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Crabwalk

Applying Pragmatic Genealogy to Contextualist Political Theory

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But I'm still not sure how to go about this: should I do as I was taught and unpack one life at a time, in order, or do I have to sneak up on time in a crabwalk, seeming to go backward but actually scuttling sideways, and thereby working my way forward fairly rapidly?

G. Grass

ABSTRACT

(EN) Contextualist approaches to political theory share a common feature: they include statements about contextual facts in the justification of normative political judgments. This feature exposes them to the problem of critical distance, i.e. to the worry that an approach including facts about the context to be evaluated in the justification of the judgments evaluating it may entail a form of unduly conservatism or status quo bias. Is it thus possible to increase contextualism's critical purchase without giving up its distinctiveness, i.e. without relying on external and fact-independent normative resources but remaining into the context? I argue that this is possible, and that genealogy makes a salient contribution in making it so. More specifically, I argue that pragmatic genealogy – the hybrid functionalist approach to genealogy pioneered by Bernard Williams, Edward Craig and Miranda Fricker – can provide crucial insights about the normative standing of contextual facts while steering clear from the genetic fallacy. My argument unfolds across three papers. In the first two papers, I put the method to test, showing that it can bring about different results. In the third paper, I take stock of the issue offering an account of the logic and practical import of the kind of genealogical arguments made in the previous two, namely the mix of justification and explanation known as vindicatory explanations.

(IT) Gli approcci contestualisti alla teoria politica condividono una caratteristica fondamentale: nel giustificare i giudizi politici normativi, fanno riferimento a fatti contestuali. Questa caratteristica li espone ad una critica altrettanto fondamentale, in base alla quale l'inclusione di fatti relativi al contesto da valutare e normare nella giustificazione dei giudizi attraverso cui la valutazione è espressa comporta un'eccessiva deferenza nei confronti dello status quo e una tendenza implicita verso il conservatorismo. È possibile rispondere a questa critica senza abbandonare l'approccio contestualista? Nelle pagine che seguono argomento a favore di una risposta affermativa, sostenendo l'importanza di un approccio genealogico alla comprensione dei fatti contestuali. Più nello specifico, sostengo che un approccio pragmatico all'indagine genealogica – un approccio ibrido e funzionalista inaugurato da Edward Craig, Bernard Williams e Miranda Fricker – può fornire spunti cruciali circa lo status normativo di certi fatti contestuali senza per questo commettere la fallacia genetica. Il mio argomento si sviluppa in tre articoli. Nei primi due metto questo approccio alla prova, mostrando che può fornire risultati differenti. Nel terzo articolo, descrivo quella che ritengo essere la logica e la rilevanza pratica degli argomenti genealogici offerti nei primi due.

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Widening the scope

1. General outline and structural features of the project

Contextualism is a family of approaches to normative political theory that takes contextual facts as crucial references for the justification of normative judgments. This is an admittedly broad definition that, without further qualifications, applies to virtually all kinds of normative political theory. If judgments are to be understood as the application of principles to specific cases and if factual considerations about context are relevant for sensibly applying general principles (two things rarely denied in political theory), then all political theory is contextualist. Consider the following instance. One may hold the socialist principle P according to which the State should collect resources from each according to their ability and distribute them to each according to their needs. Leave for the moment aside the issue of how to justify this principle (which might very well be done without referring to any fact, contextual or not) and consider how to apply the principle to, say, the case of people in country X, in which an oppressive military regime just collapsed and socialism is yet to be established. To arrive at a sound normative judgment about what X's people should do in those circumstances, factual knowledge about X's context is highly valuable because it helps in figuring out how P should be implemented and in formulating a sound judgment J to this effect. In turn, the same factual knowledge about X's context will be equally crucial in justifying J, because it will serve to demonstrate the soundness of P's application.

The kind of contextualism I will be mainly concerned with in the following pages is more specific. We may call it 'theoretical contextualism', defining it as the view according to which contextual facts are relevant for defining the content of normative principles. Notice that, on such a view, the general definition of contextualism provided above still holds, but differently. A normative judgment's justification will feature a reference to some contextual facts but not in virtue of the fact that this reference is crucial

for the principle's application, but for formulating the principle in the first place. Notice also that nothing is preventing these two versions of contextualism to stick together. The distinction is purely analytic.

This is admittedly quite schematic, so let me flesh this out with some reference to the literature. As an approach, theoretical contextualism is perhaps most notoriously associated with authors such as John Rawls (at least since the early 80s onward), Michael Walzer, David Miller and Andrea Sangiovanni. All these authors roughly agree on the idea that context determines the scope, content, and justification of normative principles. What they disagree on (among – obviously – many other things) is what the relevant context for political theorizing is. In *Political Liberalism* and coeval writings, Rawls limited the scope of his theorizing to liberal and democratic societies, defending his conception of justice as fairness and its two constitutive principles as the best expression of the 'basic intuitive ideas that are embedded in the political institutions of a democratic society' (Rawls 1985, p. 225). In *Spheres of Justice*, Walzer picked up a semantic conception of context according to which the only justifiable principles for distributing goods must be in tune with the meanings that a given political community assigns to each specific good or service (Walzer 1983). In *Principles of Social Justice* Miller, on the other hand, argued in favour of a relational conception of context, claiming that different modes of association – i.e. different ways in which individuals associate with one another – require different normative principles hinged to alternative fundamental concepts (Miller 2001). Sangiovanni, most recently, insisted instead on the idea that the content, scope, and justification of a conception of justice depends on the structure, form and, most importantly, the point and purpose of the practices and institutions that the conception is intended to govern (Sangiovanni 2008).

The problem I address in the following pages and especially in the first two papers is a recurring and unsolved one in contextualist political theory. Abiding by the literature's convention, I labelled it as the problem of critical distance (Lægaard 2016, 2019). The problem originates from the justificatory role that contextualist approaches attribute to contextual facts and it may be formulated as follows: if facts about the context (like local meanings and conventions, existing practices and relations) can justify

normative judgments by substantiating the principles on which they rely, what ensures that these judgments and principles are not unduly biased by whatever state of affairs happens to obtain in the relevant context? Isn't contextualism exposed, due to its most fundamental methodological features, to the charge of being unduly conservative? After all, existing views, relationships and institutions might be either contingent or themselves unjust. Therefore, letting contextual facts determine the scope and content of normative principles, together with their justification, implies running the risk of incorporating their contingent or unjust features in political theorizing, thus limiting the ambitions and the transformative potential of the latter.

The clearest and simplest illustration of this problem emerges reflecting on the practice of immanent or internal criticism, which logically presupposes a practical commitment to some form of theoretical contextualism. In the practice of immanent criticism, the critic identifies a target of social criticism in, say, a specific institution, then looks at the declared goals and standards it officially upholds and proceeds to detect and denounce all the shortcomings and the contradictions of its operations in light of those goals and standards. One can, of course, do the same targeting a society as a whole – for instance by denouncing the U.S. reduced social vertical mobility in the last 40 years or so as contradicting the professed ideal of the ‘American dream’ and the ideas of equality of opportunity and meritocracy embedded in it. This kind of criticism, when sound, has the obvious advantage of retaining an immediate authority on the people it targets because it relies on normative premises they already subscribe to. But what if the institution or the society embeds goals, standards and ideals that are themselves unjust? What about an institution like slavery or a society committed to wicked values and ideals? One may remain confident in the possibility that no matter how twisted or corrupt a society or an institution might be, there will always be some normative resources to exploit in any given context, allowing one to cast a critical judgment about it. This might be true and certainly there is an abundance of historical scenarios in which this has been the case (see for instance (Walzer 1987, Dees 1994, Sabia 2010)). But the close connection between theory and practice thus established is nonetheless worrisome, for at least two reasons. First, because this proximity between the object of criticism and the standpoint from which the criticism is formulated may leave out from the critic's scope of vision the most puzzling

aspects and features of the object itself, resulting in what one may call a moral blind spot. Second, because detecting a contradiction between a fact and a norm does not tell us anything about the value of the norm and thus about how the contradiction should be resolved: the only way to claim that the contradiction should be adjudicated in favour of the norm is to commit oneself to some version of theoretical contextualism.

Versions of the problem of critical distance have been moved against all the authors just mentioned and the problem itself has been discussed in the recent debate about contextualism (Lægaard 2019, Moodod & Thompson 2018). The question I take up in the following pages arises out of such a problem and runs as follows. Is it possible to push theoretical contextualism at a greater critical distance from the socio-political contexts it starts from without thereby appealing to normative resources that are universal or somehow external to such contexts? Such a question, formulated alternatively, might be read as asking whether it is possible to correct the lack of critical distance displayed by theoretical contextualism without giving up its methodological distinctiveness, i.e. without denying that contextual facts should keep playing a crucial role in the way we devise normative principles. I take it as a particularly challenging question because the problem seems to arise out of the most fundamental and defining methodological feature of such an approach.

The hypothesis I intend to test as a possible answer to this question derives from the critical role that many authors, in the last twenty years, attributed to a specific kind of historical inquiry, namely genealogy (Owen 2002, Tully 2008, Srinivasan 2019), by which I mean a form of retrospective and diachronic inquiry into the origin and evolution of phenomena. A good way to express my hypothesis is through the following reasoning.

The specific sets of contextual facts on which contextualist theorists focus on tend to pick up different aspects of what one may call, very broadly, ‘practices’: social goods and services are produced and distributed through certain practices, which in turn have a point and purpose and establish certain relationships between individuals. Practices are also supported by (more or less) reflective pro-attitudes in their participants, typically articulated through certain basic ideas and related beliefs, both factual and normative. In the second paper, I shall elucidate my conception of this notion further but, for now,

suffices it to say that I take practices as established patterns of human behavior (Southwood 2011).

It is worth noticing that practices, despite being human products that evolved historically, can become so deeply entrenched in the mindset and reflective processes of those engaged in them as to appear as part of the furniture of the world. But maybe – and this my hypothesis - we could put them at a greater critical distance without thereby abandoning the context of reference were we to know more about how and why these practices originated and evolved. It might be the case, in other words, that some explanatory insights about why certain practices are in place could have some normative and evaluative implications on their status that, in turn, can be helpful to validate their justificatory role in contextual political theory.

This is, admittedly, a rather counter-intuitive hypothesis because philosophers have typically kept the space of causes and the space of reasons quite insulated from one another. Facts and values, as the Humean wisdom goes, are independent and any attempt to derive normative insights from information about genesis and evolution constitutes a genetic fallacy. However, as I shall argue later, these two domains may be logically closer to one another in certain cases.

The first two papers constitute two distinct tests to this hypothesis and they both deliver affirmative answers to the research question I posited. Together, they provide an argument to the effect that a certain method of genealogical reconstruction can, in at least two cases, provide an understanding of practices that allows discerning whether the normative/justificatory status assigned them in contextualist theoretical reasoning is warranted or not and to what extent. The cases I shall focus on concern the practice of liberal government and legal punishment. The genealogical method I apply is what I shall call pragmatic genealogy – the hybrid approach combining rational and empirical reconstruction pioneered by Bernard Williams (2002), Edward Craig (1990), Miranda Fricker (2007) and recently systematized by Matthieu Queloz (Queloz 2018, 2020a, 2020b, Queloz & Cueni 2020).

As it will become clear in the following pages, this method is quite different from what has been typically understood as genealogical inquiry. In contrast with the purely historiographical method practiced by Foucault and its followers, pragmatic genealogy involves a good deal of idealization and it is only partially concerned with real history. Moreover, it does not pose any emphasis on the notion of contingency and its achievements go beyond the problematizing or denaturalizing effect that many philosophers praised as a crucial import of genealogy. This approach to genealogy reconstructs the origin and evolution of practices with a pragmatic eye on the needs and the practical pressures that moulded them, offering a functionalist account on the base of which our confidence in their status can be either supported or subverted, depending on the practice at hand and on the current context in which it is currently located.

In the first paper, I employ pragmatic genealogy to fill what I call a ‘justificatory gap’ in the late Rawls’s philosophy, showing that the method can indeed result in a vindicatory account of a practice in the political domain. The argument I make here goes roughly as follows. As I already mentioned, from the *Dewey Lectures* onward Rawls rejects the universalistic assumptions of *A Theory of Justice*, reframing his conception of justice as an elaboration of the basic ideas shared in liberal democratic societies: the idea of society as a fair system of cooperation, of citizens as free and equal persons and of a well-ordered society. What I call the justificatory gap is the fact that nowhere Rawls justifies these ideas. They are simply retrieved from the liberal-democratic social world and, beyond constituting the new premises of Rawls’s theory, they are also posited as an obligatory reference for the justification of judgments and proposals in the political debate of a liberal-democratic society.

From within this kind of society, the gap is far from significant. Rawls’s ideas are likely to elicit solid allegiances among its members. But from the outside, their desirability is not yet established and one may thus charge Rawls of being uncritically relying on contingent contextual facts in grounding his conception of justice. After reconstructing and criticizing the broadly Hegelian strategy through which Rawls seems to fill this gap, I test pragmatic genealogy’s capacity in this respect. Under the assumption that Rawls’s ideas are truly expressive of liberalism, understood not only as a doctrine

but as a practice of government, I show that it is possible to outline a pragmatic genealogy of it relying on material that Rawls himself provides and out of which liberalism emerges as a continuously pointful response to the need of securing social peace in the conditions of pluralism that dramatically characterize modernity since the Reformation. To this extent, I argue, the confidence of liberals in the normative/justificatory role of Rawls's ideas is vindicated and the theory resting on them stabilized.

In the second paper, I climb up the ladder of abstraction and tackle the recent debate on contextualism to lay down a more analytic and more general case for the relevance of the pragmatic genealogical method. Here I show that the method does not necessarily result in vindicatory accounts of existing practices, but that it can be employed in a subversive way. My interlocutors in this paper are the rest of the other authors I mentioned above, namely theoretical contextualists such as Walzer, Miller and Sangiovanni. The test case I focus on concerns the role of punishment in transitional scenarios, i.e. in the set of circumstances societies go through in the aftermath of large-scale violence and human rights violations while transitioning toward democracy. I frame this case as positing a conflict between the demands of peace (urging for reconciliation) and the demands of justice (urging for the retributive punishment of those responsible for the atrocities) and then examine how Walzer's, Miller's and Sangiovanni's approaches would tackle such a case.

I show that each of them delivers results that can either be charged with a lack of critical distance (because they end up endorsing the dominant retributive view of punishment while being incapable of considering the peculiarity of the situation) or indeterminate results that fail to provide clear guidance as to how the conflict between the two demands should be resolved. I then apply pragmatic genealogy to the practice of punishment, sketching an account that supports the explanatory primacy of its pro-social function and in the light of which the demands of justice through punishment are undermined and downsized. The gist of the argument is that, if punishment primarily arose to secure pro-social behaviour in members of a society and normally fulfils this function through a retributivist configuration – and if maintaining this configuration in the transitional scenario is likely to be counter-productive to this end, reproducing a

fragmented society – then we have a prima facie reason to downplay the demands of justice in the face of the ones of peace.

In the third paper, I leave behind the testing ground and turn to a more conceptual work aimed at clarifying the nature and character of the arguments developed. The focus is on the vindicatory argument developed in the first paper because this kind of argument received way less attention than its debunking/subversive counterpart of paper two. To this end, I focus on the relationship between explanation and justification in the practical domain and examine the overlooked relationship between the two. I do so on pragmatic grounds, namely starting from an account of what justification and explanation typically do rather than on what they are. Here I show that some explanations of practices like the one I provided in the first paper are perfectly capable of playing a justificatory role, in the sense that by unearthing both a cause and a rationale they can constitute a pointful defence of their object.

Taken together, the papers this project consists of could be understood as falling in the theory-testing format, a quite popular standard in political sciences departments. What makes it interesting, I believe, is that the theory I put to test (or more accurately, the method I put to test) comes from outside the borders of strictly speaking political theory - from the remote territories of meta-philosophy and epistemology of concepts. If my points in what follows are correct, then by the end of this dissertation I will have provided one more reason to agree with a remark attributed to Philip Pettit, according to which the lessons learned when thinking about problems in one area of philosophy often constitute ready-made solutions to problems faced in completely different areas. Moreover, as far as my arguments will make sense, then one more reason will be provided in favour of the idea that political theory or, at least, some versions of it, can fruitfully enter a dialogue with empirical disciplines such as history. But of course, this is up to the reader to decide.

2. Some framing: political theory.

Rather than taking up space at this stage to elucidate the method I shall employ – something I do in the next two papers and with a good deal of repetitions – I believe it to

be a more fruitful option to dedicate some opening remarks to locate my research with respects to the other bodies of literature it stands in contact with. The ones with which the relationship is more intimate are, most obviously, the one dedicated to contextualism and the one dedicated to genealogy. I shall start from the former and its ties with other debates in political theory before moving to the latter in the next section. These remarks, I believe, will prove useful for elucidating the broader scope and relevance of my arguments.

As I mentioned at the outset, contextualism as a view about the justification of specific normative judgments is a relatively widespread view and my focus in the following papers is on a specific variety of it which brings context to define principles' scope and content. My choice of theoretical contextualists as main interlocutors derives from the fact that theoretical contextualism is arguably the approach most exposed to the problem of critical distance. But, as I am about to argue, as far as other varieties of contextualism are exposed to the same problem, something like the solution I propose is – I believe – of their concern as well.

Compiling a hierarchy of contextualism's varieties following their degree of exposure to the problem just mentioned, the second in line is arguably what we may call methodological contextualism. In this view, context is not necessarily a source of empirical premises for specific judgments nor a ground for principles, but rather a benchmark against which prospective principles are tested, revised and re-formulated. Authors committed to this way of proceeding, like Joseph Carens (Carens 2000, 2004) and Tariq Moodod (Moodod & Thompson, 2018), do not focus on one specific context, but rather move across a variety of relevantly similar ones, which they employ as testing grounds for assessing how principles perform in each of them.

The process takes an iterative form, with different contexts taking up this testing role and bringing out implications that can inform further revisions. Such a process closely resembles the one involved in reflective equilibrium, where principles and considered judgments are put on balance through successive adjustments. This balancing process concerns both the formulation and the justification of principles. Indeed, reflective equilibrium is not just a deliberative procedure through which we decide what to do and through which we arrive at the most satisfying principles available; it also works

the other way around, offering a justification of the principles formulated through it, and this holds for methodological contextualism as well. The kind of justification offered in a contextualist framework of a methodological sort is as holistic as the one afforded in reflective equilibrium, in the sense that it supports certain principles or judgments by showing how they fit with certain normative inputs. The main difference is that the starting point for methodological contextualism is not the theorist's considered judgments, but the normative resources one can find in different socio-political contexts - like existing laws, norms, practices and so on.

As an illustration of methodological contextualism's way of proceeding, consider the following case about hate speech, sketched by Tariq Moodod and Simon Thompson. At a first step, the theorist starts his quest for a general principle of protection from hate speech from a given socio-political context, say the early 00's British legislation on the issue, trying to capture the values and principles that make the best sense of it, ultimately opting for equality. 'A principle of equal protection from hateful speeches' – the theorist may conclude – 'best captures the essence of these laws and their applications'. The process does not stop here. Moving to another context, like French legislation, the theorist will find that protection from hate speech is tightly linked to the idea of defamation as a terrible harm, and she may include that insight into her previous principle, refining protection from hate speech as a legal right to equal protection, both for groups and individuals, from the harm of defamation. With this provisional conclusion as her starting point, she would then have a foothold to argue that hate speech legislation should be extended to cover not only or mainly cases of racial discrimination (as in the British early legislation), but also cases of religious discrimination, discrimination due to sexual preferences and other relevantly similar issues. Moving to the European level, the theorist may come to see that protection from hate speech represents a significant way to uphold and pay respect to the founding values of the union, such as tolerance, and she may thus revise the principle accordingly – for instance, by including more groups or excluding intolerant groups previously covered by the principle (Moodod & Thompson, 2018).

In this view, the problem of critical distance is downsized because the principle resulting from the iterative process is not a direct function of any contextual norm.

However, the problem is not eliminated – for at least two reasons respectively about the inputs and the outputs of the iterative process just described. As for the former, it needs to be stressed that the process starts, and needs to start, from existing norms that are taken as pre-theoretical and that inform the theorization. In other words, the method itself requires granting a prima facie credibility to existing norms and practices that may be, in some cases at least, unduly biased by cultural indoctrination, bias, local prejudices and so on. This point is a reformulation of a line of reasoning that utilitarian thinkers like Hare (1973) and Brandt (1990) followed to attack the method of reflective equilibrium. As far as I know, methodological contextualists did not confront this challenge and, maybe, rightly so. After all, all theorizations need to start somewhere, and one can always criticize the unjust or prejudiced norms serving as inputs later in the process, in light of the resulting principles. This kind of criticism, therefore, is not decisive. But it certainly is a very robust one, as at least one defendant of reflective equilibrium realized (more on this later).

As for the outputs of the process, the problem of critical distance can reoccur at this stage depending on how the contradictions between the normative inputs and the resulting principle are resolved. Coming back to the previous illustration, imagine the resulting principle P to conflict with the existing norms at play in the British legislation on a specific case. If – as Moodod and Thompson maintain – existing norms amount to significant normative constraints on the resulting principle’s operativity, then the problem represents itself, regardless of the arguments one can provide in favour of such constraints (Lægaard, 2019).

For these reasons, I believe that methodological contextualism may also benefit from the kind of genealogical approach to practices I envisage in the following pages. As I shall argue, pragmatic genealogy can work as a powerful tool for ascertaining whether and to what extent we should be confident in certain practices and this knowledge can and should affect how we treat these practices in our theorization. Rather than blankly accepting them either as legitimate inputs or as constraints on our theoretical outputs simply because they are in place or because they enjoy people’s support in a given context, one can shed light on the functionalities of these practices and norms through a

genealogical inquiry, thus obtaining a compass to determine whether and to what extent the normative/justificatory role assigned them is warranted.

Let me now focus on contextualism in the broadest and less distinctive sense of the term, i.e. as the view holding that contextual facts constitute a reference in the justification of normative judgments qua applicatory pre-conditions for principles. Call this ‘applicatory contextualism’. It is noteworthy that even G.A. Cohen, despite the well-known fact-insensitive character of his theorization, would fit under this label. The reason is the following. On a view such as Cohen’s, all fact-sensitive principles are ultimately grounded on, and justified by, further fact-insensitive principles, but this does not rule out that facts (contextual or not) are relevant for the justification of normative all-things-considered judgments. Indeed, as far as this sort of judgment is concerned, facts matter on at least two counts. First, as relevant factors for devising rules of social regulation and, second, as relevant empirical premises for applying them to specific cases.

Now, applicatory contextualism is certainly the variety less exposed to the problem of critical distance and thus the one less in need of the sort of solution I propose. However, despite the reduced degree of exposition to the problem, I want to suggest that the sort of reasoning I follow in the next pages can matter here too, for at least one reason.

On this applicatory view of contextualism, contextual facts – such as the fact that people in a given society share certain established beliefs, or the fact that in a given society there are certain deeply-rooted institutions in place and so on – are relevant empirical premises of normative judgments about specific cases, i.e. of judgments about what ought to be done in a certain case. One way in which facts of this sort can matter for judgment (a particularly relevant one for political theory) is by posing feasibility constraints on the kind of interventions that certain principles (universal or otherwise) would recommend. Assume to hold the proto-democratic principle P, according to which human beings living in the same community should govern themselves. Now, one may reasonably interpret this principle as defining direct forms of democracy as, *in principle*, the best kinds of regimes. Now imagine applying this principle to the case of community C, characterized by a complex economic structure and a numerous and dispersed population. It might be that contextual facts about the case, like the ones just mentioned,

would lead the theorist to formulate a normative judgment to the effect that what C should do is not to establish a direct form of democracy, but rather a representative form of democracy, because the former would be unfeasible given those facts.

There is considerable disagreement about the sort of ought-judgments that contextual facts are relevant to formulate, i.e. on the kind of normativity at stake in this kind of feasibility-constrained judgments. Some theorists believe that judgments that are normative in a political sense themselves require a reference to contextual feasibility constraints (usually on the ground of some specific conception of political normativity), whereas others believe that it is only all-things-considered normative judgments that require this reference (see Cohen 2008). But there is no need to take a stand on this issue to advocate the marginal relevance of pragmatic genealogy for strengthening this kind of judgment. However things might be in this regard, and regardless of the level at which contextual facts become relevant elements for judgments' formulation and justification, there is little disagreement about the fact that these facts matter. One can thus always ask whether these facts are something we should just accept when it comes to applying principles, or whether they are themselves something we should aim at changing for the better, in the light of what principles would commend. As far as practices are concerned, pragmatic genealogy can help to answer this question by providing a functional account, i.e. a perspicuous image of the various needs to which they are responsive and thus of what would be lost in getting rid of them. By doing so, I believe, it can help to assess how far the allure of necessity surrounding certain practices is warranted and thus how significant they are as – for instance – sources of feasibility constraints.

Leaving contextualism behind, a further suggestion I want to make is that the kind of contribution I provide, which brings together the explanatory and the justificatory domain, may be relevant not just for contextualism but for whoever believes in reflective equilibrium as an appropriate method for arguing and reasoning about politics and morality. This might sound overreaching, but I believe it to be a quite modest and agreeable claim once properly formulated.

Consider again the first criticism concerning theoretical contextualism, which I drew from Hare and Brandt. These authors' original target, as I mentioned, was reflective

equilibrium and the pre-reflective endorsement that reflective equilibrium grants to existing intuitions or considered judgments. Consider now how far Hare's and Brandt's charge has been met. Norman Daniels, who arguably thought harder than anyone else on the issue, envisaged three possible lines of response to the charge, none of which are reassuringly robust (Daniels 2016). The first is to raise the standards of validity for inputs, something that both Rawls and Daniels personally commended. Both suggested starting only from those considered judgments formulated in circumstances which favour reliable belief formation, free from distorting pressures and toward which we have a strong degree of confidence (see Daniels 1996). These suggestions are perfectly on point and reasonable, but hardly sufficient to meet the challenge, for three reasons. First, confidence is not a reliable indicator of a belief's validity per se. Ideological beliefs, for instance, enjoy such a high degree of confidence that they become quite impervious to rational revision, yet nobody would suggest taking them on board as legitimate normative inputs. Second, many distorting pressures affecting our reasoning are far from being transparent and conscious. Indeed, philosophers in all times proved incredibly talented in rationalizing whatever moral beliefs they happened to have. We can thus reasonably be sceptical about the sufficiency of Rawls's and Daniels's recommendations.

The second possible reply to Hare's and Brandt's charge, according to Daniels, is steering toward intuitionism, claiming that the normative inputs in the reflective process are collected through a peculiar faculty capable of providing reliable insights about the structure of the moral world. However, this is no easy road. Indeed, the challenge of providing a defensible account of such a moral faculty proved to be hard enough to discourage, up to very recently, any new attempt to meet it since the early XX century (see Huemer 2007 and Audi 2004). Finally, a third strategy would amount to stress the parallel between science and ethics, establishing an equivalence or at least a robust analogy between moral intuitions or considered judgments, on the one hand, and empirical data on the other. Yet this requires demonstrating that intuitions (or considered judgments, for that matter) are as reliable a source about how things should be in the moral world as scientific observations are about how things are in the physical one, which is exactly what is being disputed by Hare's and Brandt's criticism.

I agree with Daniels when he writes that meeting Hare's and Brandt's challenge requires an account of the reliability of considered judgments; a story telling us that some considered judgments deserve trust – 'perhaps [...] something like the causal story that some theorists of knowledge offer to explain the reliability of observations' (Daniels 2016). However, for Daniels no such story is forthcoming. Is he right? At a closer examination, this pessimistic judgment is disputable. Many scholars in recent years tapped into moral psychology, evolutionary theory and many other disciplines providing us with a richer understanding of how and why we (either as human beings or as members of specific groups) have specific moral intuitions. Most importantly, many of these scholars convincingly argued that the causal stories so provided do not lend equal support to all the beliefs they targeted and that, in some cases, these stories provide reasons to be sceptical about their validity (for an overview see Sauer 2018).

For instance, it has been argued that moral intuitions based on disgust are particularly unreliable. The reasoning, in this case, goes roughly as follows. There are good reasons to think that disgust is an emotional response that evolved to minimize the chances of poisoning from spoiled food. Moreover, there are quite persuasive arguments to the effect that the mechanism of disgust has been later recruited to the service of in-group norms compliance in social life, because of its flexibility in associating with a wide range of external cues. Now, because of its protective function, disgust is a highly sensitive mechanism: The cost of missing an opportunity for food might be high, but it is typically much lower than the cost of ingesting contaminated or rotten food. What does this tell us about judgments or ethical intuitions based on disgust? Well, since there is no apparent reason to believe that this tendency to deliver false-positive results is less acute when the mechanism is co-opted for moral purposes, one might legitimately be sceptical or at least particularly careful about these results (Kelly 2011).

To conclude framing my project in the wider scope of political theory, I want to point out (and briefly elaborate on) only three more issues that the pages to follow bear some relevance on, namely relativism, political realism and conservatism. Let me start from the first. Metaethical relativism is not the same as contextualism. Although the two labels have often been run together, contextualism is not relativist if, by relativism, one

means the view according to which the validity of certain judgments and principles depends on a community having certain ideas, values, traditions and so on. Contextualism can be relativist in this sense - although it needs not to be so - once the relevant contextual facts are taken to be cultural (as Walzer suggests). But if the relevant contextual facts selected are about the type of relationships in which individuals relate to one another (as Miller suggests), then it will not be relativist. In this case, the appropriateness of principles and the validity of normative judgments are independent of their being on this or that side of whatever cultural border.

There is little doubt that pragmatic genealogy should represent an interesting tool for those who believe in the relativity of normative judgments on the traditions, convictions, and practices of different human groups. This is so for at least two reasons. First, because the method takes differences between practices very seriously. Investigating their functional relationship with their historical and social environment, it remains open to the possibility that individuals and groups may have good instrumental reasons to endorse certain practices. Second, and most importantly, because the method provides a way to unearth these instrumental reasons and to evaluate local practices and norms in their light. Rather than segregating human groups in respectively insulated conceptual worlds, it opens the possibility of non-circular inter-groups assessment and it does so on the base of a minimalistic and naturalistic type of normativity. As I shall clarify in the third paper, when the results of the method are vindicatory, i.e. when certain practices prove to be responsive to some basic need that all human societies must address, the reasons so unearthed may certainly fall short of commending allegiance to certain practices to non-participants, but they are such as to command some respect – a respect that is not born out of mere deference toward diversity, but out of the different circumstances of human life and the pressures they exert.

Secondly, there is the issue of political realism. In line with the dominant self-understanding of this approach, we might identify realism's core in the thesis that politics is a separate sphere of human activity with its kind of normativity, different from the one of other domains, such as morality. The reasoning I engage in the following pages does not entail any endorsement of this thesis, which has grown increasingly hard to defend

(Leader Maynard & Worsnip 2018). However, the content of the following pages aligns with at least three concerns enjoying a relatively high degree of priority in the political realists' agenda. The first and most obvious concern derives from the fact that political realism (or at least most versions of it) is exposed to the problem of critical distance as much as contextualism (Finlayson 2017). The reason for this might be that political realism itself is in a sense a version of contextualism: a kind of political theory that starts from the facts of politics. Some of these facts might be universal (like disagreement, coercion, conflict and human selfishness) but the circumstances of politics change dramatically from one scenario to another and many political realists are keen to highlight this contextual variability (Philp 2010). The question of whether realism is unduly biased by the status quo thus arises and it is indeed worth stressing that some realists already resorted to genealogy while attempting to answer this question to the negative (Geuss 2002, Rossi & Prinz 2017). For reasons I will make explicit later, I believe that the genealogical method I propose is superior to the ones that realists so far exploited to address the charge of being biased toward the status quo.

The second and related realists' concern to which my research is responsive is the contextual character of political judgment, a feature that many realists highlight as an implication of the core thesis just exposed and that they wave against the possibility or opportunity of grand theorizing (see Rossi & Sleat 2014). If one distinctive feature of politics, as opposed to morality, is represented by the competing pressures, the many conditionalities and the sheer contingency to which political agents are subjected to – and if this feature should make us sceptical about the prospects of grand theorizations from which to derive universally valid principles – then pragmatic genealogy can serve as a promising tool for navigating specific political contexts and for supporting specific judgments. The first two papers, respectively vindicating the value of tolerance at the heart of liberalism and questioning the value of punishment in transitional scenarios, provide good examples of this claim.

Finally, there is an issue toward which realists have been drawn partly because of their focus on the distinctively political value of legitimacy. This is the issue of ideology and the possibility of its critique – a possibility that some realists see as both crucial and

out of reach for standard political theorizing (Rossi & Prinz 2017). In this respect, I believe that pragmatic genealogy can prove to be a useful tool. Locating the various needs and pressures to which practices are responsive, the method can indeed serve the goal of ascertaining whether and how far we (or others) can stick to a practice in good conscience, which is precisely what – in my understanding – one should want from ideology critique.

The last strand of political theory to which I think the following pages can contribute to concerns conservatism. It is notoriously challenging to reach an agreeable definition of such a strand of political theorizing and one may even argue that not only there is no such thing as a conservative tradition on political theory, but also that there cannot be one, because conservatism is intrinsically opposed to theory as such (Kekes 1997). I will not try to solve this issue here. I will merely point out that there are at least three recurring and interrelated features that conservative thinking typically displays (Hamilton 2019). First, a good degree of epistemological scepticism about the purchase of rationality and theoretical systematization in politics (but see Cohen 2011). Secondly, a common commitment to some version of the view according to which practices and institutions in any given socio-political context exist for reasons and/or persists for merits which may very well remain obscure from a purely theoretical standpoint. Third, a specific attitude toward social and political change recommending caution, graduality and a slow pace in bringing it about.

As in the case of realism, resorting to pragmatic genealogy does not imply an endorsement to any of these views, although subscribing to some of them (for instance, the first one) can affect judgments about its usefulness. The only partial exemption concerns the second view, which the method indeed implies, although only to a limited extent and with the following, crucial proviso. One does not need to be a conservative to admit that some theories are ill-suited to capture the value of some practices. Even the most holistic and intuition-friendly theorizations must prioritize some kinds of considerations if they are to deliver determinate results and this might well fail to grasp what is valuable about certain practices. This is particularly likely when the practices under consideration are outside of one's social and political milieu. But this reasonable concession does not require, as many conservative thinks, to suspend one's judgment and

to defer to what exists simply in virtue of its existence or its long history. If, as I shall claim, the explanatory and the justificatory domain are not always as neatly separated as we are used to thinking, then there might be ways to harness the causal history of a practice to assess whether it is true or not that it embodies some form of wisdom.

3. Some more framing: genealogy

Let me now locate the substance of my argumentation in the scope of another set of debates, namely the ones concerning genealogy, broadly conceived. On this broad conception, genealogy is any inquiry in the causal history of beliefs, practices and other phenomena and it has received an increasing share of attention in the past few years, from a variety of perspectives. Some authors cashed out the notion of causal history in evolutionary terms, relying on insights from evolutionary theory to debunk and (less often) vindicate certain kind of judgments, intuitions and practices (for an overview see Sauer 2018); Some other authors, starting from a Nietzschean or Foucauldian perspective, pointed toward cultural and social history as a valuable mining site to increase the critical potential of philosophical criticism (Owen 2002, Tully 2008, Srinivasan 2019). None of these two broad groups of authors is discussed at length in what follows and the few remarks I shall offer in the second paper are dedicated to the second group because it has been the most influential one in political theory's quarters. For the same reason, I shall persevere in this injustice here. I will do so not by attempting a literature review (something that would be as feasible as much as boring), but by addressing three increasingly specific questions that will help understand why I took the direction I took. These questions are the following: Why history? Why history as genealogy? Why pragmatic genealogy?

History is an ambiguous term because it can refer both to the totality of facts making up the human past and to the knowledge or study of those facts. Here I will use the term in the second sense. I want to clarify right away that history is certainly not the only kind of inquiry from which one can mine resources for political theory. I do not want to deny the possible relevance of psychological, anthropological or sociological inquiries and I am confident that a closer dialogue between normative and empirical endeavours can yield some dividends for the former (see for instance Zacka 2017, Prinz 2020, Sagar

forthcoming). Normative debates about disagreement, for instance, may benefit from a psychological (as opposed to a merely epistemological) understanding of the phenomenon.

At any rate, the issue of what kind of empirical discipline may be useful for the sake of a normative enterprise obviously depends on the enterprise's purposes, i.e. on the research question it addresses, and my focus on the history rests on my concern for the critical distance problem. The reasoning behind this linkage is roughly the following. The conceptual resources, the beliefs and the political institutions forming the base of our current normative political reasoning are historical products, in the sense that they are the outcomes of various formation processes stretching deep into the past. There is a variety of terms in which one can understand these processes and the terms of progress seem intuitively the right ones. But there is what we may call an endogeneity problem when we judge our history in terms of progress, both because the standpoint from which we formulate this judgment is informed by its outcomes and because there are no obvious reasons to think that some of our ancestors (whose practices, values, and beliefs we now find morally repugnant) would agree with our judgments (Williams 2006). In the face of this problem, we can try to defuse it, explaining away the disagreement in non-moral terms, or we can accept the disagreement as a genuinely moral one while maintaining that our ancestors were mistaken, and then proceed to identify the causes that prevented them from realizing their mistakes (Tsai 2012, Aronovitch 2012, cf. Smyth 2017). Yet if one is only partially reassured by these strategies (as I am), then she may feel that the problem itself invites us to question our moral standpoint more closely, and examining its history is a way to do so. For one thing, doing so might deepen our understanding of ourselves, helping us explain why we think as we think, act as we act, value what we value and so on; but if I am right, it can also provide us with non-fallacious reassurances and critical hints, i.e. with good reasons why we should (and why sometimes we should not) keep thinking, acting, and valuing as we do.

This brings me to the second question, namely why genealogy and not some other forms of history. What makes genealogy special? Why not rather questioning the history of political thought or attending to synchronic reconstructions of how other peoples in the

past lived, thought, and acted? After all, the first activity may unearth new resources to deal with the problems we face and a comparative exercise, based on the results of the second activity, may sharpen our self-understanding as well. Again, I am far from dismissive of these alternative enterprises. Their results are there to be admired and, clearly enough, debated. As for the former, one needs to go no further than to Skinner's (1998) and Pettit's (2001) revival of the Republican tradition to realize how theoretically consequential the history of political thought can be. As for the latter, one can look at Williams's work on the ancient Greeks' ethical culture to realize to what extent synchronic reconstructions offering a vivid picture of some past society can inform both our self-understanding and our self-critique (Williams 1993).

The reasons why I opted for genealogy are three. The first and perhaps more opportunistic one concerns originality. Beyond Skinner's and Pettit's example, the mining of political thought's history in the service of the present is what many historically minded theorists do on a daily basis and there is an extensive debate on how this should be done, on how to combine historiographical accuracy and theoretical innovation and on other related issues. The second (and related) reason concerns the relationship between history and philosophy. Regardless of the kind of source we might interrogate in any of the two kinds of activity just mentioned - be it a set of misunderstood classical authors or the conceptual world of a past society - the type of work involved in both cases falls rather squarely in the scope of standard philosophical theorizing. History provides the material, the opportunity and the inspiration for new forms of understanding and for raising new criticism, but the processing and the argumentative elaboration of this material remain eminently philosophical, with the borders between the historical and the philosophical component of the work relatively well defined. Genealogy, on the other hand, establishes a closer relationship between the two; a relationship that remains problematic, under-investigated and (in my view) harbinger of interesting theoretical benefits. The final reason why I opted for genealogy is that its retrospective character allows the inquiry to start on the point, i.e. on specific targets whose normative status concerns us. Genealogy is indeed uniquely suited to deliver causal explanations of current items and, if I am right, causes and reasons might be closely related in some cases.

The last question left to address now is why pragmatic genealogy - with its off-putting combination of idealization and de-idealization - and not the purely historiographical approach of Nietzsche or Foucault. Since the following pages (and especially paper two) will offer a positive case for my choice, I think it is best here to mount a negative one, i.e. to dive a little deeper than I do in the text into the reasons why I did not opt for genealogy in its standard, purely historiographical version.

The first thing to notice to answer this question is that there is no such thing as a full-fledged alternative model of genealogical inquiry to rely on. To be sure, plenty of contributions have been devoted to issues concerning the import of genealogical inquiry and its presuppositions, but little has been said about how such an inquiry is to be pursued and what is its relationship with traditional historiography. What is certain is that none of the two obvious references when it comes to genealogy, namely Nietzsche and Foucault, were very clear on this point either. Indeed, there is room for doubting that any of the two practiced genealogy as a, strictly speaking, historiographical business.

Consider Nietzsche. The literature on what his genealogy of morals actually is, how it should be interpreted, how it is conducted and what it achieves is enormous. As Williams noticed in comparing it to Wittgenstein (another author which did not leave any ready-to-use theory behind) Nietzsche's works pose formidable challenges to any alleged definitive reading and in the case of genealogy this is as true as it gets. Consider just the following question, i.e. whether the narrative developed in *On the Genealogy of Morals* is a hypothetical take on remote history. On the one hand, the answer seems positive. The sociological categories Nietzsche's employs are rather thick (slaves, masters, priests, etc.) and the morality whose evolution he reconstructs displays recognizable Judeo-Christian traits. On the other hand, however, Nietzsche's professed a-moralism seems wider and more radical than what a rejection of Judeo-Christian morality alone would suggest. Indeed, at a closer look, the sociological dynamics he portrays as unfolding between masters, slaves and priests assume a more paradigmatic and less concrete allure, meaning that they might stand for sociological ideal-types likely to be found in the remote past of every society, not just in ours (on this and other puzzling aspects of Nietzsche's genealogy see May 2011).

As far as Foucault is concerned, his take on genealogical reconstruction certainly stands a better chance to figure as closer to standard historiography than Nietzsche's. Indeed, I picked him up as the patron saint of what in the text I simplistically call (and admittedly so) 'historiographical' or 'empirical' genealogy. However, as many commentators suggested, there is a good amount of stylization in Foucauldian genealogy, together with many other things that set his genealogical inquiries aside from standard historiography (Garland 2014).

Leaving this issue aside, let me now focus on the more substantial reason why I am ultimately sceptical about the possibility of employing a kind of genealogy inspired by Foucault's example in a way that is compatible with the purposes of normative theorizing. This reason derives from what effect, outcome or result a purely historiographical genealogy is supposed to achieve. There are two possible answers to this question and I find both unsatisfying. To illustrate them, take *Discipline and Punish* as an example. The genealogy of the modern prison that Foucault provides in the book notoriously tracks the evolutive lines of an increasingly disciplinary society, in which external asymmetries of power are more and more concealed into devices of domination that are, in turn, more and more interiorized. For the sake of the argument, assume that Foucault's reconstruction is empirically correct and then ask yourself, from a philosophical point of view, the crucial question that any piece of research ought to address: 'then what?'

If Foucault's reconstruction is supposed to count as a philosophical criticism of discipline, then it is puzzling both because it seems to commit the genetic fallacy, i.e. the mistake of presenting something as bad only because it is the outcome of a process of domination and subjection, and because it is not clear on which normative ground discipline should be condemned or resisted (Fraser 1985). There are two possible answers to these allegations.

On the one hand, one can reply by casting genealogy in a non-normative light while revindicating its usefulness for criticism – a move that many independent theorists did. On this view, the genealogy of a practice can be critical without committing the genetic fallacy and without presupposing any specific normative commitment. The reason

is that it can show the practice as contingent (Tully 2008), it can denaturalize it (Bevir 2008) or show how our understanding of it is captivated into a limited framework (Owen 2002). To use a term I shall employ as an umbrella concept encompassing all these conceptions of genealogy's contribution, genealogy can 'problematize' our practices (Koopman 2013), thus providing the intellectual freedom to think about alternative ways of living and acting.

On the other hand, one can reply by revindicating the normative character of genealogy – something that several interpreters claimed was Foucault's position. On this view, genealogy is genuinely critical because it presupposes and relies on a certain view of freedom, a view of freedom based on the emancipation not so much from the falsity of certain beliefs qua ideological, but from the very frameworks in which beliefs are assessed and validated – a view of freedom that has been variously labelled as 'possibilising' (Lorenzini 2020), as 'self-transformation' (Mascaretti 2019), and in many other ways (see for instance Tiisala 2017 and Oksala 2005; Owen (2002) combines these two views).

In my understanding, the first view delivers too little while the latter presupposes too much. The first view delivers too little for my purposes, regardless of the specific conception of problematization one endorses. On a weaker conception, problematizing through genealogy primarily means revealing *that* its object is contingently constituted (Tully 2008, Brown 2001, Butler 1990). Now, there is little doubt that some of our conceptual and practical arrangements tend to be seen as somehow natural and necessary when they are not. Butler's (1990) and Haslanger's (2012) work on the contingent social constructions of notions such as gender and race clearly show that this is indeed the case and it is certainly worth cultivating awareness and wariness about this phenomenon. However, it is also worth reminding that this allure of naturality and necessity typically surrounds concepts and practices that are themselves apparently natural, whereas concepts and practices in the political sphere are patently contingent and, most importantly, already recognized as such by many (Bevir 2015). Moreover, genealogy is certainly sufficient but hardly necessary to cultivate this sort of awareness because one could obtain virtually the same result engaging with different types of inquiry, like the

synchronic type of historical reconstruction mentioned above in relation to Williams's work on the ancient Greeks.

On a stronger conception, problematizing a practice or a concept means to show *how* it has been contingently configured. In the case of discipline, this conception translates into the idea that Foucault's contribution is not to have shown that the disciplinary tendency in modern societies is contingent, but rather 'dangerous', 'troublesome', 'problematic' or 'worthy of concern' (Koopman 2013, p. 100). My concern with this stronger conception is that it is hardly distinguishable from the normative interpretation of genealogy, on whose problems I shall turn in a second. In fact, something can hardly turn out to be dangerous, puzzling or worthy of concern without some normative presupposition already in place. Cliffs are certainly dangerous, but only if someone walks by them and only on the background assumption that life and health are valuable. In other words, notions such as dangerous and troublesome might fall short from being normative, but they are certainly value-laden and if genealogy's contribution consists in showing a practice or a concept as either dangerous or troublesome, then genealogy is itself quite into the normative business (Mascaretti 2019).

Of course, there is nothing wrong with normativity. Indeed, my approach to genealogical reconstruction has its own normative resources. The problem I have with the normative interpretation of Foucauldian genealogy is rather the kind of normativity it draws upon, namely a too open and, I think, unusable conception of freedom. To substantiate this point, let me turn back to the previous example, namely to the genealogy of the prison and the dangerousness of discipline. As I said, for the disciplinary tendencies of modern society unveiled through the genealogy of the prison to prove dangerous, there needs to be some normative assumption in place. This assumption, for Foucault as well as for many of his followers, regards a very demanding conception of freedom as continuous emancipation from the existing structure of power/knowledge and as a quite radical refusal of any form of domination. Discipline, under the light shed by this conception, is dangerous because it represents a new and peculiarly modern device through which power, at the same time, shapes the subject and operates on it, defining the borders of intelligible conduct in specific and narrow ways that foreclose its range of

possibilities. Leaving exegetical issues aside, it needs to be noted that the reliance on such a conception of freedom does not give genealogy any more action-guiding capacities than it has under a non-normative interpretation. The reason is that such a conception is too radical to make some room for the notion of validity or, in other words, to address the questions concerning the distinction between legitimate and illegitimate practices, ways of thinking, forms of power and so on. Despite the recent defensive attempts, it still seems to me that Walzer's and Rorty's criticisms of Foucault, according to which his critical enterprise betrays an anarchistic attitude of 'aesthetic decisionism' (Walzer 1986, p. 53, Rorty 1992), hits the mark.

In conclusion, I only want to add the following remark. Scepticism is less moving when it is generalized, and so are claims to freedom. If we approach the task of questioning the historical products constituting the starting point of our thinking with an eye on orienting ourselves among them, the radical subversive posture grounded in such a transformative conception of freedom will serve us poorly. To be sure, there might be a lot of contingencies and worrisome power dynamics in the historical process which led us to where we are. But there might be a lot more to learn from it. If what we want from the causal history of our practices is some insights about the degree of confidence we can have in their normative status, then it is probably best to tackle this history with an eye to the functional links between their development and the many practical pressures that moulded them into their current configuration. By doing so, we may realize that some practices are responsive to needs we might not be aware of.

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Testing pragmatic genealogy in political theory. The curious case of John Rawls

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Introduction

Can a genealogy of our political practices contribute to their evaluation? In this paper, I argue that it can. More specifically, I argue that a specific genealogical method, namely pragmatic genealogy, can contribute significantly to the vindication of practices and may thus represent a useful tool in normative political theorizing. I prove this point by testing the method against a well-known problem in political theory, namely Rawls's struggle to justify the basic ideas of liberal-democratic societies.

Starting from the 'Dewey Lectures', Rawls starts framing his conception of justice in a contextualist framework, as an elaboration of the 'basic intuitive ideas that are embedded in the political institutions of a democratic society' (Rawls 1985, p. 225). These ideas - the idea of society as a fair system of cooperation, of citizens as free and equal persons, and of a well-ordered society - 'have their origins in the Wars of Religion following the reformation and the development of the principles of toleration' (Rawls, 1996 pp. 14-15). In contrast with *A Theory of Justice*, Rawls does not take justice as fairness as valid for all societies anymore, but just 'within a democratic society under modern circumstances' (Rawls 1980, p. 518). In synthesis, the set of facts defining Rawls's context of reference includes both ideational elements (the presence of these ideas in the public culture) and social elements (most importantly, the fact of reasonable pluralism). These facts pick up the relevant features of the modern liberal-democratic social world and are the assumptions on which his late theoretical outlook is built. But

how can we justify the crucial normative role assigned to these facts? Why should we accept the ideas implicit in our political culture?

In the following pages, I reconstruct what I think is the strategy Rawls envisages to solve this problem and I sketch an alternative solution to overcome its shortcomings. The solution I propose is a pragmatic genealogical argument – the kind of argument provided by authors like Bernard Williams, Edward Craig, Miranda Fricker and recently systematized by Matthieu Queloz (2018, 2020a, 2020b). Pragmatic genealogy is a hybrid type of genealogical reconstruction dedicated to unearthing functional origins of practices by combining rational model-building (in the form of a state of nature fiction) and empirical information (i.e. actual history). Starting from an idealized model, the genealogy makes it possible to control whether there is any possible prototypical version of the target practice that would emerge in response to basic needs, i.e. needs we can assume humans have anyway. In the second stage, this ideal starting point is historicized by factoring in historical information. This affords to bring into focus more local needs and contingent circumstances that contributed to shaping the practice into its current form. As we shall see, this hybrid genealogical reconstruction makes the function of the target practice an object of evaluation and, under two conditions I shall spell out later, can vindicate the practice itself.

My primal goal in this paper is to assess whether, how and to what extent pragmatic genealogies may serve as a vindicatory tool in normative reasoning. This entails two things. First, that I do not seek to substitute philosophical reasoning with genealogical reconstruction, but rather to show that, under certain conditions, a certain way of doing genealogy can helpfully integrate normative argumentation by providing reasons in favour of certain practices. Second, that I engage with Rawls's thought as a case study and not as an exegetical object. My discussion of Rawls shall thus remain on the logical level, venturing in the interpretative domain only as far as necessary to clarify the problem I am addressing.

I proceed as follows. In the first section, I briefly present the late Rawls's outlook and qualify his contextualist approach to elucidate how the problem of vindicating its assumptions – namely, the combination of ideational and social facts seen above – arises.

In the second section, I reconstruct and criticize what I think is the strategy Rawls sketches to solve this problem. In my understanding, this strategy underlies a broadly Hegelian line of reasoning that is incompatible with Rawls's self-imposed metaphysical abstemiousness and, more importantly, with reasonable principles of metaphysical parsimony in political philosophy. In the third section, I introduce and define pragmatic genealogy as a good way to overcome the shortcomings of Rawls's strategy. To this end, I sketch a pragmatic genealogical argument drawing on Rawls's brief reconstruction of liberalism's origin in *Political Liberalism*. After pointing out the conditions under which pragmatic genealogies maintain vindicatory power, I claim that the argument satisfies these conditions. I thus conclude that, as far as liberalism underpins the basic ideas of liberal-democratic societies, we can partially vindicate these ideas through a pragmatic genealogy of it.

1. Rawls's late outlook. A justificatory gap

As noticed in the introduction, from the '80s onwards Rawls starts reformulating the argument supporting his conception of justice in contextualist terms. These terms include both ideational facts (the presence of three fundamental ideas in the public culture) and social facts (most importantly, the fact of reasonable pluralism)¹. These facts pick up the relevant features of modern, liberal, and democratic societies and, in a sense that I will now elucidate, form the contextual premises of Rawls's new argument.

A liberal-democratic society cannot rely on a comprehensive view, understood as a shared and common conception of the good. The fact of reasonable pluralism entails that citizens do not agree on the ultimate ends of life. Judgments in philosophical, moral and religious domains are subjected to heavy burdens, whose weight cannot but produce 'a diversity of conflicting and irreconcilable – and what is more reasonable – comprehensive doctrines' (Rawls 1996, p. 36). What a pluralistic liberal-democratic society can rely on is something thinner than a shared comprehensive view, namely a

¹ There are four more general facts about liberal democratic societies in Rawls's account. These are the fact of oppression, the fact that a democratic regime requires the genuine support of a vast majority of its citizens, the fact that public cultures normally contain fundamental ideas on which it is possible to elaborate a conception of justice, and the fact of the burdens of judgment (Rawls 1996, pp. 37-38; 58-61).

political and public culture, whose basic ideas offer a common ground for the justification of fundamental principles. It is from these ideas that political philosophers – and citizens more generally - should work out their arguments. According to Rawls, political philosophy in circumstances of pluralism ‘must remain on the surface’ and adopt what he calls ‘the method of avoidance’, which requires to step aside from philosophical controversies and longstanding problems (Rawls 1985, p. 231).

Two noteworthy differences distinguish the contextualist approach of *Political Liberalism* (PL) from the universalist one of *A Theory of Justice* (TJ). First, in the former, a conception of justice must be a possible object of overlapping consensus among different comprehensive doctrines, and this requires arguing for it with reasons that every reasonable citizen can accept – that is to say, with reasons derived from the basic ideas embedded in the political culture of a liberal-democratic society (Rawls 1996, p. 141)². Second, the original position is not conceived anymore as the appropriate standing point from which to formulate universally valid principles of justice. In PL, Rawls presents it as a ‘device of representation’ which operationalizes the three fundamental ideas embedded in the liberal-democratic public culture (Rawls 1996, p. 24). This is admittedly a rough account of Rawls’s transition, yet it suffices to show how he rewires his arguments around those ideas.

However coherent, Rawls’s late approach displays a curious problem of justification. As we just saw, in circumstances of reasonable pluralism stability requires a conception of justice to be a possible object of overlapping consensus, i.e. to be constructed around fundamental ideas that all citizens share: the idea of society as a fair system of cooperation, of citizens as free and equal persons, and of a well-ordered society. Yet even conceding that it is possible to identify a single set of shared ideas and that justice as fairness represents a sound elaboration of them, what can we say to justify these ideas once all controversial philosophical considerations are left aside, as Rawls’ method

² On Rawls’s transition from TJ to PL, see Weithman (2016, pp. 62-81). On the pivotal role of considerations of stability in this transition, see Krasnoff (2014).

of avoidance prescribes? In other words, what reasons do we have to accept the ideas implicit in our political culture?³

These questions concern the very status of the basic ideas of liberal-democratic political culture, on which the appropriateness of the original position depends. Considering what has been said so far, questions about the value of these ideas seem to lay beyond Rawls's reach and Rawls himself might be suspected to have abandoned the 'traditional project of moral justification in favour of a purely practical task' (Krasnoff 1998, p. 270).

2. Toward reconciliation: Rawls's shortcomings

The question waiting for Rawls's response curiously resembles the one that, according to Bernard Williams, reflective members of ethical communities eventually come to ask themselves: what reasons do we have to stick to our basic ideas and conceptions, beyond the fact that they are our own ones? How can we vindicate these ideas and the social world incorporating them?⁴ It is worth stressing that looking for an explicit and thorough answer in Rawls's writings would be vain. However, in his last years, Rawls provides some indications on the kind of strategy he envisages. In this section, I reconstruct such a strategy and show its shortcomings.

Indications of this strategy can be retrieved in Rawls's conception of political philosophy. He notoriously assigns four roles to the discipline. Beyond the practical role and that of orientation, which respectively consists in unearthing possible basis of agreement and in guiding citizens in the space of all possible social and individual ends, he lists the reconciliatory task and the role of formulating a realistic utopia. The reconciliatory role is intended to 'calm our frustration and rage against our society and its

³ Several Rawls's critics raise similar questions. See, for instance, Habermas (1995, p. 122), Raz (1990, pp. 18-20) and Wingenbach (1999, pp. 220-222). More recently, Rawls's problem of justifying the basic ideas of the liberal-democratic political culture have been discussed, together with the possibility of looking at history for a solution, by Besussi (2019) and Pasquali (2019).

⁴ These questions mark a crucial point in Williams reflection, i.e. chapter 8 of *Ethics and the Limits of Philosophy*. They come after a peculiar philosophical path which is obviously different from the Rawlsian one in many important respects. Nonetheless, in both cases we see a reflective attempt to the same task, that of providing a reflective evaluation of given values, shared among a given community. See Williams (2011, pp. 167-172).

history by showing us how its institutions, when properly understood from a philosophical point of view, are rational and developed over time to attain their present, rational form'. The role of formulating a realistic utopia is conceived as 'a variation of the previous one' and consists in 'probing the limits of practicable political possibility', in feeding our hope for the future of our society, 'which rests on the belief that the social world allows at least a decent political order' (Rawls 2001, pp. 1-4).

The crucial task to focus on to grasp the contours of Rawls's justificatory strategy is the third one. Indeed, the choice of some basic ideas derived from the current social world as starting points for normative theorizing could in principle be justified if one manages to reveal the rationality of such a world and to reconcile to it. Rawls explicitly draws the notion of 'reconciliation' on the Hegelian concept of *Versöhnung* (Rawls 2001, p. 3), which in Hegel as much as in Rawls denotes both the process of overcoming alienation, i.e. the state of anger and frustration deriving from the perception of society as inhospitable and resistant to individual's understanding and aspirations, and the state of being at home in it, which implies the philosophical acknowledgment that society, as it is, already satisfies important values and needs (Hardimon 1992, p. 180).

I shall come back on these points but, for now, it suffices to note two points. First, reconciliation does not involve resignation. On the contrary, it designates a positive and wholehearted acceptance of the social world as it is (Rawls 2001, p. 3). Second, the object of reconciliation, i.e. the social world, needs to be conceived in minimalist terms, as consisting of its fundamental and defining features, which I already identified with its socio-historical conditions and the basic ideas of its political culture. The reason is that predicating reconciliation to the social world as a whole - to all its institutions, customs and laws - would imply that a realistic utopia is redundant⁵.

Rawls seems to be oriented toward a Hegelian solution to the problem of justifying the starting assumption of his contextualist argument, namely the basic features of liberal-

⁵ Indeed, we may understand Rawls's notion of realistic utopia as a political state of affairs in which the most pressing problems of the present world - or at least the ones realistically solvable - are solved. On the way in which Rawls combines feasibility and desirability in the notion of realistic utopia, see Pasquali (2012), Thomas (2015) and Galston (2016).

democratic societies. Indeed, a holistic justification of a Hegelian sort, consisting in ‘proving that a form of life... has a normative content which is already realized and that we should just make explicit’ (Peña 2017, p. 223)⁶, appears as a reasonable choice once foundationalist strategies, which would justify those features on the ground of their relationship with some first, self-evident principle, are ruled out by the method of avoidance. But how to achieve this sort of justification?

Rawls is not clear on this. However, his belief that probing the limits of political possibility by devising a realistic utopia is itself ‘a variation’ of the reconciliatory task provides a significant clue. If Rawls’s words are to be trusted when he declares to ‘believe that the very possibility of [a liberal and decent] social order can itself reconcile us to the social world’ (Rawls 2000a, p. 128), the point seems to be that the prospect of a realistic utopia can itself amount to reconciliation. More to this point, Rawls seems to conceive his whole philosophical enterprise as a form of realistic utopianism in his later writings⁷. In this reading, the liberal-democratic social world would be justified (and so would be the basic ideas on which it rests) if it affords some reasons for optimism concerning the achievement of a realistic utopia. Yet regardless of whether this reading is correct, the thesis it brings out certainly is not.

To understand why, consider Rawls’s inspiration on this topic, i.e. Hardimon’s understanding of Hegel’s political philosophy⁸. As Hardimon stresses, the linchpin of Hegel’s project of reconciliation is the concept of ‘being at home’ in the social world and this is both a matter of objective and subjective conditions. People can be at home in the social world if they feel and affirm it subjectively as a home but only, and crucially, if the social world is also, objectively, a home (Hardimon 1992, p. 181). Considering this distinction, we can understand why what seems to be Rawls’s position cannot be correct.

⁶ See also Cohen (1995, p. 288). During his career, Rawls increasingly takes up Hegel as a relevant interlocutor for his own reasoning. Whereas his philosophical relation with Kant is the subject of an extensive literature, his relationship with Hegel remains less explored. For a recent appraisal, see Bercuson (2014).

⁷ Most explicitly in *The Law of Peoples* (Rawls 2000a). Rawls’s employment of historical arguments also supports this interpretation. Indeed, these arguments typically aim – as Müller (2006) shows – at demonstrating the feasibility of realistic utopia.

⁸ Rawls recognizes his own debt with Hardimon in *The Lectures on the History of Moral Philosophy* (Rawls 2000b, p. 331).

Realistic utopianism can certainly satisfy the subjective condition - it is ‘a version’ of reconciliation in the sense that showing a decent political order as feasible helps us to feel at home in the current social world by giving us a reasonable faith in its future⁹. However, the prospect of a realistic utopia cannot satisfy the objective condition, which requires showing the current social world as desirable.

On the contrary, one could argue that reconciliation is itself a precondition for the formulation of a realistic utopia. Indeed, our ideas of a political order worth striving to are inevitably dependent and related, to some extent, to the values and principles affirmed in our current social world. Yet this world and its values are historical products. Therefore, we need reassurance against the possibility of their being merely contingent, biased or ideological¹⁰. Otherwise, we would be exposed to the risk of crystallizing the status quo into a (realistically) utopian ideal. The only insurance against this risk, one should conclude, is to show that the current social world is objectively desirable. But how can we do so?

Rawls’s few words on reconciliation seem to go, once again, in a Hegelian direction. He says that reconciliation can obtain by showing that the current social world ‘developed over time to attain [its] present, rational form (Rawls 2001, p. 3). Indeed, if we could read history as a progressive process and see ourselves at its latest stage, reconciliation would obtain. The current social world, in its most fundamental features, would be a desirable starting point for future developments. But whereas Hegel has the resources to read history in this way, Rawls does not.

⁹ Rawls’s conception of reasonable faith is drawn on Kant (Rawls 2000b, p. 309-310). This topic has been recently and illuminatingly examined by Paul Weithman (Weithman 2016, pp. 213-241).

¹⁰ Citizens’ values and principles do not form an independent evaluative benchmark. They are formed under the institutions and the political culture of a given society. Rawls himself concedes this when he claims that ‘the social system shapes the wants and aspirations its citizens come to have’, determining ‘in part the sort of persons they want to be as well as the sort of persons they are’ (Rawls 1999, p. 229). In the same vein, he also makes clear that social influence extends to the very criteria against which society itself is evaluated, claiming that ‘the nature of the political system teaches forms of political conduct and political principles’ (Rawls 2008, p. 7). To be sure, Rawls refers to this dependency to support his argument for stability of a just society – under just institutions, citizens will develop a sense of justice appropriate to support them. However, we cannot expect this to hold only for just societies (McKean 2017, pp. 1182-1183). If unjust societies can also shape their members’ aspirations and ideals, taking the implementation of these ideals as the standard measure for reconciliation would expose the notion to the ideological distortions that Rawls himself urges to be wary of (Rawls 2001, p. 4).

When we look back at history from the perspective of our current social world, it certainly looks progressive. But this perception is not enough to reconcile us to this world, because the values and principles on which we ground our historical judgments of progress – the values and principles of the social world from which we look at history - are themselves one of this history’s outcomes. One needs an external perspective to legitimately read history progressively and for Hegel, at least, this perspective is provided by his system, according to which the demands of reason ‘are thus that men live in a state articulated according to the Concept... as participants in a larger life. And this larger life deserves their ultimate allegiance because it is the very foundation of things’ (Taylor 2015, p. 78)¹¹. Unfortunately, this kind of answer requires a systematic outlook which is not just old-fashioned and incompatible with Rawls’s commitment to the method of avoidance, but it is also in contrast with any reasonable principle of metaphysical parsimony in political philosophy.

3. An alternative way: pragmatic genealogy

Considering what has been said so far, the strategy Rawls seems to sketch ends up in a deadlock because it cannot carry the metaphysical baggage it would need to reach the right conclusion. I submit that there may be another way toward reconciliation. This way consists in the provision of what Matthieu Queloz, interpreting Williams (2002), Craig (1990) and Fricker (2007), calls a ‘pragmatic genealogy’ (Queloz 2018, 202a, 2020b)¹². This is a form of genealogical reconstruction focused on unearthing functional origins of practices - conceived as ways of going on in the conceptual, social and political domain (Queloz, 2020b). Before articulating this genealogy, let me explain what pragmatic genealogy is and how it does work by mean of contrast with Foucauldian versions of genealogy (section 3.1). Once this will be clear, I shall proceed by showing that Rawls himself provides some of the elements we need to arrange a successful pragmatic genealogical argument (section 3.2). I shall claim that, once properly integrated, this

¹¹ For Hegel, a society worth reconciling to ought to follow the articulation of Geist in its moments of immediate unity, separation and mediated unity and these categories are duly fulfilled in the conception of the objective spirit as articulated in the family, the civil society and the State. On the normative role of the system in Hegel, see Thompson (2017).

¹² Fricker recently moved towards paradigm-based explanation, arguing that it is a more perspicuous way of reaping the same pay-off as pragmatic genealogy while dispensing with its combination of fictionalizing and historicizing (Fricker, 2016). Queloz offers a qualified defence of the method in Queloz (2020b).

argument satisfies the two conditions under which pragmatic genealogy can claim vindicatory power (section 3.3).

3.1. Foucauldian vs. pragmatic genealogy

There are two main differences between Foucauldian and pragmatic genealogy. A first difference concerns how these two approaches avoid the genetic fallacy, i.e. the ‘alleged mistake of... inferring something about the nature [and/or the merits] of some topic from a proposition about its origin’ (Blackburn 2016, p. 149)¹³. Foucauldian authors usually steer clear from this fallacy by conceding that genealogy lacks any normative potential (in the sense that it cannot provide reasons either for or against its target) while claiming that it maintains an indirect critical purchase thanks to its denaturalizing or problematizing effects¹⁴. On the contrary, pragmatic genealogists hold that knowledge of the process through which the target of genealogy emerged, in some cases, can offer reasons either for or against it by providing insights into its functionality and by making the function an object of evaluation. The second distinguishing feature concerns how genealogy proceeds. Foucauldian authors usually insist on the historiographical and empirical character of this mode of inquiry, whereas pragmatic genealogists endorse a hybrid approach in which actual history and hypothetical reconstruction coexist.

To understand a) the relation between these two components and b) how the vindication is provided, consider Williams's pragmatic genealogy of truthfulness, i.e. the

¹³ Blackburn refers to the genetic fallacy as an ‘alleged’ mistake because he correctly maintains that there are many non-fallacious ways of linking the context of discovery (the space of origins and causes, in which the stumbling and tentative process of belief formation takes place) and the context of justification (the space of reasons, where merits and flaws can be properly assessed). For instance, as Blackburn himself notices, it is not fallacious to see the make of an automobile as an indicator of its likely quality (Blackburn 2016, p. 149). Indeed, many contributions on this topic claim that the prohibition of inference from origins and formation processes to justification is not an exceptionless rule. Items in the first context can enter in the second if elements of the first are relevant in the second. As both Pashman (1970) and Crouch (1993) convincingly argue, the case for relevance cannot be established in advance and in general terms - it depends on the case at hand. It should be noted that in epistemology there is no shared definition of the genetic fallacy. For instance, cf. Hamblin (2004) and Glock (2008).

¹⁴ Colin Koopman (2013), David Owen (2002), and James Tully (2002) are among the authors endorsing this approach.

ethical concern with the truth and the corresponding dispositions to tell the truth, as an illustration (Williams 2002).

Let's start from a) the relationship between the hypothetical, rational component and the historiographical, empirical one. In Williams, the hypothetical component of genealogy outlines a fictional state of nature picturing a primitive community dealing with the natural environment and the cooperative pressures it exerts. The point of such fiction is to understand whether and *why* truthfulness, in some prototypical form, has a point for creatures like us. Williams answers positively to the 'whether' question and his explanation for such an answer goes roughly as follows. Members of the fictional community need information about the environment, its risks and its opportunities, but since they are in different places at different times, they need to divide epistemic labour efficiently. These members are thus required to become reliable contributors of information and this implies that dispositions to sincerity and accuracy will be praised in the community. Finally, since the practical value of these dispositions largely consists in their advantageousness to others, members of the community must come to appreciate them intrinsically if the practice is to avoid succumbing to free riders. This means that dispositions to sincerity and accuracy, in some prototypical form, will become intrinsically valuable and praised as virtues.

As it results from this brief reconstruction, the goal of the hypothetical component is to explain *why* creatures like us would come by a certain prototypical practice in terms of the difference such a practice makes for them. The state of nature fiction serves this goal by providing a model in which basic needs, i.e. needs that we can thus assume humans have anyway, can be identified (I will come back to this point in section 3.3)¹⁵. The historical component of genealogy, on the other hand, aims at explaining *how* the prototypical practice assumed its current configuration, developing into the target practice we are concerned with in drawing the genealogy. It resorts to real history to show how,

¹⁵ This implies that the state of nature fiction is not supposed to provide insights into the hominid past of our ancestors. The state of nature, as Williams himself argues, 'is not the Pleistocene' (Williams 2002, p. 27) but rather, as Fricker states more clearly, a construct designed to characterize our basic needs and what they entail (Fricker 2007, 108-109). This is the reason why, following Queloz, I refer to the state of nature as a model, whose role is to allow the formulation of sound basic needs ascriptions and to understand the relation between simple prototypes and these needs.

outside the simplified model, contingent circumstances and more local needs gave the target practice its specific form¹⁶. An example of this is the practice of scientific history, i.e. the specific version of truthfulness based on the idea of telling the truth about the past, whose condition of possibility, for Williams, is the contingent event of the invention and diffusion of writing (Williams 2002, pp. 168-171). Given this contingent event, this specific form of truthfulness is, for Williams, necessary.

Now let's consider b) how this sort of genealogical explanation retains a positive normative purchase, i.e. under what conditions it can offer reasons in favour of the continuation of its target practice. Following Queloz, I think these conditions are two, namely 1) avoidance of the genetic fallacy and 2) avoidance of continuity failures. As we have seen, pragmatic genealogy avoids the genetic fallacy by connecting origins and justification through the notion of function. In Williams's case, this is done by showing that truthfulness, given certain needs and certain facts about us and our environment, represents an apt response. But this strategy for avoiding the genetic fallacy requires the argument to satisfy another condition. The functional insights of the sort provided through pragmatic genealogies, to provide reasons for affirmation, must prove to be valid not just in the hypothetical model, but also in the current situation (Queloz 2020a). In other words, the circumstances need to be similar enough to present our current version of the prototypical practice as still functionally answering to the same predicament¹⁷. Simply assuming this is the case or failing to show that it is equates to run into a continuity failure.

If both these conditions are satisfied, pragmatic genealogy can rightfully claim vindicatory power. Vindicating through pragmatic genealogy amounts to deriving needs we are less confident to have (e.g. the need to value truthfulness as a virtue) from needs

¹⁶ While history informs the empirical component of pragmatic genealogy, it is not the primary purpose of this genealogy to mirror the actual historical development. Its main purpose is rather to extricate from the nit-and-grit of history the main practical pressures and dynamics that have sculpted our practices (Queloz manuscript, p. 20).

¹⁷ Nietzsche blames 'English genealogists' for making this assumption and thus for thinking a-historically (Nietzsche 1998). We must thus be aware of the repurposing and the historical variability that may have affected the object of genealogical inquiry. By factoring real history into the reconstruction, pragmatic genealogy steers clear from this error. Of course, the continuity clause does not exclude that the practice may have come to serve other purposes. It just ensures that, as far as the original purpose is conserved and worth delivering, there is a prima facie reason to affirm the practice. Therefore, it does not follow that this reason is enough to draw a conclusive judgment concerning what should we do with the practice.

we are more confident we have (e.g. the need to have reliable information concerning the environment). As Queloz claims, ‘when questions arise over whether we should cultivate these [practices]... revealing [their] instrumental relations to some of our most basic needs acts as a powerful vindication to them: it frees them from suspicion by showing them to be rooted in basic human needs and thereby... provides reasons for us to continue cultivating these practices’ (Queloz 2020a, p. 2019)¹⁸.

3.2. *A pragmatic genealogy of liberalism*

Now it is time to consider whether this kind of genealogy may be helpful in Rawls’s case, i.e. whether we can resort to it to justify the three basic ideas Rawls takes as his argumentative starting point. To answer this question, I propose to start from a relatively overlooked text, i.e. the concise reconstruction of liberalism’s origin that Rawls himself provides in the introduction to *Political Liberalism*.

Before examining this text, however, three important qualifications are in order. First, Rawls’s reconstruction is not a genealogy of liberalism tout court. Liberalism is, in fact, a contested and variable concept, with many possible interpretations¹⁹. Rawls’s reconstruction rather brings to light what is arguably the fundamental configuration of liberalism, that he plausibly identifies in the tolerance of the State toward citizens’ comprehensive doctrines (what we might call the practice of liberal government)²⁰. Second, it might not be the case that the three ideas Rawls indicates are the best representatives of liberalism. Proving this point first-hand would require extensive engagement with Rawls’s texts that would go beyond the scope of this paper. Therefore, I will just outline a pragmatic vindicatory genealogy of the practice of liberal government,

¹⁸ Queloz also argues that Williams’s genealogy satisfies both conditions. For our purposes here, we do not need to agree on this point. Williams’s genealogy of truthfulness is indeed controversial and very much debated - see, for instance, McGinn (2003) and Fleischaker (2004). However, I maintain that the reconstruction above, despite its necessary simplifications, provides a good account of the pragmatic approach to genealogy – an account particularly suited to understand its proper functioning and thus to spot Williams’s own possible shortcomings.

¹⁹ For a recent and well-documented analysis of the historical variations in the concept of ‘liberalism’, see Bell (2014).

²⁰ As Muller points out, there are alternative self-understandings of liberalism (2006, p. 331). However, I here take side with Rainer Forst, who authored a careful and detailed historical analysis of toleration. Forst recognizes that ‘liberalism, which has many parents – one need only think of its political-economic component – should be regarded as a child of toleration’ (2013, p. 171).

leaving open the issue of which ideas best capture the character of such a practice. Third, Rawls's purpose in deploying his reconstruction of liberalism's origin is not that of vindicating liberalism but to explain the peculiar character of modern political philosophy (Rawls 1996, p. xxiii)²¹. Therefore, what I shall say should not be understood as an interpretation of Rawls's thought but rather as an intervention on it.

Rawls reconstruction draws a contrast between three stages of western history, i.e. ancient Greece, medieval Europe, and post Reformation modernity. This contrast mainly revolves around the roles of religion and it starts with a characterization of the Christian faith, whose unity under Catholicism formed the common comprehensive doctrine in Europe up to the Reformation. According to Rawls Christianity is, in contrast to the ancient Greeks' civic religion, a salvationist, doctrinal and expansionist creed. With the Reformation, religious unity breaks into a plurality of conflicting doctrines sharing the same intolerant character. The result is the massive bloodshed of the Wars of religion, which stormed Europe throughout the XVI and the XVII century. It is because of these conflicts and their horrors, according to Rawls, that liberalism could emerge (Rawls 1996, pp. xxiii-xxvi)²². He identifies the fundamental configuration of liberalism in the practices of tolerances through which many states in Europe separated political obedience from issues of the highest good, and in other texts, he specifies how this practice, engaged for prudential and instrumental reasons, eventually and thanks to its success came to ground moral principles that now informs the sense of justice of liberal-democratic citizens and their disposition to reasonableness (Rawls 2000a, p. 44).

The structure of Rawls reconstruction resembles Williams's genealogy of truthfulness in three important respects: in its reliance on basic human needs (the need to

²¹ One might object that a vindicatory genealogy of liberalism cannot reconcile us with a liberal *and democratic* social world. Guess (2001), for instance, stresses the heterogeneous and conflicting nature of liberalism and democracy in a historical perspective. This is an important point whose importance, however, should not be overstated because a vindicatory genealogy of liberalism could at least bring us significantly closer to reconciliation. In some occasions, Rawls treats democracy and liberalism as somehow continuous with one another - as based on a common moral/political core. However, his conception of political liberalism and his idea of public reason clearly serve to limit the scope of democracy in important respects. On this point, see Guttman (2003).

²² Rawls also mentions other factors, like the development of the centralized state, of modern sciences and of market economies (1996, pp. xxiv-xxv). On the historical relevance of the Wars of Religion in the emergence of liberalism, see also Charles Larmore (1996).

avoid conflict and securing social peace), in the transition from prudential to moral reasons, and in its account of the target practice (liberal government) as a functional response to some basic need tailored to more local needs arising out of contingent historical circumstances (securing social peace among a plurality of reciprocally intolerant doctrines). As Williams does in accounting for historiographical accuracy – a situated and local form of truthfulness, at least in the times of the ancient Greeks – Rawls recognizes that contingent historical factors led the target practice to its current configuration. However, Rawls’s reconstruction does not start from a hypothetical state of nature model. What is the relevance of this difference?

This difference is not determinant, because Rawls’s reconstruction itself, to some extent, fulfills the roles assigned to the state of nature model in pragmatic genealogy. It allows us to grasp the basic need the target practice of liberal government responds to – the need for securing social peace – and, from there, it is not difficult to grasp what the prototypical version of the target practice in a hypothetical state of nature would look like. This would be the practice of government as such, understood as the rule of any legitimate (in a Weberian sense) political authority. However, this would be going too fast. A clearly defined model would certainly provide a more stable starting point for genealogical reflection, affording to draw a sound attribution of basic needs and to flesh out more clearly the relationship between the prototypical practice, on the one hand, and the target practice we are concerned with, on the other. Interestingly enough, we can find the resources to do so in another text of Williams.

In *From Freedom to Liberty* (2005), Williams sketches another pragmatic genealogical argument which he envisages as potentially leading to a justification of liberalism²³. Let’s imagine a hypothetical community sharing a language but no sophisticated technology. All members of this community have a basic need in securing peace as a condition for personal security and for social cooperation inside the community. Moreover, they all care about their primitive freedom, i.e. their being

²³ The article was originally published in 2001, a year before *Truth and Truthfulness*. Williams does not appeal there to a hypothetical community and ground his basic need ascription on a straightforward universalist argument. As I claimed before, I do not take this as a problem because the state of nature model works primarily as a useful (but not necessary) tool to make this kind of ascription perspicuous (see footnote 15).

unobstructed in doing what they want by any form of humanly imposed coercion. Indeed, they react with resentment and with the actions that resentment invites when obstructed. This generates conflict and the need to define the borders of individuals' freedom to avoid it. An authority endowed with coercive powers over the community, i.e. a political authority, may represent a solution to the problem. However, if this authority is to solve the problem rather than substituting private oppression and violence with a public version of them, it needs to *have* authority or, in other words, it needs to be taken as legitimate by the ones subjected to it. And since legitimation needs to be as widely and firmly accepted as possible, in our hypothetical fictional community – as well as in most of the communities of the past – the legitimation story is likely to draw on some deep and commonly shared beliefs such as, for instance, religious ones.

This is admittedly a rough sketch of what a model in a pragmatic genealogy of liberalism might look like. Nonetheless, it elucidates quite clearly what can just be indirectly derived from Rawls's reconstruction. This reconstruction can now be employed as a historicization of such a model, factoring in two important factors in the process, namely the diffusion of a salvationist, expansionist and authoritarian religious doctrine as the base for political legitimacy in the middle ages and, subsequently, the fragmentation of this religious base in a plurality of incompatible and reciprocally intolerant doctrines in modernity²⁴. Given the circumstances of modernity and the local needs they bring about – most importantly, the need for legitimation in the absence of a common and shared background of pre-political beliefs - the tolerance involved in the practice of liberal government thus emerges as an apt, functional solution.

Once integrated in this way, the argument effectively portrays the target practice (liberal government) as a functional answer to a basic universal need (securing social peace) given the peculiar and contingent historical circumstances of modernity and the

²⁴ To be sure, Rawls historical reconstruction is a just-so story, like many others we find in philosophical texts, and it could benefit from a more detailed engagement with actual history. However, we need to be clear about what kind of details would be relevant, from a pragmatic perspective, to make a genealogical account more compelling. As I stated before (footnote 16), quoting Queloz, the primary purpose of pragmatic genealogy is not to mirror actual historical development, but to extricate from history the main practical pressures that have shaped our practices. A more careful and detailed engagement with history could clearly help in identifying these historical pressures and in determining their force. I thank an anonymous reviewer for pressing me on this point.

local needs they give rise to (the circumstances of pluralism of incompatible comprehensive doctrines and the need to ensure their peaceful coexistence). Moreover, with this arrangement, the argument comes to adhere to the structure of pragmatic genealogy, that Queloz formalizes as follows.

- (P1) In a prototypical group G , a set of root needs $RN_I - RN_n$ under root circumstances $RC_I - RC_n$ generates a practical problem.
 - (P2) This generates a practical pressure on G to solve the problem: the target need TN .
 - (P3) Prototypical practice P would meet the target need TN by serving function F .
 - (P4) P could develop quite naturally, i.e. out of the capacities we are prepared to grant G anyway, via the set of steps $S_I - S_n$.
 - (C1) Therefore, circumstances permitting, P would be highly likely to develop in G .
 - (C2) Therefore, it is rational for G to engage in P in order for F to be served in G (in the sense that people with these needs under these circumstances would welcome and if they could do so, aim for engagement in P with a view to securing P).
 - (P5) In the actual group G^* , there are close analogues to $RN_I - RN_n$ and $RC_I - RC_n$, namely $RN_I^* - RN_n^*$ and $RC_I^* - RC_n^*$.
 - (C3) Therefore, it is also rational for G^* to engage in P^* , the closest analogue to P in G^* , for F to be served.
 - (C4) Therefore, the best explanation for why G^* goes in for P^* is that it serves F .
 - (C5) Therefore, there is a *prima facie* reason for G^* to continue to engage in P^* , and P^* is to that extent vindicated
- (Queloz 2018, 20-21).

The scheme above highlights how the argument offers a perspicuous representation of how a current practice bears instrumental relations to a basic human need. It starts from a need we can take as natural and necessary for there being such a thing as a society and then tailor the functional responses these needs trigger to the contingent and local elements at play here and now. Most importantly, however, the scheme above also highlights the logical juncture on which the vindicatory power of the argument depends, namely P5, which engenders the ‘continuity condition’ I spelled out in the previous section. For the argument outlined to be more than explanatory or, in other words, in order for the argument to provide reasons to affirm and sustain the target practice, we need to

show that such practice still answers to the basic need pointed out in the model. In the next section, I provide two arguments to show this.

3.3. Two arguments for continuity

By presenting liberalism as a functional response to pluralism and to the conflicts it generates, the pragmatic genealogical argument outlined above shows that liberalism represents a historical lesson worth reminding, thus avoiding the genetic fallacy. But is this lesson still valid today, in the current circumstances? In his contribution on Rawls's 'genealogy of liberalism', Beiner tackles precisely this problem. In his view, Rawls's reason to 'excavate the origins of liberalism qua reaction to the devastation wrought by the Wars of Religion... conveys in an especially dramatic way why it is necessary for political liberalism to detach itself from any and all comprehensive views' (Beiner 2016, p. 82). However, it is far from clear that this necessity still holds in current circumstances. Since religious fanaticism is long gone and since the problem of tolerance is now settled, Beiner rhetorically asks if there really is any reason to stick to the principle of neutrality underscoring Rawls's account of liberalism (Beiner 2016, p. 81). This point clearly shows that continuity cannot be assumed but should rather be argued for on historical grounds.

I think there are two arguments we can bring against Beiner's point concerning continuity. Let me start with the first. When he claims that our current society is secular, moderate and reasonable he is certainly right. Religious zeal now moves just a minority of citizens and the extent to which it moves them is insufficient to threaten peaceful coexistence. But it is crucial to observe that even though the exposition to the risks connected to sectarian and potentially violent tendencies decreased, these risks are not down to zero. Indeed, scholars see the polarizing trends and the mutual intolerance between political parties and their supporters as major threats to social and political stability (Dworkin 2006). Moreover, political antagonism, in some countries like the US, assumes increasingly identitarian traits, tracing differences in social upbringing, geographical location and sometimes race, suggesting the possibility of even further radicalization (McCoy et al., 2018).

One may reasonably dismiss the risks connected to these tendencies by trusting the robustness of liberal-democratic institutions, but recent studies suggest that the stability of liberal-democratic regimes are only weakly related to institutional design. For instance, despite having a constitution and an institutional framework almost identical to the USA, many South American democracies in the course of the XX century collapsed under polarizing tendencies into violent and oppressive regimes (Levitsky & Ziblatt 2019, pp. 97-106). These regimes cannot represent a solution to the problem of peace of security if they merely represent, as they often do, the institutionalization of a civil war, in which one faction represses the other by gaining control over the State's apparatus²⁵. The point here is that even once religious zeal and fanaticism faded away, the risk of sectarian antagonism and conflict, in one form or another, did not. If the risk is still actual to a relevant extent, then the need to secure tolerance and protect a common, neutral and reasonable way to deal with the disagreement between incompatible views continuously obtain.

If the first argument challenges discontinuity, a second argument takes off from reflecting on the causes which led circumstances to change – to the extent they changed. In fact, if contemporary pluralism is more moderate and reasonable than the one from which liberalism emerged, it is worth asking why. Rawls's argument in this respect seems alarmingly circular, for it suggests that citizens' doctrines became reasonable because they got reshaped under a political conception of justice defining the boundaries of reasonableness. If this were the case, reasonable pluralism would not be 'a pre-given fact of democratic regimes', but rather 'the end result of the implementation of political liberalism' (Wingenbach 1999, p. 222).

We may defuse this apparent circularity by taking, as a more charitable reading would suggest, citizens' transition toward reasonableness and governments' transition toward liberalism as co-extensive and mutually reinforcing. In such a reading, the more citizens divided by incompatible doctrines engage in successful cooperation under

²⁵ The obvious examples here are Chile and Argentina. One may object that they do not represent significant cases for they lack the democratic tradition or the liberal political culture that the US, for instance, have. But this reinforces my point, which is precisely about the importance of such a culture, together with the implicit norms of toleration embedded in it, for the stability of liberal democracy.

prudential reasons, the more reasonable they get, in the sense that they become more well-disposed toward their fellow citizens. And the more this process proceeds - the more the practice of tolerance is interiorized and turns into the virtue of reasonableness - the more likely it is to find expression in politics and to be reinforced. As far as this Humean reading is correct in respect to Rawls and as far as it is historically plausible, Beiner's suggestion to drop the quest for political neutrality between comprehensive doctrines seems to presuppose that the process such a reading describes cannot be reverted or stopped and that pluralism, once it became reasonable, will remain so. Yet what the previous argument shows is that such a process is rather fragile and that requires continuous maintenance. And if the quest for a neutral politics is part of it, then it should not be dropped.

If these two arguments are correct and the continuity clause is thus respected, the genealogical argument outlined in the previous section can maintain a vindicatory power with respect to liberalism. And as far as liberalism is based on the three basic ideas Rawls proposes, these ideas would result vindicated too. To be sure, the pragmatic vindication so delivered ultimately rests on naturalist grounds, for it works by showing its object as a functional response to basic human needs. And of course, we learned to be wary of any attempt to derive normative claims from alleged 'facts' about human nature. For instance, it is unclear whether Rawls's commitment to the method of avoidance would allow him to accept this vindication.

Against this doubt, I just want to stress that the ground on which the argument rests is naturalistic in a rather minimalist sense. The hypothetical component of pragmatic genealogies serves precisely to bring to light needs that are likely to occur in every form of society, like the need to have reliable information about the environment and the need for social peace. Using Craig's words, the needs so identified 'are so general... that one cannot imagine their changing whilst anything we can still recognize as social life persists' (Craig 1990, p. 10). Therefore, there is an extremely heavy burden of proof on anyone who claims to find a society in which they were not operative. Whether this is enough to comply with the method of avoidance is an open question, but how exclusive this method is and to what extent we should stick to it are open questions too. What is

certain is that basic needs represent a more stable ground for vindicating liberalism and thus to reconcile us with a social world deeply characterized by it, than any metaphysical narrative of a Hegelian kind.

Conclusion

So far, I answered two questions: whether and how pragmatic genealogy can contribute to bridging the justificatory gap in Rawls's late outlook. By way of conclusion, I want now to briefly consider the extent to which it can do so.

Does the genealogical argument succeed in showing that our social world is objectively a home and that it is thus worth reconciling to? As we have seen, as far as our social world is a liberal one, and as far as the three basic ideas which are among its defining features underpin liberalism, the ideational component of our social world is vindicated. However, nothing in what we said so far entails that pluralism, however reasonable it might be, is a fact that we should appreciate and embrace whole-heartedly. It might be the inevitable outcome of practical reasoning under free institutions, as Rawls suggests, but the genealogical argument itself cannot show that this is the case. Pluralism remains beyond the scope of genealogical vindication for it represents the bedrock from which the liberal-democratic way of arranging society emerged. In the light of this argument, the social world is thus a home, but in a very specific sense: not the joyful and comfortable hearthstone we may wish for, so to speak, but the shelter we need.

A final clarification concerns the kind of reasons pragmatic genealogy provides and the sort of justification it achieves. As we saw, these reasons are functional, instrumental and precautional and the justification, therefore, pragmatic²⁶. This fact is not necessarily problematic, but it stands in apparent contrast with what might be a relevant desideratum. Rawls himself claims that a political agreement based on precautional reasons would be an unstable *modus vivendi*, whose endurance depends on the ever-changing power balances between the forces taking part to it (Rawls 1996, p. 148). In

²⁶ This is the reason why I talked of the genealogical argument as providing a vindication rather than a justification. Justification is indeed a term that, in the context of normative political theorizing, has a moral dimension.

light of this claim, it may seem we are facing a dilemma. On the one hand, the genealogical argument could contribute to reconciling citizens to their social world, but their knowledge of the argument would weaken their moral commitment to liberal-democratic ideas, making the political agreement at the cornerstone of liberal-democratic societies less stable. On the other, the requirement of stability for moral reasons apparently prescribes forgetting the functional origins of our ideas for the sake of moral adherence to them and thus suggests concealing the genealogical argument. However, this would be incompatible with any minimally democratic view of political philosophy.

A full treatment of the issue would fall beyond the scope of this paper and would require a thorough discussion of the relation between functionality and normativity. However, I think that a proper grasp on the character of pragmatic genealogies could display this dilemma as an apparent one because the first horn wrongly presupposes that learning about the functional origins of a normative commitment would weaken it. However, this is not necessarily the case. Indeed, sceptical or disaffected citizens could make sense of their commitment to liberal values through pragmatic genealogy in a way that dogmatic re-affirmation does not allow and, by doing so, they can stick to them in good conscience. Moreover – and most importantly - virtually everybody, even those who are outside the liberal and democratic community, could make sense of those values through pragmatic genealogy. This does not mean that a pragmatic genealogical argument will or should convert them to the liberal cause. It rather means that the arguments can show them why citizens of liberal democracies, given their history and their current situation, have good reasons to affirm their social world, its institutions and its fundamental ideas, thus performing a vindicatory function.

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Genealogical solutions to the problem of critical distance in contextualist political theory

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Introduction

There is a methodological trade-off in normative political theory that, in broad brushstrokes, may be rendered as follows. On the one hand, the theorist can start her reflection as detached as possible from local conventions, particular institutional arrangements, established practices and, in short, the specific context. From such a distance, her theorizing will be wide in scope and hopefully grounded on some rational foundation, retaining a strong critical potential when confronted with the social and political reality. However, these desirable traits come at a price. The standards and principles resulting from this kind of theorizing may lack a specific and clear content, so to make their application problematic, and they may prove hardly appropriate in some set of circumstances. Moreover – as conservatives tend to emphasize – the practices and institutional arrangements already in place in certain contexts may embody a form of practical wisdom that a general and abstract theorization is unsuited to capture.

On the other hand, the theorist can start with more contextually specific details. Remaining in a closer relationship with existing practices, institutions, and arrangements, she may work out theoretical standards and principles better suited to address specific situations and toward which agents in those situations can be receptive. But this choice comes at a price too. Starting closer to the social and political reality the theorist runs the risk of taking for granted certain aspects of it that, from a more detached perspective, would appear as simply prejudiced or unjust, thus sacrificing the transformative capacity of political theory for an unduly conservative stance.

In this paper, I will be concerned with theorists and approaches that make the second choice and I will try to show that there are ways to mitigate its costs. More specifically, I will focus on contextualist approaches - namely those approaches to normative political theory which hold that contextual facts are a crucial point of reference for the justification of normative judgments - and on what is arguably the most deep-seated problem they face. This problem, roughly sketched above, consists in a lack of critical distance. It originates from the justificatory role that contextualist approaches attribute to contextual facts and it may be more accurately formulated as follows: if facts about the context, like local conventions and existing practices, can determine and justify normative judgments, what ensures that these judgments are not unduly biased by whatever state of affairs happens to obtain in the relevant context?

It is usually thought that this problem cannot be solved while remaining faithful to contextualism's methodological premises. I shall argue instead that there are two ways of solving this problem without endangering contextualism's distinctiveness. These two solutions consist in the application to the context of two different genealogical methods. The first solution, related to the purely historiographical method pioneered by Foucault and endorsed by authors working in the critical theory tradition broadly construed, consists in problematizing the relevant contextual facts, i.e. in providing a new perspective from which their contingent configuration and worrisome aspects can emerge. The second solution is related to the hybrid method of pragmatic genealogy, as practiced by Bernard Williams and prefigured by Edward Craig. This method combines idealization and historical reconstruction, delivering a functional interpretation of contextual facts in the light of which it is possible to ascertain whether and how the specific configuration of such facts is responsive to normatively relevant needs.

Bringing about an increase in critical distance while maintaining contextualism's distinctiveness, both these methods satisfy two important desiderata, but this does not mean that they are equally useful. Indeed, I will show that these two methods fare differently when comparatively assessed in light of one more desideratum, namely normative action-guidance. Pragmatic genealogy, as I shall argue, is the only one capable

of providing this guidance and thus of assisting the contextualist theorist in the crucial task of discerning how far certain contextual facts deserve a justificatory role.

Supporting my claims requires fulfilling several tasks, which I tackle as follows. First, obtaining a grasp of what contextualism amounts to and a sound formulation of the problem of critical distance. Second, establishing the list of desiderata serving as criteria for ranking possible solutions and comparing the approaches to genealogical inquiry available in their light. Third, testing the most promising one, namely pragmatic genealogy, against a real case. The test case I will employ concerns the role of punishment in transitional contexts, i.e. the sort of socio-political scenarios obtaining during the recovery of a political community from the outbreak of inter-group violence, oppression, and human rights violation on a large scale. I show that approaching the practice of punishment through pragmatic genealogy in this context offers a corrective to the lack of critical distance and normative action guidance that several contextualist approaches (like Walzer's, Miller's and Sangiovanni's) would display in such a case.

1. Contextualism and the problem of critical distance

Contextualism is probably best defined as 'a family of views holding that factual claims about the context of a case are part of the justification of normative political judgments about this case' (Lægaard 2019 p. 954). This definition applies, in an interesting variety of ways, to authors as diverse as Michael Walzer (1993), John Rawls (1993), David Miller (2001), Joseph Carens (2000), Andrea Sangiovanni (2008) and many others. The definition constitutes a good entry point in that it is informative (it delimits the domain in which context is relevant to justification), inclusive (it wisely leaves underdetermined how context is defined and how it specifically affects justification) and because it suffices to realize that contextualism is exposed to a serious problem. Since contextualism takes contextual facts as crucial features for the justification of normative judgments, concerns about the normative standing of these facts may legitimately arise, putting the value of those judgments into question. Indeed, contextual facts (like local conventions, existing practices and institutions or established relationships between individuals and groups)

may reflect unjust or contingent arrangements. Therefore, relying on these facts for the crucial task of justification may transfer their injustice or arbitrariness to normative judgments themselves, thus limiting the ambition and the transformative power of normative theorizing. In other words, the proximity between theory and practice in contextualist theorizing exposes the approach to the risk of being unduly conservative, in the sense of being biased toward the status quo, and thus to the charge of lacking critical distance (Buckley 2012; Moodod and Thompson 2018; Lægaard 2019). We can call this problem ‘the problem of critical distance’ or, for the sake of brevity, the CDP.

There are several ways in which contextual facts can bear upon normative justification. Distinguishing between them allows one both to tell different varieties of contextualism apart and to realize that they are not equally exposed to the CDP. In what follows I shall focus on the variety which is arguably the most exposed, namely theoretical contextualism, which comprises approaches in which context determines the scope and content of normative principles and, *a fortiori*, the justification of judgments (at least as far as judgments are plausibly understood as applications of principles to specific cases)²⁷. A typical example of this approach is at play in Walzer’s *Spheres of Justice* (1983), where context is defined in terms of the social meanings that a given community attributes to specific goods. Indeed, Walzer derives the content of the principles according to which goods are to be distributed from an interpretation of their social meanings, delimiting the scope of such principles to the society sharing those meanings, and this way of proceeding exemplifies theoretical contextualism’s high degree of exposure to the CDP. After all, social meanings are a matter of shared understanding and they may be the outcome of a transitory (and perhaps unjust) social consensus. Moreover, they do not merely influence the application of principles, but also determine their content, thus allowing only for immanent forms of social criticism whose

²⁷ I am here relying on Lægaard’s (2019) taxonomy, that identifies two more variants of contextualism. Applicatory contextualism, i.e. the view that context co-determines the implications of general principles for particular cases, is virtually immune to the CDP because it is hard to fathom how political theory could ever tackle real-world issues without being contextualist in this way. Indeed, most if not all political theorists are contextualists in this sense. Methodological contextualism, i.e. the view that employ several contexts as a resource against which general principles are tested, revised, and justified, if not immune, is certainly quite well equipped to deal with the CDP. The reason is that this process of testing and revision can be repeated employing different contexts as benchmarks, thus minimizing the influence of any given context to the minimum in pretty much the same way as reflective equilibrium does with considered judgments. On the relationship between contextualism and reflective equilibrium, see Carens (2004).

standards and scope remain limited and contestable. Indeed, a theory deriving distributive principles from the shared meanings of some goods, like Walzer's, can certainly condemn actual distributions failing to respect those principles, but it seems poorly equipped to challenge the meanings from which its principles are derived²⁸.

The terms in which context is defined in the literature display as many variations as the ways in which context and justification are related. Authors defined contexts in terms of social meanings (Walzer 1983), modes of association and relationships (Miller 2001), institutional arrangements (Carens 2000) and in many other ways. I shall follow Moodod and Thompson in conceiving these sets of contextual facts as picking up specific aspects of existing 'normative practices', i.e. networks of norms strongly associated with particular patterns of human behaviour (2018, pp. 344-5). The reason for this choice is that social meanings, modes of associations and institutions are usually intertwined with one another to the point that one can hardly obtain without the other being in place. The specific meanings attributed to goods such as healthcare and education, for instance, are usually accompanied by a corresponding view of the relationships in which these goods are exchanged, produced and allocated. Certain societies see these goods as commodities and the undergirding relationship as between providers and customers, whereas other societies see these goods in different ways and thus attach to them very different standards, expectations and social norms. Moreover, certain relationships are possible only under specific institutional frameworks and are themselves institutional (corporations, for instance, are networks of instrumental relations but also, and crucially, institutions that produce and contribute to attributing meanings to goods). In light of this degree of interrelation, I believe it is safe to maintain, as Moodod and Thompson do, that most of the differences between the ways in which contexts have been defined are best understood as different perspectives on the same underlying object, namely practices²⁹.

²⁸ By immanent criticism, I mean forms of criticism appealing to criteria and standards that are internal to the practice, the institution or (more generally) the context under critical scrutiny. For a defence of immanent criticism, see Sabia (2010); for a defence of Walzer's version of it, see Solinas (2019).

²⁹ I will use the term 'practice' rather than the term 'normative practice', employed by Moodod and Thompson, because I think that the very concept of practice is, in itself, already suffused with normativity. Indeed, if the concept of practice is supposed to capture some regularity or pattern of behaviour – as it is – then there must be some normative element at work, implicit and undefined as it might be, for this regularity or pattern to obtain. The very concept of "norm", after all, refer both to something usual and standard as

2. The problem of critical distance and three desiderata concerning its solution

Focusing on practices allows us to grasp the CDP in its most general terms and to introduce a promising hypothesis about its solution. As James Tully remarked, ‘freeing ourselves from [...] the practices in which we think and act is difficult because participation tends to render their shared patterns of thought and reflection [...] pre-reflective and habitual’ (2008, p. 32). This means that practices tend by inertia to become entrenched and apparently necessary for those who live by them, giving rise to the very problem we are here concerned with. However, practices are not simply there for us to accept. They are human products that originated and evolved in certain ways, and knowing the processes through which they emerged – as Tully suggests – may ‘provide the means to criticise and evaluate [them]’ (2008, p. 34). This remark about the critical potential of information about practices’ origin and evolution is the hypothesis I intend to examine in the remainder. In testing this hypothesis, I shall focus on the critical role of the type of historical inquiry specifically concerned with the diachronic reconstruction of the formation processes through which practices emerged, namely genealogy³⁰.

This hypothesis is likely to sound counterintuitive because it conflicts with a piece of philosophical common sense, i.e. that one should not - on pain of committing the genetic fallacy - draw inferences from what Reichenbach called ‘the context of discovery’ (the space of causes in which beliefs and practices take form) to ‘the context of justification’ (the space of reason where their merits and flaws can be properly assessed) (1961, pp. 6-7). Such inferences are typically mistaken because, even assuming that a given practice originated as, say, a form of oppression, it does not follow that we thus have a reason to reject it. From a critical and evaluative perspective, what matters is how

well as to a rule, a principle or other action-guiding elements. Following Sangiovanni (2016), I rely on Southwood’s account (Southwood, 2011) and identify such a normative element in the pro-attitudes of participants to the practice towards the relevant behaviour that the practice describes, leaving open the question of where this pro-attitudes come from and where they find expression - a position to which explicit rules, implicit norms, values, customs, conventions and the like are equally good candidates. In this view, institutions amount to a formalized and regimented type of practices and Sangiovanni’s practice-dependent approach, like other versions of contextualism, emerge as concerned with a specific aspect of practices, namely their points and purposes.

³⁰ For a recent review of genealogy’s possible contributions to political theory see Prinz and Raekstad 2020. See also Rossi 2019.

the practice fares now with respect to relevant standards, which are independent of the causes that brought the practice into being.

However, a deeper examination of the issue suggests resisting the sirens of common sense. Indeed, even leaving aside the fact that inferences from the context of discovery to the context of justification are sometimes legitimate - as far as the two are properly linked³¹ - there are at least two general strategies to avoid the genetic fallacy and to make historical information critically relevant. These strategies respectively characterize two different methods of genealogical reconstruction. The first one is what I shall call the 'problematizing' strategy and it characterizes the purely historiographical version of the method pioneered by Foucault and defended, among others, by Tully himself. The second strategy is functionalist and it characterizes the pragmatic, hybrid version of the genealogical method associated with Bernard Williams.

In the pages to follow, I will show that both these methods represent possible solutions to the CDP in that they both increase the critical distance between theory and practices when applied in a contextualist framework. However, it does not follow that the two methods provide equivalent solutions. Indeed, as I shall claim, the two methods do not contribute to the same extent to the satisfaction of the relevant desiderata for an appealing contextualist political theory. Drawing on Lægaard, I take these desiderata to be 1) critical distance, 2) normative action-guidance and 3) distinctiveness (2016, p. 17). When applied to prospect solutions to the CDP, these desiderata can be formulated as follows:

1. **Critical distance:** First and most obviously, a solution to the CDP ought to solve the problem, i.e. it should lead to a theory whose principles do not simply reflect the dominant conceptions of, or the existing norms at work in, any given practice. The theory should rather provide a detached and autonomous perspective

³¹ Pashaman (1970), Crouch (1993) and Klement (2002), for instance, agree that there are various ways in which the context of discovery and the context of justification can be non-fallaciously linked. One obvious example is that of genetically justified items, like democratic deliberations, whose normative status depend on the way in which they came about (Queloz 2018, pp. 6-7). A second example is Nozick's theory of just acquisition (1974, pp. ch. 7, section I), that derives the justice of a distribution at any given time from the justice of the various intercourses which led to it.

on the practice and its norms, from which problematic aspects can emerge and assumptions can be questioned.

2. **Action-guidance:** Second, the solution should lead to a theory that does not only highlight problematic aspects of a practice but offers normative resources to address them. In other words, rather than simply spotting internal contradictions between a given norm and some feature of the practice, an appealing contextualist theory should provide reasons prescribing how these contradictions should be resolved and what agents should do in the face of them.

3. **Distinctiveness:** Finally, the solution should not require a withdrawal from the methodological commitments identifying contextualism as a distinctive approach. This means that normative judgments ought to remain justified in virtue of contextual facts and, in the specific case of theoretical contextualism, the same holds for principles. In other words, a solution to the CDP is certainly desirable but, if such a solution requires infringing these commitments, it would not count as desirable from a contextualist perspective because it would prescribe moving – somehow and to some extent – beyond contextualism itself (or to abandon it altogether)³².

The challenge posed by the CDP is particularly daunting because most candidate solutions entail a drawback concerning either the second desiderata, the third or both. Consider, as an instance, the following option. One may expand the conception of the context (say, from one practice to a set of practices), so to have a plurality of principles and norms whose possible tensions may ground critical judgments unavailable in the narrower context. Such a strategy, for someone like Walzer, would require looking holistically at various social meanings in order to spot inconsistencies either between distributive principles in different ‘spheres of justice’ (e.g. by showing that goods with similar meanings are wrongfully distributed differently or vice versa) or between specific

³² It is worth noticing that, among contextualists, the most common way of countervailing the CDP is to affirm some form of minimal moral universalism. For instance, Walzer (1994) qualifies his approach by distinguishing between thick and thin morality, i.e. by positing a minimal but universal normative threshold of moral decency under which contextual norms are to be rejected and through which they can be criticized. Sangiovanni (2008, p. 163) makes a similar move to criticize practices based on unmediated coercion, like slavery (see also Miller 2013, p. 69). This is certainly not the place to assess the tenability of this minimal universalism, but it is worth pointing out that its success in solving the CDP depends on a partial withdrawal from the methodological assumptions identifying theoretical contextualism.

principles and some more fundamental normative commitments of a given political community (assuming these commitments exist and can be retrieved)³³. However, this strategy is unlikely to secure the fulfilments of the desiderata. Besides doing little to prevent the CDP from re-emerging - once again, why should we accept the norms at play in the wider context? –, it does not grant action-guidance nor distinctiveness. As for the former, one may claim that such a strategy retains the same normative flaws it was supposed to correct because it simply identifies contradictions between existing norms, without thereby offering reasons as to how these contradictions should be resolved. As for the latter, the fact that CDP can recurringly emerge at any further enlargement of the context would push the contextualist theorist pursuing this widening strategy into the universalist's corner, i.e. toward such a broad conception of context that 'many proclaimed contextualists will not recognize this as a genuine form of contextualism at all' (Lægaard 2016, p. 18).

What is promising about the idea of employing genealogy critically is that, if such an idea is viable, there could be a solution to the CDP that does not involve any significant costs in terms of distinctiveness. Indeed, employing historical data about the origin and evolution of a practice does not require the theorist to move beyond the relevant context, but only to deepen her understanding of it, introducing 'more nuances or levels to [its] interpretation' (Lægaard 2016, p. 18). However, since there are two genealogical methods available, it is now time to assess how they fare with respect to the other two desiderata just mentioned, namely critical distance and action guidance.

2.1 Historiographical genealogy

The first and most established approach to genealogy is typically associated with Foucault and counts among its defenders Quentin Skinner (1998), Raymond Guess (2001), David Owen (2002), Wendy Brown (2001) Colin Koopman (2013), James Tully (2008) and,

³³ In *Spheres of Justice*, in which he frequently insists on the pluralism of distributive criteria and against the dominance of any specific goods or principle, Walzer is sceptical about the idea that there may be a set of fundamental normative commitments in any political community. However, this scepticism is not entailed by his methodology – certain political communities might have this sort of fundamental commitments.

more recently, Amia Srinivasan (2019). Beyond their differences, all these authors share a common commitment to the empirical nature of the enterprise (in the sense that they take genealogy chiefly as historiographical) and a common strategy to avoid the genetic fallacy. This strategy consists in avoiding any inference from the context of discovery to the context of justification by limiting genealogy's contribution to a perspectival kind of work. More precisely, they employ information from the former to reframe and cast a new light on practices under assessment in the latter. By illuminating the role of power, accidents and other contingent factors that contributed to shaping our practices, genealogy is conceived by these authors as a way of problematizing and denaturalizing these practices, as a way of freeing us from certain frameworks in which our understanding of them is held 'captive' (Owen, 2002)³⁴, as a way to 'develop the perspectival ability to consider different possible ways of governing' (Tully, 2008, p. 17) and thus to remake 'our world anew' (Srinivasan, 2019, p. 144).

In this view, genealogy is not inherently critical, because it is not constitutive of what we typically understand as the activity of critique, i.e. the evaluation of a certain object through normative reasons³⁵. However, genealogy so conceived supports such activity by increasing the distance between the practice and the reflective agent appraising it, inducing the latter to question the configuration of the former and the assumptions on which it rests. This capacity, of course, may be hardly specific to genealogy³⁶. Nonetheless, it seems safe to maintain that Foucauldian genealogy, in this capacity, may work as a corrective for the lack of critical distance affecting theoretical contextualism.

³⁴ As an anonymous reviewer correctly pointed out, Owen takes the idea of 'captivity' from Wittgenstein (1986, §115, p. 48).

³⁵ Critique is often conceived as a negative activity, but it need not to be. Art critics, for example, are not simply expected to argue about what they dislike, but also about what they like and why. It is also worth noticing that this conception of critique as reasoned appraisal is not separated from the notion of action-guidance. On the contrary, it presupposes it, because the activity of providing reason for or against an object of criticism presupposes the existence of some standards against which the object of criticism is measured and in respect to which certain actions are justified. For instance, if a critic has a positive judgment of a movie, the reasons grounding her judgment are action-guiding in the sense that they can recommend and justify actions such as actually going to see the movie. In the same vein, the reasons featuring in the criticism of a policy can justify actions such as voting against it, amend it and so on. On the other hand, the notion of critical distance does not presuppose the notion of action-guidance, which is indeed treated separately here.

³⁶ Contingency-awareness may be nurtured as well by attending to non-diachronic historical reconstructions, to ethnographic reconstructions, to the conflicting interpretations of the same practice in the relevant society (Hills, 2020) and perhaps even to works of fiction.

But what about the remaining desideratum, namely normative action-guidance? The authors mentioned above maintain that genealogy is not in the normative business and, therefore, that it is neither suited nor supposed to provide reasons as to what should be done about a given practice. Genealogy, in this view, is a preparatory but not a constitutive component of judgment. It can provide the theorist with the sort of intellectual freedom required for an unbiased evaluation, but it does not give any guidance as to how this freedom should be employed. Most importantly, on this view genealogy *cannot* give this sort of guidance because it is precisely due to this reticence that the genetic fallacy is avoided. The normative action guidance desideratum, therefore, remains unsatisfied³⁷.

2.2. Pragmatic genealogy

To satisfy this desideratum, we must look at an alternative approach to genealogical reconstruction, namely pragmatic genealogy. Recently systematized by Matthieu Queloz (2021, 2020a, 2020b), it runs through the work of Edward Craig (1990), Bernard Williams (2002) and Miranda Fricker (2007). Since a comprehensive characterization of this approach is beyond the scope of this paper, I want to focus on two crucial features that distinguish it from its Foucaultian alternative, namely 1) the functionalist strategy through which it avoids the genetic fallacy and 2) its hybrid way of proceeding.

As for (1), pragmatic genealogy does not limit its contribution to a problematizing or denaturalizing activity. Rather, it aims at establishing a direct link between the context of discovery and the context of justification through the notion of function. The basic idea is that information about the origins and development of a normative practice does not necessarily testify for its contingent and limited nature. On the contrary, in certain cases

³⁷ Other scholars have recently proposed a different view, arguing for the genuine normative character of Foucauldian genealogy (see for instance Tiisala 2017, Mascaretti 2019 and Lorenzini 2020). Most of the contributions in this direction are presented as exegetical perspectives and I will not try to intervene in this interpretative debate here. However, I want to point out that these interpretations, from a theoretical point of view, are not in contrast with my point about Foucauldian genealogy's lack of action guidance. The reason is that the claims of these scholars about normativity often concern the normative interests supporting a genealogical endeavour, not genealogy's capacity of providing action-guiding norms or criteria. They all argue that genealogy's unsettling effect depends on the method's implicit commitment to freedom but none of them advance any substantial claim to the effect that genealogy offers indications concerning how freedom (either conceived as self-government, as non-domination or as self-transformation) should be used.

that information can provide important insights on its functional relationship with important needs of participants, in the light of which it is then possible to evaluate the practice itself. As for (2), and in contrast with the purely empirical and documentary character of Foucauldian genealogy, pragmatic genealogy is a hybrid method: it combines historical materials and philosophical idealization in the following way. It starts by building a model – typically, a simplified situation in which cultural and other specificities are bracketed – to ascertain whether there are any basic needs, i.e. practical necessities that every human society is likely to face, that a prototypical version of the practice under consideration (call it the target practice) may help to meet. As a second step, the model is then de-idealized by factoring in more socio-historically local needs and pressures that, relying on history and empirical knowledge, we know have played a role in shaping the practice in its current form. Proceeding in this way, namely by tailoring the model closer to the target practice as one proceeds, it is possible to account for the practice's emergence in terms of both the basic and the more contingent needs it conceivably emerged to serve.

This is admittedly a very compressed illustration, so let me unpack it through an example. In *Truth and Truthfulness*, where he offers his genealogical account of truthfulness, Williams attempts to grasp the basic point of this virtue starting from 'a small society of human beings, sharing a common language, with no elaborate technology and no form of writing' (2002, p. 41). Starting from such a simplified model allows him to formulate the elementary practical dynamics that could bring to the emergence of some prototypical version of truthfulness. These dynamics unfold roughly as follows. First, the individuals in the state of nature need reliable information about their environment. Their very survival and well-being depend on the knowledge they have about the dangers and the opportunities characterizing their surroundings. Secondly, the members of this society need more information than they can acquire individually. Different individuals find themselves in different places at different times and this reciprocal positional advantage gives them exclusive access to relevant pieces of information that others lack. Therefore, they also need a way to divide the epistemic labour and to pool reliable information. This requires encouraging individuals to contribute to the pool with sincere and accurate information and a reliable way to do so is by cultivating the corresponding dispositions

to share true beliefs (sincerity) and to be careful in acquiring true beliefs (accuracy). For Williams, the virtue of truthfulness consists precisely in these two dispositions.

Now, what is the point of such a state of nature fiction? Williams emphasizes that the state of nature ‘is not the Pleistocene’ (Williams 2002, p. 30), meaning that it is not an attempt to gain insights into our hominid past. Following Queloz, I believe that the state of nature is indeed best understood as a heuristic idealization: as a model certainly involving abstractions and distortions, but whose abstractions and distortions allow to isolate instrumental dependences between a prototypical version of the target practice and certain basic human needs³⁸. On this view, the state of nature model serves to draft a hypothesis about the original and generic point of the target practice by showing how, already at a high level of abstraction, the interplay between certain needs generates a problem to which a prototypical version of the target practice provides a salient solution (Queloz, 2020b, pp. 691).

To be sure, the state of nature model cannot take our understanding of the target practice very far, because contingent and specific historical factors intervened in its formation. For Williams, a thorough understanding of specific target practices indeed requires insights from real history and the second half of *Truth and Truthfulness* is devoted to their collection. For instance, in the chapter about a culturally specific form of truthfulness, namely historiographical accuracy, he shows that the remote past has not always been a subject of truthful discourse. The Greeks had a mythological conception of it well up to the 5th century and it is only since Thucydides that the idea of there being something true and accurate to say about the past got some hold in the West. Such an idea was made possible by several contingent factors, among which the invention of writing played a crucial role (2002, pp. 161-170), and it is due to this idea that the need for reliable information extended from the surrounding environment to distant times. In contemporary liberal societies, Williams argues, the need for reliable information about the past is even more pressing because liberalism rests – among other things - on the

³⁸ The analogy is with models in the natural sciences, whose contribution to the understanding of phenomena precisely depends on their distorting and abstracting character. For an overview of how models’ contribution to understanding has been conceived, see Weisberg (2013).

awareness of past atrocities and on the distrust toward legitimating myths (2002, pp. 255-256).

One may contend that such details provide little more than some colour to the genealogy. But this is not the case. Rather, Williams's turn to real history and cultural specificities appears as a way to de-idealize the model and to account for the target practice in a non-reductive way, i.e. by factoring in the former the contingent practical pressures and the more local needs that might help to explain the particular configuration of the latter. This de-idealizing operation does not require pragmatic genealogy to turn into proper historiography by providing a step-by-step causal account of the target practice's emergence, but it certainly requires some degree of collaboration between philosophy and history. As Queloz put it, with this second step pragmatic genealogy becomes 'a receptacle for the insights of more orthodox historiography' and serves to 'extricate from history the main practical pressures that have shaped our practices and that are crucial for understanding their retention, elaboration and differentiation into the forms they now have' (Queloz 2020b, p. 692).

Let me now turn back to the genetic fallacy issue. How is the method supposed to contribute to the evaluation of current practices? Pragmatic genealogy offers a twofold benchmark against which the practice can be evaluated.

1. On the one hand, the practice can be evaluated with respect to how it fulfils its function(s). Since ascriptions of functionality are always relative to specific circumstances and since pragmatic genealogy makes these ascriptions primarily in relation to a simplified model, this kind of evaluation depends on the relationship between the current set of circumstances and the ones represented in the model:

- (a) If the two sets of circumstances are similar enough, i.e. if the target practice maintains an instrumental link to the needs it conceivably arose to serve according to the model, then the practice can be considered as continuously functional or, in other terms, as still a pointful response to

certain needs (Smyth 2017, p. 1137; Queloz 2020a, p. 2015). If this continuity clause is respected, the practice is vindicated³⁹.

(b) If the relationship between the two sets of circumstances is such as to sever the functional link (for instance, because the practice simply ceased to be functional with respect to the needs in response to which it may have emerged) the practice results, to that extent, contingent. This might be a destabilizing outcome, but not necessarily so. It will prove destabilizing for the practice only as far as participants are used to thinking of it as natural or necessary in some sense (see Queloz 2020a, p. 2013).

(c) If the relationship between the two sets of circumstances is such as to make the practice counterproductive to the need it was and still is supposed to serve (or if it overreaches itself, extending beyond the circumstances that make it functional), the practice can be regarded as dysfunctional and thus either worth reforming or worth rejecting. To that extent, the practice is subverted (see Queloz 2020a, pp. 2011-12).

2. On the other hand, pragmatic genealogy also puts the practice's functions up for evaluation.

(a) If the needs the practice is responsive to are ones we can recognize as important and worth fulfilling, we will have a reason to uphold the practice fulfilling them. This will be the case as far as basic needs (like the need for reliable information about the environment) and uncontroversial local needs (like liberalism needs for truthful history) are concerned.

(b) If this is not the case, we will have a reason to either abandon it or reform it. This might be the case if we do not share the more local needs to which the practice is responsive to or because these needs are themselves problematic (like the needs of powerful minorities, masked by

³⁹ For a genealogical vindication of liberalism. See Testini 2020.

the ideological terms in which certain practices are couched) (Queloz and Cueni 2020).

In light of this scheme and its reliance on needs, a few words about my use of the concept are in order. My conception of basic needs mirrors what I believe is the soundest one available, namely Wiggins's, according to which 'y's need for x is basic only if what excludes futures in which y remain unharmed despite his not having x are laws of nature, unalterable and invariable environmental facts, or facts about human constitutions' (2002, p. 15). This definition includes first-order needs like eating, sleeping and other needs based on human physiology, but it also includes second-order needs, i.e. needs arising from the relations between individuals' first-order needs (Queloz 2010a, pp. 2018-2019). For instance, the need to gather reliable information about the environment (to which Williams's genealogy tracked down the virtues of truthfulness) falls in this category. I take these basic needs to be uncontroversial because I fail to see how someone may deny that human beings would be harmed if deprived of the capacity to gather reliable information about their environment. Therefore, I also take them as relevant in the context of functional evaluation.

Local needs, on the other hand, are more controversial. Local needs, in my view, are needs that are relative to specific socio-historical contexts and that some individuals, outside of those contexts, may not recognise as such (i.e. as needs). However, I do not wish to deny that some local needs might result problematic even from within the relevant socio-historical predicament. Indeed, as I claimed above, it is precisely on this possibility that an important aspect of a practice's evaluation rests. Whether these are real needs, needs that deserve reflective endorsement or needs that may be addressed in ways that do not involve the practice to which they are related through genealogical inquiry are all legitimate and welcomed questions, but questions that pragmatic genealogy alone cannot address. The normative resources to answer them are to be provided by the theorist⁴⁰.

⁴⁰ In political theory and moral philosophy, some authors working on needs advocated for a re-orientation of moral and political discourse around this notion (Reader 2007, Hamilton 2003). But the fact that pragmatic genealogy rely on it does not mean that the method presupposes or entails this view. For a thorough discussion about local needs and their role in functional evaluation, see Queloz and Cueni 2020, pp. 26-32.

This account should suffice to show why pragmatic genealogy is certainly a more ambitious and yet more promising option than its purely historiographical counterpart for theoretical contextualism. Indeed, examining a practice with the tools of pragmatic genealogy seems a good way to satisfy the critical distance desideratum because, far from taking a practice for granted, the method allows its functional evaluation. Most importantly, however, the method seems to satisfy the action-guidance desideratum as well. Rather than simply performing a perspectival work and preparing the theorist for judgment, the method's reliance on needs offers a pragmatic background against which it is possible to evaluate a practice's merits, thus orienting judgment and offering reasons for action. Now is time to see whether the method delivers on its promises.

3. The test case: the role of punishment in transitional contexts

The methodological guidelines I sketched so far are admittedly quite abstract. To show the relevance of pragmatic genealogy for theoretical contextualism, let me thus examine what difference the method makes in dealing with a case in which, as I shall argue, different forms of theoretical contextualism are likely to give problematic answers. The case I will briefly discuss concerns the role of punishment in transitional contexts, i.e. in the sort of socio-political scenarios following the outbreak of inter-group violence, oppression, and human rights violation on a large scale (Teitel, 2000). I will try to understand what kind of distributive principles of punishment three major versions of theoretical contextualism would provide and then illustrate how a pragmatic genealogy of punishment might affect this answer. My discussion will inevitably be tentative and unrefined since both punishment and transitional justice are the subjects of extensive debates. At any rate, my aim in what follows is not to make a salient contribution to these debates, nor to flesh out a comprehensive genealogical account of the practice of punishment (which would deserve a book-long treatment), but rather to illustrate what difference does it make, from the standpoint of theoretical contextualism, to approach the interpretation of practices through pragmatic genealogy.

The transitional scenario is a valuable 'test case' to bring this out. The notion of 'test case' is here employed in a rather technical sense, borrowed from software

engineering. In this sense, a test case is a simplified set of inputs and operative conditions through which it is possible to verify a program's performances concerning specific parameters. The case of punishment in the transitional scenario performs precisely this role: the elements of the case are to some extent simplified, but they are so in order to allow a perspicuous evaluation of theoretical contextualism with respect to specific parameters. For our purposes, these parameters are critical distance and action guidance, as previously defined. Once I have demonstrated through this test that theoretical contextualism is defective in their regard, I will be able show that (and how) pragmatic genealogy can correct these deficiencies.

Before running the test, let me say a few more words on the case at hand. It is well known that a conflictual relationship between the demands of retributive justice and the demands of peace characterizes transitional scenario. In transitional circumstances, justice and peace can raise inconsistent demands that give rise, if not to dilemmas, at least to substantial trade-offs. Seeking just convictions for all those involved, for instance, may threaten peace if a large part of the population took part in the crimes to be addressed, running the risk of remarking the very sectarian borders along which the violence occurred (Eisikovits 2014). On the other hand, partial amnesties, truth commissions and other non-punitive tools of transitional justice seem to acquire peace at the price of justice, painfully dismissing the demands of those who have been persecuted.

In the transitional justice debate, many scholars support the demands of peace, downplaying the role of punishment as a tool to deal with past atrocities, while advocating for restorative practices, truth commissions and so forth. Even those who are less sympathetic with the claims of peace typically concede that punishment in transitional scenarios is an issue to be handled carefully and, perhaps, selectively. Few deny that at least the most serious violations of human rights ought to be punished, yet virtually everybody agree that the application of normal culpability standards in cases of this sort can jeopardize the transition to a peaceful and just society, for a variety of reasons. For instance, the sheer number of individuals who colluded with the past regime might be too big, some of these individuals might have knowledge and capacities essential for the state-building process to be initiated and so on (see Pfiffner 2010). For reasons that will become

evident later, it is worth noticing that in the long-standing debate about transitional justice this balance between justice and peace has been pursued in two different ways. During the Nineties, most scholars tried to reach such a balance at the level of judgment. This means that the dominant view on the issue involved two or more conflicting principles or values, whose conflicting demands had to be balanced in light of specific circumstances. More recently, scholars like Larry May (2012) and Colleen Murphy (2017) addressed this balancing task at the level of principles, claiming that transitional justice is a distinctive kind of justice whose principles and virtues already embed a concern for peace and reconciliation. I will come back to this point.

As for the practice of punishment, there are a few details worth pointing out. From the end of WWII up to the Seventies, many western countries had a broadly corrective-rehabilitative approach to legal punishment. Starting from that decade, however, several concerns eroded the academic and political consensus supporting that approach. These concerns mostly regarded the degree of interference that a correction-oriented system subjected convicts to, the substantial discretion it granted to judicial, administrative and social workers, the disparity and indeterminacy in sentencing it allowed and, as conservatives have been eager to stress (especially in the U.S.), its softness on crime. On the other hand, the approach now dominant - the ‘justice model’ of punishment, as Barbara Hudson called it (1987) – is rather minimalistic and mostly retributive: eschewing correction and rehabilitation from its declared goals, it displays a backward-looking orientation focused on the retrospective features of the situation (who caused harm? Did they mean to? Could they avoid it?) rather than the prospective ones (will punishment serve as a lesson? Are they likely to offend again?), and it places notable emphasis on the notions of proportionality and desert (both of offenders and victims)⁴¹. For the sake of the argument, I shall assume that the society facing the challenges of the transitional scenario is as fond of this justice model of punishment as many western

⁴¹ The most influential and earliest version of this model is arguably the one provided in Von Hirsch (1976). For a more detailed picture, see Hudson (1987). For the pivotal role of victims in this model of punishment, see Prittwitz 1999, Remmetsma 1999, Fletcher 1999, Haque 2005 and Kaufman 2013). According to Maculan and Gil Gil (2020, p. 133), this focus on victims in penological discourse fostered the punitive tendencies of some international courts dealing with cases of transitional justice, especially the Inter-American Court of Human Right (on this point see also Malarino 2012, Sanchez 2009 and Seibert-Fohr 2009).

countries are. Let me now examine what sort of principles its members should follow when distributing punishment according to theoretical contextualism.

4. Theoretical contextualism's responses

According to my characterization, theoretical contextualism is an approach holding that contextual facts determine the scope and content of principles. This characterization, however, is too abstract to get a grasp on how this approach would address the transitional case. Therefore, let me select three specific instances of it. One way to do so is by distinguishing between authors focusing on different aspects of practices. Three approaches stand out in the literature: Walzer's, whose focus is on social meanings; Miller's, whose focus is on relationships, and Sangiovanni's, whose focus is on the point and purpose of existing practices. As I will show, all these three variants of theoretical contextualism, when tested against the transitional case, display a lack of critical distance (in the sense that they tend to define the role of punishment in the light of the dominant retributive conception of the practice) and/or a lack of action guidance (in the sense that they lead to indeterminate results as to what role (if any) punishment should take up in the transitional case).

Walzer and social meanings

In Walzer's case, the focus is on social meanings, i.e. the shared understandings that members of a given community have of certain goods. The principles regulating goods' distribution are supposed to be justified by, and expressive of, the meanings that a given political community attaches to them. Of course, punishment hardly qualifies as a good for the punished, since it conceptually requires the infliction of some sort of hardship or at least the deprivation of some goods. Yet it is reasonable to assume that Walzer's scheme applies to it as well (for one thing, because the punishment of offenders might be considered a good for their victims).

Now, applying Walzer's approach to punishment in the transitional case is quite challenging. After all, since inter-group violence occurred, the society at hand may lack the degree of cultural homogeneity sufficient to reconstruct determinate meanings. They might disagree, for instance, about the kinds of acts worth punishing. Most importantly, however, there is a relevant sense in which the political community itself, presupposed by Walzer's approach, might not exist anymore so that the question about whose meanings should be taken into account lacks an obvious answer. Yet even assuming that these issues are not serious hurdles to the application of the approach, it is hard to see how Walzer's focus on social meanings could avoid endorsing the justice model of punishment. Assuming the society in the transitional scenario is similar enough to ours, the social meaning attached to punishment will have a retributive core and punishment will accordingly be distributed quite generously, according to principles whose defining features will be proportionality and responsibility. To be sure, at the level of judgment, Walzer has other tools to avoid the conventionalist tendencies of his approach (illustrated in Miller 1995), but the fact that such an approach has this kind of tendency as far as principles are concerned is hardly contestable.

Miller and modes of association

For Miller, the salient aspects of practices are not the social meanings attached to the goods they produce or distribute, but the relationships they establish between individuals. The appropriateness of normative principles, in this framework, depends on the relationships or modes of association they are supposed to regulate (2013, p. 49). For instance, principles of desert are appropriate to regulate instrumental relationships, like the one between employer and employee; principles based on needs are appropriate in the context of a solidaristic community like the family; and principles of equality are appropriate in the context of political associations, like state membership or, to put it in Miller's words, 'citizenship' (for details, see Miller 2001).

On the one hand, Miller seems more critically detached than Walzer from social and political conventions. After all, relationships are apparently formal features of context

and focusing on them allows one to eschew deference toward local meanings and to criticize them when they are not in tune with such features. On the other hand, however, it is not clear how purely factual accounts of how people are related to one another can ground or trigger specific principles. As it has often been noticed – and as Miller himself noticed - relationships are always suffused by a variety of local norms and by ideas concerning their normative significance (Moodod and Thompson 2018, p. 344; Buckley 2012), to the effect that different cultures attach different values to the same relationships (Miller 2013, p.170).

In the transitional case, this raises a problematic point concerning both the sort of relationship Miller’s approach would pick up and its normative import. The victims-offenders relation seems like an obvious choice and, given how the justice model frames this relationship, one is left to suspect that retributive principles based on desert would emerge as the appropriate ones for the allocation of punishment. If the choice falls on political membership and citizenship, thus requiring a principle of equality, it is obviously up to the theorist to decide which is the most appropriate one. But since the transitional context is specifically concerned with addressing human rights violations and crimes, a principle of equality in front of the law seems hardly avoidable and this kind of equality principle, in such a context, warrants a quite extensive resort to punishment as well. To be sure, one may focus on the relationship between the two or more groups involved in the conflict as components of one political community that somehow came apart, thus supporting either a rehabilitative take on punishment or the employment of alternative, restorative tools. But this indeterminacy cannot be resolved merely from the methodological remarks Miller provides. As these few equally plausible hypotheses illustrate, Miller’s approach delivers quite undetermined results and thus fails to provide action guidance in this context.

Sangiovanni and practices’ point and purpose

Finally, let me consider Sangiovanni’s practice dependent approach. The approach falls squarely into the category of theoretical contextualism in that, as Sangiovanni declares,

‘the content, scope, and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern’ (2008, p. 138). For my purposes here, this approach is particularly interesting for two closely related reasons. First, because Sangiovanni's methodological proposal shares with pragmatic genealogy an emphasis on the functional aspect of practices, i.e. on their point and purpose. Second, because this proposal implements a synchronic approach to functional interpretation which is at odds with the diachronic one at work in pragmatic genealogy. Instead of the complex combination of idealization and de-idealization required by pragmatic genealogy, Sangiovanni's synchronic approach focuses on the ‘here and now’ and requires just two simple steps. First, the interpreter determines the point and purpose of the target practice relying on its structural features and external characteristics. Second, the interpreter assumes the perspective of participants to reconstruct what reasons they might have to affirm the practice's basic rules and standards. In fulfilling both these tasks, Sangiovanni argues, the interpreter ought to respect the principle of interpretative charity, thus understanding the practice as ‘an integral whole, whose parts work together to realize a unique point and purpose’ (2008, p. 149). With these materials in hand, ‘the content, scope and justification of a conception of justice is worked out in light of both its intended role within existing institutions and the interpretation of the point and purpose of those institutions’ (2008, p. 150).

This synchronic approach seems more appealing than the diachronic one I proposed, both because of its simplicity and of its focus on the ‘here and now’. In the face of this, one may argue that information about origins and developments are redundant in ascertaining the functionality of practices. Why bother with diachronic historical inquiries if a practice's function can be determined synchronically? I gladly concede that synchronic approaches are more straightforward and often earn their keep. Sangiovanni's method, for instance, proved to be quite efficient in dealing with highly institutionalized practices in the international sphere (Sangiovanni 2007). Therefore, I am also willing to concede that as far as synchronic approaches to functional interpretation like Sangiovanni's practice-dependence produce clear and reliable results, there is no need to engage in the complex diachronic modelling of pragmatic genealogy.

However, many practices are quite impervious to synchronic approaches and in such cases, as I shall argue, pragmatic genealogy represents a viable and useful alternative. In social and political theory, practices that are the product of complex historical processes along which repurposings and alterations took place (to the effect that they now display a variety of functional aspects) are the most prominent examples⁴². And punishment, as Nietzsche noticed, is probably the most representative instance of this kind of practice. Even at the most abstract level, punishment is indeed overladen with functions of all kinds (Nietzsche 2006 [1887], p. 54), ranging from deterrence to retribution passing through rehabilitation, incapacitation, censure and many others. Such a variety is not a problem in and for itself, since it is perfectly reasonable for a practice to have different functions or, in other terms, to be responsive to different needs at the same time. However, such a variety can, and in fact does, give rise to conflicting interpretations respectively emphasizing one or another of these functions, leaving one to wonder how to deal with this variety⁴³.

To see how impervious a practice like punishment is to synchronic approaches, consider how the practice dependence method would approach it. The first significant problem arises as soon as the first step is taken. With practices of this sort, sticking to the interpretative principle of charity is not only difficult but also misleading, because the principle's commitment to coherence entails the risk of projecting onto the practice a unity that it may lack. As Lægaard nicely put it, in such cases any claim about what constitutes the unique point and purpose of a practice or institution is a political attempt to seize the 'definitorial power' over the practice (2017, p. 96). Moreover, even assuming the interpreter can get a grasp on some function of punishment as fundamental by attending to the outward features of this practice, to its implementations and its position in the general institutional framework, this functional interpretation is extremely likely to

⁴² Other cases in which pragmatic genealogy can make a useful difference when compared to synchronic approaches are (1) practices that apparently lack a point altogether and (2) practices that seems to serve either (2a) only basic, uncontroversial and quasi-anthropological needs or (2b) only very local and contingent needs. In each of these cases, the possibility of devising a prototype of the practice afforded by pragmatic genealogy allows the running of a reality check. In (1), it provides guidelines to ascertain whether the pointlessness of the practice is only apparent or not. In (2a) and (2b), it can assess whether there is something more generic or more local worth knowing about the practice. For a discussion of these cases, see Queloz 2020b.

⁴³ For an overview, see Fletcher 2000, pp. 410-440, Alschuler 2003 and Kelly 2018.

reflect the dominant view of the practice in a specific social and political context. In a country like the U.S., for instance, a brief look at courts' proceedings, judicial records, sentencing guidelines, criminal legislation and the prison system would force any sensitive interpreter to conclude that the point and purpose of punishment is (and thus should be) chiefly retributive.

The second step faces at least three related hurdles. First and foremost, it is unclear who exactly counts as a participant. In the case of punishment, a narrow way of drawing the participants' circle is to encompass just individuals with an active role, thus including only law enforcement agents such as attorneys, judges, police officials and administrators; a broader circle, enlarged to individuals with passive roles, would include at least victims and offenders too. In the case of punishment, this is far from being a trivial issue because people at different ends of the practice may have very different and conflicting ideas about the reasons to uphold it in its current configuration - or to not uphold it. Secondly, it is unclear what the interpreter is supposed to do when the reasons provided by participants conflict either with one another (the chances of which are likely to increase as the circle of participants is enlarged) or with the point and purpose identified in the first step⁴⁴. Finally, it is worth reminding that although granting a role to participants' reasons in the functional interpretation of the practice is undoubtedly a sensitive move, certain unjust practices tend to be rationalized by participants (especially active ones) and that focusing on their reasons may thus have significant costs in terms of critical distance, resulting in rather complacent interpretations.

These considerations show that tackling punishment with the synchronic approach engendered in Sangiovanni's practice dependence would yield either indeterminate results or a reductionist account which is likely to reproduce the status quo, granting primacy to whatever function of punishment is prioritized in the socio-political context at hand. Moreover, the transitional scenario makes the first outcome more likely - since there might not be a stable institutional framework around the practice anymore, an appreciation of the latter's role in light of a broader whole would be hard to obtain - and the second more problematic - because the challenge posed by transitional scenarios is

⁴⁴ This problem and the previous two has been pointed out in Lægaard (2017).

precisely that of designing new institutions (or, less ambitiously, rethinking and reforming existing ones).

Since - as I showed - similar conclusions hold in the case of Walzer and Miller, one can hardly avoid the conclusion that theoretical contextualism is ill-suited to deal with the transitional scenario. This approach either leads to indeterminate principles as to what role (if any) punishment should play in the transitional process (something we can take as a lack of action-guidance), or it tends to define this role simply in light of the dominant conception and configuration of the practice (something we can take, in this case, as a lack of critical distance)⁴⁵.

5. Toward a pragmatic genealogy of punishment

To bring out what difference a pragmatic genealogy can make for the functional interpretation of the practice of punishment, let me take the cue from a recent contribution to the debate about its role in transitional justice. Maculan and Gil Gil (2020) recently argued in favour of a careful and limited use of punishment in transitional contexts, claiming not only that such contexts pose very specific challenges that punishment is unsuited to meet (and that can be met with other tools), but also claiming that the basic function of punishment is to promote ‘the conservation of the group’ and the ‘social order’ – goals that an extensive employment of punishment would make hard to achieve in transitional cases. The interesting point about Maculan’s and Gil Gil’s argument, for our purposes, is the ground on which they revindicate the primacy of this pro-social function of punishment against others. Drawing on anthropological and psychological studies, they argue that our retributive impulses ‘respond to the calculated reciprocity mechanism’ we share with other animals and which ‘acts as a preventive tool’, ultimately serving to promote the conservation of the group. ‘Even when the punishment does serve to satisfy the needs for reciprocity that are so firmly inherent in our system of social interrelations’, they continue, ‘this purpose is ultimately instrumental’. For this reason, they claim, the

⁴⁵ The problematic character of this second possibility does not depend on the assumption that a retributive approach to punishment is the wrong answer in transitional cases (this would obviously beg the question), but on the ways in which the approaches just examined arrive at this answer.

victims' right to satisfaction should never be placed as a purpose in itself or seen as superior to the classic preventive aims of punishment. It cannot eclipse or replace the main rationale of criminal law, that is, to protect legal interests and the social order' (2020, p. 141).

Pragmatic genealogy offers a useful framework to harness the psychological and anthropological insights to which Maculan and Gil Gil appeals to⁴⁶. It can do so by devising a model through which the structure of instrumental dependences relating the various functions of the practice, from the most basic to the more socio-historically local, become visible and perspicuous, helping us 'situate, contextualise and accounts for each of the different functions [the] practice acquired, thereby imposing a form of order' (Queloz 2020b, p. 699). By doing so, pragmatic genealogy can provide a framework for those insights and a benchmark against which the practice can be evaluated in the relevant set of circumstances. Most importantly, since pragmatic genealogy neither is committed to methodological assumptions about the functional unity of the target practices nor is particularly concerned with the reasons of its participants, it can do so while avoiding the pitfalls that a practice dependent approach might fall into. As I anticipated, a thorough genealogical account of punishment would be well beyond the scope of this paper. Nonetheless, the circumstances of the transitional case do not require a full account to flesh out a dysfunctionality argument along the lines Maculan and Gil Gil sketched. If pragmatic genealogy can support the claim that punishment conceivably arose to serve a pro-social function, the fact that it would be detrimental to this end in transitional circumstances would constitute a robust dysfunctionality argument against the practice.

⁴⁶ There is a voluminous empirical literature on punishment, extending beyond the domain of both psychology and anthropology and well into evolutionary game theory and behavioural economics (for an overview, see Cushman 2015). As I wrote in the section outlining pragmatic genealogy's ways of proceeding, the method constitutes a form of model-building operating through distortions, abstractions and idealization. However, this does not imply that empirical insights when available, should be discarded in outlining the model. The reason is that such insights are helpful for distorting, abstracting and idealizing in a sensible way. After all, if pragmatic genealogy is best understood a kind of abductive reasoning, i.e. as a tool to make inferences to the best explanation (Queloz 2020a, pp. 2012, Klement 2002), reliable empirical insights deserve a place in any explanation aspiring to this title. It is interesting to notice that some anthropologist and law scholars concerned with the functional origins of punishment sketched general explanations as to how such a practice may have emerged resorting to abstract and paradigmatic predicaments like the ones on which pragmatic genealogy rely (see for instance Lampe 1970, 1987).

In its barest outline, a pragmatic genealogy of punishment would roughly go as follows. If we imagine a society in the kind of situation Williams envisaged, we can be sure that its members would need some way to secure pro-social behaviour in its members because anti-social attitudes make notoriously difficult to solve the sort of coordination and cooperation problems that would prevent them, as a group, to meet the challenges posed by the environment, by other groups competing for resources and so on. There is a variety of ways in which this can be achieved. Even assuming that members of this society are not all kins, as far as their number is small enough for most members to know each other and for chances of future reencounters to be high, this society may do well enough in ensuring pro-social behaviour simply through the promotion of certain codes of conduct among, and through the cultivation of certain disposition in, its members. Under these conditions, anti-social behaviour might be discouraged by the prospect of reputational damage and thus social exclusion, by the close relationship between members, by the motivational pull of dispositions and internalized norms of conduct and so on.

However, no such system of socialization is likely to be efficient as the population size increases, as the affective ties among members become thinner and the opportunities for free-riding multiply. One way in which members can protect themselves from anti-social agents is for members to develop the sort of retaliatory attitudes familiar among those scholars who studied vengeance in so-called honour cultures, i.e. cultures in which honour and shame are central elements of the ethical vocabulary. Indeed, as many anthropologists and evolutionary psychologists argued, there are good reasons to think that honour and shame, together with the retaliatory attitudes they engender, fulfil a double function in societies that lack reliable institutions of norms enforcement. At the individual level, a retaliatory attitude against offenses fulfils a signalling function, showing to possible offenders that the agent is not one “to mess with”, thereby discouraging potential attackers (Nisbett and Cohen 1996). At the social level, a widespread disposition toward retaliation can constitute a diffuse and decentralized system of deterrence against anti-social agents. The more entrenched and diffused this disposition is, the more effective it is likely to be in securing this effect. Following this reasoning, we can understand the reciprocity mechanism engendered by retaliatory

attitudes in pro-social terms, i.e. as an individual and social tool to secure peaceful conditions of cooperation by way of deterrence.

Punishment, as Bedau and Kelly noticed, ‘is not a social institution that every conceivable society must have’ (2019) and the model here outlined nicely backs up this idea. Indeed, the very notion of punishment - as opposed to the negative feedback required by the socialization of norms and the retaliatory acts which vengeance consists of – requires some sort of legitimate authority to get some conceptual grip⁴⁷. To arrive at something like it, more local pressures have to be considered - first and foremost, the absence of reliable tools to manage and defuse the possibly endless spirals of violence that a widespread retaliatory disposition to vengefulness may generate⁴⁸. If this crucial condition obtains and exerts its pressure, then we can imagine something like a prototypical version of the practice of punishment to arise out of the centralization of retaliation in the hands of an authority both to avoid the escalation of revenge cycles and for deterrence.

The model allows us to make two further inferences. First, we can infer that this authority will need some sort of legitimacy in the eyes of those subjected to it because an authority without authority, as it were, would hardly succeed in those two tasks. This need for legitimacy, depending on the cultural resources and the social structure of specific societies, will be satisfied in different ways in different social contexts, but it is reasonable to assume that the legitimation will generally involve some form of regulation of the role taken up by such an authority. Secondly, and most importantly, we can infer that this authority will allocate punishment regardless of instrumental considerations about deterrence⁴⁹. Indeed, were the practice to wear its function on its sleeve, it may not be

⁴⁷ This is the case even outside the socio-political context. Parents may be said to punish their children, as opposed to simply impose hardship on them for educational purposes, precisely because they can claim to be legitimate authorities in the family. Similar considerations hold, for instance, on the workplace, in clubs, churches and the like. This is – admittedly - a narrower notion of punishment than the one at work in psychology, game theory and behavioural economics.

⁴⁸ Since Malinowski (2018 [1926]), several studies have indeed pointed out that vengeance and feuds are not inherently unstable and uncontrollable phenomena. Byock (2003), for instance, showed how ecological and cultural factors can help accounting for the successful regimentation of feuds among and within Icelandic Viking communities. For other interesting case studies see Lorini and Masia 2015.

⁴⁹ This is a claim about the configuration of the practice, i.e. about the way punishments are practically allocated, not about the way in which the practice is justified. As far the authority’s legitimacy does not simply rest on theological or mythical grounds (and sometimes, even when it does), the imposition of

able to fulfil it, because anti-social agents could disincentivize punishment by signalling to not be scared by its implications, i.e. to not be deterred by them. And as it has been pointed out, the same degree of exposure to exploitation concerns other instrumental considerations about punishment, like correction (Cushman 2015, p. 123). Taken together, these inferences point to a strong pragmatic rationale for a retributive and backward-looking configuration of punishment based on desert rather than an instrumental and forward-looking one. To that extent, these inferences lead to a *prima facie* vindication of the practice as envisaged in what I called, following Hudson, the ‘justice’ model.

In more formal terms, the argument so far might be expressed in the following way:

P1: In a prototypical group G , a set of needs N_1-N_n under root circumstances $C_1 - C_n$ generate a practical problem

P2: This generates a pragmatic pressure on G to solve the problem: the basic need BN

P3: Prototypical practice P would meet the basic need BN by discharging function F

P4: P could develop quite naturally, i.e. out of the capacities we are prepared to grant G anyway, via the set of steps $S_1 - S_n$

C1: Therefore, P would be bound to develop in any G that persists

C2: Therefore, it is rational for G to engage in P in order for F to be discharged in G (in the sense that people with these needs under these circumstances would welcome and, if they could do so, aim for engagement in P with a view to the discharge of F)

P5: In the actual group G^* , there are close analogues to $N_1 - N_n$ and $RC_1 - RC_n$, namely $N^*_1 - N^*_n$ and $C^*_1 - C^*_n$

C3 Therefore, it is also rational for G^* to engage in P^* , the closest analogue to P in G^* , in order for F to be discharged

C4 Therefore, the best explanation for why we go in for P^* is that it discharges function F

C5 Therefore, there is a *prima facie* reason for G^* to continue P^* , and P^* is to that extent vindicated⁵⁰

hardship through punishment is a kind of act with a dire need for justification and many considerations are apt to perform this role.

⁵⁰ Adapted from Queloz 2020a, p. 2020.

The model might be de-idealized further, factoring in more local needs and pressures⁵¹. This would allow controlling whether the circumstances under which the practice assumed more specific functional aspects are relevantly similar to the circumstances obtaining in contemporary societies. Doing so would be necessary to assess whether the justice model still represents a pointful response to the local needs we have now and to what extent, instead, it proves responsive to local needs we might find problematic. But given our illustrative purposes, our focus on the transitional scenario, and the exceptionality of the circumstances characterising such a scenario, this is not necessary to harness Maculan's and Gil Gil's insights into a genealogical dysfunctionality argument. The structure of instrumental dependences reconstructed through the model vindicates the primacy claim of the pro-social function of punishment, offering a perspicuous understanding of how retribution conceivably grew out of it. In light of this reconstruction, we are in the position to claim that under the circumstances of the transitional scenario, in which an extensive resort to punishment may threaten a peaceful and stable coexistence, a retributive approach to punishment's distribution would not only fail to satisfy the continuity clause (thus failing to fulfil what we have reasons to take as punishment's basic, pro-social function); its implementation would also be detrimental to that function, impinging on the satisfaction of the very basic need that the practice of punishment itself primarily emerged to address, namely that of ensuring social peace and the condition of cooperation⁵².

⁵¹ For instance, one may account for the transition from corporal punishment to a prison-based and predominantly corrective view of the practice between the late 19th century and the 20th century by factoring in (among other things) the need for a stable labor force in increasingly industrialized capitalist societies – a factor highlighted, among others, by Ignatieff (1978), Melossi and Pavarini (1981) and Foucault (1977). For an account of the transition from the corrective model which has been dominant up to the 1970s to the retributive justice model still dominant today see Hudson 1987 and Garland 2001.

⁵² This point might be strengthened by showing that, in the current circumstances, other derivative functions of punishment either a) do not satisfy the continuity clause (thus making the practice pointless as far as that function is concerned) or b) can be fulfilled in alternative ways (thus making the practice redundant as far as that function is concerned). In the transitional case, an argument of type (a) can be made for deterrence, because once the power structure, the institutional framework and the ideological background that supported the mass violence are removed, the chances of relapsing in the same sort of violence are likely to be low. As for the expressive function of punishment, i.e. its role as a way to express a community's condemnation of certain behavior and to uphold certain norms and values, arguments of type (b) are available, because this result can be achieved without punishing.

Complementing the formal exposition provided above, the scheme of the argument proceeds as follows:

P6: In the actual group G^* , there are close analogues to $N_1 - N_n$, namely $N^*_1 - N^*_n$, but a different set of circumstances $C^\dagger_1 - C^\dagger_n$

P7: $C^\dagger_1 - C^\dagger_n$ are such as that P^* would impinge on $N^*_1 - N^*_n$

C6 Therefore, P^* would be dysfunctional with respect to $N^*_1 - N^*_n$

C7 Therefore, it is irrational for G^* to engage in P^* in order for F to be discharged

C8 Therefore, there is a *prima facie* reason for G^* to refrain engaging in P^* in $C^\dagger_1 - C^\dagger_n$ and P^* is to that extent subverted⁵³

There are two aspects worth clarifying about this line of argument. The first aspect concerns its relevance for theoretical contextualism. In my view, the argument maintains its relevance both upstream, at the level of principles, and downstream, at the level of judgments. The first level is certainly the most important for theoretical contextualism. At this level, the relevance of the argument consists in its providing a reason against granting the practice of punishment (retributively conceived) the normative status it enjoys under theoretical contextualism, namely that of justificatory reference. This may reasonably lead some theorists to abandon the approach, but this does not necessarily follow. Indeed, once we recall that theoretical contextualism holds that contextual facts determine the scope and content of principles and that, as we saw, these contextual facts are typically identified with certain aspects of existing practices, an alternative becomes available. This alternative consists in registering the dysfunctionality argument I proposed and changing the conception of the relevant context accordingly, to include a wider set of facts as justificatory references, and to formulate more sophisticated (and less conservative) principles⁵⁴. The circumstances characterizing the transitional scenario –

⁵³ The exceptionality of the transitional case makes particularly easy to substantiate P7 whereas fulfilling this task, in standard circumstances, would require more efforts. This is one reason why I defined it as a test case, in the technical sense clarified above.

⁵⁴ Previously, I equated the lack of critical distance with the idea of a conservative bias. My claim that pragmatic genealogy can correct this problematic aspect of contextualism may appear puzzling now because the position the genealogical argument supports - a position stressing the importance of peace over justice - seems itself quite conservative. As an anonymous reviewer noticed, in many transitional contexts indigenous and ethnic minorities – as usual victims of regime's oppression – are often the ones stressing the importance of justice and punishment over peace. This consideration gives me the occasion to clarify the argument. The fact that the position supported here is not one associated with actors typically playing

the same circumstances that pragmatic genealogy focus on in formulating the dysfunctionality argument – are obviously prominent candidates to this justificatory role⁵⁵. Granting them such a role, I believe, would align a contextualist approach to the issue of punishment in transitional cases with the approach of scholars, like Murphy, that take transitional justice as a peculiar kind of justice with its own guiding principles, attuned to the specifics of transitional scenarios.

Downstream, at the level of judgments, the argument maintains its relevance in that it still provides a reason against resorting to punishment to the extent that our retributive feelings recommend. In this capacity, however, this argument differs from those arguments straightforwardly stressing the importance of securing stability, reconciliation, and the conditions for peaceful coexistence against the demands for punishment that retributive justice (either for the offenders or for the victims) gives rise to. These arguments aim at tilting the scale of reasons by adding more weight to the side of peace. This can be done in a variety of ways and it is a move perfectly within the reach of contextualists as well as of virtually every theorist (see, for instance, Miller 2013, p. 64). The line of argument I proposed here contributes to the same outcome but in a crucially different way in that it does not add more weight to the side of peace but rather subtract weight to the side of justice. It does so by showing that justice's demands for punishment might be misplaced in the case at hand because satisfying them through and through would defy the very purpose for which human beings have, raise and normally respond to that sort of demands. This, of course, does not mean that this latter line of reasoning is more productive or fruitful than the former. It rather offers a valuable complement to it, supporting the same conclusion with its own resources.

a progressive role in real politics does not, I believe, invalidate my point. The reasons are two. First, because these actors do not always play a progressive role in real politics. Some ethnic and indigenous minorities, for one thing, endorse patriarchal social models and are themselves quite conservative. Second, and most importantly, because the notion of conservatism I rely on here is not informed by the contestations of real politics at all. It is purely analytical and denotes the tendency to accept with insufficient scrutiny established conceptions, views and norms. In this sense, the position my argument leads to is not conservative.

⁵⁵ In Murphy's account, these circumstances are four, namely pervasive structural inequality, normalized and collective political wrongdoing, serious existential uncertainty, and fundamental uncertainty about authority (see Murphy 2017, p. 33).

The second aspect worth clarifying about this argument concerns the character of the reason it provides. As reported in its formal version above, this reason is *prima facie*, in the sense that certain considerations may undermine it and other reasons may outweigh it⁵⁶. A consideration that would undermine this reason is that the account of punishment on which it rests is either wrong or worse than a competing one. As for contrasting reasons, it takes only a little imaginative effort to rearrange the transitional scenario in a way that gives rise to them. For instance, the people who endured the oppression of those who colluded with the overturned regime may have the possibility of (and reasons for) forming a new, separated state in which to live by themselves. In this case, they might simply disregard the concern for cooperation and peaceful co-existence and thus resorting to punishment as extensively as they think appropriate. Or it might be the case that not punishing wrongdoers enough will let resentment mount in the population, thus jeopardizing peace⁵⁷. These are all valid points I neither want nor need to deny. I do not need to deny them because arriving at a justifiable deliberative output on complex issues such as the role punishment should play in transitional cases will necessarily involve a delicate balancing of reasons pulling in different directions. Having provided a valid and original input, I believe I can rest my case.

Conclusion

I started my inquiry from the problem of critical distance (CDP), a deep-seated problem for contextualist approaches and especially for theoretical contextualism, among whose endorsers there are Michael Walzer, David Miller and Andrea Sangiovanni. I then

⁵⁶ This is a declaredly unprecise characterization of *prima facie* reasons in that it embodies the defining feature of *pro tanto* reasons too. I hope that the widespread diffusion of this unprecise characterization, together with the following clarification, makes it excusable. As far as I know, the soundest way of drawing the distinction is the one proposed by Reisner. The term *pro tanto*, when applied to a reason, implies that the reason is weighty as far as it goes. Reasons of this kind may be supported by more *pro-tanto* reasons pointing in the same direction or counterweighted by others supporting some alternative. They would imply a final, conclusive or overriding reason, say, to \mathcal{P} , only if there are no other divergent *pro tanto* reasons or other considerations, like side constraints or *prima facie* reasons not to \mathcal{P} , that apply. *Prima facie* reasons, on the other hand, are in one way stronger and in one way weaker than *pro tanto* reasons. ‘The way in which they are stronger is that the fact that one *prima facie* ought to do something implies that one finally ought to do it, unless the *prima facie* ought is undermined. [...] The way in which *prima facie* oughts are weaker than *pro tanto* oughts is that the latter retain their force, even if outweighed, whereas the former may be completely inoperative if undermined (Reisner, 2013, p. 3).

⁵⁷ I am grateful to an anonymous reviewer for pushing me on this point.

proceeded to investigate possible solutions to this problem, looking for tools that could not only compensate for contextualism's lack of critical distance but also ensure some degree of action guidance and distinctiveness. Driven by Tully's and other's claims about the critical purchase of genealogical reconstructions, I compared two different approaches to genealogy and tested the most promising one against the transitional case after having shown the shortcomings of Walzer's, Miller's and Sangiovanni's approaches with respect to this case. By doing so, I showed that the Foucaultian conception of genealogy as a problematizing device does not provide any guidance for action, whereas the functionalist approach to genealogy pioneered by Williams not only supply this guidance but proves to be a particularly effective tool to deal with practices, like punishment, that are impervious to synchronic methods of functional interpretation, like Sangiovanni's one.

If the way in which I conducted the test and the way in which I interpreted the results are correct, pragmatic genealogy represents a good solution to the CDP in that it satisfies the relevant desiderata highlighted above. First, it is consistent with theoretical contextualism's assumptions and it thus satisfies the desideratum of distinctiveness. Second, it satisfies the desideratum of critical distance because it does not simply repeat the dominant conception of, or the existing norms at work in, the target practice. It rather provides a detached and autonomous perspective on the practice and its norms, from which their assumptions can be questioned. Moreover, pragmatic genealogy satisfies the action-guidance desideratum in that it does not simply highlight contradictions and inconsistencies in the practice of punishment, but it provides reasons to either uphold it or reject it. In the transitional case, this guidance found expression in a dysfunctionality argument questioning the normative standing of the practice of punishment.

Joseph Carens once claimed that contextualism incorporates an important Burkean insight, namely 'that our institutions and practices contain forms of wisdom that theories and pure reflection can hardly capture' (2004, p. 122). By claiming so, he probably pointed out a belief that many contextualist political theorists share, implicitly defend or at least indirectly support. Now, Carens *might* be right. There might be some form of wisdom in the social meanings that we happen to share, in some of the relationships we establish, in certain institutional arrangements and in some of the

practices in which these elements are often intertwined. Moreover, it is certainly possible that this wisdom *might not* be evident from the purely theoretical standpoint of abstract and universal principles. However, we cannot simply assume that such wisdom is there. If we want to stick responsibly to contextualism and compensate for its lack of critical distance, we need a tool to assess whether our practices contain any wisdom and, if they do, to bring this wisdom to light, so that the justificatory role assigned them by contextualists can be questioned and, if warranted, validated. In this paper, I argued that pragmatic genealogy can be such a tool, because it can help us see through the mist of historical contingency and discern, in light of the needs they address and the functions they serve, how far certain practices are worthy of our allegiance.

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Between explaining and justifying: The logic and import of functionalist vindicatory explanations

Introduction

The relationship between explanation and justification had been discussed quite extensively in moral philosophy, but in a rather unidirectional way. From a metaethical perspective, philosophers debated over the explanatory efficacy of normative facts and properties (Sturgeon 1985, Brink 1989, Railton 1998, Harman 1977, Audi 1997, Thomson 1998); From a normative perspective, a lot of ink have spilled over the motivational and thereby explanatory powers of moral beliefs with respect to actions (see Rosati 2016). In this paper, I revert this direction of inquiry and investigate the normative powers of a certain class of explanations. I will discuss the notion of ‘vindicatory explanations’ or, more succinctly, ‘vindications’, provisionally understood as that class of explanations that provide both a cause and a rationale and that seem to offer reasons to embrace, uphold, support or affirm their explanandum⁵⁸. So far, this notion received little

⁵⁸ As far as I know, the first occurrence of the term dates back to Herbert Feigl, who employed it to label a specific kind of pragmatic justification consisting in showing that the object of justification serves some relevant purpose. Feigl drew a contrast between vindication and validation – the standard conception according to which justification is delivered through appeals to norms, standards and principles - claiming that only the former represents a viable solution to the infamous problem of ultimate or final justification. On Feigl’s account, justification is a linguistic game that can escalate quickly in increasingly radical questions behind which lurks the threat of infinite regress. Validating conceptions of justification eventually stumble upon principles they cannot give further reasons for but when questions arise about these principles these conceptions are either likely appeal to intuition or to resort to circular arguments. Vindications, on his view, represent a solution by showing instrumental linkages between the target of justification, on the one hand, and goals and purposes pragmatically related to a common human nature (Feigl 1950). Beside a reappearance, but in a rather different key, in the philosophy of David Wiggins (Wiggins 2002 [1987] pp. 200-209; 344-348)⁵⁸, the notion of vindication re-emerged only with Bernard Williams, who employed it to describe genealogical explanations of an outlook or set of values capable of strengthening one’s confidence in them (Williams 2000, Williams 2002, p. 36; 238).

if no attention. The only exception concerns the debate on genealogies as conducted by philosophers (Queloz 2020a) and evolutionary, cognitive and moral psychologists interested in the philosophical import of their disciplines (Kumar 2017, Kumar 2018, Sauer 2018, pp. 209-217). In this context, however, vindictory explanations are typically characterized as the opposite of debunking explanations and it is the latter that received the lion's share of attention. Therefore, I shall not spend the pages to follow arguing for or against specific views, but rather laying down what I think is the logic and the practical import of vindications vis a vis justifications.

As I shall clarify further in the first section, there are several types of vindications available, i.e. several ways of connecting the explanatory and the normative domain. The class I will be mostly concerned with is the one I call 'functionalist vindications', i.e. explanations of practices, beliefs, specific sets of moral intuitions and other phenomena identifying their cause in the instrumental relation they entertain with some independent value. This class is particularly interesting because it brings into focus the potentially problematic relationship between justification and vindication. Indeed, it is worth noticing that different scholars envisaged this relationship in different ways. On the one hand, consider Kumar's empirical vindication of moral luck, according to which the practice of holding people responsible for deeds they were not totally in control of is best explained by the functionality of the practice in securing effective moral learning (Kumar 2018). For Kumar, this vindication should draw us away from the deontological reasons ruling our judgments of responsibility and blame toward a form of indirect consequentialism, because the fact that an indirect-consequentialist justification is mirrored into the very etiology of the phenomenon at least shows that that justification is not a mere rationalization. On the other hand, consider Queloz's vindication of the practice of blaming, which he explains – following Fricker - in terms of its function of attuning the moral consciousness of the blamers, the blamed and the possible bystanders. In contrast with Kumar, Queloz urges to maintain justification and vindication separated. On his view, the functionalist vindication strengthens the authority, but does not affect the independence of the deontological reasons on which judgments of blame are normally based (Queloz 2020b). These are two views of the relationship between vindication and justification and I want to clarify from the outset that the following pages will leave this

issue relatively untouched. What I shall focus on is rather the logic and the practical import of the former vis a vis the latter.

In fulfilling this task, I shall argue that vindications are a class of explanations defined by their capacity to perform, to some extent, the same functions of justifications, which I identify in a defensive function – protecting the agent from negative responses to its actions – and in a pro-active function – convince, persuade and lead others to agree over the appropriateness of an action, a behaviour, a practice, a policy and so on. I will illustrate how vindications can do so by focusing on actions and practices supported by agent-relative reasons, i.e. by reasons the authority of which cannot be understood without an essential reference to a specific (kind of) agent (Van Willigenburg, 2005)⁵⁹. The reason for this choice is that some agent-related reasons are problematic from a justificatory standpoint because certain considerations are reason-giving for some agents but not for others. What vindications can do in this respect – what I take to be their most significant practical import - is to offer a defence of the agent-relative reason-giving force of certain considerations, i.e. to offer agent-neutral reasons in favour of certain agent-relative reasons. In the final section I will have something to say about the type and strength of the reasons provided through vindications but before that I shall refine the idea of vindication by resorting to the notion of normative explanation, i.e. an explanation of why things have the normative features they have. I will show that vindications are a type of normative explanations because they satisfy the justificatory condition that normative explanations must satisfy to count as such, namely that of going some way towards justifying certain responses to their object (Väyrynen, 2019).

1. Outlook, terminology and basic concepts

The notions of explanation and justification have been subjects of extensive debates in epistemology, moral philosophy, philosophy of science, philosophy of action and in many other fields. The only domain in which I shall investigate their intersection is the practical one. This means that my concerns shall be limited to explanations and justifications of actions, reactions, attitudes, behaviour, policies, practices and other items related to the

⁵⁹ The concept of agent-relative reason has been introduced, under a different label, by Thomas Nagel (1970). Parfit (1984) later introduced the current terminology.

sphere of human agency. I will not consider whether my arguments hold any validity in the domain of theoretical reason, nor I will address the relationship between the practical and theoretical domain as far as the notions of explanation and justification are concerned. Delimiting the scope of my arguments in such a way removes some variables from the discussion. Yet there remain various competing accounts and definitions of both explanation and justification. It is not without relief, however, that I can point out that there is no need to get lost in the weeds of this variety to get my argument off the ground. On the contrary, we can rely on a rather minimal and everyday view of these notions by focusing on what justification and explanation typically do (the point and purpose of resorting to them) as opposed to what they ultimately are (the necessary and sufficient conditions engendered in their possible definitions).

Let me start with justification. I maintain that demands for justification arise from disagreement or in the face of problems related to the character, the consequences, or the goals of one's action. In fact, when this is not the case, demands for justification are typically perceived as inappropriate. Think, for instance, about how awkward it would be to demand a friend to justify her behaviour just because she answered a phone call while hanging out with you. Sure enough, her action may be rationally justified in the trivial sense that she had enough reasons to support an all-things-considered judgment to the effect that picking up her phone was the rational thing to do - but nothing in such an action seems to require a justification. In other circumstances, however, such a requirement legitimately arises. For instance, you may reasonably demand a justification if your friend picked up her phone in the middle of your full-hearted mourning over your recent break up. In these circumstances, you would feel the intimacy of the context and the expectations of care and attention linked to your friendly relation disregarded, and this certainly calls for a justification. The point is that to have a disagreement or a problem at all – and thus for demands of justification to arise - there need to be two or more judgments about the action in contrast with each other. One of these judgments may come from others or by the agent herself, in the case she is of two minds. But be it another person or one self's hypostasis, justification requires a puzzled audience and typically requires arguments complying with standards (of rationality, morality or of other kinds) accepted or acceptable by the audience at hand.

But what is justification for? As Herman notices, justification seemingly fulfils a variety of functions: ‘legitimizing actions, attitudes, institutions, and practices, avoiding blame, demonstrating one’s innocence, reaching agreement on binding rules, convincing dissenters’ and possibly many others’ (Hermann, 2015, p. 84). To reach a more definite answer, I propose to simplify this variety by distinguishing between two general clusters of functions. The first may be defined as Defensive. In this respect, justification appears as a tool to protect the action (and thus the agent) from negative responses like blame, reproach, scorn, discredit, rebuke, resentment, regret and so on. For lack of better terms, we may generally refer to these negative responses as ‘disdain’⁶⁰. The second cluster of functions may be defined as Pro-active. In this respect, justification appears as a tool to secure agreement and persuade others of the worthiness, reasonableness, morality or rationality of one’s (proposal for) action. Now, these two clusters of functions are typically continuous with one another, in the sense that the more reasons in favour of doing one’s action can be provided, the more likely it is for the agent to avoid disdain and vice versa. However – as I shall clarify in a second – bear in mind that this is not always the case: there might be cases in which justification succeeds in deflecting disdain whilst failing to secure agreement about the appropriateness of an action.

It is worth noticing that what kind of reasons and standards are relevant and effective in justifying one’s action or behaviour depends, among other things, on variables like the role of the agent and the relevant audience. For instance, a head of marketing whose campaign failed to achieve the expected results, once summoned by his CEO, can appeal to a limited range of reasons to justify her work. She can appeal to strategic reasons deriving from best practices in her field, to budget side-constraints, to the intervention of unpredictable external factors and the like. Moral reasons, in this respect, constitute an interesting exception. Some philosophers maintain that moral reasons (or at least some sub-species of moral reasons) are overriding, in the sense that it is never rational to act against what morality requires. Others maintain that moral reasons cannot, by themselves, foreclose deliberation and are thus to be weighted together with other kinds of reason to reach a sound all-things-considered judgment. What nobody denies is that moral reasons

⁶⁰ One may further distinguish between kinds of normativity on the base of the specific negative responses that their violations trigger. Darwall (2013), for instance, identifies the distinctiveness of moral normativity in its unique relationship with reactions such as blame and resentment.

have a considerable specific weight. There may be little agreement on how moral reasons should be defined but once we consider that they are typically other-regarding, it is not difficult to account for their high specific weight⁶¹. Indeed, as other-regarding, moral reasons typically appeal to others' interests, needs, rights and are thus a useful tool both for securing agreement and for deflecting disdain regardless of the context and particular audience. This is not meant to deny that moral reasons are often disregarded by some of those demanding justification. Coming back to the case of the marketing strategist, let's assume that she did everything she could to make the campaign work, that the only way to possibly avoid the failure of the campaign was to lie about the products advertised, and that she provides these two statements to the CEO to justify herself and her work. There is no doubt that some CEO may think that the first statement is in contradiction with the second, but this does not mean that moral reasons – as engendered in the second statement - are sometimes irrelevant to justification. Indeed, they would appear in all their importance if the relevant audience (namely, the CEO *and* all the consumers that would have been deceived) was equally represented in the room.

Let me now move to explanation. As in the case of justification, there are plenty of things that an explanation typically does or allows for in the practical domain. For instance, managing to explain somebody's actions affords some degree of prediction about her future behaviour. In a social environment, insights so retrieved allow elaborating expectations about her future actions and these expectations, in turn, can inform one's behaviour and plans. Moreover, explaining somebody's action also allows to properly evaluate both the action and the person performing it in a variety of terms. For my purposes here, suffices it to say that explanations usually aim at making sense of one's action and thus at understanding the dispositions, the deliberative patterns and the goals of the agent⁶².

⁶¹ I do not take other-regardingness as a necessary trait of moral reasons, only as a rather typical one. Indeed, there may be moral reasons to defend nature and duties toward one's self, as Crisp (2018, p. 801) correctly points out.

⁶² This simple description holds also when the behaviour to be explained is one's own or that of a human group (or of humanity as such). Introspection and psychology are tools to make sense of one's puzzling behaviour (e.g. a nevrosis, obsession, addiction etc.), which may not always be transparent to the agent. In the same way, ethnography and anthropology are disciplines providing tools to make sense of practices, customs, symbols and many other things at a more general level.

Both justification and explanations are concerned with reasons, but with two different kinds of reasons. Justifications are concerned with normative reasons, by which I mean, following a widely accepted view, considerations referring to properties or facts about actions that count in their favour (Raz 1975, Scanlon 1998, Parfit 2011). Explanations, on the other hand, are concerned with explanatory reasons, which I take as offering an account, or part of an account, of what motivated someone to act. As far as the relationship between justification and normativity is concerned, there is an important distinction among normative reasons to be made. This is the distinction between agent-neutral and agent-relative reasons. The latter are reasons whose authority cannot be understood without an essential reference to a specific agent and his particular projects, relationships or commitments. The former are reasons whose authority does not depend on such reference; they are reasons for virtually anybody. Now, agent-neutral reasons are particularly apt to feature in the justification of one's action. If virtually everybody can share them and recognize their authority, then my capacity to appeal to them in justification will make it more likely successful, both in what I called a defensive and pro-active sense. Agent-relative reasons are more problematic from a justificatory perspective. Some agent-relative reasons, like specific deontological duties related to roles and professions of individuals, can effectively feature in the justification of one's action, at least in a defensive way. I take this to mean that although such reasons may lack pro-active authority for the audience, the audience may nonetheless respect them as reasons for the agent and recognise them as legitimate. Members of the audience would have acted differently and may thus disagree with the agent about the idea that the course of action she chose is ultimately justified in a pro-active sense, but they may nonetheless consistently maintain, at the same time, that she was justified in taking the course of action she took, in the defensive sense that she is not to be resented, blamed or disdained for it.

Some other agent-relative reasons are even more problematic, in that they cannot even perform this function. What I have in mind are reasons deriving from personal idiosyncrasies and, most prominently, from specific cultural norms. In the latter case, the agent is to be understood in the plural, i.e. as a class of individuals sharing some norms and taking some considerations as reason-giving. These are more problematic than reasons related to social or professional roles because outside the relevant context they

seem, from a justificatory standpoint, inert. Consider the case of some populations in the South Pacific, for which the consideration that performing a certain apparently trivial action would be taboo is a reason for abstaining from it. Outside the social context in which the norm is shared, the consideration that an act is taboo is not reason-giving: neither in the sense that it may count as a defence were the action to be avoided, nor in the sense that it can be summoned to persuade others to avoid it.

In what follows, I will try to show that in some cases some of these problematic agent-relative reasons and their authority can be explained in such a way as to provide both a cause and a rationale, thus performing, to some extent, the functions of justification even when justification is nowhere to be seen. These sorts of explanations, as I anticipated, I shall call vindications. Before discussing some cases, however, it is worth addressing a possible misunderstanding. The intertwinement between explanation and justification involved in the concept of vindication might lead one to think that such a concept represents a misguided attempt to bridge the gap between ‘is’ and ‘ought’. However, I believe that some clarity about the structure of vindications suffices to dispel this impression and to support the idea that there is nothing misguided, in principle, in the concept. In its most basic form, vindication is best described as structured in an argument comprising an empirical (explanatory) and normative (justificatory) premise. Taking *X* as the object and *P* as the causal process, reported in the explanation, that brought it about, the two premises combine in the following way:

- 1) *X* is formed (produced/brought about etc.) on the basis of *P*
- 2) *P* is reliable (trustworthy/non-defective etc.)
- 3) Therefore, *P* is to that extent vindicated⁶³

As mentioned in the outset, I shall focus on functionalist vindications, by which I mean those sort of vindications that flash out the normative premise by establishing an instrumental link between an object *X* and some independent value. What I have in mind are, for instance, explanations of taboo in medical or ecological terms – explanations that

⁶³ I take this scheme from (Sauer, 2018, p. 212).

link the existence, persistence and resilience of a norm or a practice with basic needs or interests that it arose to secure. In the next section, I lay down two more specific examples. For now, let me clarify what I mean by ‘practice’. With the term ‘practice’, I shall refer to a pattern or regularity of behaviour among a group of agents. I maintain that, for this regularity to obtain, there must be some normative feature, implicit and undefined as it might be, at work in any given practice (the very concept of “norm”, after all, refer both to something usual and standard as well as to a rule, a principle or some action-guiding element). Following Sangiovanni and relying on Southwood’s account, I identify this normative feature in the “pro-attitude” of participants to the practice towards the relevant behaviour (Sangiovanni 2016, p. 3; Southwood 2011, pp. 774-5). I maintain that these pro-attitudes can be treated as beliefs with a minimal propositional content expressed in the paradigmatic form ‘practice Y is legitimate/appropriate/good’ and that these pro-attitudes, in turn, might be part of a wider set of beliefs, dispositions and attitudes supporting the practice. To keep the concept of practice flexible enough, we can leave here two questions open. First, where these pro-attitudes derive from (explicit rules, implicit norms, shared values, or mere conventions are all possible candidates); Second, how much reflection is involved in their obtaining (some pro-attitudes might be relatively irreflective and sustained by nothing more than customs, while others might be more explicit and sustained by a whole set of beliefs and arguments).

2. Case studies

Depending on the level of description, practices may range from anthropological cases to culturally specific ones. For instance, punishment as such is likely to be a practice of the former kind, in that most human societies impose some sort of sanctions on certain actions and behaviours of their members. Yet the more details we feat in the description, the more specific practices are singled out. Sticking to the case at hand, different human groups differ in terms of the actions and behaviours they deem worthy of punishment, the range of individuals they deem punishable and how they punish them. Sanctioning adultery, convicting minors or drug users and carrying out the death penalty are all less than universal practices on whose value participants and outsiders sometimes disagree. Practices of this more specific sort, we may say, are often supported (among other things) by what we may reasonably consider as agent-relative reasons, in that participants and

outsiders are likely to disagree on whether certain considerations have normative reason-giving force. Leaving the taboo case aside and remaining closer to home, the consideration that some act is an intentional murder is for many supporters of the death penalty a reason to carry it out on the murderer, whereas for those who oppose the practice it is not. This does not mean that disagreements about the justifiability of a practice are stuck at the level of conflicting intuitions. Obviously, both participants and outsiders to the practice can and often do rely on more neutral terms for sorting out disagreement. What it does mean is that disagreement about the justifiability of a practice between participants and outsiders is often (and plausibly) rooted in different intuitions about the normativity of certain considerations. And as far as this is the case, it makes sense to talk of certain practices as supported, among other things, by agent-relative reasons.

Consider the following two examples. A first interesting pattern of behaviour is constituted by the tendency to react with anger and violence to perceived offenses in so-called ‘honour cultures’⁶⁴, i.e. in societies in which honour is a central value. Reacting to offences is certainly a widespread behavioural phenomenon, yet members of these societies display higher responsiveness to acts perceived as attacks to one’s honour. For these groups of agents, we may say, the fact that something counts as an attack on one’s honour is a reason to react, or at least it is a reason to react more often and easily than it is for outsiders.

A second interesting case is liberalism. Indeed, liberalism is not only a political doctrine but also a way of arranging society – what we may call a practice of government – particularly concerned with tolerance as historically established into a certain set of individual rights. Oversimplifying, we may say that the fact that a policy would forbid someone to act in a certain way, although acting in this way would not interfere with anyone’s else liberty, is for liberals a reason to dismiss the policy, whereas for other it is not. Besides this, it is reasonable to assume that both practices are held in place by pro-attitudes and accessory sets of beliefs, as in the general description provided above. Whether these practices are ultimately justified (either morally or all-things-considered),

⁶⁴ On honour cultures, see (Peristiany 1966, Fields 1991, Appiah 2010, Barnes et al. 2011). For further references, both philosophical and anthropological, see Demetriou (2014).

to what extent they are so and to who is irrelevant here. What we need to consider is whether they might be vindicated – whether a credible explanation of their arising can lend some support to them.

There are two possible vindicatory explanations of why individuals participating in these practices came to see certain considerations like the ones stated above as reasons in their favour. As for honour societies and the reactive tendencies of their members, Nisbett and Cohen (1996) proposed the following and now widely accepted explanation⁶⁵. Focusing on states in the south of the U.S., Nisbett and Cohen argued that the increased sensitivity of Southerners to offenses can be explained by referring to socio-economic conditions. According to their theory, these reactive tendencies associated with honour are likely to arise in societies in which propriety is portable and there are no reliable institutions enforcing property rights. In these social circumstances, an agent's honourableness – expressed in violent reactions to attacks, threats and insults – serves a signalling function, communicating to would-be attackers and thieves that the agent is not one to mess with. The American South – as many other 'honour societies' – had a considerable portion of its economy based on cattle. Moreover, it was mainly colonized by immigrants coming from herding areas of the North of England. On such an account, the socio-economic environment and the attitudes of individuals living in it, over time, attuned to one another to produce the relevant pattern of behaviour.

A similar explanation may be proposed for liberalism. Following Rawls (Rawls, 1996 [1993]) and Larmore (1996), liberalism may be understood from a historical perspective and as a way to exercise political power attuned to the conflictual and exacerbated religious pluralism European States had to put up with in the XVI and XVII century. From the age of the late Roman Empire throughout the middle age, Christianity became the dominant creed in Europe and played an increasingly political role, especially as a source of legitimacy for the monarchies of the continent. Religion and political power grew intertwined with one another. Such an intertwinement between religion and politics was not peculiar to Europe. What was peculiar is the character of the religion, because Christianity was and still is a salvationist, proselytizing and authoritarian creed. These

⁶⁵ For a contrasting view, see (Demetriou, 2014).

doctrinal features provide a good account of why the loss of Christianity's institutional and doctrinal unity, brought about by the Reformation, resulted in a plurality of reciprocally hostile confessions, backed up by secular powers, that conflicted with one another in the Wars of Religion of the XVI and XVII century. After these blood baths, we observe in the policies of many European states a slow but steady revisionist attitude toward what was arguably, to that moment, the basic assumption of politics, namely that civil peace and religious unity were co-dependent. The political sphere and the religious one began to come apart and toleration, of which liberalism is certainly a child (Forst 2013, p. 171), became an increasingly successful tool for securing civil peace⁶⁶.

Both these explanations are what we may call just-so stories, in the sense that, however plausible, they may be rather simple explanatory rationalizations of complex phenomena lacking anthropological and historical support. They are putative explanations that may be falsified and challenged on different grounds. However, it is worth reminding that as much as we know what they lack and how they might be challenged, we have an equally clear mind about how they might be strengthened. For instance, the former account might be enriched by comparative ethnographical studies and by the provision of a causal mechanism accounting for the fit between social circumstances and the axiology of the group⁶⁷. The same holds for the latter, which may be further supported by a greater amount of details about how tolerance ended up becoming an entrenched value both at the policy and cultural level⁶⁸. At any rate, the epistemic status and robustness of these explanations shall not primarily concern us here.

⁶⁶ The peace of Westphalia (1648) put to an end to the thirty years war by reinstating the pivotal principle firstly affirmed in Augusta almost one hundred years earlier: "cuius regio, eius religio". Yet it enriched it with the clause that Christians living in principalities in which their confession was not established could practice their faith in private and in public during designated hours.

⁶⁷ Kumar (2017, 2018) did precisely this, showing that model-based moral learning, as theorized by Crockett (2013) and Cushman (2013), represents a fitting mechanism in this and other cases.

⁶⁸ History, moral psychology and political sciences provide a rich and underexploited array of materials to explain this fact. At the policy level, one may resort to lesson-learned mechanisms, which are often appealed to by political scientist working on foreign policy. See for instance Levy (1994). At the cultural level, experimental results from social psychology show that individuals coming from different and hostile groups, once put in the same territory and in the need to cooperate, develop less hostile attitudes. See for instance Sherif, et al. (1988). As for history, see Brown (2019) about the empathogenic effect of depictions of violence and Frisch (2015) about the role of popular literature to the same effect.

Let's assume, for the sake of the argument, that these explanations retain a good claim to be true. Are they vindicatory?

To answer this question is necessary to go back to the general form of vindications and to note that all we have up to this point is the empirical premise of the argument. We still need a normative premise, i.e. a reason to think that the causal process reconstructed in the explanation is, in some sense, reliable. A promising way to substantiate this premise in both cases is to claim that the process is functional in that its outcomes can be regarded as responsive to what we have all reasons to take as fundamental basic needs. In the Southern case, retaining one's property is a relatively uncontroversial need whose satisfaction goes beyond its prudential value, because it is of great importance not just for the single individual but for his family and community as a whole (Kumar, 2017, p. 130). In the case of liberals, the need for securing social peace - arguably the most fundamental task of politics as such - seems equally straightforward. In both cases, the explanations successfully provide explanatory reasons whose normative salience is recognizable not just by individuals already committed to the practice, but to outsiders as well. However, such a functionalist way of spelling out the normative premise invites a further evaluation before granting the explanation a vindicatory status, because the circumstances in respect to which a practice and its supporting beliefs are functional may not obtain any more. As Smyth correctly noticed, functional explanations of this sort thus need to satisfy an important condition for claiming any justificatory relevance. They should avoid continuity failures (Smyth 2017, Queloz 2020a), meaning that the functional insights provided through the explanation must prove to be valid not just in the circumstance in respect to which the practice and its supporting beliefs originally had a point, but also in the current circumstances.

Once introduced, this clause imposes to distinguish the two cases. The responsive and potentially violent behaviour triggered by the logic of honour does not seem to satisfy the continuity clause. Southern American states nowadays rely on pervasive and established institutions of law-enforcement and cattle accounts for just a portion of the regional economic system. In such a context, the behaviour ceased to make any positive difference and one may even argue that, under current circumstances, it is dysfunctional.

If this is the case, what seemed a vindictory explanation would turn out to be a debunking one⁶⁹. On the other hand, liberalism and its underlying commitments to tolerance and liberty seem to be in a different predicament. To be sure, the kind of pluralism that contemporary liberal societies are confronted with is less radical and conflictual than the one which gave rise to the first proto-liberal arrangements. Moreover, social peace is nowadays safeguarded by established institutional frameworks. Nonetheless, the polarizing and identitarian dynamics at play in contemporary liberal democracies suggest that the value of those commitments, in citizens as much as in politicians, has still an important role to play (Testini 2020, pp. 13-14; Levitsky & Ziblatt 2019, pp. 97-106). If this is correct, the explanation has a good claim to a vindictory status.

This explanation brings to light the reasons why some agents (in this case, a group of individuals engaged in a practice) takes certain considerations as normative reasons (supporting the practice and substantiating pro-attitudes toward it). In this case, the explanation illustrates the functional relationship between the practice and some uncontroversial needs and, once supplemented by arguments to the effect that this relationship still obtains, it goes some way toward justification. Once again, however, this does not mean that whoever receives such an explanation is thereby provided with a normative reason to support, embrace, commend or act in accordance with the practice. The vindication falls short in pro-active terms because, for one thing, the audience may consist of members of a society in an entirely different predicament (I will come back to this issue in the conclusion). The proximity between the vindictory explanation and justification rather means that the audience, however different its predicament may be, is provided at least with a reason to not disdain the practice and its participants.

3. Vindications as normative explanations

The cases discussed showed that there are circumstances in which agents act in compliance with a practice supported by agent-relative reasons whose authority may not be perceived by outsiders. Some of these reasons are problematic from a justificatory point of view and yet, as we saw, vindictory explanations of why the agent came to have

⁶⁹ More specifically it represents, in Sauer's term, a case of 'debunking from obsolescence' (Sauer, 2018, pp. 33-35).

those reasons can go some way toward warranting their normativity and justifying, at least in a defensive sense, the action or practice supported by those very reasons. In this section, I want to refine this understanding of vindication and I shall do so appealing to the concept of normative explanation. The conceptualization of normative explanation offered by Väyrynen, I will show, provide a useful framework in which to locate vindications and will be helpful to understand their logic.

Normative explanations are ‘explanations of why things have the normative features they do’ (Väyrynen, 2019, p. 1). A policy, for example, is right because it allows higher education to be distributed in a way that is sensitive to brute luck in circumstances of birth and upbringing. Similarly, helping a shelter for homeless people is good because it contributes to relieving misery. Normative explanations such as these may be unpacked as follows:

- 1) a normative consideration N (‘the policy is right’) substantiated by a predicate linking
 - 1.1) a constituent object ψ (‘the policy’) with
 - 1.2) a normative feature n (‘right’) and
- 2) the explanation of why N obtains, NE (‘because it allows access to higher education in a way that is sensitive to brute luck’)⁷⁰.

One may reasonably wonder what distinguishes normative explanation and justification. A first answer Väyrynen provides is that they have different relata. Normative explanations are concerned with normative considerations of the type N illustrated above (predicates of the form ‘ ψ is n ’ or ‘I ought to ψ ’)⁷¹ whereas justification

⁷⁰ Väyrynen talks about normative facts, but he is quick to add that who is allergic of talks about normative facts is free to substantiate the expression normative facts with any deflationary account he prefers (2019, p. 6). I will push this freedom a little further and talk instead of normative considerations. This choice is not grounded in any deep scepticism about normative facts, but just in a prudential metaphysical agnosticism. By normative consideration, I mean a linguistic utterance referring to what is taken to be a fact about, or a property of, an action. By maintaining the linguistic dimension involved in the notion of consideration, I leave open the question of whether the facts or properties denoted are dependent or independent from the mind of who utter them.

⁷¹ The term ‘normative explanation’ should be understood broadly, as encompassing both evaluative ‘facts’ (x is good, x is right etc.) and normative ‘facts’ tout court (I ought to x, I must do x etc.).

concerns the constituent object ψ as such. One may reasonably be sceptical about this characterization and opt for taking normative explanations simply as justifications of normative considerations. However, this is a mostly terminological issue that needs not to be addressed here, especially because the distinction between normative explanation and justification is not supposed to be sharp. Väyrynen is indeed willing to concede that ‘normative explanations are (perhaps among other things) justifications’ (2019, p. 2) and there is certainly nothing mistaken about taking normative explanations as providing normative/justificatory reasons in favour of ψ . But even more to the point, the very notion of normative explanation that Väyrynen proposes is defined by a justificatory condition – call it *NEJ* - that he formulates as follows: ‘for any particular normative [consideration] N , a correct complete normative explanation *NE* of why N obtain must identify features that goes some way towards justifying certain responses to (the constituent object of) N (2019, p. 4). In other words, among the many things that explain why something is good or why I ought to do something, there must be at least one that makes responses such as preaching, commending or supporting appropriate⁷². Otherwise – depending on the account of explanation one embraces - the explanation is either incomplete, erroneous or not an explanation at all.

Vindications, like normative explanations, are explanations of why certain things have the normative features they have, but in a rather different sense than the one intended by Väyrynen. They feature reasons why rather than normative reasons, bringing to light the reliable causal process that led certain agents to see certain things as endowed with normative value and to take certain considerations as reasons for doing something. Therefore, one may legitimately be sceptical about the possibility of qualifying vindications as a kind of normative explanations. However, it is possible to do so because vindications satisfy the justificatory condition.

To illustrate this point, consider once again the cases discussed before. It is important to notice that what reactions will be justified through a normative explanation depends, as Väyrynen himself recognizes, on the specific normative features predicated in the normative consideration. Although he focuses on cases in which the variable n is

⁷² On the controversies related to the issue of complete explanations, see Väyrynen (2019, pp. 5-6).

substantiated by paradigmatic features such as ‘right’, ‘good’, ‘ought’ and thus on straightforward responses such as ‘cherishing’, ‘promoting’ and ‘commending’, it is not hard to expand the view to other possibilities. For instance, if what is predicated of the constituent object – say, ‘reading fiction on my spare time’ -, is its permissibility, then it seems safe to say that others are justified in tolerating it. In the same vein, if something – say, ‘dedicating my life to save the life of starving children’ -, is heroic, then it is likely that others are justified in admiring it. The cases we introduced before, however, bring into the picture a further variation, namely a reference to a specific agent. This means, as we saw, that the normative authority of N is agent-relative and, as we shall see, this fact has interesting implications both for the kind of responses that will result justified and for the identity of persons justified in having them.

Taking the Honour culture case discussed before and applying the notation related to normative explanations (while rendering the agent-relativity of N with $N_{(a)}$), we obtain the following scheme:

$N_{(a)}$: ‘Responding to offenses, even violently, is honourable (and one ought to do what is honourable)’

Ψ : Responding to offenses (thereby doing what is honourable)

n : ought

Now assume that there is a vindicatory explanation obtaining, of the sort provided in the previous section, and take this vindicatory explanation as putative normative explanations (NE)⁷³. Does NE ‘goes some way toward justifying certain responses to the constituent objects’? As we saw in the previous section, it does, and the distinction between justified and unjustified responses tracks the one between the Defensive and the Pro-active functions of justification I distinguished at the outset. Assuming that the circumstances are still such as to make the responsive attitudes of agents in the relevant group functional (assuming, for instance, that they are members of a herding society with

⁷³ In the southern case, this requires imagining that either the socio-economic circumstances that made the practice originally functional remained the same or that we are considering their case back into a time in which those circumstances obtained.

no law enforcement institutions), the vindication showing this functionality exclude judgments in terms of barbarity, blaming and outright condemnation as legitimate responses from the audience. Yet nothing in the vindication invites or justifies responses such as preaching, promoting, commending or praising. These responses pertain to what I called the Pro-active role of justification and express the recognition, by the audience, of the constituent object as worthy of their endorsement. This function is left unattended because the vindications here provided explain why the agents came to be moved by certain considerations in a way that warrants their authority on the agent, but it does not provide to the audience, ex hypothesis unmoved by them, with a reason to recognize their authority as well. The only subject to which vindications provide a reason in favour of N and its constituent object Ψ is the agent.

4. Kinds of reasons

So far, we determined that the explanatory reasons provided through vindications are such as to retain some normative potential, in the sense that they can support the reason-giving claim of certain considerations, at least for the relevant agent. This support may not be strong enough (or such as) to lead others to personally endorse and commend these considerations as reasons they can share (more on this in the conclusion), but it can affect others' evaluation of these considerations, of the action that stems from them and, ultimately, of the agent. We defined, in other words, the normative range of the reasons provided through vindications. But their strength remains to be assessed. This task is not as easy as one may think. One can reasonably exclude right away that reasons provided through vindication may be final or overriding. Granting a final normative status implies that there is no further or more forceful normative consideration to make and its certainly beyond the capacity of vindications to saturate the space of reason in such a way - because moral justification and vindication may pull in different directions, for one thing. However, even once we exclude the possibility of granting these reasons a final status, it needs to be determined which kind of non-final status these reasons enjoy.

Non-final reasons are either *prima facie* or *pro tanto*. Philosophers often fail to distinguish between these terms and sometimes embrace incompatible definitions. It is then unsurprising that even the few who dedicated some attention to the notion of

vindication failed to distinguish between them⁷⁴. As far as I know, the soundest way of drawing the distinction is the following, proposed by Reisner. The term *pro tanto*, when applied to a reason, implies that the reason is weighty as far as it goes. Reasons of this kind may be supported by more *pro-tanto* reasons pointing in the same direction or counterweighted by others supporting some alternative. They would imply a final, conclusive or overriding reason to Ψ only if there are no other divergent *pro tanto* reasons or other considerations, like side constraints or *prima facie* reasons not to Ψ that apply. *Prima facie* reasons, on the other hand, are in one way stronger and in one way weaker than *pro tanto* reasons. ‘The way in which they are stronger is that the fact that one *prima facie* ought to do something implies that one finally ought to do it, unless the *prima facie* ought is undermined. [...] The way in which *prima facie* oughts are weaker than *pro tanto* oughts is that the latter retain their force, even if outweighed, whereas the former may be completely inoperative if undermined (Reisner, 2013, p. 3)⁷⁵. Which of these descriptions fit the reasons provided through vindication?

The normative explanation model comes to help in answering this question by supplying the distinction between the normative consideration $N_{(a)}$ and the constituent object Ψ . Indeed, I submit that the answer changes depending on which of the two we take as the relevant object of the vindicatory explanation NE. Let me explain why.

As far as $N_{(a)}$ (i.e. agent-relative reason-giving considerations such as ‘responding to offenses, even violently, is honourable and one ought to do what is honourable’) is concerned, vindications seem to provide *prima facie* reasons to embrace it. If the vindication featuring as normative explanation NE is correct, the agent is provided with a final reason to take the authority of $N_{(a)}$ as justified. In other words, a vindicatory account of how the agent came to hold $N_{(a)}$ as a consideration endowed with normative force provides the agent with a potentially final reason to affirm $N_{(a)}$, to keep thinking that $N_{(a)}$ obtains and so on. Being *prima facie*, however, these reasons in favour of $N_{(a)}$ may be undermined so to lose all their normative force and it is rather easy to discern

⁷⁴ Kumar, for instance, treats the two as synonyms. See Kumar (2017, p. 131)

⁷⁵ I am treating reasons and ought statements as equivalent, but it is worth noticing together with Reisner (2013, p. 2) that, under certain characterizations, they can come apart - at least in the epistemic domain. For instance, if one conceives reasons for beliefs as depending on evidence, there might be a threshold of available evidence to raise above in order to say that one ought to believe something.

what may undermine them. Vindictory explanations (like all explanations) may be falsified, defeated or confronted with more appealing competitors. Consider once again our previous example. The confidence of honour culture members in the idea that ‘responding to offenses, even violently, is honourable and one ought to do what is honourable’ may be shaken if the explanation of Nisbet and Cohen was proved to be flawed. And if the account is explanatorily flawed, then it becomes justificatory void. In sum, it seems reasonable to conclude that as far as the vindication retains a strong claim to be true or the best available one, the agent would be *prima facie* justified in affirming N(a) and to see it as valid.

However, it does not follow that the agent is thereby provided with a *prima facie* reason in favour of Ψ because, even under the assumption that the vindication is not undermined, there might be other reasons to be weighted by the agent in deciding whether to Ψ or not in any given set of circumstances. For instance, on certain occasions, there may be precautional or moral reasons against Ψ and these reasons may outweigh the others. A southern provided with a vindication of the responsive and violent patterns of behaviour that honour triggers among his people may choose not to conform to it anyway. Indeed, there may be circumstances in which the moral or precautional costs of upholding his honour may be high enough to induce him to bite the bullet in front of an offense. But this, once again, does not cancel the ought he eventually does not abide by, namely the ought to do what is honourable. If this is correct it seems reasonable to conclude that, as far as the constituent object Ψ is concerned, the reasons provided through vindication are *pro tanto* in its support.

To be sure, there may be other relevant factors for determining the normative strength of reasons provided through vindication. The very character of the vindication, by which I mean the specific way to substantiate the normative premise, is certainly one. Indeed, there are various ways of doing so. For instance, the vindictory argument I proposed for Southern and Liberals is a functional and pragmatic one, but there are more available, which may be more or less compelling⁷⁶. Another factor is the normative feature predicated in the normative consideration. As I showed, vindications confirm and,

⁷⁶ For a typology see Sauer (2018).

so to speak, put a ‘bill of health’ (Queloz 2020a, p. 26) on the normative character of certain considerations. The overall normative force of these considerations thus also depends on what type of reasons they are taken to be by the agent. At any rate, these are exogenous factors that have no intrinsic connection with the logic of vindication.

Conclusion

So far I argued that functionalist vindications are best understood as a particular kind of explanations, whose particularity consists in their capacity to fulfil the defensive role of justification. Refining this pragmatic account in more analytical terms, I showed that functionalist vindications have a good claim to the title of normative explanations, i.e. of explanations of why certain things have the normative features they have, because they satisfy the justificatory conditions imposed on this class of explanations: they go some way toward justifying certain responses to their objects. I assessed their impact on the space of reasons by focusing on a particular type of object, namely agent-relative reasons or, in other terms, considerations that retain normative force only for specific agents. I argued that, with objects of this kind, the defensive and pro-active function come apart and that their coming apart is mirrored in the distinction between justified and unjustified responses. Finally, to assess the extent to which vindications affect the space of reasons, I relied on the distinction between normative consideration and the actions and practices they support, arguing that the supporting reasons provided through vindication maintain a *prima facie* value with respect to the former and a *pro tanto* value with respect to the latter.

As a way of conclusion, I want to extract from what has been said so far two brief remarks on the importance of vindication, especially in cases in which agent-relative reasons are concerned.

My first remark concerns the importance of the defensive function. As we saw, by showing that the agent-relative normativity supporting certain actions and practices is stemming from a causal process on whose reliability both the agents and the audience can agree, vindications can deflect disdain. This is far from being a trivial result because some of these agent-relative reasons have little, problematic or no import at all for justificatory

purposes. And yet, if and once vindicated, they can be justifiably met with reduced negative emotions, with respect and perhaps even some degree of recognition. Such a result, I believe, is particularly important for cases involving culturally specific practices because when this kind of practices is concerned, sometimes there are very limited common grounds between participants and outsiders for resolving disagreements about the justifiability of the practice. This may be the case regardless of the particular conception of justification one embrace. Under a holistic model, say some version of reflective equilibrium, in which justification is obtained through a back and forth process between considered judgments and principles, chances are that participants and outsiders reach different equilibria, at least as far as they respectively start from different and conflicting sets of intuition. Under a foundationalist model, disagreement can be deep and serious enough to put into question the very basic principles on which justification depends. When this is the case, vindication may be a logical alternative.

My second remark concerns the pro-active function. Indeed, although vindicating practices and actions supported by agent-relative reasons does not thereby provide outsiders with a reason to embrace that reason and perform that action or practice, it does not mean that vindications are completely inert with respect to the pro-active dimension. First and most obviously, because at least the participants of a practice are provided with a reason to affirm it. One may object that this reason is redundant, at least as far as participants are already committed to the practice. However, it is worth noticing that practices may be threatened by scepticism about their legitimacy from the inside and that this scepticism may undermine the commitment of (some) participants. Vindication, if available, can be an antidote. The second reason why vindications are not completely inert in pro-active terms is that although they do not directly provide outsiders with a reason to embrace or affirm a practice, they may, nonetheless, do so indirectly. Indeed, in the case vindication is grounded on the responsiveness of a certain practice to a set of relevant sociological and historical conditions - as in the examples discussed - this could and should encourage outsiders to take those conditions seriously. If their circumstances are relevantly similar to the ones making the alien practice functional – either because they settled in a society where those circumstances obtain or because their society is in a very similar predicament – there might reasons for them to embrace it as well.

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Coda

A tale of a sinking ship

In 2002, Günter Grass published a book to which this piece of research owes both its title and its opening words. *Crabwalk* is far from being Grass's best novel and it is not among his most acclaimed works (honestly, it is also quite boring). But there are threads in the book which intertwine with some underlying themes of this work. Spending a few words on at least one of them - namely the relationship between history and narrative - is thus, I believe, an appropriate way of ending. The point of the forthcoming thoughts is not so much to wrap everything up in a digestible set of take-away points, because the structure of my reasoning and its conclusions seem, to me at least, already clear and repetitive enough. The point is rather to highlight and defend, however briefly, a tacit assumption in the previous pages concerning the relationship of history and narrative; to offer a coda, namely a final string of notes at the end of a longer piece of music, rather than a proper conclusion.

Crabwalk's script is rather straightforward. The protagonist, Paul Pokriefke, is a German unpassionate journalist in his fifties who finally decide, after years of pressures from his mother Tulla, to write the story of the sinking during which she gave birth to him. The sinking in question (really) occurred on January 30th, 1945. On that day a USSR's submarine of the Baltic Red Fleet torpedoed the *Wilhelm Gustloff*, a German ship carrying ten thousand people, mostly civilians, fleeing Prussia in the face of the collapse of the eastern front. Estimations about the sinking death's toll range between 7000 to 10000 and even the most conservative one suffices to mark the event as the largest loss of human lives in a single ship sinking in history. During the documentary research about the tragedy he conducts on the internet, Paul ends up on a Neo-Nazi website where users discuss the event as one of the many, untold tales of Germany's victimhood in WWII. He

eventually discovers that his estranged son, Konny, is the website's admin and this leads the book toward his tragic conclusion.

If the script is straightforward, Grass's narrative certainly is not. The book stretches across different time layers and moves between them employing small details as passages. Paul's birthday, for instance, is not only the day of the *Wilhelm Gustloff's* sinking but also the birthday of the man to whom the ship was named after. Wilhelm Gustloff - a Nazi party *landesgruppenleiter* in Switzerland –gained such an honour after being shot for obvious political reasons in 1936 by David Frankfurter, a Jewish medical student. Gustloff's murder, the *Gustloff's* sinking and Paul's story – the three main narrative layers of the book - grow increasingly intertwined as the narrative unfolds. Ironically, Paul learns about Gustloff's murder on Konny's website, which is precisely dedicated to the memory of this Nazi "martyr". Moreover, in a dramatic reversal of history, Konny ends up killing a polemic user of his website precisely because he disrespected the memory of Gustloff – a kind of national hero to him. After the act, Konny replicates the actions of David Frankfurter and turn himself in to the police, declaring to have shot 'because I am German'.

Grass's book is about a variety of things, some of which are peculiarly German. No other country is arguably as far as Germany from being able to indulge in what was once called a national history – a collective *bildungsroman* telling the story of a people becoming what it was meant to be – and no other country has such a problematic past, so cubistically rendered by Grass in this and other books. One is led to suspect, perhaps correctly, that the very fragmentation of the storyline across different layers of time is itself a way for the form to mirror the content, namely the shattered past of Germany – 'from the utter destruction of the *Shoah* to the surplus of well-being of the *Wirtschaftswunder*' (Geyer e Jarausch 2003, 16).

Grass himself makes this odd relationship between his works and Germany's past explicit in his Nobel Lecture 'To Be Continued...', in which, commenting Adorno's famous remark, he states that:

The only way writing after Auschwitz, poetry or prose, could proceed was by becoming memory and preventing the past from coming to an end. Only then could post-war literature in German justify applying the generally valid “To Be Continued ...” to itself and its descendants; only then could the wound be kept open and the much desired and prescribed forgetting be reversed with a steadfast “Once upon a time” (Grass 1999).

Leaving aside Grass’s peculiar relationship with German history, however, there are features of the book that should resonate with a broader audience. Notwithstanding Grass’s picaresque inclinations, there is, for instance, a tragic aspect in the unfolding of *Crabwalk*’s narrative, an aspect that seems to speak about the human condition in general. Something close to destiny creeps into the story through small details and coincidences since the very first pages, leading to a finale that repeats - while reverting - something that in a sense already occurred and that, as one may thus feel, could have not been otherwise. But besides the somehow tragic dimension of the narrative, there is another general feature of it that is relevant for the project I pursued in the previous pages. This feature regards the relationship between history and narrative, i.e. between the facts of the past and their organization into stories supposed to make sense of them. Since there is a voluminous debate on the issue, what I will say here about it will inevitably be too little too late but still, I hope, worth saying.

Grass conveys quite clearly how problematic the relationship between history and narrative can be. During his research on Gustloff’s murder, Paul appears puzzled by the variety and incongruity of the historical accounts he retrieves on the internet. His two main sources are Emil Ludwig and Wolfgang Diewerge - a Jewish journalist and a Nazi functionary in the ministry propaganda. Ludwig’s fictionalized account of the murder, published under the title *The Davos Murder*, frame the story as the one of David’s struggle against Goliath’, portraying Gustloff as a man of skewed priorities, totally committed to the *Führerprinzip*, while he pictures David’s motivation as arising from the oppression of the Jewish people, symbolized in the humiliations endured by his family in Germany. On the other hand, Diewerge’s account in his *Der Fall Gustloff* portrays the *landesgruppenleiter* as an honest and probe citizen, simply, sheerly and cowardly murdered (Youngman 2008, p. 185). The contraposition between these accounts points toward a specific problem involved in the relationship between history and narrative,

namely that there seems to be a variety of possible ways of arranging the facts of the past into very different narratives, each of them involving the selection of different facts as worth mentioning, different ways of filling the various gaps in the records and, most importantly, different understandings of the same materials. As Grass remarked in the same Nobel lecture quoted above, ‘there is only a multitude of truths’ (Grass 1999).

The genealogical accounts I sketched in the first two papers can be conceived as narratives: they select some facts while leaving others out, they fill gaps and they weave elements together in an intelligible whole, offering a pragmatic understanding of certain practices. Isn’t this multitude of truths a problem for narratives in general and for the kind of genealogical narrative I sketched in particular?

I believe it is not, for two different reasons. The first is that the idea of there being a multitude of truths about the past does not entail that anything goes as far as it is told in a way resembling a story. If what we want to make sense of is a practice and if how we try to make sense of it is by looking into the process that brought to its emergence, then there will be outer borders within which any plausible account will be constrained. And tracing these borders is a matter of truthfulness. Some of these borders concern the selection of the relevant facts, ruling out accounts relying on facts provably false (like Diewerge’s hints to a Jewish conspiracy in the Gustloff’s case) and imposing justificatory burdens on accounts leaving out those facts on whose relevance there is wide agreement. Some other constraints regard how the gaps in the narrative are filled and these are as much a matter of truthfulness as the previous one. There are more or less persuading ways of filling the gaps and their persuasiveness is based on other things we know, on sound inferences and many other things we have a relatively stable grip on. The accounts I sketched - elementary, defeasible, simplified and developable as they are - seem to me to fall within these constraints.

The second and main reason why I do not take the idea of there being a multitude of truths in the case of historical narratives is that I do not take this idea as implying that the truth about the past is relative, either to the audience or the narrator. There certainly are multiple truths about the past, but simply because there are a lot of different questions we can ask about it. Some of them are quite basic, such as ‘what exactly happened on the

battlefield of Azincourt?’, and easily verifiable in the light of facts. We might lack evidence and we might be divided between contrasting historical records, but we have a clear mind on what would count as the truth of the matter. Some other questions are more complex yet equally legitimate, such as ‘was WWII evitable?’, ‘why Nazism arose in Germany and not in other countries?’ and so on. Any answer to these questions, although based on facts, will necessarily need to move beyond the facts as we know them, arranging them into truthful interpretations providing a certain understanding of the phenomenon at hand. As Bernard Williams put it:

Philosophers of science disagree whether there could be such a thing as “the truth about the universe,” but those who think that there could be such a thing certainly do not suppose that there is just one true thing to be said about the universe. They mean something to the effect that there could be a final answer to the question “What are the most basic laws of the universe?” [...] In such a sense, there is no such thing as “the truth” about the historical past, though as with the universe or Caesar there are many truths about it. There would be such a thing as “the truth about the past” only if there were one most basic question about the past that was the concern of those inquiring into it, and there is no such question (Williams 2002, 257).

To be sure, there will also be different answers to the same question, i.e. different interpretations of the same phenomenon, and it is important that their claims to primacy, if they make any, remain comparatively assessable. Luckily, there is a relatively stable and agreed-upon set of criteria for making this sort of evaluation. Most importantly, however, one needs to be aware that there can also be various ways of interpreting the same question. Questions such as why certain people engage in certain practices and how they came to uphold the practices they uphold can be interpreted as requiring to carefully track in chronological order the subsequent causal links that lead people X to engage in practice Y. But it needs not to be that way. Another legitimate way of tackling this question - the pragmatic way I employed in the previous pages – is by determining the needs the practice evolved to address. This sort of understanding, if my arguments in the previous pages is correct, can inform our philosophical reflections, theories and judgments concerning the practice. For this reason, I believe, one could perhaps extend to this approach what Nietzsche thought was true about classical philology:

I cannot imagine what [its] meaning would be in our own age, if it is not to be untimely—that is, to act against the age, and by so doing to have an effect on the age, and, let us hope, to the benefit of a future age' (Nietzsche 1990, p. 88).

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