).

² Even though there are other voting procedures that respects the principle of equality, majority rule is still present at least at parliamentary level in nearly all contemporary democracies.

broadly with citizens' political rights, such as the right of free speech, of association and political participation. Moreover, they also includes other elements, as the inclusion of all citizens¹, political equality, the presence of alternative options and accessibility of information, in order to make free, equal and informed decisions². The underlying idea is that all citizens ought to have the chance to freely cast an equal vote based on an informed judgment about alternative options³. Such a decision-making procedure is a necessary, albeit perhaps insufficient, condition for democracy and constitutes the primary answer to the question of what democracy is.

2.2 Beyond Aggregative Democracy

The traditional focus on voting procedure characterizes both minimal proceduralism at large and social choice theory approaches to aggregative democracy, in particular. The general idea shared by both is that democracy consists in a set of rules, primarily voting procedures, that are fair to all participants, because they treat each person's preference equally. According to this picture, the conception of democracy (the *what* question) is minimal because it is identified essentially with a voting procedure and the justification of democracy (the *why* question) is procedural because it hinges on the distinctive political fairness that democracy embodies.

This view has encountered several difficulties. A part from the stipulative character of the definition (Ottonelli 2012, 83) and related problems of reducing a complex political, cultural and symbolic social system to a decision-making procedure (Tocqueville 2000, Rorty 2012, Ferrara 2011, chapter 2), this focus has also the inconvenience of obliterating the quality of democratic outcomes. Insofar as the binding force of collective decisions come from the way they have been brought about, their

¹ I am not concerned here with the recently much debated boundary problem about how to define the demos, for which see for instance Dahl 1989 (especially chapter 9, with respect to competence), Walzer 1983, Bauböck 1994 and Benhabib 2004. Hence I only claim that all citizens ought to be included, but I do not tackle the question of who should be given citizenship and according to which principle, whether the all affected interests one (Goodin 2007) or the all subject to coercion one (Miller 2009).

² Consider for instance Rober Dahl's five standards that are needed to identify a political process as democratic: effective participation, voting equality, enlightened interests, control of the agenda and inclusion of all citizens (Dahl 1989, 108-131).

³ Naturally, these normative requirements apply primarily, but not only to political institutions, like elections. However, to be satisfied, they also demand a certain kind of lively and free public sphere, composed by civil society organizations and political parties (Habermas 1996). It is clear how any minimal definition of democracy as a decision-making process is somehow reductive, as in order to be normatively significant, said definition calls into question many other relevant aspects of a well-functioning democracy. However, it is still conceptually possible and analytically useful to curtail a minimal definition of democracy as a decision-making procedure and take it to be a necessary condition for identifying a regime as democratic.

substantive content is overlooked and may not contribute to the legitimacy of these decisions. Hence democratic outcomes might turn out to be unjust, inconsistent and even irrational, as social choice theories of democracy have shown (Arrow 1963, Riker 1982).

Kenneth Arrow's impossibility theorem shows how no decision-making procedure that respects basic democratic requirements can lend a complete and consistent collective ordering of all individuals' preferences rankings in case of more than two alternatives¹. Arrow's theorem is a further formalization of a problem already devised by Nicolas de Condorcet: the paradox of voting. This paradox indicates the eventuality that majority rule produces cycles in case of more than two options, because it cannot order individuals' preferences rankings in a consistent way. Given three alternatives A, B and C and three subgroups of people X, Y and Z, the paradox of voting illustrates how it can be the case that there are two thirds of people in favor of each of the options (Condorcet 1995)². As it is acknowledged, Arrow's theorem shows that the problem is even deeper, as it proves the impossibility of having a voting procedure for collectively aggregating preferences that could both satisfy certain conditions, thought to be minimally fair and sound, and produce rational outcomes at the same time. This means that also in case of weak preference orderings³ at the individual level, there is no voting procedure that can fairly aggregate those orderings and produce a rational collective

¹ In case of two alternatives, simple majority rule has been proved to be the only one to respect anonymity, neutrality and responsiveness, given unrestricted domain. See May's theorem, May, 1952.

² Given these rankings: X (A, B, C); Y (B, C, A); Z (C, A, B), it seems that A is preferred to B because it comes before B in both X's and Z's rankings. Moreover, B seems preferred to C for the same reason. But then it is easy to see how also C is preferred to A for both Y and Z, so that the final collective ordering is inconsistent: A>B>C>A. Arrow's theorem formalizes this result, by showing that it unavoidably happens if the decision-making procedure (that is, the social welfare function) is required to respect certain criteria of fairness and rationality, while applying to a decision with more than two options. The further premise is that individuals' preference ranking ought to respect a requirement of basic consistency or transitivity, so that their preferences are at least transitive and connected. The five conditions are:

1. Condition U (unrestricted domain): all possible individual orderings are admitted;
2. Citizens' sovereignty or non-imposition: A cannot be the result of the social welfare function, regardless of all possible preference rankings of individuals;
3. Condition P (Pareto optimality): when each individual prefers option A to option B, then the social welfare function does so as well, that is, if everyone prefers A to B, then the collective result cannot but prefer A to B (this condition formalizes the requirements of non-imposition and monotonicity, See Riker 1982, 117);
4. Condition I (independence of irrelevant alternatives): : if all prefer A to B in a pairwise comparison, then the social welfare function has to track this ranking irrespective of how people rank all other options (C,D,E...);
5. Condition D (non-dictatorship): there is no dictator who gets to decide all by himself which is the final collective ranking, but all counts equally.

Almost all conditions have been criticized, especially condition I, independence of irrelevant alternatives, as well as the assumption of non-strategic voting behavior. See for instance Dummett 1985, Mackie 2003, especially chapters 5 and 6. For a general review see Morreau 2016. For Amartya Sen's extension of the Arrow's theorem see Sen 1970.

³ Three features characterize weak preference orderings: reflexivity, transitivity, and connectedness.

outcome. Therefore, we are in need for a kind of trade-off between rationality and fairness, because the only way to escape this paradox is via relaxing at least one of the fairness conditions set by Arrow.

Indeed, upshots of Arrow's theorem in normative political theory have been relevant: on one hand, it has been used to disqualify any attempt at a more substantial account of democracy, on the other it contributed to the genesis of a new substantial account of it as a reaction: deliberative democracy. The fundamental reference for the first case is William Riker's *Liberalism Against Populism*, where the political scientist defends an eminently minimal conception of democracy, whose justification is due to the eventual irrationality of any collective outcome. Since aggregating preferences cannot guarantee that democratic decisions be rational, these preferences can neither be substantially just, nor reveal some sort of General Will (as he assumes "populist" democratic tradition believes). The democratic process cannot aim at identifying any supposed popular will, simply because its outcomes are not the consequential product of a social welfare function whose inputs are individuals' preference rankings, but rather they depend on random selection and agenda manipulation, so that "all voting is rendered uninterpretable and meaningless" (Riker 1982, 237). Thus, only a procedural and liberal conception of democracy "allows elections to be useful and significant even in the presence of cycle" (Riker 1982, 244), because it does not require them to be the result of popular participation, but only a means to protect individual freedom from official tyranny¹.

If this is the case, however, it turns out that minimal proceduralism might not be enough to defend the recourse to democratic procedure. Why should we obey decisions that are little more than random and subject to manipulation by agenda setters? If democracy rests on an irrational procedure, then there are three escape routes, that have been endorsed separately or jointly: (1) the procedure is indeed meaningless, but this is so because its worth resides in its by-products, rather than in the outcomes it lends (that are by assumption irrational); (2) the procedure cannot be reduced to mere aggregation of votes, but is richer than that, as it involves public, free and rational deliberation; (3) or the procedure has intrinsic authority, but it cannot be only due to its formal fairness,

¹ It is quite baffling that, according to Riker, this can be done without a causal connection between individuals' preferences and electoral outcomes, as also the confirmation in power or rejection of public officials might be the result of cycling and manipulation. For a thorough and to my mind effective criticism of Riker's account of democracy see Cohen 1986.

as there are other values that democracy embodies which outweigh its flaws, when issuing unjust or irrational outcomes.

I think Riker endorses the first answer, when he declares that his Madisonian or liberal democracy is justified as a peaceful and institutionalized way to transfer power and change public official without recourse to violent conflict or war (Riker 1982, 8-11). Yet since this also means switching to an instrumental account of democracy, minimal proceduralism is shown to be unstable unless one of the other two replies works (Ottonelli 2012).

2.3 Beyond Deliberative Democracy

Accounts of deliberative democracy represent the second option and have been advanced in the last thirty years with the declared intent of solving the worrying fallout of very unjust or irrational, but still legitimate outcomes that we have seen minimal proceduralism allows for. All political theorists that belong to such a wide and heterogeneous field of study start from a critique of social choice theory assumptions¹. First of all, their main concern is the notion of preference: in social choice theory, preferences are considered as exogenous to the political process and used as a fixed starting point for the analysis (Elster 1986). Conversely, deliberativists hold preferences as endogenous and susceptible of being changed during the political process. As a result, political actors are expected to give shape to their beliefs, opinions and preferences while exchanging reasons and considerations on public matters with others.

Deliberation is thus conceived as the medium of this process of reason-exchange, with functions that are both epistemic and moral and with the general aim to improve the quality of collective decisions (Fishkin 1995, Fearon 1998, Goodin 1986, Besson and Martí 2006, Estlund 2008, Landemore 2013). On one hand, deliberation allows that new information be gathered and shared among individuals, who may take advantage of the deliberative process by acquiring new evidence, as well as by testing the validity and

¹ I am not interested in providing a complete and thorough account of deliberative democracy, because the reference to this conception only serves to highlight the relevance of deliberation before voting even from a prudential perspective and to rule out the possibility that democracy is identified by deliberation alone, rather than by a voting procedure. Therefore, I will not present a detailed review of the literature on deliberative democracy and I will leave aside the main distinction between public reason-based and critical theory-based versions of deliberative democracy. Suffices to say that the former is largely based on the work of John Rawls, while the latter derives mainly from Jürgen Habermas's theory of public sphere and communicative action. Yet, both strands have some elements in common, especially with respect to aggregative conceptions of democracy. For a general presentation see Bohman and Rehg 1997, especially their introduction.

soundness of their opinions. On the other hand, deliberation allows and induces citizens to take others' points of view into consideration and hopefully to publicly argue in terms of generalizable interests, impartial considerations or a publicly shared conception of justice (Goodin 1986, Habermas 1996, Nino 1996, Gutmann and Thompson 1996, Rawls 2005). As it is clear, deliberative democrats share a more complex and rich understanding of democratic politics as centered on the public practice of free and rational deliberation aiming at reaching a unanimous consensus on the common good. Hence, also the democratic legitimacy of collective decisions is more substantial: not only is majority rule not enough to justify a democratic decision because deliberation too is required, but also deliberation has the ideal aim of reaching rational or reasonable consensus among citizens (Mansbridge 1980, Elster 1986, Manin 1987, Habermas 1996, Cohen 1986, 1997a, 1997b).

This entails two main distinctions with respect to the minimal definition of democracy: on one hand, democratic regimes cannot be reduced to a decision-making procedure, as deliberation aims at unanimous consent; on the other, citizens are expected to exchange their cognitive judgments about the common good, rather than casting votes based on their self-interested preferences¹. These initial accounts of deliberative democracy thus take deliberation as a way of solving not only irrationality, but also injustice of some democratic outcomes, which minimal proceduralism leaves open (Miller 1992, Dryzek and List 2003)².

This result is achieved at a very high price, though. Here I cannot provide a proper account of the functions that deliberation is meant to fulfil, but the fundamental idea is

¹ This view represents the very first version of deliberative democracy, as it has emerged around thirty years ago. However, more recent accounts have abandoned the reference to unanimity and consensus for a more nuanced and less utopic understanding of deliberation, as compatible with some forms of negotiation, compromise and majority rule. See for instance earlier works on majority rule and deliberation, like Barry 1995, Nino 1996 and Christiano 1996, as well as more recent works on deliberation, negotiation, compromise and self-interest, like Mansbridge 2006, Mansbridge, Bohman, et al. 2010, Biale 2015 and Warren et al. 2016 (for a critical appraisal see Biale and Porello 2012).

See also fundamental criticism to the idea of deliberation fostering consensus in Sunstein 2002 and Gaus 1997. Finally, after a primary concern for ideal conditions of deliberation and local realization of deliberative mini-publics, deliberative theories have undergone a so-called systemic turn and concentrated their attention on the complex deliberative interplay between political institutions, civil society organizations and political parties, following Habermas's conception of public sphere (Habermas 1989, 1996), for which see Parkinson and Mansbridge 2012, Owen and Smith 2015, Rosenblum 2008, White and Ypi 2011, 2016, Bonotti 2014. Yet, all these further elaborations have in common the acceptance of democracy as at least also a decision-making procedure that does not seek consensus and hence recognize the relevance of majority rule.

² Interestingly, the achievement of consensus is not the only way deliberation solves Arrow's Impossibility Theorem, according to Dryzek and List. On the contrary, deliberation allows to relax both condition U and I of the theorem, which stand for universal domain and irrelevance of independent alternatives, respectively. While the latter requires consensus on what the relevant alternatives are, the former concerns the introduction of single-peaked preference orderings and does not require consensus. Against Dryzek's and List's proposal see McGann 2006, 130-133 and Ottonelli and Porello 2013.

that the public discourse, insofar as it “mediates between reason and will” (Habermas 1996, 475-476), bring together justice and legitimacy, because it lends all and only decisions on which consensus has been reached. Indeed, the deliberative-democratic process, as long as it is conducted according to certain ideal procedural criteria, represents both a necessary and sufficient condition to produce a rationally justified collective decision. According to Habermas, because the aim of deliberation as described by the ideal speech situation is to reach consensus, this decision will be justified to everyone’s lights¹. According to Cohen, who heavily draws on Rawls’s ideas of public justification and original position (Rawls 1971, 15-19), a properly constrained deliberative process will yield outcomes that all will find acceptable (Cohen 1997a, 72-73, 1997b, 413). In both cases, deliberative democratic procedures that respect their ideal counterpart will ensure both justification and legitimacy; that is, they will generate outcomes rationally justified and hence binding, at least insofar as they respect their idealized version. As a consequence, these accounts put together the two concepts of justification and legitimacy by claiming that all and only justified decisions are decisions to which we ought to obey².

Three are the drawbacks of this understanding of deliberative democracy. First, there are two ways of reading this conflation of justice or rational acceptability and legitimacy. Democratic outcomes can be legitimate because they are just or acceptable, but then this is not an account of political authority at all, for we ought to obey to democratic decisions *because*, and not in spite, of their being just. As we have seen, one fundamental element of political authority and obligation is that authoritative decisions are content-independent, hence they ought to be complied with irrespective of their

¹ While I believe that Cohen’s account corresponds to the one presented here, it is more difficult to ascribe such interpretation to Habermas, since he clearly admits of conflict, negotiations and compromises in the deliberative process (Habermas 1994, 4-5). However, following Charles S. Peirce, Habermas also refers to truth as ideal assertability within specifically idealized circumstances, as the ones described in the ideal speech situation (Habermas 1996, chapter 1.1). Therefore an ideal democratic procedure is called into question to justify actual democratic outcomes as product of that procedure.

² The project of public justification as well, in its substantive interpretation, can be taken to exemplify such a position. See, among many, Rawls 2005, Quong 2011, Gaus 1996, 2011, D’Agostino 1996. However, it is important to notice that: (a) the consensus model refers only to *reasonable* acceptability and hence does not require unanimous consensus, while the convergent model requires that each person has her own reasons to endorse the collective decision; (b) the public justification approach is not susceptible to the criticism I lay out further in the text against Habermas’s and Cohen’s accounts, because public justification represents a substantive standard for the justifiability of collective decisions and hence admittedly applies only to particular issues, rather than to the democratic process itself. Naturally, it is possible to give and indeed has been given a proceduralist reading of Rawls, as well. According to such interpretation, only the constitutional essentials ought to be publicly acceptable and to respect the strict requirements of public reason, while any decision that flows from them ought not respect the same standard of reasonable acceptability. Hence, people might be free to argue on the basis of considerations different from the ones dictated by public reason. For a similar reading see Peter 2008, 6.1.b. For a similar dualistic reading of public justification see also Ackerman 1991 and Michelman 1997.

substantive merit. Yet here, deliberative democracy is authoritative because it guarantees that collective decisions will be substantively just, or at least acceptable to all. As such, it loses sight of disagreement and it provides content-dependent reasons to obey, rather than reasons justifying the authority of democracy. Or, democratic outcomes can be just because they are legitimate, meaning because they are brought about by an appropriately constrained deliberative process. This means that the fact that they are the product of a democratic procedure (their legitimacy) makes them just, because democracy is the only procedure we have to select those decisions that ought to count as acceptable for all. The most annoying and exciting feature of disagreement is that all opinions, worldviews, interests and conceptions of justice which people have qualify as private or simply not shared by all. What democracy under this interpretation serves for is to select one of these stances and to award it with the status of public stance, because the decision over which deliberation ends qualifies as the only one acceptable to all.

Now, if justice and legitimacy are so conflated, the consequence is that the content of justice is given by what people can agree to. Although this is perfectly in line with constructivist accounts in metaethics, it has an inconvenient implication in politics. Either all political decisions are taken only through actual deliberation that respects ideal standards and reaches unanimous consent, meaning that decisions are both justified and legitimate; or collective decisions issue from actual and flawed democratic processes, which fail to fulfil all ideal requisites, as it happens in nearly all actual democratic regimes, with the result that none of them is justified and legitimate¹.

Second, one can escape this gloomy picture by recognizing that decisions reached under ideal deliberation conditions determines standards of justice or acceptability that are independent from actual democratic procedures. Yet, in this case, although the criterion is construed in a procedural way, it still qualifies as an independent criterion according to which democratic outcomes are legitimate because they tend to fulfil said independent criterion. Hence, this justification of democratic procedures is instrumental rather than proceduralist (Estlund 2008, 90).

Finally, given the fact that seldom if any collective decisions are taken unanimously in real democracies, one ought to account for majority rule ending actual democratic-

¹ Similar versions of this argument and of the inherent instability of such proposal have been given by Estlund 1997, 2008, chapters 5 and 10; Peter 2008, chapter 6.2; Ottonelli 2012, chapter 4.4. For a tentative answer to this problem see Lafont 2006. For another attempt to overcome the abstract and universalistic notion of ideal deliberation, through the adoption of a more concrete and exemplar idea of practical reason and judgment see Ferrara 2000.

deliberative processes well before consensus is reached. But then again, we face the issue of justifying majority rule or any other equal voting procedure as an essential component of democracy. Moreover, in this case it would be much more difficult to account for the justification of collective decisions, since they would be acceptable only to a majority of people. Hence, we ought to drop the justification of particular decisions, while retaining their legitimacy, or arrive to the counter-intuitive conclusion that decisions over which there is no consensus are nonetheless acceptable to all in virtue of their being democratic¹.

2.4 Beyond Minimal Proceduralism

The third and last possible reply to democratic irrationality is represented by normative proceduralism. While I will introduce and discuss this account in the next section, here I wish to remind the well-known reasons why it is different from minimal proceduralism seen so far. The instability of minimal proceduralism depends on its disguise as a purely formal and value-neutral justification of democracy, which purports the idea that democracy can work as the lowest common denominator of all competing opinions and understandings of justice and individuals' interests. This is so because democracy is thought to be fair to all these positions: it gives a right to an equal say to all people and as such treats them fairly, given the fact of pluralism and disagreement which make it impossible for each and every decision to get universal approval. As Jeremy Waldron reproaches to John Rawls, we do not only happen to have divergent comprehensive doctrines, but we also disagree over the very public conception of justice that reasonable citizens ought to share, according to Rawls². Therefore, we cannot cling to it in order to justify collective decisions, as they inevitably won't appear so to all those citizens who in good faith disagree over what justice requires (Waldron 1999, 149-154). By modifying Rawls's circumstances of justice (Rawls 1971, 109-112), Waldron sets up what he calls the 'circumstances of politics', which specify the conditions that make politics both possible and necessary. These are the fact of disagreement and the need of cooperation (Waldron 1999, 101-106). As he says, disagreement matters because we need to take collectively binding decisions, as otherwise, if we did not need to cooperate,

¹ If we take justification to meet epistemic independent standards, we also incur in a danger of deference, according to Estlund 2008, 102ff.

² Rawls posits a fundamental distinction between the political conception of justice, on which reasonable citizens in a well-ordered Society agree, and comprehensive doctrines characterized by the fact of reasonable pluralism under contemporary liberal-democratic regimes, as he states in *Political Liberalism*. See Rawls 2005 and the second chapter of this work.

we would not care about disagreeing. On the other hand, if we all agreed on what to do on each and every instance, we would not experience the necessity for collectively binding decisions because we would act according to our own judgment and still be able to coordinate¹.

In a way, it seems plausible to wonder whether we could still talk of legitimacy without disagreement over what to do. If we were to agree with every single collective decision, either because we take it to be intrinsically just or correct, or because we find it instrumentally useful to realize our aims and ends, we would never face circumstances where we ought to obey to decision we strongly disagree with². A little thought-experiment may be of help here. If we lived in a very bizarre social world where we all agreed on every single issue and we knew that we so agreed, it seems reasonable to think that we would be able to harmonize spontaneously and act according to our common knowledge. We would live in the realization of Thomas Hobbes's dream of ants and bees, whose communities are immune to disagreement and which are able to coordinate following a natural hierarchy (Hobbes 1998, 113)³. To be sure, we would still have to take collective decisions in order to coordinate and hence would need a decision-making procedure of some kind. But, by hypothesis, almost any decision-making procedure would do, since we would know that we would agree on each and every decision. We could take decisions democratically or autocratically; we could vote or we could select by lot one of us taking decisions always or only for a certain amount of time.

Certainly not any decision-making procedure would treat all of us in the same way, as for instance the autocrat would get to decide everything on her own. However, it seems difficult to think that this would be a problem, because the final decision would be one on which we all agreed and none of us would feel to have it imposed upon him. The demand for legitimacy arises when a decision which we deemed unjustified is imposed on us. If we were to agree (and know that all of us agree) on all collective decisions, the only problem of political authority would be to ensure compliance with these decisions by akratic citizens. And since the main function of political authority would be to handle

¹ One possible objection to this kind of argument regards akrasia, that is, the fact that people violate their own judgment of what is the best thing to do (on which by hypothesis they agree with all others). In this case we would still need political authority, but with the considerably weakened function to handle akrasia. Another objection concerns coordination problems, like on what side of the road to drive. Here, there is no better decision, as both sides are fine as long as we coordinate on one of them. Here a decision-making procedure would still be necessary, but since we would be indifferent with respect to the specific decision taken, it seems hard to believe that a proper issue of legitimacy would arise.

² In a relevant way, we could not be said to *obey* to anything, since we would respect the law willingly and spontaneously, even though this depends on what we take obedience to consist of and it is true only if we take it to require some sort of disagreement with the reasons behind the law.

³ A similar thought is expressed by David Estlund. See Estlund 2008, 71.

akrasia, we would perhaps be able to forsake democracy¹. Certainly, this possible world would be very different from our own, as such an obliteration of pluralism is difficult even to be conceived.

In another closer, but still quite bizarre world, we could agree on every decision as well, without knowing that we do so agree. In such a world, we would have a greater need for a decision-making procedure, because we would not be sure that we really agree on what to do. Decision-making procedures would deploy only an epistemic and detective function, as they would just make clear to all what the agreed-upon decisions were. However, in such a world we would not share these decisions as common knowledge, hence the need for a detective procedure, and we would not be sure of our agreement. In fact, from this world inhabitants' point of view, there would be no way to distinguish between a world where such unanimous consent is near at hand and one where it is not. Therefore, decision-making procedures would have to be justified *irrespective* of whether unanimity is available or not, because people who followed them would be uncertain about their capacity to reach generally justifiable decisions. Under these conditions, the issue of legitimacy would arise and take form and substance, since there would be the actual possibility that we ought to obey to decisions we disagreed about.

Waldron's intuition seems to be that fairness and justice are on different levels. While the latter concerns our different worldviews, life plans, moral and religious conceptions, which happen to differ, pace Rawls, the former defines what are the *fair* conditions to handle disagreement over justice (Waldron 1999, 195-198). In particular, under conditions of pluralism and disagreement, fairness requires that decisions everyone ought to abide by be produced in a way that respects the fact that people may disagree over those decisions. Therefore, the legitimacy of laws and policies does not depend on their substantive value, but by the fact that they have been generated according to a fair procedure. But since only democracy attributes an equal right to a say to every citizen, democracy is the only fair, hence legitimate procedure.

This switch from the justification of particular decisions to a focus on decision-making procedures that yield them is behind most current theories of democratic

¹ Given the problem of akrasia and in general the possibility of people acting to pursue their self-interest rather than the justified decision (on which they would still agree, though), there would still be the need of a political authority that exercised coercive power. What I contend is that such authority would not need to be democratic and, if it were, the reasons for this would be very different from our actual justifications of democracy, given disagreement.

legitimacy (Waldron 1999, Estlund 2008, Christiano 2008, 2013, Peter 2008, 2016)¹. Nevertheless, while I think that this sort of argument convincingly shows why to draw a line between justification and legitimacy of collective decisions, it does not *directly* support democracy. That is, democracy as a decision-making procedure need not to be justified given the fact of disagreement, as there could be perfectly convincing reasons that defend democracy even when we all agree². The problem is that any political regime that claims to lend legitimate outcomes has to take disagreement into account. Despite current justifications of democracy (e.g. Waldron 1999, Christiano 2008), the former example illustrates how disagreement is morally significant only to the extent that we have to abide by decisions that we might find wrong. Therefore, it is not the distinctive working of democracy that depends on the fact of disagreement; rather, it is the question of legitimate authority which arises only conditionally on it. This is also shown by the relevance of the content-independence condition that all authoritative directives ought to satisfy, as we saw in the first chapter. Therefore, any justification of the legitimate authority of democracy ought to argue for the bindingness of democratic directives in virtue of their pedigree, leaving aside the substantive merit of each³.

However, contrary to what Waldron seems to hold, this does not settle all disputes. In fact, two are the objections that can be moved towards his account. First, if it is undoubtedly true that matters of justice are controversial, as Waldron reproaches to Rawls, it is indeed also true that matters of procedure and of procedural fairness are controversial as well (e.g. Christiano 2000, Enoch 2007)⁴. Perhaps we can safely say that democracy is at least morally permissible, if not plainly the fairest possible decision-making procedure. But, even if we can hope to reach such unanimous consensus, which is unlikely if we confront ourselves with all human societies in all times, still there would

¹ A similar idea is shared also by constitutionalists like Ackerman and Michelman, as well as by Rawls's distinction between constitutional essentials and particular political issues. According to these accounts, ordinary collective decisions are legitimate because they conform to a constitutional setting whose essentials are justifiable to all. See note 2 at p. 139. Of course, the difference with accounts of democratic legitimacy resides on the focus on liberal constitution, rather than on democratic process.

² For instance, if we think that a procedure ought to treat people as equals, this can be true and worthwhile irrespective of the fact that those equals agree on the final decision to make. However, in this case we could assess the justice of said procedure and we would not deal with its legitimacy, as people would still end up complying with outcomes because they agree with them and not despite they think they are wrong.

³ We will see further in the chapter that an instrumental justification of democracy hinges on the substantive merit of its outcomes. However, this merit is considered on average, rather than for each single decision.

⁴ Charles Beitz provides a similar observation when he distinguishes between an institutional level and a justificatory level for political equality. While the former concerns the direct constraint of the structure of democratic process, the latter concerns the reasons why we should accept one rather than another conception of procedural equality. See Beitz 1989, 18. See also Christiano's criticism of Peter Singer's justification of democracy as a fair compromise, Singer 1974, Christiano 1996, 51-53.

be room to argue over which kind of democracy would be the best or most suited to us. The simple fact that democracy is fair would not help us to adjudicate between a more populist, more 'epistocratic', more liberal or more majoritarian democracy, *if all these versions of democracy crucially hinge on the conception of fairness we embrace*. Given that disagreement touches also on what is the best and fairest decision-making procedure, even within a more or less democratic framework, we need a clear justification of democracy that ought to provide us with reasons to infer from the specific value of democracy the legitimacy of its outcomes. Moreover, it is not as clear as Waldron thinks that fairness and justice correspond to two different levels, where the former is prior and trumping with respect to the latter. Since what is really fair is also controversial, why should we do without justice for the sake of fairness?

Second, Waldron's account falls prey of the same weakness that affects all other fairness-based justifications of democracy and that has been phrased by David Estlund. Not only there is no one unique fair way to take decisions, but also procedural fairness does not seem to suffice to provide a convincing justification of democracy. If we take fairness in its most basic interpretation as 'full anonymity', we can see how the fact that a procedure is blind to personal features is not enough to take it as justified. Or at least, when we try to justify democracy, procedural fairness is not all that matters, for otherwise we would be contented with a decision-making procedure by lottery or by the renown coin flip (Estlund 2008, 72-84). To claim that democracy is fair, in the sense of fully anonymous, would not do, because this would not grasp the distinctiveness of democracy with respect to lot or coin flip and because mere fairness does not appear as a good reason to obliterate outcome justification, especially when we are dealing with very wrong decisions¹. There is something more to democracy, and the problem of its justification consists in giving good reasons to abide by democratic decisions, despite some of them might turn out to be wrong².

¹ It is important to observe how this distinction between outcome legitimacy and outcome justification leaves open the problem of how to react when outcomes are too unjust. Different accounts of the justifying value of democratic procedures will propose different, albeit similar, accounts of the limits of democratic legitimacy and ought to be completed by theories that explain when and to what extent democratic decisions are not legitimate anymore and civil disobedience is justified.

² John A. Simmons would argue that any justification of democracy would not suffice to lend legitimacy to its outcomes, because said legitimacy can only rest on consent. He might have a point in holding that affirming a political regime as just does not necessarily entail that it has a right to rule. However, this in turn does not mean that consent is the only ground of legitimacy either. See Simmons 1979, 1999. This point is developed in the fourth section of this chapter.

3. Two Justifications of Democracy

In order to make sense of democratic voting procedures, we ought to make reference to substantive values, as procedural fairness won't get us far enough. We ought to come back to the initial distinction between instrumentalism and proceduralism: on one hand, we still have so-called normative proceduralism to explore; on the other, we can take epistemic accounts of democracy, which have recently flourished with the precise aim to complete or replace fairness-based justification of democratic legitimacy by appealing to its epistemic quality (Cohen 1986, Goodin and List 2001, Estlund 2008, Peter 2008, Landemore 2013), as model for instrumentalism¹. What is clear nonetheless is that both attempt to replace the substantive justice of democratic outcomes with their legitimacy as a reason to obey them. Thus, both allow that some outcomes might be wrong, since their legitimacy depends on the procedure, rather than on the substantive justness of said outcome². Moreover, both ought to account for the legitimate authority of democratic procedure through *justification* with respect to some other value or set of values that make respect of democracy more important and weightier than its more or less likely unjust or irrational outcomes. But why should we take the fact that collective decisions have been made democratically to be a sufficient reason to obey them even if they are wrong?

3.1 Instrumentalism

If Estlund's criticism of procedural fairness is sound, any acceptable justification of democracy ought to present a procedure-independent value or a set of values according to which democracy itself is justifiable as a legitimate authority. Call this the procedure-independent criterion of justification. Instrumentalists do so by taking democracy to be a means to something else, which is the 'real value' they are after. It can be equality, as it is with Richard Arneson (2003), or it can be some moral virtue which

¹ I do not discuss here Fabienne Peter's account, which is purportedly a case of pure epistemic proceduralism and hence does not fall under the instrumentalist flag. See Peter 2008.

² This point has been often neglected, since the recent merging of the literature on democracy with the one on public justification. The result is that also democratic theorists have focused on the justification of single decisions, without realizing that this does not provide them with legitimacy in a democratic framework. For instance, even though he is very keen to notice that democratic legitimacy must provide citizens with "moral reasons to comply, not epistemic reasons to believe", David Estlund happens to blur this distinction when he opposes his epistemic proceduralism with correctness theory. In fact, while the former still is an instrumentalist justification of democratic procedure, the latter is not a justification of procedures at all, since it states that legitimacy depends on substantively just outcomes. See Estlund 2008, 102ff. The same mistake is done by Kolodny, 2014a, 205.

the democratic process allows citizens to realize through participation, as with John Stuart Mill (Mill 1977). Be it its direct outcome or its by-product¹, still democratic procedure is taken to represent a means to achieve such result. This allows for two possibilities: democracy can be only a contingently good means to realize good results or it can be the best means on the market (Ottonelli 2012). However, a clearer way to define instrumentalist approach might be that they generally present more than one of these three features: (1) contingency; (2) conditionality; (3) indirectness with respect to democratic procedures.

In the first case, the focus goes on the fact that democracy per se is meaningless and hence all possible ameliorations and improvements that can be applied to it, no matter how much undemocratic, are welcomed and justified. This is the position of some theorists in the debate between constitutionalism and democracy, because as long as democracy has only value for its outcomes, there are no apparent reasons not to constrain majority rule if this helps to ensure better outcomes. Democracy ensures substantive justice only in a contingent way: it is not the only possible way to achieve such result, although it can be the most effective under nowadays contingent circumstances². It is not that such justification is piecemeal, as Thomas Christiano claims³, because we can consistently take it to be valid for all subjects and for all outcomes. The problem with instrumentalism is not that it cannot justify wrong outcomes, because the target of its justification is the democratic *procedure* and not outcomes directly. Yet, said procedure is justified because it tends to produce *on average* outcomes which respect the procedure-independent criterion of justification. Hence, it is both perfectly plausible and possible that certain democratic outcomes will be wrong. However, they will still retain their legitimacy, if democracy can be shown to produce on average correct results. The problem is that the connection between the principles that

¹ There is also another, more compelling distinction between the “task of government” and the “effect of governing”, which Wall proposes on the basis of a distinction already drawn by Jon Elster. According to such distinction, one should instrumentally value procedures considering both how they let the government fulfil the tasks it might have (for instance, to secure order or to realize justice) and all the consequences that a certain way of governing determines. See Wall 2006, 96; Elster 1983, 91-100.

² For interpretation of instrumentalism as imperfect procedural justice in Rawlsian terminology see Estlund 2008, Peter 2008 and Ottonelli 2012.

³ Thomas Christiano proposes to draw a distinction between piecemeal and holistic justifications and states that instrumentalist justification will depend on the subject and on the class of decisions taken, thus being piecemeal, while proceduralist accounts are holistic, because they ground democratic authority in the same way for all citizens (Christiano 2004, 267-268). Even if Christiano has in mind Joseph Raz’s Normal Justification Thesis, which is both instrumental and piecemeal, instrumental justifications in general might be holistic.

justify democratic procedures and these procedures themselves is indirect and contingent, because principles refer to outcomes only.

However, this is not the only instrumental way to conceive of democracy. Let us take the famous Condorcet Jury Theorem as an example (Condorcet 1995)¹. This justification of democracy is instrumentalist and epistemic and has been recently updated by Robert Goodin (Goodin and List 2001, Goodin 2003). It says that if three conditions obtain, then the more people will be for a certain option, the likelier will be that the option is right. The three conditions are: (1) that there is a binary choice, where one option is right and the other wrong; (2) that the average competence of voting population is better than random; (3) that people cast their vote independently from one another. If the second condition is not satisfied, then the mechanism reverses and the more people want option A, the likelier will be that A is wrong.

Although such theorem is an instrumentalist justification of democracy, that draws its value from the substantive quality of its outcomes, still it qualifies democracy as *necessarily* getting the right results. Once the three conditions are fulfilled, the fact that democracy will choose well is no matter of contingent circumstances, but will happen by necessity. What about the contingency, then? Here, instrumentalism shows another feature, which is conditionality. The link between the principles that justify democracy and democracy itself is always indirect, but is not contingent. In fact, the capacity to reach correct outcomes is what justifies democracy (indirectness) and this capacity is necessarily given by the majority rule itself. However, democracy ensures the best result if and only if the three conditions of CJT hold. There could be democracies where citizens are not enough competent (and the effect would reverse), as well as there could be democracies or electoral systems where people do not cast their vote independently (as the Borda count). Therefore, the justification of democracy is conditional on certain empirical circumstances and in case they do not obtain, democracy ceases to have both value and legitimate authority².

Indirectness, contingency and conditionality taken together represent a double problem. On one hand, as we have seen, they make democracy's legitimate authority

¹ For arguments in favor of and against the CJT as a good epistemic justification of democracy see: Grofman and Feld 1988, Estlund, et al. 1989, Goodin and List 2001, Goodin 2003, Estlund 2008.

² The same happens for instrumentalist approaches to deliberative democracy, as Hélène Landemore's (Landemore 2013). Here the epistemic quality of democracy depends on its capacity to employ through deliberation all the different perspectives and viewpoints of citizens in society. As such democracy is able to fulfil two functions of problem-solving and prediction of the better alternative. Yet, this makes democracy contingently *and* conditionally valuable, because it ensures correct outcomes only if a certain threshold of minimum social complexity is achieved and only if said complexity really fulfil the two functions (which is something less evidently sure than Landemore seems to think).

depend on empirical circumstances ensuring that democracy brings about good results or on factual conditions whose realization is necessary in order for democracy to bring about said results. In the former case, the connection between democracy and its outcomes is contingent; in the latter, the connection is necessary, but conditional on certain premises. If we take the competence condition of the CJT, this raises a number of questions concerning what citizens ought to be knowledgeable about and how we define the threshold of *average* competence, especially depending various and diverse political issues citizens ought to consider. Moreover, if we look at how the competence condition works with the third condition on independence, we might encounter other troubles, as deliberation constitutes a way to improve our competence, but is taken by some to be incompatible with independence¹. On the other hand, even if these factual circumstances were to obtain, democratic authority would not be on firm grounds either. In fact, since it relies on the average outcomes democracy produces, the evaluation of these outcomes acquires a much greater importance with respect to democratic procedure itself. Yet disagreement about how to evaluate these outcomes, about what constitutes the proper definition and realization of substantive values such as justice and equality makes it incredibly hard to come to a shared understanding of democratic authority.

This represents the core of proceduralists' criticism of instrumentalism and has been framed in various ways and employed against both justification of democracy and non-democratic justification of legitimate authority². The result is that democratic authority is debatable and uncertain, because it hinges on its performance with respect to outcomes whose worth is in turn debatable and controversial. If the only reason for which I should take democracy to be legitimate and its outcomes to be binding and enforceable is that it generally lends just or correct outcomes, then there are two ways to evaluate these outcomes.

On one hand, I can confront them with my own conception of justice or with other substantive values or interests I endorse and see whether they fit. If they do not, democracy is no legitimate authority for me. Let me emphasize that democracy does not lose its legitimate authority because some of its outcomes are wrong, as instrumentalism is a justification of democratic procedures that requires only *average* outcomes to be correct. Nonetheless, since it is up to each citizen to evaluate these outcomes according

¹ For different takes on the problem, see Estlund, et al. 1989. See also Dietrich 2008.

² For the former see for instance Christiano 2008, Peter 2008, Ottonelli 2012; for the latter see Christiano 2004, Herschovitz 2003, 2011.

to their conscience, disagreement kicks in and jeopardizes democracy's authority insofar as democratic outcomes are deemed by some to be unjust more often than not.

On the other hand, epistemic versions of instrumentalism have a more sophisticated option. If democratic procedures are really capable to select the correct outcome, then it is my idea of the outcome wrongness that ought to be revised, rather than my allegiance to democratic procedures. What I am required to do is a Bayesian reasoning: I should take the fact that a majority of people have voted for outcome x as a good reason for thinking that x is right, despite what I may have previously thought. However, in this way democracy would be not only a political, but also an epistemic authority, because what issues from it would demand both our compliance and our acceptance as true. But this way of thinking of democracy cannot work, because it is excessively demanding. For following this line of reasoning, we ought to take democratic outcomes as *both* correct and legitimate and this collapses the very distinction between the justification and the legitimacy of outcomes with which we started¹. In such a way it loses sight of one of the main features of legitimate authority: the fact that its directives are content-independent. Moreover, since no epistemic account takes democracy to be able to deliver all and only correct outcomes, to ask deference to democratic decisions would be unwarranted, as the chance that democratic outcomes are of the wrong kind is always there. In sum, any justification of democratic authority should provide reasons to act, to obey its directives irrespective of their content, rather than reasons to believe whether said directives are right or wrong (Estlund 2008, chapter 6).

The conclusion is that epistemic versions of instrumentalism seem either too much or too little. On one hand, they are insufficient if citizens are required to evaluate democratic outcomes in virtue of their own judgment and find out that democracy is wrong more often than not. But on the other, epistemic instrumentalism asks too much if it demands citizens to believe that democratic outcomes are always correct, rather

¹ Even the authority of democracy would be jeopardized, because according to some, epistemic authorities are no authorities at all. In fact, if a qualifying feature of political authority is to issue content-independent directives, it is not clear that epistemic authorities' directives are content-independent. Surely, it is because most of these directives are substantively correct that someone is an epistemic authority to me and the reason why I follow one of her directives is that she is an authority, rather than that I know that said directive is correct (which is something I do not know by hypothesis, since I need to follow an epistemic authority). So, the reason why I obey is that the authority told me so. Yet, it is only because the authority is right more often than not that she is an authority to me. Hence, the fact that the content of the directives is correct represents the reason why I follow said directives, although I cannot assess their substantive correctness by myself, as I have to trust the authority for that. But the reason for following the directive is that it is right, while the reason why I know it is right is that authority told me so. On the issue see Enoch 2014. For an interpretation of political authority as a form of theoretical authority, hence lending reasons for belief rather than action, see Hurd 1991.

than to obey them regardless of what they think of them because these outcomes issue from a legitimate authority. Insofar as instrumentalism asks deference, it is both substantially and conceptually mistaken. On the contrary, instrumentalism can work as a proper justification of democratic procedure if it allows that democratic outcomes are correct only on average, rather than always. Yet, in such a way, the problem of disagreement about the justifying values of democracy surfaces again.

To sum up, contingency, conditionality and indirectness in this justification have prompted proceduralists to raise various critiques, and two of them are especially relevant here. The first revolves around the fact of disagreement, as we have seen. The argument goes more or less like this: if we shared the same judgment about the quality of democratic outcomes, or at least if we shared the same standard of correctness or truth conditions about what makes an outcome correct, then democracy would have only instrumental value¹. Thus, if we did not disagree as in fact we do, we could agree on democratic authority in virtue of a shared commitment to the quality of democratic outcomes. Yet, we happen to disagree a lot, and on both substantive judgments and truth conditions. Therefore, not only do we formulate opposed judgments about particular outcomes, but we also strongly disagree about what matters for an outcome to qualify as just or correct.

Unfortunately for this criticism, a certain, albeit more modest, amount of disagreement concerns also the principles that justify democracy in a necessary way. It is true that procedural justifications take democracy to be a legitimate authority because it is *democratic*, but normative principles grounding democratic procedures are object of disagreement as well. How do we deal with disagreement that concerns procedural principles, such as equal respect or mutual justifiability? Proceduralists can contend that democracy is able to elicit much more support than other substantive principles applying to outcomes. There will be disagreement, but much less. Or, they can accept disagreement concerning their grounding principles but reject the idea that it would have the same, destabilizing effect on the legitimate authority of democracy. For democratic institutions allow for institutional change in a way that no other experienced regime can. So, since they possess a reflexivity that makes them more hospitable to

¹ This is Laura Valentini's argument about the effect of disagreement on democracy. She draws a line between reasonable and unreasonable disagreement and she argues that epistemic democracy is justified under the former, but not the latter, while intrinsic democracy is justified under the latter but not the former. Reasonable disagreement happens when people disagree about substantive judgments, but share the same conception of truth-maker conditions, while unreasonable disagreement happens when people disagree also on the latter. See Valentini 2013.

disagreement than any other political system, they allow people to discuss and contest the very justifying principles at their heart, which is something other forms of political authority grounded on substantive principles do not allow for¹. Under these circumstances, normative proceduralism will consistently ground democratic legitimate authority in a way that is precluded to instrumentalism.

Nonetheless, there is also another, deeper shortcoming of instrumentalism: its incapacity to properly account for the value of democratic procedure². The underlying thought is that reducing the value of democracy to something else is not the adequate way to reckon such value. If according to normative proceduralism, democratic authority hinges on certain moral or epistemic³ intrinsic properties of democratic procedures, to recognize what is exactly this value is essential in order to assign the right to rule to these procedures, regardless of their outcomes or by-products. Hence, instrumentalists fail to see this direct and necessary relationship between grounding principles and procedures. Naturally, this represents a deficiency only from normative proceduralist perspective, as it is exactly instrumentalists' point to assign value and hence authority to democracy only contingently and instrumentally. For them, it is a way of clarifying how political authority is an artificial entity and, as such, has power and right to rule only to the extent that it serves those over which it rules (Raz 1986). If this is not the case, political authority loses its contingent right and people ought not to obey its directives.

On the other hand, proceduralists claim that the authoritativeness of certain decisions draws by the way they are taken and cannot be doubted on the basis of a set of standards, which happens to be mine but no one else's. Surely disagreement makes things worse, as it certifies the non-publicity of certain standards, but the value of democratic procedure does not hinge on disagreement, according to this reading (Ottonelli 2012, Ceva 2012). Rather, democracy merely treats people as they should be treated always, that is as autonomous, or equal or subjects entitled to justification. Instrumentalists' focus on outcomes is mistaken, following this line of reasoning, because they overlook this procedural aspect of justice, which prescribes what is due to

¹ For the reflexive feature of democracy see Johnson and Knight 2011. For a similar argument about how democracy answers to individual's right to justification and hence qualifies as a system that requires that decisions be justified to all see Forst 2011. For a justification of democracy which revolves around the concept of contestability see Pettit 2012. While mutual justifiability seems a procedural justification of democracy, as it pertains properly to how democratic procedure works, it remains to be seen whether features like contestability or reflexivity qualifies as intrinsic or instrumental with respect to democratic procedure.

² I take this second shortcoming from an unpublished manuscript by Emanuela Ceva and Valeria Ottonelli.

³ Peter's pure epistemic proceduralism: Peter 2008.

people as autonomous and equal beings, regardless of the consequences of the choices they make. Let us inquire further this possibility.

3.2 Normative Proceduralism

Contrary to instrumentalism, normative proceduralism conceives the relation between the independent criterion and democracy in a quite different way. In fact, the kind of values that justify democracy are achieved directly, necessarily and unconditionally¹ through that process. Hence, democratic procedures play a determinant role, as they represent a necessary condition for the realization of the justifying value, whose fulfillment cannot be obtained without democracy. It is still a procedure-independent criterion, because it is logically distinct from *actual* democratic procedures to which it refers. However, there are no other ways to realize the independent criterion without democracy being realized (Peter 2008, Ottonelli 2012, Kolodny 2014a, 2014b, Viehoff 2014). In a way, democracy may be said to embody such value and thus cannot be left aside if we want that value to become real. In this sense, normative proceduralist accounts are all those which take democratic procedures to be “constitutive of legitimacy” (Peter 2008, 64) in a way alien to instrumentalism.

However, this does not depend on the fact that normative proceduralism avoids relying on a procedure-independent criterion, as Peter contends (Peter 2008, 64), but only on the kind of necessary and direct connection that normative proceduralism devises between said criterion and democracy itself. Accordingly, democratic outcomes retain their legitimacy although they might be *all* wrong, because the reason for democracy itself to be justified is independent from the kind of decisions democracy makes on average. Hence, the authority of democracy is not jeopardized by democratic decisions, in case these are too bad. This is both an advantage and a drawback. In fact,

¹ I think that the issue of conditionality is where some doubts may arise concerning pure proceduralism of certain accounts. For instance, Christiano makes it clear that democracy is justified only insofar as the “facts of judgment” hold and identifies a set of conditions that make individuals’ interests in judgment relevant. The same is true for Waldron’s justification of democracy as conditional on the fact of disagreement and the need for order. However, it is also true that these conditions are ubiquitous and characterize more generally the *human* condition itself. Therefore, it is difficult to draw a line between those conditions that cannot be left aside in any political reflection (like actual pluralism) from those which are somewhat inessential (like individuals’ competence). I doubt that any proper justification of democracy as a *legitimate authority* can avoid considering what are the political and human conditions we start from, anyway. See Christiano 2008 and Waldron 1999. For the idea that an apt justification of democracy should be sensitive to actual empirical conditions and circumstances under which we live see Ottonelli 2012, 9.

democratic results can turn out being really awful, but they would still retain their legitimacy and we would still be demanded to obey them. To what extent is this true?

A possible criticism of normative proceduralism is that it allows its outcomes to be deeply inconsistent with principles that are behind the justification of democracy itself. Since the justification of democracy is impenetrable to the quality of outcomes, which might be as bad as humanly possible, it can be the case that democracy democratically undermines and ends itself, through decisions that replace it with some other political regime. To this worry there are three possible replies, which focus on, respectively: (1) external and non-democratic concerns; (2) external and democratic concerns; (3) internal and democratic concerns.

The first reply is more instrumentalist than proceduralist in spirit, as it takes democracy to possibly be at odds with other substantive concerns, like social equality or individual freedom, and hence constrains the range of domains that can be submitted to democratic evaluation and decision. This thought is behind most constitutionalist efforts to confine democracy to issues that do not jeopardize shared, but controversial liberal principles and values.

Philosophers like Philip Pettit endorse the second type of reply and let democracy decide over a great array of questions, except for the democratic regime itself, which is put outside the range of people's choices. Democracy can be modified, it can be made more or less majoritarian or consensual, it can have more or less directly democratic institutions, such as popular referenda, but the democratic people cannot be allowed to put an end to the democratic experience. In a way, citizens are free and independent, except from the burden of democracy, which they cannot shake (Pettit 2012). However, although necessary for the stability of democracy itself, this imposition qualifies as an external constraint, over which citizens have no power, hence it ends up being a strange undemocratic safeguard for democracy¹.

¹ Pettit's model is even more demanding, if we consider his proposed solution to the so-called discursive dilemma. This dilemma concerns judgment aggregation and in a way is an extension of social choice paradoxes of preference aggregation, like Condorcet's and Arrow's to judgment aggregation. It shows that if we aggregate conclusions from a judgment based on two premises we can draw a different result with respect to the aggregation of these premises directly. The effect is that the collective group endorses aggregated premises that do not support, rather reject the aggregated conclusion on which the decision is taken. Pettit's solution consists in strengthening the rationality of the decision and hence in aggregating premises rather than conclusions. The proposal might seem somewhat undemocratic, because it constrains citizens' reasoning in a standardized one and it seems to favor so-called contestability of democratic decisions (making them rest on unified and coherent premises) to citizens' autonomy in taking them. Yet, while the option to overthrow democracy is literally taken out from the set of options available to citizens, this further requirement of rationality concerns Pettit's demanding interpretation of how democracy should function and not external limits that ought to be put on the democratic process itself. On the democratic dilemma see: Kornhauser and Sager 1986, 1993, 2004; Pettit 2001; Pettit and List 2004, 2005; List 2006,

The third reply is the most ambitious, because it aims at avoiding both too unjust and undemocratic outcomes. Here the thought is that democracy retains its legitimate authority only insofar as its founding principles are safeguarded. Let us take Christiano's example: since he grounds both democratic authority and fundamental human rights on public equality, whenever contradicts this normative principle, it is not legitimate anymore (Christiano 2008). As a consequence, democratic citizens are not prevented from taking any democracy-ending decision, but simply once said decision is taken, democracy ceases to be a legitimate authority and no one is morally required to comply with its directives. Christiano's effort is more ambitious, because it aims to identify the limits of democratic authority with the internal logic of democracy, rather than grounding them on external considerations. Moreover, it is also more demanding, for regime change is not the only reason for democracy to lose authority: there can also be other causes, such as disenfranchising of minority groups. The trickiest part relates to the three different institutions that the principle of public equality is taken to establish. Since together with democracy and human rights, also an economic minimum follows from the principle of equal advancement of the interests of all, not only it might seem very easy for democracy to become illegitimate, but it might be questioned whether there is any legitimate democracy at all¹. Naturally, Christiano rejects the idea that also the lack of an economic minimum can be sufficient ground to disregard democratic authority. Yet it is not clear what warrants such a dissimilar treatment, with respect to human rights².

All these attempted solutions combine proceduralism with instrumentalist insights, because they refuse to overlook outcomes. Yet, contrary to epistemic accounts, they recognize the moral and normative value of procedures beyond the outcomes they might or might not bring about. To be sure, it is an unstable solution, that cannot possibly be accounted for in wholly proceduralist terms. In this sense, these accounts of democratic justification qualify as dualistic, rather than monistic (Christiano 2004, 2008, Estlund 2008), or as complex (Beitz 1989), because they reckon more than one dimensions of value within democracy and attempt to complete proceduralism by

2012. Against Pettit's solution and more generally the relevance of discursive dilemma for democratic theory, see: Peter 2008, 100-109, 2009; Ottonelli 2010, 2012, 257-289, Ottonelli and Porello 2013.

¹ Christiano however is very careful in qualifying the economic minimum, which responds to a sufficientarian, rather than properly egalitarian concern. See Christiano 2008.

² Christiano argues that violation of human rights has a public evidence that violation of economic minimum has not. According to his conception of publicity, this makes violation of human rights worse. However, it is not clear what neutralizes violation of economic minimum, to the extent that it is not only less wrong, but also not a legitimacy-debunking kind of wrong. See Christiano 2008, especially chapter 7.

avoiding too unjust or even undemocratic outcomes. Nevertheless, rigorous normative proceduralism would still be consistent if it answered that, again, the value of procedures is independent from outcomes. Legitimate authority depends on the way democracy treats people, rather than on the end-state it ensures. Therefore, as long as people take decisions together as free and equals¹ and as long as democratic institutions respect their freedom and equality in the way they take decisions (hence they necessarily follow majority rule, although this requirement might not be sufficient to respect citizens' political agency), nothing more can be said about outcomes. For democratic decisions might be rejected according to some citizens' conscience, while they might be perfectly sensible and just according to others. Since we cannot avail ourselves of any publicly acceptable set of criteria for the evaluation of these decisions, we ought to content ourselves with the fact that they have been taken democratically and delimit the grounds of legitimate authority to democratic procedures themselves.

There are two replies that can be advanced. First, the distinction between outcomes and procedures is less clear-cut than normative proceduralism seems to hold. While most of the time, democratic decisions pertain to issues that are not directly linked to democracy itself, like for instance the taxation system, or public health and education, there are decisions whose aim is to change the institutional setting of the democratic regime. As we have seen, there are diverse forms that a democratic regime can take and whether they are still within the democratic range depends on the *what* question we mentioned at the beginning of the chapter. If deliberation is deemed to be essential for a proper democratic system, then whatever regime does not protect and enhance deliberation will prove to be outside the democratic range. Conversely, according to the same deliberative reading, if majority rule is thought to be dispensable, then all political systems that replace majority rule with consensus or supermajority still fall within the range of democratic regimes, as long as they protect deliberation.

Since I argued that majority rule is a necessary, albeit not sufficient, condition for democracy, all institutional change that expunges majority rule would *eo ipso* make the new institutional setting fall beyond the democratic range. Naturally, the more conditions are taken to be necessary for democracy, the narrower will be the permissible range for institutional change. The problem, then, is that the more demanding and thorough is the justification of democracy, the more extended the set of all its necessary

¹ Peter and Ottonelli, following Sen's criticism of welfarism, stress the role of citizens as active agent of decisions, rather than passive receptors of social benefits. See A. Sen 1985, 204, Peter 2008, 25-30, Ottonelli 2012, 108-109.

features, the easier will be to abandon the democratic regime when an institutional change will be attempted. Democratic outcomes and democratic procedures are hence much more intertwined than rigorous proceduralists might want us to think, so that it is for the sake of democratic procedures that too unjust or undemocratic outcomes should be prevented.

Second, normative proceduralism also neglects the way procedures are employed by citizens. **If it makes sense to draw a line between substantive principles that apply to end-states and procedural principles that are realized by the way democracy works, it seems even harder to separate these procedures from the way people behave within them.** We cannot possibly give a proper account of the democratic game if we overlook the way this game is played. Democracy, like any other game, is primarily a set of rules and roles assigned to citizens and it requires to follow a specific procedure to take collectively binding decisions. If a procedural justification of the intrinsic value of democracy assumes citizens to have certain dispositions they do not have, the effect is simply that said justification does not apply to actual democracies, where citizens possess a different disposition.

Let us have a look at two examples. There are many reasons for liking volleyball: some are clearly instrumental, such as the fact that volleyball keeps us fit, others are more difficult to define, such as the fact that playing volleyball is fun. Obviously, there are other fun games to play, so that fun does not constitute the specific feature of volleyball. Still, it seems quite intrinsic. Anyway, volleyball works like this: players try to score points by grounding a ball on the other team's court under organized rules. The assumption is that anything not explicitly forbidden is permitted and, most of all, that people play to win. If someone during a match intentionally punched me in the face, it would certainly not be fun anymore, but it would also not be volleyball anymore. I cannot win by shooting down the enemy team with a gun. It would not count as 'winning' at volleyball. The same goes for winning aim players are assumed to have, for if they played to make the other team win, due to a fraudulent or even benevolent intent (like a father playing with his child), the game would not be really volleyball anymore. Or, if it were volleyball, it would not be the authentic game it is when players try to win.

The same goes with other more or less "procedural" things, like friendship, for instance. Clearly, we value friendship intrinsically, to the extent that even thinking about friendship in an instrumental way (although it certainly has some valuable by-products) would mean to betray its spirit. Yet, there are things we can and things we cannot do to a friend; and things that once done, perhaps more than once, terminate the relationship

with the so-called friend. Both examples represent a game and a relationship that we value intrinsically. Nonetheless, both experiences hinge on the way we entertain with others within them. We would not be playing volleyball anymore if we started hitting each other – and probably we would not be friends anymore either.

We can distinguish between three levels. First, there are the rules of the game, that is how a certain practice is performed or what a certain relationship allows for. In the examples, shooting down the adversary team or betraying a friend are actions that are inconsistent with the very practice of volleyball or friendship. Second, there is the disposition with which we engage in the practice and said disposition might be more or less determinate and demanding. In the case of friendship, it is generally considered quite demanding, as being a friend means caring for the other person and being in such a caring disposition towards her. In the case of volleyball, things are less clear, as players might be assumed to have more than one specific disposition. If volleyball is taken to be about winning, then the father and child case barely qualifies as *proper* volleyball; while if volleyball only requires people to enjoy the game, then a father might be thought to enjoy it even without having the winning disposition. Nonetheless, there are dispositions that are ruled out, like the desire to physically hurt the other. Finally, there is the level of reasons or intentions with which we undertake a certain disposition towards the practice. I can play volleyball to win because that is my job as a professional player or I can do so with the intention to have fun by winning. Or, I can care for a friend because I admire her or because she is a long-time friend. Naturally, the more demanding and specific the disposition is, the narrower is the set of intentions and reasons to undertake said disposition. While there might be many reasons to play volleyball, the caring disposition towards a friend is incompatible with certain intentions, like the one of exploiting her for her wealth.

The point is that in the justification of these experiences the kind of disposition with which we engage in them matters to the value they have. Hence a justification is disposition-dependent insofar as the right kind of disposition from participants is assumed and fundamental in characterizing said experience as valuable, or even as precisely that experience rather than something else. If democracy is a legitimate authority because of the way it treats people and the rights it attributes to them, in particular the right to vote, the way these rights are employed by people may affect the value democracy has. This does not relate to the quality of outcomes, but simply to what makes procedures valuable. If democracy is a game, the right to vote is the main role

democracy assigns to its players. Depending on how this right is *played*, democracy will embody the normative principles that justify it differently.

This is clear if we have a look at the one of the former advocates of democracy: Jean-Jacques Rousseau. On his account, the legitimacy of democratic authority derives from the General Will, which in turn has a double interpretation. On one hand, the General Will represents a distinctive way to take collective decisions, that is by giving all citizens an equal right to vote and adopting the decision taken by the majority of them (Rousseau 2002, 165-166, 226, 228-232). On the other hand, the General Will has also a substantial and realist interpretation, as it is defined as what is in the interests of all, or the common good (Rousseau 2002, 172-173, 189). Since the legitimacy of democracy requires both conditions to be fulfilled, citizens ought to think of what is in the interests of all when voting and they cannot let their own “particular will” prevail over the general one. Therefore, the kind of disposition they have is fundamental in determining the value of democracy and its legitimacy, because in case all citizens were only concerned to further their own interests, then no decision would be really authoritative, as the General Will would disappear (Rousseau 2002, 172-173, 227-274).

Similar considerations move Rawls’s idea of reasonableness, which we have seen in the second chapter. Here the exercise of power is legitimate only insofar as it is acceptable to its citizens, whom in turn are assumed to be reasonable and thus willing to act on the basis of the principles of justice, the former of which ought to be fulfilled if the exercise of power needs to be legitimate. Although critical of Rawls’s moralist assumptions, a similar thought underlies also Waldron’s justification of democracy. On one hand, Waldron allows all conceptions of justice to be publicly expressed, and in fact considers democracy as a sort of second-order justice or fairness which deals with disagreement over the right conception of justice¹. Nonetheless, he takes democratic decisions to be authoritative because and insofar as people vote *in good faith*. Simply, they can assess their interests and others’ on the basis of their own standards of justice, but this is what their opinions ought to be about (Waldron 1993)².

All these examples represent accounts of democracy that do consider citizens’ disposition but requires it to be of a demanding and distinctive kind. As a result, the intentions and reasons that are compatible with this disposition are essentially only

¹ Here Waldron distinguishes the question of “what we ought to do from what we ought to do when we disagree about what we ought to do”, Waldron 1999, chapter 1.

² See also Nico Kolodny’s idea of the “right disposition” in Kolodny 2014b, 296, and traditional accounts of deliberative democracy that take citizens to be concerned with the common good or generalizable interests: Mansbridge 1980, 1990, Cohen 1986, Elster 1986.

morally oriented¹. What other reason might I have to be reasonable and in good faith, if not for devising terms of cooperation that are fair to all or an impartial balance of everyone's interests, as I see it?

If we consider democracy, I might intend to engage in the democratic voting procedure with different intentions, which overall determine my disposition towards democratic institutions. Since the justification of democratic authority hinges on the assumption that citizens display the right disposition when they engage in the democratic game, actual democracies appear to lack legitimate authority if the majority of its citizens do not conform to such disposition towards democratic institutions. These justifications of democracy are disposition-dependent and thus the justification of democracy that this proceduralism conveys is conditional on citizens' manifesting the right kind of disposition. The conclusion is that unless one trusts one's fellow citizens to be truly and primarily interested in justice or the common good, one cannot take the democratic system one lives in to be a legitimate authority. And this is the case no matter what outcomes the democratic game produces. Moreover, if what matters is that people develop certain dispositions to treat each other as equals (Christiano 2008, Kolodny 2014b) it might seem that the value of democracy resides more in its by-product, rather than in the way its procedures work.

However, procedural justifications of democracy may also not refer to citizens' disposition. In this case, democracy is justified because it gives to each individual what is due to her, by acknowledging her public status as equal and autonomous persons (e.g. Christiano 2008, Peter 2008, Urbinati 2006, 2014, Ottonelli 2012, Viehoff 2014)². According to this disposition-insensitive view, the justification of democracy ought to recognize this status to citizens and said equal status is prior and independent from the use that individual citizens make of it. Here democracy is a matter of procedural justice that leaves aside both inputs and outputs of the democratic process itself. Yet, this second account of normative proceduralism has its drawbacks too. I will outline three of them.

¹ Consider Rawls's claim that the reasonable and the rational are irreducible to each other, in Rawls 2005, 48-50. For a different view see David Gauthier's attempt to ground a moral disposition on prudential considerations in Gauthier 1986.

² Valeria Ottonelli represents a special case. She in fact endorses a complex justification of democracy, called "proceduralism of ideals", according to which the kind of respect for persons as political agents that individuals are owed does not depend on individuals' being that kind of persons. She draws a line between the content of respect and the reasons for which we ought to accord respect to citizens as political agents (Ottonelli 2012, 202- 212). As a result, the democratic ideal requires to treat citizens as if they were rational, reasonable and prudent political agents, regardless of whether they really are. If this reading is correct, Ottonelli ought to be considered an advocate of disposition-insensitive normative proceduralism, because the reason why democracy is a legitimate authority is independent from the actual dispositions that citizens display. Rather, it requires to respect them *as if* they were capable of showing them.

First, normative proceduralism seems to commit the same anti-pluralism mistake it blames on instrumentalism, since it relies on a conception of justice about how people ought to be treated. Whether it is equal political liberty or equal respect, the idea is that democratic institutions and especially majority rule embodies directly and necessarily an independent criterion of justice¹, so that legitimacy ultimately hinges on a distinctive conception of justice. However, this is exactly the core of proceduralists' traditional critique of instrumentalism and although it is true that democracy is much less controversial than other nondemocratic conceptions of justice, still those who disagree with the justifying conception of justice behind democracy are left outside the legitimation pool. Those who disagree with the public conception of justice will have no good reasons to take democracy as a legitimate authority and hence will be in the same conditions of Rawls's (not necessarily so) unreasonable people².

Second, if the disposition-dependent view conforms to what we have seen and excluded in the second chapter, the disposition-insensitive view obeys to the same logic behind Tom Christiano's externalist justification of democracy. This means that in order to count as a justification of democracy's legitimate authority, this view ought to provide something more than a simple justification of democracy according to criteria of justice. To say that democracy conforms to (procedural) justice counts as a reason in favor of its legitimacy only if we add that we ought to do as justice asks primarily and conclusively. That is, we have a duty of justice to comply with democratic directives. But then the same doubts that I raised against Christiano's account target also this version of normative proceduralism.

Finally, the disposition-insensitive reading of democratic justification seems to leave aside the fact that democracy serves as a decision-making procedure, rather than a code of conduct. Democratic relations among citizens might have an implicit worth, but they also have the express aim to bring about decisions that all will be required to obey. The value of the democratic practice ought to be given in virtue of what democracy is, that is primarily a decision-making procedure, and hence the way citizens engage with their role in the democratic practice matters to its value and authority. If the normativity of democratic authority rests on its way to treat people equally, a normative proceduralist justification seems to overlook the possibility that unjust or undemocratic

¹ Christiano declares it explicitly (2008), but this is also true of other normative proceduralists, although not all of them cast the justifying value in terms of justice (for instance, Pettit 2012 does not).

² For an internalist conception of public justification that purportedly exclude unreasonable from the legitimation pool see Quong 2011 and for a criticism Wall 2002, Kelly and McPherson 200, Sala 2013.

decisions be brought about by citizens who fail to live up to the standards of justice. As a consequence, the justification proves incapable of standing on its own foot, since it has to be completed by outcome-oriented constraints that ensure the stability of the democratic regime (Christiano 2004, 2008, chapter 7, Viehoff 372-374, Urbinati 2014, 102). To the extent that one is concerned with the possibility of undemocratic outcomes, the way citizens behave within the democratic game matters.

What I attempted to highlight so far is simply that dispositions matter. If we shift our attention to the fact that citizens' status as equal or equally autonomous is also a role that each person has to play within the democratic game, then the way she plays contributes to the definition and the value of the game. It is a procedural concern, but it calls into question normative proceduralism, because this approach either assumes one specific disposition that is not as widely shared as it purports or it neglects the relevance of dispositions altogether. While the justification of a procedure can be independent from the outcomes said procedure produces, it cannot be insensitive to dispositions as well. A proper justification of democracy, hence, ought to follow a middle path, between disposition-dependence and disposition-insensitivity. On one hand, the justification cannot assume a disposition that is too demanding and distinctively moral, as it will be compatible only with morally oriented intentions and reasons to assume said disposition. On the other, the justification cannot completely forgo dispositions. Thus, I believe that two conditions ought to be met: (1) disposition-sensitivity; (2) independence from a highly specific disposition.

This consideration does not pertain to the substantive domain of outcomes. Rather, it shows how democracy cannot be a legitimate authority, regardless of its outcomes, if it is justified as a procedure employed by people with certain intentions which are different from actual democratic citizens'. What matters is that for democracy we cannot avail ourselves of the distinction between ideal and non-ideal theory, especially if we aim to justify democracy procedurally. It would be like saying that volleyball is fun because you play to win, while all volleyball games are played by father and child and the child knows that her father will always let her win. Or, it would be like valuing friendship for a number of reasons, while all people just use it to further their interests. It is not the case that ideal volleyball and ideal friendship lack their own worth, it is that they cannot work to justify the practice of actual volleyball and actual friendship. This is especially relevant for the distinction between ideal and non-ideal democracy, insofar as the aim of justification is to provide actual democracies with legitimate authority.

In order to achieve this result, democratic justification ought to be framed in such a way that it can allow for various intentions and reasons to undertake a certain disposition towards its institutions, without requiring citizens to be all moved in the same way. Justification ought to be disposition-sensitive, but not disposition-dependent. If it is not, there are two possible consequences. One, disposition-insensitive justifications neglect the way democracy is practiced and the role citizens ought to engage in. Two, disposition-dependent justifications define as legitimate authorities only those democracies where citizens show the relevant disposition that make democracy valuable and those intentions compatible with that disposition. I will explore further this thought in the next and conclusive section. First of all, I will try to see whether democracy can be justified taking into account everyone's intentions. I will do so by offering a prudential justification of democracy, that shows how democracy can be authoritative from a rational point of view. Such justification, if successful, would be disposition-sensitive, because it would give each citizen interests-based reasons that she can accept to take democracy as legitimate. Moreover, it would be independent from a specifically demanding disposition, because it would not rule out non-moral intentions from the democratic game, but it would illustrate how democracy is rationally acceptable given almost all possible intentions.

4. An Alternative Proposal

4.1 A Heterogeneous Pool of Rational Interests

As we have seen, citizens might be interested in what justice requires and accept that democracy is needed to treat each other according to a principle of equal respect. Yet this is not the only reason to engage in the democratic game and acknowledge democracy as a legitimate authority. If citizens are not concerned with matters of justice, can they still look at democracy as authoritative? I intend to argue that they can, because democracy has a distinctive feature: it is the best regime available to pursue one's own interests. This means that there are also prudential reasons to take democracy as having a right to rule and to take citizens as having a duty to obey. I will first of all outline the conception of interests I work with, then I will put forward my argument and answer to some possible objections.

Interests are at the same time intuitive and vague. When we say that something is in our interest, we may refer to very diverse cases, from gaining a material benefit, to getting introduced to someone, from starting a healthy sport to being nice to a stranger, who might turn out to be rich and grateful - or gunned. "Interest" can target a wide array of things. We can even talk of "moral interest", as something morally relevant we deeply care about. Hence, the concept of interest seems to refer to anything that advances our well-being and we care about. Naturally, if we expand the meaning of the word to encompass everything within these two criteria, it becomes really difficult to see what is distinctive about interest. Yet, interest also refers to a specific logic we engage in, that is to instrumental rationality¹. Generally, when we say that one ought to reason about one's interests, we ask said person to be rational, in the sense of capable of considering his interests and preferences and maximizing in the most effective way the utility of a certain situation. Here the concept of interest intertwines with those of utility and preference. The relevance of instrumental rationality is something whereby interest and utility are closed. Contrary to utility, though, interest is not itself a quantitative measure that can be summed up and subtracted in the rational calculus. My interest for horse riding might in some way balance with my interest in philosophy, but unless one endorses some kind of Utilitarianism these are two very different things that have no shared measurement.

Similarly, interests are so closed to preferences that in natural language we might use the terms to mean more or less the same thing, and both cannot be totally stripped away from the individual holding them. Preferences are what people holding them say or think they are. It makes little sense to talk of an unconscious preference, because apparently it is something we ought to be aware of. We might decide not to reveal them to others, but we know what they are². Nonetheless, it is both theoretically useful and adequate to the use we make of the terms to draw a line between interest and preference. While the latter tracks what we actually think about what we desire and want, the former points to what advances our well-being³. So one should not collapse the concept of interest with the subjectivist thesis about interests, that it is up to us to define what our interests are. The subjectivist thesis concerns the kind of conception of interest we may or may not endorse, rather than the concept of interest, which merely identifies what is

¹ For a poignant and fascinating account of how the language of interest has been used in modern history to replace and tame passions that were harmful for the political order see Hirschman 1977.

² When we talk of hidden or revealed preferences, the reference is always to other people rather than the subject holding them. Another relevant distinction is that preferences may refer to any domain of human life, while interests have a distinctively political dimension (Barry 1965).

³ Under this respect, preferences are more similar to desires, as they both regard domains of life that are not necessarily rational, but may refer to non-cognitive conative states.

good for us. The role of awareness distinguishes a subjectivist versus an objectivist view, whereby the former takes interest to conform to what individuals think they are and hence be close to preferences, while the latter draws a clear-cut line between what *really* advances our well-being and our ability in understanding what this is.

I endorse a moderately subjectivist conception of interest. It is subjectivist in the sense that we cannot strip interests completely away from what people think of them, but at the same time there can be cases where people get their interests wrong. Interests relate to our broader conception of the good, defined in Rawlsian terms, as a set of worldviews and life plans that concern all comprehensive aspects of our lives¹. The view is moderately subjectivist because I leave open the possibility that people get their interest wrong according to their own standards. They may fail to infer the right conclusion even starting from premises they endorse². In this sense, my interests are what my rational and reasonably informed self thinks they are, given all available evidence. I hereby introduce a kind of idealization in the picture: it is not entirely up to the actual self to say what is in her interest, as she can get these wrong according to her own set of preferences, fault to either wrong beliefs or incorrect inferences. Nonetheless, our idealized counterpart reasons starting from the set of preferences and desires our actual self has. In this sense, the view is subjectivist because in the end it is up to the actual self to determine her preferences. At the same time, this view is also moderately epistemic³, since epistemic idealization occurs to check which of the actual self's preferences and values are realizable and at which costs⁴. The combination of the two

¹ I am not endorsing a subjective or objective desire-based theory of the good, since I do not claim that these interests constitute in any way what is actually good for people. I therefore leave aside debates about moral and metaethical issues around the good and how to define it. I simply start from a shared liberal assumption that we have different worldviews and set of beliefs and preferences and that it is up to us to decide whether something is compatible with our system of thought or not, according to the information we have. Naturally, this does not mean that our assessment is always correct, even from our own point of view, since we may have failed to gather correct information or to make correct inferences. For the idea of life plans in Rawls see Rawls 1971, section 63. For a defense see Heyd and Miller 2010; for a criticism see Larmore 1999.

² This conforms to Jerry Gaus's idea of open justification, whereby something can be openly justified to me if I can come to accept it given my own mindset and conception of the good, although I might not be currently aware of this fact. See Gaus 1996.

³ It is so because it does not take for granted what people think or say about their interests, but requires them to conform to the rules of logic and rational inference, as well as to correct factual beliefs. Therefore, it is not enough for them to think that something is in their interest, but they *ought to* get informed and be rational in considering their preferences and beliefs in order to understand what their true interests are. At the same time, these "true" interests are but what their idealized counterpart says they are and are not assumed to be neither fully objective nor universally shared.

⁴ Interests are then a function of preferences, beliefs and logical ability of flawless reasoning. Naturally, my preferences might change given different beliefs, as in Williams's example of the glass of oil instead of gin and tonic (Williams 1981, 102). Yet, in this case we can easily assume a higher-order preference for staying alive. Hence there must be some sort of hierarchy in our desires and we are not always aware of how this hierarchy is structured.

elements results in a normative conception of interests, because individuals are required to conform to certain normative desiderata of rationality and information. After all, this corresponds to the experience of many of us and does not contradict the fact that we are and ought to be the final judge of our true interests¹.

The reason for this derives from the characterization of interests in a subjectivist fashion, because individuals are those who have the best grasp of what they want and value. Although their long-term interests might be in contradiction with their sudden desires, still the idealized version of themselves to which we make appeal to identify these long-term interests and distinguish them from immediate preferences remains connected to the actual persons' desires and values. For instance, let us imagine a blue-collar worker that votes for a yuppie billionaire candidate, whose plan is to abrogate any social security policy. Apparently this goes blatantly against her interests and we might imagine that her idealized version can tell her that. Yet, this person is also ferociously xenophobic and that candidate has just promised to build a giant wall to keep immigrants out of the country. An objectivist take on interests seems to be bound to claim that this person has made the wrong choice, because, let us imagine, material interests are much more important than migration issues – and probably also because her stand on migration issues is simply wrong. However, this move is not available for a supporter of the subjectivist view, because it is up to the person to assess what her interests are and her idealized version is simply instrumentally rational and well-informed. Of course, if the wall was impossible to build, then also her idealized version could have reasons to prevent her actual self to vote for that candidate. But this crucially depends on the hierarchy of values and preferences that said person has and which defines her interests *as she could see them*, if she were consequential and reasonably informed².

Since my conception of interests is both moderately epistemic, it is possible to draw a line between between interests and individuals' judgments about their interests. As Christiano states, "judgments can be correct or incorrect, whereas interests are not correct or incorrect" (Christiano 1996, 54). However, since my conception is also moderately subjectivist, interests are not objective components of a person's well-being,

¹ This can be explained by two reasons. One, we are those who know best the set of all our preferences and therefore we are more entitled than others to assess which of these preferences would be left aside in case of conflict. Two, we are also the most interested in getting our own interests right, so that we are more motivated than others to assess them.

² It is important to remark that I do not endorse a subjectivist theory of the good. Perhaps that person is fully and simply wrong, from an objective standpoint. What I only claim is that a prudential justification of democracy works with this conception of interests and leaves manifestly and intentionally aside the question of what qualifies as the good, or just life. For these kind of questions, we have moral justifications of democracy, in either their instrumental or procedural versions.

that can be attributed to her regardless of what she thinks. On the contrary, they are defined by what the idealized counterpart of the person thinks, given that she possesses all relevant and available information and makes no inferential mistake. Interests are thus a function of actual individuals' preferences or values, on one hand, and of idealized individuals' set of correct beliefs, on the other.

Insofar as there is a gap between what the actual self thinks of her interests and what these interests are according to the idealized self's definition, it is possible that her judgment about her own interests is mistaken. In this sense, the conception of interests provided is normative, because interests are taken to constitute reasons for action. A possible objection is that prudential considerations like these only count as explanatory rather than normative reasons (Raz 1990), in the sense that they do account for people's actions given their beliefs, but they do not provide objectively justifying reasons for these actions. Admittedly, if what people think they have a reason to do does not really give them a normative reason for action, it seems that appealing to people's interests is a non-starter. However, according to the present understanding, interests do not simply correspond to what actual people think of them, but are defined by the idealized counterpart. Hence, they cannot figure among the explanation of one person's actual action, because only that person's *judgment* about her interests can. Epistemic idealization determines the normativity of interests, whereas the values and preferences from which to idealize are those accepted by the agent¹.

There are three ways people might change their mind about what constitutes their interests. First, they might simply change their judgment about their interests, because they find out that it is incorrect according to the definition given by the idealized self. This can happen in two ways. I can simply be wrong about evidential facts that I could have known of. For instance, despite my preference for being healthy, I could have known that vaccines are not dangerous as I thought they were. Or, a second version of the same change occurs when the new judgment is motivated by the discovery of a previous inferential error. Here, there is no new information, but only a better reasoning, like when I realize that I have stumbled in a logical fallacy.

¹ Since the idealization concerns only factual accuracy and capacity for logical inferences, this view does not fall prey to David Enoch's criticism of the rationale for idealization, as he himself notices (Enoch 2005, 768). The underlying thought, put forward by Bernard Williams, is that actual individuals already do care about these things (Williams 1995, 37). Naturally, this is a factual assumption that might not be shared and the further argument in that case would need to defend the normativity of rationality. This is something I do not discuss in this dissertation, as I said in the introduction.

Second, people might change their judgment because the definition itself changes as soon as new evidences emerge. While in the first two cases the definition of interests as spelled out by the ideal self remains the same, in the second case, the ideal self's definition changes. For instance, I might rightfully think that investing in mortgages advances my economic interest as my idealized counterpart defines it, but then a sudden economic and financial crisis makes the housing prices drop dramatically and my interest, as defined by my idealized self, changes, as well as my actual judgment about it.

Finally, individuals might change the hierarchy of their preferences and values, with the consequential effect that also the ideal self's definition of their interest changes accordingly. The beneficial effect of laundering preferences through deliberation praised by deliberative democrats¹ mainly corresponds to this last type of change.

Another relevant consideration is that interest pertains to the part of one's conception of the good which is not *necessarily* related to or supportive of a conception of justice. On one hand, a broader understanding of interest shows how this cannot be reduced to mere material advantage or self-regarding benefits if we want it to play a role in a normative democratic theory. Yet on the other, if we lack a proper distinction between what is interest and what is not, it seems that we only engender confusion. It suffices to say that if we expand the concept of interest to encompass also moral and impartial questions, such as justice or equality, it seems that we are back to either Rawls's higher-order interest in being reasonable or to Christiano's higher-order interest in being publicly treated as equal². Hence, the interest talk would stand for another moral argument and we would be back to precedent moral instrumentalist or proceduralist justifications of democracy. However the problem is that if we distinguish interest and morals as two opposing domains, the former self- and the latter others-regarding for instance, then we have already taken a stand concerning what morality is about³.

¹ See section 2.3 of the present chapter.

² To say that we all have an interest in being publicly treated as equal might be true (Christiano 2008), but then it is not clear why we are talking of interest rather than justice. Of course, Christiano means that being treated as equal furthers other interests I might have, hence I should feel motivated towards it. But this is empirically uncertain, since not always my interests will be compatible with equality. Moreover, my desire to be treated as an equal entails others' right to be treated as equal only if I assume a certain criterion of reciprocity and a certain condition of equality with respect to other individuals which is not beyond question. If it is in my interest that I let a surgeon remove a cancer from my lungs, surely it is not in her interest to let me do the same to her. To recognize others as equal to us in all relevant things is required by justice rather than by my interests, even though it is in my interest to have others recognize me as equal. See last chapter for further inquiry.

³ We are saying that morality concerns our relations to others, while interest pertains to what we want for ourselves. Yet, it makes perfect sense to say that I have an interest in helping those I love. It makes also sense to consider altruistic and self-interested motivations to be compatible and to put them together

On the contrary, this focus on interest attempts to recognize and overcome the disagreement and pluralism about the conceptions of the good and of justice that people might have. The idea is that we can disagree over what morality entails and how it is related to self-interest on one hand, and to altruistic or impartial considerations on the other. To shift the focus of justification to interests aims to overcome such disagreement, by admitting that we can have different worldviews that diverge and that give us interests of different kinds. Henceforth I will use interest as anything compatible with and furthering one's idea of the good, without imposing any special qualification on which idea of the good individuals can endorse¹. This allows for a wide array of inputs within the democratic process, and hence for a wide array of intentions with which citizens engage in the democratic game. It is not only the case that democracy answers to moral worries individuals may have about how to treat each other and what is the best decision to uphold. Democracy is also about interests and democratic citizens engage in politics also because they attempt to further their interests.

Political philosophers cannot dismiss this or try to translate a concern for one's interest and well-being into a more or less structured conception of justice or the common good. Naturally, this does not mean, as public choice theorists of democracy claim, that citizens are narrow-minded material and self-regarding interests maximizers. Both descriptions are flawed. As Brennan and Hamlin have pointed out, both altruistic and self-interested motives are somewhat oversimplifying and end up obliterating the space of politics (Brennan and Hamlin 2000). On one hand, altruistic intentions assume non-compliance away and hence cannot deal with public choice problems of designing institutions able to assure individuals' compliance (Brennan and Hamlin 2000, 62). On the other, mere *homo economicus*'s disposition makes it impossible to understand and engage in normative thinking (Brennan and Hamlin 2000, 27-28). For this reason, both philosophers and political theorists ought to allow for heterogeneous intentions in democratic citizens and see whether democratic institutions can be justified and citizens' positive disposition towards them can be compatible with a various array of intentions and reasons. Hence, it is not the case that all individuals are assumed to belong to the

in one theory of morality. It suffices to think of Aristotle's point that being moral is in any individual's interest or to what supporters of virtue ethics contend. To keep such distinction straight would then entail that morality requires altruism, whereas interest is always self-regarding, in explicit opposition to a unified theory of morality and interest. But this is contentious. See for instance Paul, Miller and Paul 1997, Bloomfield 2008.

¹ Interests are thus anything people are interested in, as long as they can be made the object of reasoned decisions. Therefore, no moral requirement is imposed a priori in order to select only those considerations that are either supportive of a determinate conception of justice or compatible with the general requisites of the concept of the right. See Rawls 1971, 2005.

homo economicus archetype. Actually, none of them is. For even considerations of mere material self-interest are tempered by more general views about our lives and society.

The problem is not only that each of us is on a continuum between pure self-interest and absolute altruism, and that we occupy different positions depending on circumstances, but also that this spectrum is not exactly between self- and others-regarding concerns, because morality does not necessarily amount to impartiality or altruism. It depends again on individuals' conceptions of morality, which in turn specifies to what extent each person will balance his self-regarding interests with concern for others' interests and with normative values she considers worth following¹. Similarly, two persons might share the same conception of justice, but disagree not only over what justice requires in specific circumstances, but also on whether ideally defined justice really determines what ought to be done no matter what the circumstances are. From a political perspective, disagreement represents not only an epistemic problem concerning which is the right conception of justice and what is its metaethical status, but also a practical problem concerning the action-guiding force of a conception of justice and its relation to other values².

The recourse to a complex conception of interests, as functions of one's set of beliefs, values and preferences, allows to by-pass those problems in order to seek a prudential ground for accepting democratic institutions given citizens' diverse worldviews and life plans. Rather than assuming reasonable citizens or requiring them to restrain themselves to justice-based evaluations, it is useful to see whether democratic institutions might be a rational choice for individuals despite their heterogeneous values and preferences. The assumption then is that individuals have interests they care about and intend to realize and that these interests determine the disposition with which they engage in the democratic game and exercise our political rights, among which there is the right to vote. As a consequence, a prudential justification of democracy aims to give reasons to undertake a certain disposition towards democratic institutions compatible with various and heterogeneous interests people might have. Contrary to disposition-dependent proceduralist approaches, the required disposition is not taken to filter out all intentions that are not compatible with its highly demanding standard.

¹ Here I follow recent many recent accounts that reject Rawls's distinction between the conception of justice and diverse conceptions of the good or comprehensive doctrines. For instance, see: Brower 1994, Caney 1998, Waldron 1999, chapter 7, Clarke 1999.

² The well-known debate on ideal and non-ideal theory highlights some of these issues: for instance, what the role of factual considerations is for devising justice and what the relation between justice and motivation is (e.g. Cohen 2003, Sen 2006, Simmons 2010, Estlund 2011, Schmidtz 2011, Valentini 2012).

4.2 A Prudential Justification of Democracy

The fact that democracy is consistent with the protection of individuals' interests figures alongside moral and epistemic arguments in most classical defenses of democracy, from Jean-Jacques Rousseau¹ to James Madison (Hamilton, Madison and Jay 2003, n. 10, 51), from Benjamin Constant (Constant 1988) to John Stuart Mill (Mill, *On Liberty* 1977a, Mill 1977b). Economic conceptions (Downs 1957, Schumpeter 2003), as well as social choice theory approaches (Arrow 1963, Riker 1982) and pluralist accounts of democracy (Dahl 1959, 1989) start with the assumption that individuals are self-interested, as consumers in the market. Since their main ambition is explicative or descriptive, they generally use this assumption in two ways. On one hand, they inquire over whether democracy may or may not harmonize with individuals' self-interest and with group interests (Dahl 1983). On the other, they attempt to explain why democracy is a self-enforcing and stable political regime, given the fact that there are prudential reasons for people to support it (Przeworski 1991). Nonetheless, they also pursue normative aims, when they attempt to offer adequate definitions of democracy (Dahl 1959, Riker 1982), by elaborating or employing results in social choice theory based on that assumption.

This normative stance has been associated, by most political theorists, with a justification of democracy based on minimal proceduralism, built around the value of fairness and its technical renditions as neutrality and anonymity, as we have seen earlier in this chapter. Yet, we have also observed that minimal proceduralism clashes with two troubles, one being Riker's attack to the meaningfulness of voting (Riker 1982) and the other being Estlund's coin flip objection (Estlund 2008). In the end, minimal proceduralist accounts ought to either switch to instrumentalism (Riker's Madisonian or liberal democracy, Estlund's epistemic proceduralism) or to introduce some normative values and principles to give normative content to proceduralist justifications. Both attempts demand to forgo the ambition that former versions of minimal proceduralism have demonstrated to target, by purporting to provide a rational justification of democracy compatible with diverse interests and intentions on citizens' part (Dahl 1959).

¹ Rousseau famously opposes private interests and the common good, but he conceives the republican regime as in the long-term interest of individuals. See his introductory note to the *Social Contract* (Rousseau 2002, 155).

The account I here present offers a prudential kind of justification, but it differs from standard political theory in three respects. First, it does not aim to provide an explanation or a description of democratic stability, as it points to build a normative case for democracy. Second, it takes interests in the broad sense we saw earlier: not as material and self-regarding or completely reducible to individuals' preferences. Rather, interests pertain one's idea of the good life and one's recognition of what is valuable and defines one's identity. It is a subjectivist account insofar as it takes for good what people say their interests are. Yet, it is only moderately subjectivist because it leaves room for mistakes: people might be wrong about their interests, because there is information they did not have or inferential mistakes they make. Finally, it takes justification to provide democracy with legitimate authority, which in turn entails a distinctive obligation on citizens' part.

Thus, the prudential justification of democracy I offer is normative and intended to ground democratic legitimate authority. At the same time, it purports to work on autonomous grounds with respect to moral and epistemic justifications of democracy. It fulfils this task by taking individuals' ideas of the good life and worldviews at face value and by showing that it is rational to support democracy, given these heterogeneous starting points. As long as people are rational and intend to pursue their own interests, then, democracy represents the best political system where they can do so.

Remember that we defined democracy in terms of majority rule, which has normative value only under distinctive conditions. These are inclusion, equal political rights, presence of alternative political options and accessibility of information. These principles are embedded in any democratic voting rule and qualify it as distinctively democratic. We have seen how epistemic instrumentalists and normative proceduralists justify these values and principles basically according to two opposing criteria: the idea that they serve to realize justice or the idea that they already embody justice¹. Contrary to both, the prudential account intends to provide citizens with rational and interest-based considerations to accept democracy as a legitimate authority, instead of justice-based reasons. Notice that these moral reasons are not excluded from the pool of justifying considerations for democracy. They are simply conveyed together with all

¹ Naturally, this is a simplification of these views, as epistemic instrumentalist accounts do not have to focus on justice (they can refer to domains where there is a correct answer and leave unspecified whether political morality or justice is one of these domains). Yet such a focus seems much more required of proceduralists, insofar as they are concerned with devising the intrinsic normativity of democratic procedures. Some of them explicitly refer to justice, in its public (Christiano 2008) or procedural (Ceva 2012) dimension, while others refer to equality, but nonetheless assume equality to be a principle of justice (Kolodny 2014a, 2014b, Viehoff 2014).

other considerations that people may have, with no one being filtered out from the legitimation pool. Yet once we have our heterogeneous pool of interests, why should citizens value democratic principles and hence democratic procedures from a prudential perspective?

The answer resides in the characterization of interests we put forward earlier. Although individuals are the final judges about their own interests, they can make mistakes. This possibility opens up a much more performative relation with one's interests that normative theories of democracy have thought of. Contrary to the idea of fixed preferences that have qualified both aggregative accounts of democracy (Arrow 1963, Riker 1982) and deliberative attacks to aggregative accounts (Elster 1986, Cohen 1986), interests are not fixed, for the simple reason that they are always the result of a process of deliberation internal to the subject¹. As such, we have seen that these interests might change even if preferences remain fixed, because of new beliefs that come into play. I may be a passionate and vocal supporter of my party, but if I knew that its political candidate is against gay marriages, that could matter more to me than all the other issues the party thoroughly pursues. This does not mean that I changed my preferences, but only that what I take to be my interest has changed, given that I found out new information. This means that what my actual self thinks about my interest might be wrong, with respect to my idealized self's perspective, which is more informed and consequential. Both intra-personal and external forms of deliberation, then, are instrumental for us to improve our judgments about our own interest. Even without laundering our preferences, even without generalizing our interests, still deliberation has a beneficial effect, because it helps us gathering new and more accurate information and checking for inferential mistakes². Thus, the possibility to get informed and to obtain correct and accurate facts and data in order to assess whether and which of one's preferences can be realized is particularly important for each individual concerned with how to lead her life.

¹ I do not claim that preferences cannot change, only that we can change our perspective on things in a politically relevant way without changing preferences.

² Naturally, one could be completely disinterested about what is best for oneself and hence one would not be compelled to gather information about one's beliefs and preferences, in order to understand one's own interests. This can surely be the case and there can be no prudential argument that can be provided to such person. Nor can a prudential justification be convincing for people that are manifestly irrational and have no intention to further their interests in real world politics. Unfortunately, I think that no justification would convince this kind of wantons, so this fault cannot be blamed on prudential justification. The broader pool of people to which prudential justification can be offered ought to fulfil certain initial criteria as well: being rational and willing to promote their own ideas of the good. Yet, this seems a much less demanding assumption than being reasonable, in good faith or concerned with truth.

We can specify three higher-order interests that are general among all individuals: (1) the interest in being informed; (2) the interest in being able to revise one's own declared interests; and (3) the interest in realizing one's own interests¹. These higher-order interests are shared by all individuals, but they do not qualify as moral². They are simply preconditions for people to pursue all their other interests and to identify the political regime that is hospitable to how they want to lead their lives. Insofar as individuals do care about realizing their interests, and do it rationally, that is by trying to have correct beliefs about the world they live in and consistent preference and value rankings, they will care about the chance to be informed, to change their mind if they find out they were wrong and to shape the rules that affect their interests and with which they have to comply.

These three aspects taken together show how it is rational for people to endorse democratic authority as legitimate. For contrary to all other political regimes, democracy gives to its citizens the chance to understand their interests, to make them matter publicly and to change which party to support over time. Since majority rule is accompanied by equal political rights and accessibility to information, as we have seen, participants to this way of decision-making have equal chance to have their interests recognized and to shape the social world they live in, according to what they think it suits them most³. To be sure, this does not entail that people must have a higher-order interest in equality or in being publicly recognized as equals as such, *pace* Christiano (2008). Nonetheless, since they are concerned with bringing about collective decisions that are as compatible to their interests as possible, it is still rational for them to recognize democracy as a legitimate authority, for this is the best regime under which they can do so. To be counted as equal in the decision-making process means to have one's interests advanced equally. Although people might not be concerned with equality as such, they are surely concerned about the idea of having their interests matter less and contribute

¹ The line of the argument resembles the one followed by both Christiano and Beitz, when they spell out regulative or higher-order interests all human beings have. However, contrary to both accounts, these higher-order interests are normative only insofar as their satisfaction is required for pursuing any other interests we have, regardless of the conception of justice and political equality we subscribe to. See Beitz 1989 and Christiano 1996, 2008.

² In this sense they differ from both Christiano's and Rawls's higher-order interests, which are specifically moral. See chapters 2 and 3. Moreover, the former higher-order interest in information have nothing to do with a supposed interest in "political reflection" that Nico Kolodny attributes to Christiano and Rawls (Kolodny 2014a, 211), because it does not account for the good of reflection and information per se, but only instrumentally in order to further people's understanding of their own interests.

³ This resonates with Christiano's interest in being at home in the social world. See previous chapter.

in an inferior way to shape the society where they live and which affects what they can do and determines what they must do.

The interest in being informed and the one in being able to revise one's own judgment about one's interest follow directly from the moderately subjectivist and epistemic interpretation of interests. Since we are the only ones who can grasp our interests, while at the same time we are not granted to do so correctly, democracy as equal political freedom and accessibility of information is crucial to ensure the possibility of getting our own interests right. A decision-making system that let people free to gather information, discuss and eventually change their opinions about their interests represents the best choice for individuals interested in pursuing what is best for them according to their own criteria of evaluation. The epistemic advantage that democracy ensures does not pertain directly to the quality of its outcomes, as they will be judged differently by each citizen. Yet, the participation to the democratic process has a noteworthy by-product, insofar as it allows citizens to improve the quality of their decisions, according to their own standards of judgment, both in the public and private sphere.

According to this prudential justification, then, democracy seems necessary for epistemic reasons, as it is instrumentally necessary if people want to understand better and eventually revise their judgments about their interests. Indeed, the protection of political rights, like freedom of speech and association, and the chance to access relevant information appear to be necessary if people want to evaluate critically their declared interests and approximate their understanding to their idealized counterpart's definition of them¹. Yet, although these features of democracy are entailed by a normatively meaningful democratic decision-making, they could be satisfied also by a regime where people are heard and let free to formulate judgments about their interests and to revise them, without then having the chance to cast their vote concerning the collective decision to take. To be sure, democracy seems uniquely connected to the idea of a free public sphere and lively civil society where information is free to circulate and discussion of one's values and preferences, as well as of the best means and actions to realize them, is permitted and encouraged. Nevertheless, a democratic regime is not logically necessary to such public sphere and indeed there are historical examples of

¹ Plausibly the same goes for the protection of fundamental human rights, such as the right to personal inviolability. However, since the focus of my argument is the justification of majority rule, its relation to the protection of civil human rights is beyond its scope here. For a similar, albeit moral, instrumental argument for democracy as a means to protect human right see Christiano 2011. Against, see Peter 2015.

emergent and developing public spheres under liberal, yet non-democratic regimes throughout history (Habermas 1989, chapters 2-3).

Here the third interest in advancing one's interests comes into play, because the democratic procedure allows each person to take part to the decision-making and contribute to define the laws that regulate society. Social cooperation is organized according to rules and compliance with these rules is generally ensured through sanctions. Prudentially, the more these rules conform to one's interests, the more convenient will obedience be. The possibility to take part to the decision-making through voting equates to the possibility to influence the rules one will be required to obey according to one's own interests. Naturally, individuals will not always be successful in pressing for their favorite candidates and hence their favorite political programs. Yet, it seems rational to further one's preferred, or less disliked, politicians if one has then to live in a society shaped by laws decided by them¹.

As far as I can see, there are at least four possible objections to this account.

4.3 Four Objections and Six Replies

First, let us consider the traditional objection against political equality: why should we accept a decision-making procedure that treat our interests equally? Why should not we attempt to realize a system where our interests are valued more? If the prudential justification of democracy does not rule out other possible political regimes, it seems that its relevance with respect to moral justifications vanishes, as it would not explain the distinctive legitimacy of democratic outcomes. Luckily, from a prudential perspective, autocracies are irrational because they do not satisfy the three higher-order interests. Even if an autocratic regime were hospitable to a free public sphere and a lively civil society, which is quite implausible, and even if said regime allowed the chance to understand one's interests through free deliberation, still individuals would lack any control on the decision-making process, as well as any chance to influence its outcomes. Moreover, even if said regime were consistent with their actual interests by chance, they would also lack the possibility to revise and improve their judgment about them, since they would not be allowed to change the autocrat in power. Equal formal influence on

¹ The same thought is behind Rawls's insight that principles of justice help approximate political society to a voluntary association (Rawls 2005, 40-43) and Christiano's idea of the higher-order interest in being at home in the world (Christiano 2008, 88-95).

the decision-making process is thus the maximum requirement that each individual can expect to achieve, compatibly with all others doing the same.

A variation of this objection regards the case of a theocratic regime with a majority of very religious subjects. In this case, the regime would be consistent with individuals' religious interests by definition and therefore it seems that its subjects would be prudentially justified in taking said regime as legitimate. However, also in this case, the interest in revising one's judgment and the interest in advancing one's interests directly rules out the possibility to endorse a theocratic system. In both examples, individuals could not trust their governing élites to know their interests better than themselves, to allow them the chance to revise their judgment and to be rightly motivated towards realizing these interests. Therefore, both political regimes cannot be considered rationally acceptable from a prudential perspective.

A better restatement of this objection against the prudential justification of democracy concerns the enlightened sovereign's case, according to which such sovereign would know *better* how to advance the interests of all. Or, to restate the objection in a more contemporary fashion, an epistocratic regime might be preferable to democracy, because individuals would have their interests advanced better. This objection has historical roots in Plato's *Republic* but it has been recently revived by epistemic defenses of democracy, that propose different solutions in order to dismiss it (e.g. Estlund 2008, Viehoff 2016)¹.

One could think that this objection cannot be raised against the prudential justification for the simple reason that more knowledgeable people cannot know others' interests, because they cannot have a clear grasp of all their preferences and values, even if they can have more accurate beliefs. Yet, the objection can be reformulated by claiming that these experts can be thought to have a perfect knowledge of others' mindset through some kind of futuristic technology, so that they would be much more similar to people's idealized counterparts, disposing of rationality, correct beliefs and also awareness of people's values and preferences. Unfortunately, even if this were possible, still these experts could be ill-motivated toward other people and this would make epistocracy irrational². But again, the objection can be recast as assuming experts to be also rightly

¹ For a less recent, but equally powerful statement of the objection see also Robert Dahl on guardianship, in Dahl 1989, chapters 4 and 5.

² The irrationality of trusting others with our own interests explains also why the first two higher-order interest cannot be read only as a right to be heard. Even if we could think of a regime where people are allowed to get informed, to deliberate about and to revise their interests, but then are only heard by those who take decisions instead of taking decisions themselves, this regime would still not be prudentially rational because individuals cannot trust governors to be and remain benevolent towards their interests. In

motivated towards their subjects. In this case, it seems that the prudential justification of democracy ought to bite the bullet. There are two possible answers to this objection.

First, one could bite the bullet indeed, but with a relevant comeback concerning the level of idealization that this objection requires to succeed. While the prudential justification of democracy put forward so far makes use only of a moderate and purely epistemic form of idealization, concerning the definition of individuals' interests as what would be defined by their rational and well-informed counterpart, the epistocratic objection calls for a double and more robust idealization, from an epistemic and a motivational perspective, as well. In fact, under a similar regime, experts should be trusted not only for their knowledge of the world and not only for their knowledge of each individuals' preferences and values, but also for their willingness to bring these about. Although it is not impossible to think of experts of this kind, it surely is implausible and more implausible than to think of average individuals seeking to understand and further their interests.

Second, one can remark the fact that epistocracy fails to satisfy the third higher-order interest in pursuing one's aims directly. This point illustrates how a prudential justification of democracy cannot be satisfied with the interpretation of political equality as equal correspondence between one's interests and political outcomes (Kolodny 2014a, 2014b)¹. As stated so far, the third higher-order interest has two possible interpretations: it can be taken to refer either to an interest in having one's interests realized, as with equal correspondence, or to an interest in being the one who realizes one's interests (Kolodny 2014a, 199-200). The former relates to the traditional idea of preference satisfaction, regardless of how this is brought about, while the latter concerns more a sort of distinctive good of autonomy and is generally defined as equal formal influence or equal impact (Kolodny 2014b, 308-310, Dworkin 1987/1988). As far as I can see, there are two arguments for preferring the latter interpretation to the former.

First, the capacity of being the one who realizes one's interests might be a precondition for having all our other interests satisfied in a guaranteed and prolonged way. This reasoning resembles the traditional argument for political freedom as a means

real world this is true for a number of epistemic reasons, as Christiano's cognitive bias and fallibilism examples show. Think also for instance to Kavka's argument about rational and knowledge perfection being insufficient to ensure complete agreement among individuals (Kavka 1996). Yet, in an ideal world where this knowledge would be possible or under a regime built to reach such a knowledge without giving individuals the actual power to influence decisions, it seems that unelected public officials' motivation would still be a concern.

¹ A similar argument is upheld by Nico Kolodny, when he distinguishes between interest in correspondence and interest in influence, arguing that the former does not require democratic decision-making. See Kolodny 2014a, 199ff.

to guarantee other civil freedoms put forward by many throughout history¹. Although there might be circumstances where our interests are realized by others, like some benevolent and enlightened sovereign, still those circumstances seem implausible, especially considering the subjectivist component of the conception of interests here endorsed.

Second, the idea that we ought to further our interests directly, rather than having them satisfied by others, seems to have a non-instrumental, but conditional value. Borrowing this idea from Joseph Raz's evaluation of autonomy (Raz 1989, 1223-1229), the capacity to directly further our interests seems a distinctive non-instrumental good, which yet has value only if certain conditions obtain. In particular, this value depends on the possibility of effectively realizing our interests and, thus, it is not unconditional. At the same time, this capacity has intrinsic, non-instrumental value, because it cannot be reduced to simply being a means to other interests we have, even though it has value only conditionally on the fact that we do have other interests to realize. Thus, so interpreted, the third higher-interest ought to be read as an interest in being the one who advances one's own interests.

If correspondence regards merely the idea that our interests be the ones which are followed through in political decisions, then correspondence is not enough to justify democracy, as it could be fulfilled by an epistocratic regime. Since individuals are taken to have higher-order interests in knowing, revising and advancing their interests, rather than in having their interests advanced by others, it is not rational for them to acquiescence to any decision-making rule that does not provide them with at least equal *influence*, as we will see. However, it is important to note that this interpretation of the third higher-order interest stands only insofar as the second argument for it, the one taken from Raz, is convincing. In fact, the first argument in favor of an interest to directly advance one's aims is neutralized by the double idealization of the epistocratic case. Since experts are assumed to pursue our own interests in the best way, there is no need for us to do so. Nonetheless, if the validity of the second argument follows through, then the capacity to pursue one's interests autonomously has non-instrumental, albeit conditional, value even in the face of experts.

¹ Just to name a few, this argument has been advanced by republicans like Niccolò Machiavelli (1997, 49) and liberals like Benjamin Constant (1988, 323). Moreover, this argument resonates also with contemporary republican interpretation of freedom as non-domination, hence being free now and in the future from others' possibility to interfere with our actions. See Pettit 1997, 2012 and for a non-instrumentalist defense of democracy on republican terms: Rostbøll 2015. Similarly, this reasoning recalls the paradox of freedom and the related prohibition to voluntarily enslave oneself, for which see Locke 1988.

The second objection revolves around the idea that the prudential account gives only a temporary and opportunistic justification of democracy, because it suggests to take it as legitimate only insofar as one cannot gain more power over others and overthrow democratic institutions in favor of a more oligarchic regime. Or, democratic outcomes are legitimate only as long as they are compatible with my interests. As long as this is not the case, democracy loses its legitimate authority. This would entail that democracy could be prudentially justified only as a kind of truce among people ready to seize the opportunity in order to pursue their interests even against democratic institutions¹.

On one hand, this cannot be the case for the majority of people, because by definition they are those who get the result they want through majority rule². But on the other, this is necessarily the case for democratic minorities. Two considerations apply here. One, a prudential justification is meant to account for the legitimacy of democratic procedure as a whole and not for the legitimacy of its specific outcomes. As we have seen with instrumentalist accounts, what matters is that outcomes are favorable on average, rather than in each single case. This follows from the very idea of democratic legitimacy, which implies that particular laws and policies are legitimate because they are democratic. The substantive content of these laws pertains to their specific justification, but the fact that they are binding flows directly from their being democratic. As a consequence, insofar as democratic outcomes advance individual's interests *on average* it is rational for her to take democracy as a legitimate authority, hence to obey³.

However, this does not answer the third objection: the problem of permanent minorities. What about those cases where people have almost no chance of pursuing their interests, because they cannot win? Here we have two options available. The first is clearly instrumental and calls for the benefits of democratic regimes' by-products. This is the preferred route of classical liberalism. The possibility of taking part to political decisions engenders a number of good consequences, apart from the actual outcomes

¹ See for instance John Rawls's reference to *modus vivendi* in Rawls 2005.

² Moreover, most of them simply do not possess the power or the resources to impose a regime of their own and hence for them democracy is clearly the best and most affordable way to contribute, albeit equally, to political decisions. Even for those who can afford to overthrow democratic institutions, it would not be prudent to do so unless they were certain to be able not only to seize power, but to maintain it. Przeworski's work has shown how participants' payoffs in a game theoretic explanation of democracy matter to see whether and to what extent democratic institutions can be self-enforcing. For the relevance of game theoretic framework to the analysis of democracy, especially in its deliberative institutions, see Przeworski 1991, Landa and Meirowitz 2009.

³ And in fact a real alternation in elections is taken by many to be essential of democracy. Think for instance of Adam Przeworski's idea that democracy is a system where parties lose elections, Przeworski 1991, chapter 1.

that are brought about. These range from the protection of other fundamental freedoms¹ and human rights², to enhancing equality³, to the thriving effects of participation on people's autonomy, moral and personal progress and self-respect⁴, even to the beneficial consequences of the division of labor and peaceful transition of power on the economic growth⁵. Since the instrumental argument for democratic by-products can be phrased in moral or self-interested terms and since generally the two have been proposed together⁶, I do not dwell further on this version of the prudential account. It suffices to say that the by-product-based interpretation of the prudential argument can answer to the permanent minority objection. What might be of some interest, though, is the second option available to prudential justification.

This concerns the understanding of political equality from a prudential perspective. We have seen that it cannot be taken to amount to equality of correspondence between actual decisions and one's own interests, because, in the end, it cannot guarantee that such correspondence be maintained over time and it frustrates the non-instrumental and conditional value of advancing one's interests directly. Even from a prudential outlook, political equality is better interpreted as equality of formal influence, that is the idea of having an equal capacity to advance one's own interests in the decision-making process. I employ the term "formal influence" or "impact"⁷ to refer to citizens' capacity to affect the collective outcome by casting their vote. Moreover, I talk of equal *opportunity* for influence because the relevant point, from an institutional

¹ This is the classical liberal argument, which has been put forward countless times since the authors of the Federalist papers, Alexis de Tocqueville's and John Stuart Mill's considerations. See Hamilton, Madison and Jay 2003, Tocqueville 2000, Mill, On Liberty 2006. For a peculiar reading of the intrinsic link between liberalism and freedom see Shklar 1989. A similar approach is shared by republicans and Jean-Jacques Rousseau, even if with a focus on liberty as non-domination. See Rousseau 1763, Pettit 1997, 2012.

² This distinctive connection between democracy and human rights protection is the focus of a more recent debate, even though its basics are similar to the argument of classical liberalism. The innovative twist is that the argument is taken to ground a human right to democracy. See for instance Christiano 2011, 2015, Peter 2013, 2015.

³ See for instance Arneson 1993, 2004, 2009, Wall 2007, Van Parijs 2011.

⁴ All these more clearly moral arguments are generally linked together. However, for those who highlight democratic effects on self-respect and autonomy see again Mill (2006), instrumentalist views of Rawls and Griffin 2003.

⁵ The argument of the division of labor is prominent since Benjamin Constant (1988) and has been recently revived by Christiano (1996, 2008). The link of democracy with economic growth and stability traces back at least to Madison (Hamilton, Madison and Jay 2003) and has been one of the major arguments to defend democracy against socialist models of society and politics. See also Przeworski 1991 and Elster 1986.

⁶ As in Rawls's argument from primary goods, which are both universally useful and morally relevant. See Rawls 1971, 78-81. This argument is abandoned in *Political Liberalism* and replaced by the appeal to the higher-order interest in developing one's moral capacity. See Rawls 2005 and for an analysis of the implications of such change see Besussi 1996.

⁷ For the distinction between equality of influence, understood as informal influence on the outcome, and equality of impact as equal voting right see Dworkin 1987/1988.

perspective, is that equality of influence is guaranteed for individuals who want to make use of it. One can freely choose not to advance one's interests, but a regime is legitimate if it lets everyone at least the opportunity to do so.

Since my focus is on majority rule as a necessary condition of democracy, I discuss political equality for what concerns the democratic procedure, which requires that citizens have the right to cast an equal vote. Nonetheless, political equality, even from a prudential point of view, represents more than the right to an equal say in democratic decisions, because other political rights are necessary for the voting procedure to be meaningful, as we have seen. Consequently, political equality as formal influence serves to ensure the three higher-order interests all individuals have. That said, without considering the third interest we would have a deliberative and lively regime where people get to know their interests but they have to wait for (and trust) someone else in order to make them come true. Here again is where the third interest kicks in.

Political equality requires that citizens have an equal say as an equal opportunity of impact over collective outcomes so that they can enjoy at least an equal chance to affect collective decisions they ought to comply with. Since citizens are assumed to be concerned with advancing their interests, what matters to them is the chance to do so. Ideally, control over decision-making is the best option because it gives the power to take autonomous decisions about what affects one's interest. Yet, this is simply unavailable to each of us. So long as there are collective decisions touching upon the interests of all and affecting them, an equal opportunity to have an impact on these decisions is the least we can rationally accept. From a prudential outlook, equal opportunity to influence the outcome is hence the second-best option with respect to the chance to have complete control over the decision-making process. As a consequence, even permanent minorities' members are granted with the equal chance to have an impact on final decisions¹.

The broader and deeper characterization of interests presented purposes to illustrate that democracy is justified in a mixed way. On one hand, the flavor of any rational justification is instrumental, as any primary goods type of justification (Rawls

¹ Possibly, there is a third answer to the permanent minorities challenge and it revolves around the idea that individuals' interests are complex and articulated. Since individuals are expected to deliberate before voting in order to collect information and check their judgments, it is not clear that all the interests a member of a minority has will be neglected. For instance, a black woman might be minoritarian as black, but she will not necessarily be so as a woman. It is up to each citizen to evaluate where her interest stands and what interest to pursue in each voting procedure. This conception contests the essentialist interpretation of group interests and identities as defining individual's sole interest and identity. This is especially evident for political minorities, that is minorities that issue from the democratic process and that can become majorities in the future. Yet, it is far less clear for minorities that are independent from the democratic game, like the subset of people with disabilities. For cases like these, only the two answers given in the text can work.

1971). Democracy represents the chance to understand what is in our interests and to make it matter publicly. Yet on the other, these higher-order interests are necessarily and directly realized by democratic procedure. The justification does not only apply to procedures indirectly through its outcomes. On the contrary, democratic procedures are valuable both indirectly, as they enhance our capacity to take good decisions in public and private matters, and directly, as they embody the third higher-order interest as equal opportunity of formal influence over collective decisions. Furthermore, the prudential argument applies to procedures necessarily, because democracy is necessary to ensure that all three higher-order interests are fulfilled in the long run. The result is that prudential justification of democracy is a mixed approach: democratic authority is granted insofar as democracy is both directly and indirectly necessary to devise one's interests, to revise them and to further them through equal impact. Nevertheless, prudential justification remains conditioned by people's having interests and being rational in pursuing them¹. Hence, the connection between democratic procedures and the higher-order interests that justify them is both direct and indirect, necessary and conditional.

Finally, if we are concerned only to defend majority rule as a necessary condition for democracy, there is a fourth challenge that we need to face and that has bewildered most rational choice theorists that worked with a prudential account of democracy: the paradox of nonvoting, first stated by Downs (1957, 244-246)². The core problem concerns the meaningfulness of voting in a purely self-interested perspective: if we have instrumental reasons to vote, that is because we want a certain candidate or policy to pass, then it is rational to vote only in case our vote will affect the result. This is especially true since voting has a cost, which has to be outweighed by the benefits that we can achieve through voting. But the assumption is that voting matters instrumentally, that is for its results and in case the preferred result can be achieved without voting it seems perfectly rational not to bear the cost of voting, while in a way free-riding on those who do. Put in more formal terms, the expected utility that we can have from a certain candidate's victory ought to be discounted for the likelihood that our vote will be decisive in electing that candidate. In the unlikely case that we break or create a tie in favor of our

¹ See also Jane Hampton's "true belief-instrumentalism", in (J. Hampton 1986, 36).

² However, Dowding observes that the decision-theoretic form of the paradox has been proposed firstly by Riker and Ordeshook (1968), while Downs was more interested in the paradox for its bearing on "the information costs, not [on] the opportunity costs of the act of voting itself" (Dowding 2005, 446).

preferred candidate, the expected utility of voting might be higher than its costs, and hence it is rational to cast one's ballot¹.

From a purely self-interested perspective though, it is simply irrational to vote, because the probability of being decisive for one's preferred candidate is ridiculously low, while the costs of voting might be quite high and also the utility differential between the two proposed candidate might be quite low (i.e. one candidate or the other will not affect my interests too deeply). And this is true regardless of whether our candidate is on the winning side, because our single vote would not affect the final outcome anyway. If casting one's ballot has no instrumental value, voting cannot be rational. But this in turn means that a prudential justification of democracy as decision-making procedure cannot stand, because its core (i.e. taking part to the procedure by voting) is irrational.

Luckily, there are various ways to answer to such challenge and they fall under three categories: they can reject the premises of the paradox or they can reject the inference from the premises to the paradox itself. In the first case, they ought to reject either (1) that voting is rational; or (2) that people who vote aim to determine who wins; or (3) that voters are self-interested. Those who reject (1) generally endorse an expressive interpretation of voting, according to which voters cast their ballot to express their feelings toward a candidate or to manifest publicly their values without really bearing the consequences of their choices (because they do not affect the outcome)². Those who reject (2) might hold that voting is more about minimizing regret than maximizing utility (Ferejohn and Fiorina 1974)³ or they can hold that voters attempt to increase the support shown to their preferred candidate (Guerrero 2010). In both cases, voters are taken to be rational, hence the first premise is accepted, but they are not assumed to consider voting as instrumental for deciding who is going to win. Rather,

¹ There are controversies about which formula is more correct to determine the value of the individual vote, since Brennan and Lomasky (1993) have criticized the formula given by Riker and Ordeshook (1968). To be sure, the main point of the paradox remains that the expected utility of the winning candidate ought to be discounted by the probability of being decisive and the paradox results from the fact that this hardly exceeds the costs of voting, no matter how low this cost is. Identifying which formula works best goes beyond the aims of this work. For a brief discussion see Brennan 2011. For a useful literature review see Dowding 2005.

² I will not discuss those which recoil from rationality and attribute rather an expressive value to the act of voting, although this move has been the first solution found even within social choice theory. See Riker and Ordeshook 1968; Brennan and Lomasky 1993, Brennan and Hamlin 200, 30-33. For a similar perspective see also Barry, although he takes this paradox to prove that rational choice theory cannot properly understand politics in all its multi-faceted features (Barry 1976). For an argument directly against expressive voting see Mackie 2011, unpublished. At the same time, political theorists can hold that voters are irrational in the sense that they have no idea of the actual probability of their vote affecting the outcome (Riker e Ordeshook 1968) or that they simply overestimate their importance (Acevedo and Krueger 2004).

³ For comments and criticisms on this stand, as well as the authors' answer, see the American Political Science Review Vol. 69, No. 3 (1975).

voting is instrumental to other ends¹. Finally, political theorists can reject (3) and claim that the expected utility of a specific candidate assumes a much greater importance if it concerns the interests of all or ethical issues, rather than simply the self-interest of particular voters. In this case, if voters look at the social welfare of all and at how it can be increased by the right choice of candidate, the probability of their being decisive does not matter anymore because of the greater good that can be envisioned (Goodin and Roberts 1975, Parfit 1984, 73-75, Edlin, Gelman and Kaplan 2007). However, even this answer cannot do for a prudential defense of democracy, because it assumes that people have moral disposition when voting. While a prudential justification need not deny that, as among citizens' interests there might well be moral ones, it has to stand on its own foote, without the help of moral dispositions, because otherwise it would not be different from normative proceduralism.

Therefore, we ought to look at those answers to the non-voting paradox that reject the inference from its premises to the paradox itself². Among these, the most interesting for the prudential account relate to voters' strategic behavior and to a different interpretation of causation. The first are game-theoretic strategies to overcome the paradox by pointing to what would happen if no one went to vote (Owen and Grofman 1984). Under this circumstances, the probability of being decisive would increase the more the turnout decreases³ and hence the paradox would dissolve, because the higher probability of being decisive would make it rational to cast one's vote in order to determine the result, even for self-interested persons⁴. As citizens then, we would be only rational in trying to affect the electoral outcome by voting because it could always be the case that other citizens became decisive fault to our lack of participation and consequent turnout drop. This explanation is fascinating, but it has two minor flaws. First, given the average population of current democracies, it is unlikely that the turnout

¹ It is also possible to reject premises 1 and 2 together and those who reject the first generally reject also the second. In this case, voting can be seen as a way to express one's support to one candidate, that is, voting is not rational *and* it is not directed at determining the winner.

² I leave aside the most dismissive ones, that basically claim that costs of voting are not as high as the non-voting paradox assumes. See for instance Niemi 1976. For similar reasons I will not consider those attempts to answer to the paradox by stating the existence of a duty to vote, because this would beg the general question of democratic political obligation I am trying to ask. For consideration and rebuttal of such a duty see Brennan 2011, chapter 2.

³ The probability of being decisive is a function of the turnout, that is the amount of people voting, and the anticipated proportional majority, that is the probability that one's candidate will win given the fact that she is leading in the pools.

⁴ In a way, this is a sort of game-theoretic interpretation of Kant, because it answers to the question: what would happen if no one cast one's vote? The answer is that a Nash equilibrium would be achieved where for each citizen voting would be rational given the chance of being decisive if other citizens were to avoid casting their ballot. Yet, Owen and Grofman propose a model for majority rule only.

decreases so much as to make it possible for one citizen to really be decisive and to think that she would be. Second, it seems to miss the point of what we think when we cast our vote. Any reference to citizens' feelings or motivations for voting is of course far-fetched, unless one has statistical data at hand. Even then, it would not help grasping the rationale of voting, since people might just be wrong or inconsequential about their reasons for voting. Anyway, it appears peculiar that citizens might think they ought to vote because it is likely for them to be decisive or to prevent their fellow citizens from being decisive. Both thoughts strike as utterly implausible.

We can then turn to the second proposal, which focuses on the idea of citizens' bearing causal responsibility with respect to the electoral outcome (Goldman 1999, Tuck 2008). This seems to track the way we conceive of our contribution when voting, but is clearly at odds with traditional understanding of causation, grasped by the counterfactual model. Counterfactual analysis of causation says that an event A causes an event B if in a counterfactual world where A does not occur, also B does not occur. Social choice theorists' observations that consumers' behavior is substantially different from voters' revolve around this idea, since they take voters to be irresponsible of their political choices because they are not decisive and they do not bear individually the costs of these choices (Brennan and Lomasky 1989). On the contrary, the contributory analysis, which is more adequate to trace cases like elections, does not require that A be a necessary condition for the occurrence of B, but only a sufficient one. Elections thus resemble other situations like for instance climate change or recycling, where we intuitively see how our actions are causally connected to the outcome, but we also know that are not decisive for it. Yet as in these other cases, this does not entail that we are not partially responsible for the outcome, as our action represents a contributing factor in bringing it about.

Alvin Goldman and Richard Tuck present different arguments in support for this weak understanding of causation and I cannot account for them here¹. However, insofar as it is plausible to think that we are partially responsible for electoral outcomes, then this can be so only if a certain kind of causal connection is in place. In turn, causal connection between our vote and the final outcome makes it rational to participate in

¹ Tuck focuses on Jerry Mackie's idea of INUS condition (Tuck 2008, chapter 2), while Goldman mentions it only to dismiss it and offers a "vectorial model" instead (Goldman 199, 210ff.). They also have very different aims, because Tuck wants to answer to the free-riding objection to voting, while Goldman intends to give a *moral* rationale for voting, which is that we are morally responsible for electoral outcomes. This fact cannot figure as a prudential rationale for voting, though. Yet, here I am only concerned with arguing in favor of the rationality of voting, which is granted by the existence of a causal connection to the outcome.

elections, since we contribute to the final decision over what candidate will win¹. In this way, the rationality of voting is defended and accounted for, because voting is shown to make sense from a prudential perspective interested in bringing about a certain outcome, regardless of whether this outcome responds to higher ideas of social welfare and common good or simply to that voter's interests. Moreover, the peculiar characterization of interests that has been proposed builds an even stronger case for the rationality of voting. In fact, while social choice theory identifies the non-voting paradox on the basis of the self-interest assumption, the prudential justification does not take individuals to be narrow-minded utility maximizers. Therefore, the realization of their interests might perfectly require to seek political influence albeit not on moral grounds. We can easily see similar cases in politics, when group interests and lobbies attempt to pass legislation in their favor. To be sure, this is done with various means, which go beyond voting at elections, but still this shows how influence in the decision-making matters even for individuals who are not motivated by their economic interests, rather than by the common good.

Nevertheless, one concern remains: the rationality of non-voting. In fact, my vote only contributes to the decision and is not decisive. Moreover, there will be other people with interests similar to mine that will cast their ballot to produce a result that is beneficial to all of us (in our political group). Thus, I can rationally think of free riding on their effort². Why shouldn't I? The answer to such question will be apparent in the next two sections.

To sum up, the aim of the prudential justification is to ground democratic authority on the basis that democracy is the best regime under which individuals can pursue their interests, whatever they take these interests to be. Since citizens' intentions when engaging in the democratic game will be determined by the relevant interests they have, a justification framed to be adequate to all people's interests qualifies democracy as a

¹ It is worth noting that elections are not only about who is going to win, but also with how many votes. This is especially relevant when the voting rule is proportional rather than majoritarian, which happens in many democratic regimes beyond the United States. In these cases, it is easier to see how giving a wide support to one's preferred party makes the difference to the outcome and also changes the normative mandate given to party's candidates. For this argument see Guerrero 2010. The only trouble with his argument, which nicely ties the non-voting paradox to political representation, is that it inadvertently hinges on a contributory idea of causation to solve the paradox. For even if we focus on how candidates are elected, "in terms of *how much support they have received*" (Guerrero 2010, 274), our vote still will not change the amount of support to that candidate, unless we subscribe to a contributory view of causation.

² Richard Tuck attempts to answer this question by making appeal to the inherent value of agency, which makes no difference between an action being necessary or only sufficient to produce an outcome, as long as the action is performed and the outcome produced, but I find his proposal unconvincing. See Tuck 2008, 57-62.

rational decision-making procedure regardless of the intentions people might hold. In this sense, the prudential justification aims at presenting democracy as acceptable to all citizens, and hence legitimate. Said justification solicits a positive disposition on citizens' part with respect to democratic institutions. However, with respect to disposition-dependent versions of normative proceduralism, this disposition to acknowledge democracy as a legitimate authority is both less demanding and compatible with almost any interests that citizens might have. Democracy, among all the things that it might be, is primarily and essentially a decision-making procedure that works according to certain voting rule, which in turn respects requirements of political equality, inclusion, presence of alternative political options and accessibility of information. As such, democracy is prudentially rational, given anyone's intentions¹.

This does not mean that normative proceduralist justifications of democratic authority are bypassed. They remain convincing and relevant accounts for all those citizens that share an interest in treating each other as equals or in improving their knowledge of truth and the common good. However, their shortcoming depends on the fact that they need to assume these dispositions on citizens' part to make democracy acceptable to them. In the case of disposition-dependent accounts, if we share their premises, we can accept their consequences. In the case of disposition-insensitive accounts, it is not clear that we are treating a justification of democratic *legitimate authority* anymore. Therefore, the prudential argument does not aim to replace the normative proceduralist one, but only to complete it by showing to rational people who do not share the same "reasonable" disposition that democracy is in their interest too, because it is necessary for them to understand and act upon these interests. Higher-order interests are preconditions to other interest and as such it is rational to satisfy and ensure them in the long run. This is what democracy does.

The prudential justification is a mixed approach to democratic legitimate authority. If it is sound, then it achieves its aim: to give all citizens, irrespective of their interests and intentions, reason to recognize a right to rule to democracy and to obey its directives. Naturally, much more needs to be accounted for, and in particular the

¹ The only ones excluded by the legitimation pool are not those who dislike democracy or simply are against it, but those whose fundamental preference is to overthrow democracy. To the extent that democracy is a political regime and a decision-making procedure it is hard to imagine a preference ranking with the desire to overthrow democracy as trumping *all other interests and preferences* a person might have. I hope the prudential argument has given to all those unsure of the value of democratic decision-making a reason to see it as legitimate authority.

connection between justification, acceptability and legitimacy that I just outline and that brings back what we said in the first chapters.

4.4 Justifications and Legitimacy

Let us recap the argument so far. In the last two chapters, we have seen how both John Rawls's and Thomas Christiano's strategies to overcome A. John Simmons's challenge do not work. The reason is that either justification is tailored to be persuasive only on certain people, the reasonable ones, without further explaining why one should be so reasonable, or it purports to be objective but in order to achieve its aim ought to assume a duty of justice on citizens' part. In the first case, the political conception of justice has a double intent. On one hand, it gives good reasons to take the exercise of coercive power as legitimate *and* citizens compelled to obey to its institutions. On the other hand, both things are so only insofar as citizens are reasonable and hence can accept both that the exercise of power is indeed legitimate and that this gives them reasons to comply with it. In Christiano's case, although the justification is still conditional on justice because democracy is legitimate as the just way to take decisions under conditions of disagreement, fallibilism and cognitive bias, the explicit aim of justification is to grant democracy legitimate authority. Since democracy has authority, we ought to obey to its directives, which consist in reasons for action of a distinctively compelling kind. Nonetheless, this is true only insofar as we have a former duty of justice to accept the justification of democracy as a legitimate authority *because* it is just.

In both accounts then, legitimacy, whether applied to the exercise of coercive power as in Rawls's case or directly to authority as in Christiano's, crucially depends on justice. Although both philosophers do recognize the so-called fact of disagreement and pluralism, reasonable or not, they begin with their own conception of justice on which they build an account of legitimate authority. There is a remarkable difference, though. In Rawls's account the exercise of power is legitimate only through its being acceptable to people, who in turn are assumed to be reasonable, whereas in Christiano's the acceptability to an idealized audience is not required, as he presents his justification of democracy on the basis of his egalitarian idea of justice as true, regardless of what citizens accept. In fact, Christiano's understanding of publicity, contrary to Rawls's, does not equate it to acceptability, but takes it to be weaker, because it only demands that the

egalitarian conception of justice at the basis of democracy be public knowledge, such as laws are.

Now, if the role of justice is to offer an account of how to distribute benefits and burdens of social cooperation and related rights and duties, it seems that its being publicly known by all members of society is necessary for it to fulfil this role of ensuring social coordination, as people cannot regulate their mutual expectations if they disagree over what claims they can legitimately make on one another. This is why both Christiano and Rawls, despite their diverse metaethical positions, endorse the maxim “justice must be done and be seen to be done”¹.

Yet, as we have seen in the last chapter, it may not be the case that (1) justice is necessary to ensure coordination²; (2) justice requires publicity in order to fulfil this role. Firstly, political authorities, no matter how organized, are exactly the kind of things that impose a precise set of duties on members of a cooperative venture. By their legislative activities, political authorities put together a shared set of mandatory rules that are stabilized by their being backed by physical sanction (Gaus 2013) and hence in so doing they guarantee that people’s expectations concerning others’ behavior be met³. Therefore, political authorities can ensure coordination without justice. They can do it by forcibly enforcing their rules or by helping people pursuing their interests, but nonetheless they can fulfil this role *without* justice. Eventually, justice reappears when we adjudicate these authorities’ *legitimacy* in imposing duties by force, depending on the account of legitimacy one upholds. To say that authoritative rules ought to be just and that justice should be embodied within social rules requires a further explanation.

¹ Although Christiano denies to identify publicity with acceptability, claiming that his understanding of the publicity condition is weaker than Rawls’s, he still declares that “full justice” is unachievable given disagreement. But this amounts to saying that full justice would require not only the realization of justice, but also its acceptance by democratic citizens. See also Wall’s criticism in Wall 2007.

² One can hold that justice serves to ensure coordination and that justice ought to be crafted so as to ensure coordination, but the two things are not necessarily related and one cannot argue the second claim on the basis of the first. In the first case justice is necessary for coordination, so that we cannot have coordination without justice. And this has clearly never been the case. In the second, coordination is the task of justice, hence we ought to leave apart those conceptions of justice that prove to be unable to grant coordination. But again, since coordination is possible without justice, one ought to explain why it is peculiar to the concept of justice that it ought to ensure coordination.

³ According to Gaus and to other authors critical of the social contract tradition, like Hume, the need for coordination does not entail also a need for political authority, insofar as other means of coordination, like conventions, can be thought of. I am not sure conventions would work without a stabilizing authority, since people might gain benefits by the violation of conventions that are not counterbalanced by authority-imposed sanctions. However, it is also true that conventions may exist with a shared exercise of force, so that each individual is justified in forcibly coerce others into upholding the convention. Yet this seems pretty much Locke’s state of nature and we would have again an epistemic problem of rightly upholding conventions instead of interpreting them according to our own interests. I am not interested in assessing the plausibility of the conventionalist argument, however. For a criticism of this account see Green 1988.

Secondly, the correlated idea that justice ought to be public because this is the only way to ensure coordination is also a mistake. In fact, it is perfectly plausible to think of a political authority which realizes justice even though its subjects are not aware of this fact, as those in power are the only ones to really know the truth about justice. Plato's republic and certain Utilitarians' models respond to this intuition and offer an account of justice that is independent from the publicity requirement (Sidgwick 1981, Gosseries 2010). Therefore, to contend that the principles of justice ought to satisfy this requirement *in order to ensure coordination* requires providing a further argument as well.

Christiano's argument for publicity calls for something more substantial: the idea that publicity is demanded by justice itself (Christiano 2008). Here he stumbles in a consideration that is very similar to Rawls, albeit with different metaethical assumptions behind, i.e. the idea that from the public standpoint citizens are asked to undertake, they ought to discern a principle that "everyone can *agree* treats them as equals" (Christiano 2015, 244)¹. Christiano as well, then, recognizes a normative commitment which is manifestly well entrenched in the liberal tradition: the idea that to impose something on someone cannot be completely right if that someone thinks it is wrong. Rivers of ink have been poured at least since Locke's *Two Treatises* (Locke 1988) and Rousseau's *Social Contract* (Rousseau 2002), but even long before, on this idea. And liberalism has framed it offering consent as ground for authority, because only something individuals freely and rationally agree to can be advanced without imposition.

The main concern then does not regard justice itself, but its link to legitimacy and to the possibility of forcibly imposing on people, and commanding the compliance with, collectively binding rules. Here we need to take a step back and have another look at the concept of legitimacy that we analyzed in the first chapter. As we saw there, it makes more sense to read legitimacy as a claim-right to rule to which people's duty to obey correlates, rather than a mere liberty-right to coerce people. The justification of a right to coerce is both weightier and lighter than the justification of a right to impose obligations. It is weightier because it makes explicit reference to the exercise of physical force and it is lighter because it does not require people to act in any special way, as the justification does not concern how other people behave, but only the moral permissibility of the wielder of political power to interfere with what they do. Yet, a mere right to coerce does not work for political legitimacy, which has to require subjects'

¹ See last chapter.

obedience, as we have seen in the first chapter. Hence, to reckon that democracy can be a legitimate authority means to recognize that democratic decisions are not only enforceable on people unwilling to comply, but ought to be complied with in the first place by democratic citizens. Insofar as legitimacy entails obligation, the justification bar is set higher, as it is not only the enforcement of rules that ought to be accounted for, but also the duties that whoever wields political power imposes on people¹.

Justice and political legitimacy have a troubled relationship. On one hand, we do not want them to grow too much apart, for it would mean that an authority has the right to rule even if it is deeply unjust; on the other hand, we do not want them to be too close, because if only full justice could grant the right to rule, then no authority would have it. Disagreement makes things rougher. Since we do not share one conception of justice, there are but few situations where we can confidently say that something is just and ought to be imposed², *regardless of what people think*. Natural duties corresponding to claim-rights might be of this kind, most of the time at least, as we all *agree* that killing is wrong and that we ought to save a drowning kid, if certain conditions apply³. The recourse to consent as grounding of legitimacy and obligation has been the traditional liberal answer. For actual consent has undisputed merits: it ensures stability, it goes past disagreement on justice and it seems also required by justice itself, as we have seen.

Yet, in its actual form consent is too much or too little. It is too much for not everyone has consented neither to a government nor to a system of decision-making to appoint that government⁴. It is too little because it cannot dodge false positives and false

¹ It is not that legitimacy *creates* political authority as Peter holds (2008, 2016). If that was the case, then the justification of coercive power would engender the normative capacity to create duties on others. But this is implausible. Think of all cases of permissible use of coercion by agents other than the state, like in personal assault cases. To be sure, I have a right to defend myself from those who attempt to physically hurt me, but such right is better understood as a liberty-right rather than a claim-right, because my attackers already had a duty not to hurt me in the first place. It is because they violated this natural duty they have that I am justified and also have a liberty-right to use violence against them. Conversely, political authorities have a claim-right to rule to which people's duty to obey correlates. Therefore, the mere fact of being justified in the use of force may provide a liberty-right to said use, but it does not confer to the force-user the right also to impose new duties and obligations on those subject to it.

² Generally, fundamental claim-rights and natural duties correlated to those rights represent the most part of those situations. However, contrary to what libertarians like Nozick seem to think, there are controversies even on whether rights exist, which they are and whether they can conflict or not. See for instance Hart 1955, Feinberg 1966, 1970, Wenar 2005, 2010.

³ Positive duties are more puzzling than negative duties and generally come with conditions, as I tried to show in the previous chapters. Anyway, even on negative duties there are controversies, because the greater good might require to sacrifice a life, Utilitarians think.

⁴ See Simmons's criticism to democratic consent. As he observes, there is always a minority and quite a few people have consented to the idea of electing public officials democratically (Simmons 1983/1984). Interestingly enough, Rousseau for this reason contrives periodical popular assemblies of all citizens where they have to decide whether they want to keep that form of government and the people in office. See Rousseau, 1763, 226.

negatives¹. False positives occur when individuals consent to unjust things, like for instance getting enslaved, whereas false negatives occur when people refuse to consent to right things for mischievous and dishonest reasons, such as refusing to pay one's debt or discharge an obligation². As a matter of fact, liberalism and social contract tradition rely on the idea that consent matters when it is given "freely and rationally", an expression on which lie all the ambiguities between a voluntaristic and a rationalistic understanding of consent (Riley 1982, Waldron 1987)³.

Moreover, those accounts, like Simmons's, that ground political obligation on actual consent lose sight of the fact that consent itself is normatively relevant only under certain conditions which is up to moral and political theory to justify (Raz 1981). In fact, consent is hardly seen as necessary to prevent someone from hurting another person⁴. Similarly, the killer's non-consent to be stopped or hurt in order to prevent her to kill another person has no normative value⁵. This means that we need a theory that spells out the reasons why consent is required to ground political legitimacy and obligation. Simmons cannot simply assume that this is the case, without begging the question. But if said theory is called for, then we have a justification that accounts for circumstances under which consent is normatively necessary and when it is not. Hence, if Simmons intends to argue that consent is needed for grounding political legitimacy, he cannot content himself with claiming that a right to rule can be given only thorough consent. He has to provide a justification that explains why legitimate authority would require

¹ Estlund employs this terminology to describe two criteria an epistemically accurate decision-making procedure ought to fulfil, that are sensitivity (avoiding false negatives) and discrimination (avoiding false positives). See Estlund 2008, 128-129.

² While there is disagreement over the possibility of false positives, as generally Libertarians do not admit of such cases, there is little disagreement about false negatives. Perhaps this reason has contributed to Estlund's idea of normative consent to capture those cases where one really ought to consent even if one refuses to (Estlund 2008, chapter 7). Naturally, to wrongly withhold one's consent does not imply that it is permissible to forcibly impose things on the non-consenter and in fact Estlund has to draw a line between authority as the power to requiring action and legitimacy as the right to coerce people. See again Estlund 2008, chapter 3. For a direct criticism of consent as a ground of political authority see Christiano 2004, 2008. For a compelling argument on the impossibility of an emergent justification of the state, to which consent-based theories conform, and on the necessity of teleological justifications see Schmidtz 1990.

³ Given my research theme, I am not interested in the contemporary interpretation of contractualism and especially in its moral version notoriously put forward by Rawls and Scanlon (Rawls, *A Theory of Justice* 1971, Scanlon 1982), but also by David Gauthier, although with a different twist, as he takes more clearly rationality to identify with utility maximization and does not require equality among bargaining parties (Gauthier, 1986).

⁴ At least this is the case with consent of the person we are stopping from hurting another, even though we might think that we need the consent of the hurt person in order to intervene.

⁵ Amanda Greene has recently claimed that there is an asymmetry between consent and non-consent (Greene 2016). While the former is normatively relevant only if it is qualified, the latter is normatively relevant no matter what. Yet, the example addressed in the text illustrates exactly a case in which the killer's non-consent has no normative value for my justification to force her to stop. What seems more convincing is that disagreement makes non-consent normatively valuable, insofar as we cannot be sure that we are imposing the right thing when we coerce others.

consent and when said consent would meet the required standards to be normatively significant. But this means that we need a moral or political theory to allow consent to play its normative role in grounding political authority in a way that avoids both false positive and false negatives.

What seems shared is that actual consent matters, to a certain extent. Yet, actual consent is also clearly not enough. Hence, we need to curb it somehow: either with reference to a doctrine of natural rights, like John Locke has famously attempted and Simmons after him (Locke 1988, Simmons 1999, 746), or with respect to distinctive values that consent cannot defy, like Christiano's public equality (Christiano 2008), or Amanda Greene's impartial concern for the security of all (Greene 2016). In any case, actual consent does not lend us a right to rule, the same way our actual desires do not lend us normative guidance. But if this is the case, then Simmons cannot argue that consent is the only ground for political legitimacy, simply because we never see actual consent unleashed. It is always a tempered consent and its taming is a matter of degree and strategy, rather than a wrongful choice brought about by less-than-liberal theories.

If we move beyond actual consent, there are three options¹. Either we idealize and moralize the audience of people whose consent is asked, so that they all would hypothetically give their consent insofar as they are rational and reasonable (Rawls 1971, 2005, Quong 2011, Gaus 1996, 2011, Vallier 2014)². Or we forsake consent completely and acknowledge that it matters only under certain circumstances that is up to the correct theory of justice to determine (Raz 1981, Christiano 2004). Or again, we do not take consent to be normatively valuable, but we look at it as a proxy for and a sign of political order, stability or peace, which is what we ought to ensure (Gray 2000, Williams 2005, Horton 2010, 2012).

I am not interested in the last option followed by political realists and *modus vivendi* theorists, as the account I proposed is a tentative account of the legitimacy of democratic authority rather than of democratic stability. The stability of democratic regimes might count as a reason in favor of having them, but it is a deficient reason in two respects. First, it is underdetermined: many political regimes may fulfil this

¹ Granted that we still want to argue for legitimate authority, against anarchists, who take the impossibility of actual consent as a conclusive reason for the impossibility of legitimate authority. See Green 1989, Simmons 1979, 1999.

² There is a substantive difference between the two strands of public justification. While consensus-based accounts like Quong's and Rawls's (for certain respects) require people to be reasonable, convergence-based accounts like Vallier's and Gaus's only demand that they are rational. I do not dwell on this debate, especially because public justification concerns the justification of laws and policies rather than the justification of political regimes. For a democratic proceduralist interpretation of Rawls's idea of public reason see Peter 2008.

requirement and be enough stable to solicit people's approval. Since stability per se does not preclude even violent and tyrannical means to impose it, it can count as a reason in favor of regimes we would easily dislike for many other reasons. Second, if legitimacy really consists in a right to rule, it seems hard to understand how such a *right* might derive from the *fact* of having the power to rule¹. It is not without reason that those who follow this route are at pains to draw a line between "good" and "bad" kinds of stability².

The justice-based route is problematic from the beginning, if we accept that pluralism and disagreement are here to stay. To be sure, there are moral values we all share, but when we attempt to specify these values and to discriminate among possible interpretations and conceptions, disagreement kicks in and it is hard and, if we are liberals, also wrong, to disregard it. Certainly, if legitimacy ultimately rests on justice, the fact that certain people claim that they are being treated unjustly is not relevant if the right conception of justice tells us they are not. It is not the case that all consent ceases to be relevant, but only rightful consent is.

The prudential justification that I offered points in the first direction, as it purports to give reasons that all can accept in favor of the legitimate authority of democracy. Some kind of acceptability ought then to be the benchmark of political legitimacy³. A justification which shows that democracy is rationally acceptable also shows that democracy is a legitimate authority. But why do we need acceptability in the first place? The same conundrum of consent emerges again. Either we share a conception of justice that tells us why and when acceptability matters, as for instance with the idea of acceptability to qualified or reasonable people. Or we take again acceptability to be a proxy for stability (Horton 2012). Generally, liberals take the first horn. Yet, this would mean that the prudential justification presented here would be directed only to liberals.

¹ Leaving aside Hume's is-ought problem (Hume 2007) and Moore's naturalistic fallacy (Moore 1993), the idea that the power to do something also gives someone the right to do so, although already present in Plato's *Republic* with Thrasymachus and revived by Hobbes's *Leviathan*, seems still nowadays difficult to accept, as it states a paradigm that we would not endorse in everyday life. In the case of legitimacy, this is even more alarming if one endorses, as I do, the correlativity thesis that connects the right to rule of someone to others' duty to obey. See first chapter.

² To the extent that political realism is after acceptability and not mere stability, our paths may converge (see for instance Williams's critical theory test for political legitimacy, in Williams 2005). To the extent that they are after acceptance as actual consent, the problem devised earlier with Simmons resurfaces.

³ Public justification theorists and many defenders of democracy think that some kind of acceptability cannot be forsaken, because it is required by the rock-bottom principle of equal respect for person (Rawls 1971, 513, Estlund 2008, Peter 2008, Christiano 2008, Ottonelli 2012). I cannot possibly offer any analysis of the concept of acceptability and its relation to the related concepts of intelligibility, accessibility and shareability (for which Vallier and D'Agostino 2014). Thus, I will only make use of the term in its immediate meaning of a criterion that determines whether something is possible of being accepted by individuals.

And to go justifying democracy to liberals seems quite similar to go preaching to the converted.

I try to outline a third way, while keeping in mind that, as all third ways, it might be flawed. Democracy is a peculiar regime, because it is a form of self-government. Ideally, under a direct democracy those who rule are to be ruled in turn and vice versa (Aristotle 1998, 176). Representative democracies change this picture, but it is still true that ordinary citizens decide who get to rule. One can hold that this does not only change, but revolutionizes the picture to the extent that it is not a democracy anymore¹, but I will not discuss the question here. Hence, insofar as representative democracies ask ordinary citizens to select those fittest to serve, these citizens take part in the practice of democracy as self-government, albeit indirectly so. Therefore, they are not only passive recipient of benefits and burdens, but take also active part in determining what these benefits and burdens are. As we have seen in the second chapter, they act both as subject and as law-givers. Since they can take bad decisions that will engenders unjust or even undemocratic consequences, it is peculiarly important that they play their role carefully. In this sense, Rawls's idea of reasonable citizens echoes Rousseau's requirement to follow the General Will, so that citizens will have the opportunity to obey to just laws or laws that put forward the common good.

Two complications ensue. The first has been already detected by Rousseau, when he observed a dilemma that plagues democratic decision-making process: that citizens' public-spiritedness is enhanced by laws and constitutions which are just, while these latter can be just only if they are the product of public-spirited citizens². Rawls seems to stumble into a similar paradox, when he takes reasonable citizens to supervene upon a well-ordered society and presumably a well-ordered society to be passible of being established by reasonable citizens³. We can translate this concern into the thought that to have a working democracy, we need individuals who act like citizens, that is that show the right disposition of acceptance towards democratic institutions. This might appear a consequentialist concern that should not bother proceduralist accounts. But democratic

¹ Think of the long-standing debate over whether the U.S. ought to be thought of as a democracy or a republic, some Founding Fathers' hatred for democracy, their identifying representative government with Aristotle's mixed constitution, more than with democracy, and Rousseau's attack to representation. See Pitkin 1967, Manin 1997 for the distinction between democracy and representative government, while Urbinati 2006 for the idea that representative democracies are better forms of democracy than direct ones.

² Rousseau 2002, 182: "In order that a newly formed nation might approve sound maxims of politics and observe the fundamental rules of state-policy, it would be necessary that the effect should become the cause; that the social spirit, which should be the product of the institution, should preside over the institution itself, and that men should be, prior to the laws, what they ought to become by means of them". On this see also Honig 2007.

³ See chapter 2.

interactions among citizens affect also the way these interactions are structured, as many relevant elements of democratic practice might be changed democratically. Indeed, this happens a lot of times. In order to preserve ideal democratic relations, which are intrinsically just or valuable irrespective of their outcomes, actual citizens ought to be careful not to endanger actual democratic relations with harsh and eventually undemocratic reforms.

Citizens might fail to play the democratic game appropriately by either refusing to play their role or abruptly changing the game altogether. This point does not simply relate to democratic stability, but to democratic functioning. If democracy is a decision-making procedure that works as we saw, where citizens are free to inform themselves, to discuss and then take decisions through majority rule, this practice ought to be performed according to certain rules. There are explicit and often constitutionalized rules of the game, which citizens are forced to respect (or to change democratically), and there are unwritten rules of behavior that citizens ought to respect if they want to keep on playing the democratic game. Stability is an effect of democratic functioning, but the aim should be to preserve democratic decision-making as it is, the way it is and the way it works. But why should individuals accept democracy as legitimate authority?

Normative proceduralism has two answers for this issue. One is a disposition-dependent justification of democracy, which targets those intentions that are consistent with a public conception of justice and makes the authority of democracy conditional on people's displaying these right kind of disposition. If citizens are reasonable, they are willing to recognize democracy as legitimate and to discharge their political obligation towards it by taking part to the democratic game as reasonable citizens and according to the standards of public reason (Rawls 2005, 216-222).

The other is a disposition-insensitive justification that obliterates the problem by providing a code of conduct to which citizens are required to subscribe, out of a duty of justice. As a result, democracy is a legitimate authority regardless of its outcomes and of its citizens' intentions, because it is uniquely consistent with the right conception of justice (Christiano 2004, 2008). However, this entails two things in turn. On one hand, insofar as citizens are required to discharge their duty of justice, we encounter the difficulties we have seen with Christiano's account. Among these, the fact that to be a good citizen one has to be a just man is particularly puzzling. Although Christiano does not impose Rawls's requirements of public reason on citizens, still he seems at pains to justify citizens' freedom to pursue whatever conception of justice they may have, given the fact that it might conflict with the egalitarian ground of democracy. On the other,

political legitimacy appears to be parasitic on justice, insofar as the right conception of justice grants democracy with authority regardless of what citizens think. If this is the case, the legitimate authority of democracy stands or falls with the correct conception of justice. This conclusion raises two worries.

The first is the one we saw at the beginning of this work. Actual democracies might be good and just, but, as Simmons argues, this is not enough. Simmons takes this to mean that the only possible ground of political legitimacy is consent, but this is implausible as well. Among the strategies to temper consent, acceptability seems the more fruitful for political legitimacy, as long as it does not flee too much from how individuals really are, since otherwise acceptability appears to be simply a kind of theory of right justice in disguise. If the aim of justification is to give to individuals convincing reasons to accept democracy as a legitimate authority, these reasons ought not to go further away from what individuals' interests are. But why can't citizens be simply wrong if they do not accept a justification of democratic authority based on its intrinsic value? We saw that there are false negatives with consent. And if acceptability ultimately rests on justice, then it is up to the conception of justice one endorses to specify when acceptability is warranted.

Here we introduce the second worry and the second complication, which are the same thing: the fact of pluralism and disagreement. Given the unavailability of shared standards about what is just and what furthers the common good, we disagree over the content of the right conception of justice. We disagree over its link to the common good. We disagree over its relevance as an action-guiding normative principle, as the debate on ideal and non-ideal theory shows. Moreover, different conceptions of justice will provide diverse accounts of how acceptability ought to be conceived and even accounts that disregard acceptability altogether (Raz 1981, Christiano 2008).

Our path to political legitimacy is at a crossroad. On one hand, if we end up with a conception of justice, we encounter an advantage and a drawback. The advantage is that we can specify what are the unwritten rules according to which citizens ought to play the democratic game: they ought to be reasonable or they must respect the moral code of conduct endorsed by the right conception of justice that also justifies the democratic game itself, like equal respect or equal political freedom.

The drawback is constituted by the fact that in actual democracies there are citizens who disagree over this conception and hence, according to their system of values and preferences, they have no reason to accept democracy as legitimate. While disposition-dependent justifications are left aside because they cannot provide

convincing reasons for all, disposition-insensitive accounts simply leave the whole issue aside. But this entails that citizens have no reason to display a disposition of acceptance towards democratic procedures and no interest in playing democracy according to a set of rules applicable to all of them. Insofar as citizens' role as subject to the democratic laws is concerned, this might not be troubling. Since democratic outcomes are legitimate because brought about by an intrinsically just procedure, the reasoning would go, it is simply right to coerce those unwilling citizens to comply with them. Yet, citizens' role as law-givers is neglected: either the right conception of justice is taken to regulate also the considerations citizens are supposed to make when deliberating about and voting on collective decisions, or they are free to vote decisions that contravene to the very values that justify democracy in the first place. Consequently, either there is a way to check citizens' considerations before voting, thus harshly reducing the amount of pluralism allowed, or these considerations ought not to be checked. However, in this second case, outcomes might be not only unjust, but also undemocratic, if citizens do not prove to live up to the standards of the right conception of justice. The result is that democracy is an unstable type of political authority, because, contrary to other forms of political regimes, its chance to work correctly is deeply affected by the extent to which citizens recognize it as a proper legitimate authority¹. Moreover, insofar as disagreement is itself legitimate, citizens' code of conduct is also jeopardized, because it will depend on what conception of justice is the right one.

On the other hand, if we abandon the idea of grounding legitimacy on justice, we ought to see why acceptability matters. What I try to say is that acceptability matters to democracy irrespective of justice. That is, democracy in order to work and function, in order to be practiced according to its own rules, require that citizens accept it and take it as legitimately entailing duties on their part. If they do not, democratic institutions are endangered because they can be misused by citizens who treat them instrumentally or opportunistically and fail to show the right disposition towards it.

According to the prudential justification, the reason why acceptability matters is not connected with a liberal conception of justice or with the realist concern for stability. Democracy itself calls for acceptability because it needs to be played according to its rules in order to function properly. The prudential justification aims to show that

¹ This argument revolves around the stability of democracy as a functioning collective decision-making procedure that respects the normative requirements we saw at the beginning of this chapter. Yet, there is a further argument, which is only hinted in the text, about the fairness of disposition-insensitive accounts. To the extent that we justify democracy regardless of the disposition people display in it, it seems that such justification is unfair towards those that commit themselves to be good citizens.

democracy is rational from all citizens' perspectives because, no matter what their interests (broadly intended as encompassing also ideas of the right and the good) are, it ensures the chance to understand, discuss, revise and further these interests rationally and peacefully. Insofar as individuals accept the prudential justification, they are justified in displaying a disposition of positive acceptance towards democracy, whose legitimate authority grounds their political obligation¹. In this way, the prudential argument works as a supplementary justification with respect to the ones provided by normative proceduralist accounts, as it targets those individuals who cannot share the conception of justice from which proceduralism starts.

However, if the argument is hopefully sound so far, there is a further problem concerning the role democratic citizens are expected to play within a prudential justification. If Rawls's public conception of justice demands that citizens be reasonable and Christiano's egalitarian principle requires that citizens accept the public standpoint of equality for all, what should rational citizens do, according to the prudential argument? Is it possible to prescribe a role that all citizens can play, regardless of their heterogeneous intentions and interests? The prudential justification, if successful, solicits a disposition of positive acceptance towards the democratic authority, but is it sufficient to comply with democratic directives or should this disposition demand more of citizens? I will explore this issue in the last section.

4.5 Political Obligation

We have seen that, as long as citizens are rational and concerned with realizing their interests, the prudential argument gives them reasons to adopt a certain disposition of positive acceptance towards democratic decision-making procedures. This is so because democracy satisfies the conditions posed by the three higher-order interests all individuals share. Democracy allows individuals to (1) gather information on and discuss their interests; (2) revise them freely; (3) pursue them through an equal opportunity for formal influence through voting. If the argument so far is sound, we

¹ It might be objected that the prudential justification gives citizens reasons to *think* that democracy is a legitimate authority without showing that democracy *is* a legitimate authority. In this case, democracy's right to rule would be undermined, because it would rest not on a fact (that democracy is objectively a legitimate authority), but on citizens' belief (that democracy can be taken as a legitimate authority). To this objection I reply: for the prudential justification that is enough. Since it is concerned with citizens' accepting the authority of democracy and with citizens's discharging their obligation in order to keep democracy working, the prudential justification is perfectly satisfied with citizens' convictions on its authority. After all, it is because the majority of democratic citizens think that democracy is legitimate, rather than because democracy is legitimate despite of what everyone thinks, that we have democratic regimes.

ought to understand what follows from the recognition of democracy as a legitimate authority. As we have seen in the first chapter, a legitimate authority possesses a right to rule, which means a right to impose duties on its subjects and to coerce them into obeying these duties. This is a traditional implication of political legitimacy, which is confirmed by the unilateral version of the correlativity thesis that we have seen in the first chapter. Political obligation consists in compliance with authoritative directives and flows from the fact that authority is legitimate. Yet, mere compliance with democratic rules is not enough. If democracy is a legitimate authority because it is rational to take it as such, the kind of obligation that derives from it ought to be understood more generally as a duty not to undermine the democratic practice.

While under any autocratic regime, individuals who are not in power are simply asked to comply with the laws as submissive subjects, democratic institutions are such because they are played by individuals as both subjects and legislators, albeit indirectly. Therefore, while for mere subjects the duty not to undermine political institutions if these are legitimate consists only in a duty of compliance, political obligation in case of democracy is wider, as it encompasses also duties citizens have as legislators. However, by definition the prudential justification cannot avail itself with a distinctive conception of justice, since it aims at convincing all citizens that democracy is a rational choice, according to any conception of justice they might endorse. A liberal conception of justice grounded on the principle of equal respect for people might require them to put forward in the democratic debate only reasons that they know other fellow citizens can accept and to vote only on public reasons that are shared by all (Rawls 2005, Quong 2011). Or, citizens might take themselves to be free to vote on any consideration of justice they like, as long as it is compatible with the egalitarian principle of the equal advancement of the interests of all (Christiano 2008). Or again, they ought to display the right disposition to act as equals towards their fellow citizens (Kolodny 2014b). Or finally, they can publicly act on the basis of whatever opinion they have, as long as they do so “in good faith” (Waldron 1999).

Yet, the prudential argument makes appeal only to what can be rational for people to endorse and does not ask them to subscribe to any peculiar conception of justice. What does the duty not to undermine democratic institutions mean, then? It requires following one’s own higher-order interests, i.e. to gather information about what they want and value and to pursue it. These might or might not entail that citizens ought to vote, as it depends on the distinctive conception of justice and democracy they endorse. However, no matter what are the personal reasons they have, democracy represents a

precondition for the pursuit of their other interests. And since this makes it a legitimate authority, citizens ought to fulfil the duty not to undermine it according to whatever conception of their interests they have. The content of political obligation consists of a set of hypothetical imperatives for rational individuals who have diverse interests and the same higher-order interests we saw earlier¹. This means two things: (1) the duty to vote informed; (2) the duty to abstain from voting when one is not informed².

The duty to vote is conditioned for two reasons. One, since democracy is justified as prudentially rational, the only constraint on the exercise of one's participation to the democratic practice ought to come from those higher-order interests that justify democracy in the first place. Hence, no appeal to a distinctive conception of justice to uphold in public is made, but citizens are expected in order to realize their own interests in the best possible way, to get informed. Furthermore, if they also wish to pursue their interests, they also ought to take active part in the democratic game by voting. Yet, this must be done with justified knowledge of the alternative, because it is the rational thing to do in order to further one's interests and also because it is what the prudential justification asks citizens to do. Since by definition the prudential argument cannot discriminate among the heterogeneous and diverse outcomes that can issue from the democratic procedure, there is no shared way to define one of these as unjust. However, given our definition of democratic decision-making, there can be outcomes that are undemocratic, in the sense that they constrain or limit or impair the functioning of the democratic practice. Those outcomes are against the interests of all citizens, because they go against the political regime which is rational and legitimate for them. Therefore, citizens ought to be aware of the alternative options for which they cast their vote, in order to be sure that these do not turn out to be undemocratic.

Two, since information is time consuming, it might happen not to have time to gather relevant data in order to make a reasoned decision (Lupia and McCubbins 1998, Caplan 2007). To uphold a duty to vote informed no matter what may happen to be not only demanding, but also counterproductive, as it can urge citizens to lower their standards of adequate information. Thus, since undemocratic decisions might endanger their higher-order interests it is both rational and required of them not to vote in case

¹ This means that the argument follows from the premise that individuals are rational and have interests to pursue, as we have seen at the beginning of the fourth section. As I noticed in the introduction, the prudential case for democracy stands or falls with the normativity of instrumental rationality, which this dissertation assumes rather than defends.

² On the debate about the existence of a duty to vote see: Brennan and Lomasky 2000, Goldman 1999. For two recent proposals respectively for and against see Lisa Hill and Jason Brennan (Brennan and Hill 2014, Brennan 2011).

they do not manage to be informed enough about both their real interests and the political options on which they ought to cast a ballot. As we have seen, voting is rational, but this does not mean that it is always irrational not to vote. For instance, writing down what one is thinking is rational, but this does not mean that it is irrational not to do it, if one remembers those things by heart. Similarly, insofar as active participation in the political life might help us to understand, revise and pursue our interests, as well as to take part in the democratic game and keep it working, it is not irrational not to do so if such participation might turn out to be harmful to our interests, first of all our interest in democracy.

Convictions about decision-making procedures generally represent the consequences of individuals' reasoning. Since one's values and preferences lead one to think that, for instance, men are born equal, a form of decision-making which recognize such equality seems to follow from this premise¹. If this observation is sound, individuals' disposition towards democracy will depend on the kind of premises that they endorse. Hence, if and insofar as the prudential argument works, the protection of higher-order interests comes into play before the conclusion is reached. This means that one might have very different ambitions in life, but since democracy allows her to pursue those in a uniquely protected way, it is rational nonetheless. Let us have a look at two examples.

If I am a radical Christian and I believe that the only legitimate authority on earth comes from God's word, it might seem that I happen to have no reason to comply with democratic institutions. It is true that my conception of justice simply does not fit well with all those normative values that are generally called for to justify democracy. However, insofar as I am concerned with the possibility to better understand and to revise my interests, including my religious beliefs, as well as insofar as I am worried to further my interests at least as equal, the democratic decision-making procedure qualifies as rational, despite its apparent conflict with my theory of justice and legitimacy. Granted, I will take democracy as legitimate only on prudential considerations, but these nonetheless will entail my duty not to undermine it, that is to comply with its laws and to vote only when informed.

¹ It is worth observing that this consideration is neutral with respect to the much criticized Rawlsian distinction between the moral dimension of good and the political dimension of right. Indeed, it is the fact that democracy is a way to take decisions that makes it a conclusion for any political reasoning, regardless of whether the point of departure is in the realm of the good or the right.

Likewise, if I do think that people should be given a vote proportionally to their knowledge and good intentions, I can still accept democracy, because it allows anyone the opportunity to improve their beliefs and to arrive at the right conception of justice, which presumably is the one I endorse, through discussion, debate and new ideas. Moreover, I can cast my ballot for the correct outcomes and campaigning to enlighten more people with my true beliefs. All these opportunities are lent to me by the democratic game of which I am but a player. Its outcomes might be wrong in my opinion and they might be wrong even according to the true conception of justice. However, insofar as this opinion is not shared by all, democracy represents the best system of rules where I can make my voice heard and implement my knowledge¹.

The problem of free-riding concerning the duty to vote is hence answered by the prudential argument by stating that such a duty descends directly from the legitimacy of democratic authority. On one hand, voting is rational in order to pursue one's interests, especially those we share with other fellow citizens. When people vote, they do not vote their interests directly, but they vote what they judge as the best option to further their interests. Political deliberation fosters citizens' understanding of their interests, whereas the way they cast the ballot depends on the insights they have collected about these interests and about the best strategy to realize them. Although citizens are expected to vote according to how they evaluate and adjudicate among political proposals, they cannot reasonably be expected to foster all their interests at once. It is up to their political wisdom to decide their priority and which interest it is best pursuing, given their relevance and the likelihood of their realization within the democratic game (Ottonelli 2012, 193-198). Thus, the likelihood of success will depend on the extent to which one shares one's interests with others, but this move does not need to be morally motivated or to correspond to a sincere change of perspective (Goodin 1986, Nino 1996). Rather, this will simply qualify as the best strategy available to citizens to influence collectively binding decisions that affect their interests².

¹ To be sure, a prudential argument will not be convincing for committed anti-democratic people. Yet, insofar as these people are primarily anti-democratic, i.e. the hatred for democracy ranks first in their hierarchy of values and preferences, there is no good justification, either interests-based or justice-based that can convince them of the contrary. However, it is quite difficult to imagine a person like this, for the simple fact that she would have to be a committed epistocratic as her primary, overruling and unquestionable value or preference. Yet, if she is committed to the truth, the improvement of her knowledge and its revisability should matter conspicuously and only democratic procedures, given this degree of idealization, can ensure that.

² This might recall but is distinct from Jon Elster's argument on the civilizing force of hypocrisy. First of all, it does not concern public officials and representatives, but ordinary citizens' voting strategy. As such it is not necessarily a public action and then it does not require that people switch to more impartial and less self-interested reasons to convince others. This is not to say that public deliberation cannot have

On the other hand, it might not be irrational not to vote, especially when I have other pressing affairs to deal with. However, given the prudential justification, it is irrational to undermine a legitimate democratic authority. Therefore, since I have a duty to vote, it is rational for me to do so (Goldman 1999). Nevertheless, since my duty is not simply to vote, but to be informed about my options and interests in voting, I ought to discharge this duty when these relevant conditions apply. Otherwise, I have another duty to discharge, i.e. not to vote in order to prevent the democratic practice to be threatened. When I am not able to gather enough information, to listen to others' points of view in order to be sure of mine, to be aware of the alternatives and of what is at stake, it seems that my duty as a democratic citizen is to abstain from voting. Furthermore, if the prudential argument is convincing so far, democracy also represents a rational choice for each citizen. Hence, a well-informed choice will not generate undemocratic outcomes, because the duty to uphold democratic decision-making procedure is one citizens are rationally taken to discharge by the prudential justification.

Let us take a look at those features that we enlisted in the first chapter concerning what kind of reasons political obligation ought to provide:

1. A moral reason for action;
2. A content-independent reason;
3. A binding or peremptory or exclusionary or pre-emptive reason;
4. A particular reason, which bind us to our own states and not to whatever other existing authority;
5. A general reason, that is a reason that binds most of citizens most of the time.

Political obligation as implied by legitimate democracy provides reasons for actions that are normative, since they make appeal to what individuals ought to do in order to be rational and pursue their interests. Yet, as such, they are not moral reasons, since they avoid making reference to a distinctive conception of justice and morality. Then, these reasons are content-independent, since they are given by the fact that democracy is legitimate and do not revolve around the substantive merit of the actions prescribed. This is true also for the duty to vote informed and to abstain from voting if uninformed, because these conditions are merely formal and do not hinge on any particular conception of justice. Moreover, these reasons are also binding, because democracy fulfils the requirements of peoples' higher-order interests. Insofar as the

this kind of effects, but only to remark that this is not what the prudential justification requires citizens to do when they cast their vote. See Elster 1998.

democratic decision-making procedure allows individuals to understand, revise and pursue their interests, democratic authority will lend binding reasons that can be weightier than other considerations connected with specific interest people have. Furthermore, these reasons are particular, because they are connected to the distinctive decision-making procedure to which they take part in. Political obligation is not conditional on a pre-existent and natural duty of justice that all people share regardless of what they think and where they live. On the contrary, it depends on the possibility of people to play the democratic game. Finally, these reasons for action are general, because they target all democratic citizens, whatever their interests and intentions might be. Last, but not least, political obligation is directed toward the democratic procedure itself, as this is what ensures people in the discovery and pursuit of their interests.

4.6 By Way of Conclusion

The aim of this dissertation has been to provide all democratic citizens with reasons to take democracy as a legitimate authority and themselves as bound to obey and to vote informed. The prudential justification illustrates how the democratic procedure is a uniquely suited way to take decisions while respecting individuals' three higher-order interests in understanding, revising and furthering their interests. Since its prudential target, this justification cannot offer moral reasons for democracy's legitimacy; yet to the extent that we recognize a prudential normativity and to the extent that we have reasons to be rational and to realize what is in our interest, this justification gives normative reasons for action to all citizens. Regardless of citizens' conception of justice and admitting all their heterogeneous interests and intentions, this justification shows that democracy is a rational way to take collectively binding decisions and hence its legitimate authority is rationally acceptable for citizens. This entails that citizens have a political obligation, which consists of two main duties: a duty to comply with democratic outcomes and a disjunctive duty to vote informed and not to vote when uninformed. The grounding of these duties depends on the fact that democracy is accepted as legitimate, a fact which in turn follows from democracy's rationality.

The strength of such justification with respect to traditional normative proceduralist approaches is threefold. First, the prudential argument is more hospitable to pluralism, as it provides citizens with reasons they can accept from their diverse points of view. If the argument is consequential, rational citizens may display a distinctive disposition of acceptance of democratic decision-making procedure that is

compatible with their disparate interests. Contrary to disposition-dependent proceduralism, the prudential account does not characterize said disposition with demanding requirements of reasonableness or disinterested love of truth, nor it employs said disposition to filter out those intentions and interests that might be incompatible with its requirements. Rather, the prudential account only calls for citizens to accept democracy as a rationally acceptable way to take collectively binding decisions, hence as a legitimate authority.

Second, the prudential argument recognizes the role that citizens' disposition plays in the democratic game. It recognizes that the way citizens engage with the democratic practice matters to the justification of that practice and to the authoritativeness of its outcomes. Contrary to disposition-insensitive proceduralism, the prudential account is concerned with providing citizens with reasons that they can share and that ensure the rational acceptability of democracy. This in turn safeguards democratic procedures from issuing undemocratic outcomes. Even though citizens will assess differently the quality of decisions, they will all be concerned with keeping the collective decision-making procedure democratic, because it is rational for them to do so.

Finally, the prudential argument focuses on political obligation not only as a duty to comply with democratic directives, but also as a disjunctive duty to take part to the political process by voting. Since citizens are allowed and encouraged to discover and further their interests through participation to deliberation and elections, the prudential justification cannot demand that they conform to standards of citizenship based on a specific conception of justice. Nonetheless, the rationality of democratic authority entails that citizens have a specific obligation in the way they engage in the democratic process: they primarily have to get informed. If they do, they can be more rational with respect to their own interests, because they will cast their vote for those policies which benefit their interests most and because they will not allow outcomes that jeopardize the democratic system by making it undemocratic.

One could object that such a duty, to the extent that it is a moral and not a legal one, does not play the role the prudential justification would like it to play. In fact, since it is up to each citizen to evaluate her knowledge, it might be the case that citizens will vote nonetheless and thus jeopardize the democratic system if they choose poorly. Unfortunately, I cannot address adequately this issue here, but I can only sketch a possible policy implication of the prudential argument, while leaving its thorough discussion to another time and place. The insight would be to allow for a legal

interpretation of the duty to vote informed. This would not mean that citizens should be forced to vote, because they might not be able to make sufficiently informed decisions. Nonetheless, citizens' duty to vote informed and to abstain from voting when uninformed can be institutionalized as a test to be taken at each election and whose function would be to exclude the considerations of those citizens who have failed to prove themselves knowledgeable enough. Naturally, in order to sound convincing or even worth considering, practical policy proposals like this one call for more extensive and empirically sensitive considerations than the one presented here, as well as for a proper and accurate balance of all the normative principles implied. Let me nonetheless spell out three merits and one qualification of such an insight.

First, it would be a test to be taken at each election and as such it would not disenfranchise those incompetent voters, but only neutralize those votes that citizens cast unreflectively. Second, it would incentivize citizens to get more informed if they want their vote to be valid. Third, it would encourage public discussion of possible questions in the test and thus improve also the quality of the public debate and of media coverage of political issues. Finally, a qualification is in order, concerning the obligation that any democratic state would incur into, if a proposal like this were to be taken seriously. Democratic states would in fact be under an even more pressing obligation to guarantee public education and to offer to their citizens the necessary cultural and cognitive means to play their role. This follows from two elements conjoint: (1) the fact that citizens have epistemic requirements to fulfil in order to make their voice heard; and (2) the fact that this equal opportunity of formal influence needs to be effective for democracy to be prudentially justified. This entails a double obligation, from citizens, who ought to be epistemically competent enough in order to better pursue whatever their interests are, to democracy and from democratic institutions to citizens, in order to enable them to discharge their obligation.

This understanding of democratic legitimacy as resulting from its rational acceptability is particularly apt for the democratic regime, because it addresses citizens in their double role of law-givers and subjects. Insofar as they ought to play their role within the democratic game and insofar as this role requires them to take decisions and not only to be subject to them, a positive disposition of acceptance for the democratic procedure is necessary. The democratic functioning and stability depends on citizens' willingness to discharge such obligation, which can be recognized as such only if democracy itself is rationally acceptable. Thus, it is not only rational to vote in order to further one's interests, but it is irrational not to, since voting is the core aspect of

democratic decision-making. Furthermore, such a duty is qualified: citizens ought to get informed before voting about the relevant alternatives, the accountability of candidates and soundness of their political programs. That said, the prudential justification appears to be compatible with a wide array of pluralism also concerning the political obligation it takes democratic authority to entail. In fact, individuals are rationally required to conform to a standard of citizenship that does not rule out any of their higher-order interests, nor the interests they might have that conflict with democratic outcomes.

In conclusion, it seems that we still have good reasons, albeit purportedly non-moral, to live and thrive under a democratic regime, which is legitimate and legitimately imposes on us certain, minor duties that we ought to discharge to pay for this privilege.

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