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Relational Liberalism

Democratic Co-Authorship in a Pluralistic World

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To R.C.,
for everything

*Well, there's things that never will be
right, I know
And things need changing everywhere you go
But 'til we start to make a move to make a
few things right
You'll never see me wear a suit of white*

*Ah, I'd love to wear a rainbow every day
And tell the world that everything's okay
But I'll try to carry off a little darkness
on my back
Until things are brighter, I'm the Man
in Black
Johnny Cash, "Man in Black"**

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I presented some of the arguments that I defend in this book in a preliminary form in previous publications, especially in *Decisioni pubbliche e disaccordo. Giustificazioni e compromessi tra pari epistemici*, LUISS University Press, 2017. In Chap. 2, I refer to some arguments from "Does Epistemology Matter? Political Legitimacy in the Face of Disagreement," *LPF Annals*, n. 2, 2018: 1–42 (ISBN 978-88-94960-00-6, © Centro Einaudi). In Chap. 3, some passages build on arguments presented in: "Epistemic Dimension of Reasonableness," *Philosophy and Social Criticism*, 2015, 41 (6), pp. 517–535 and "Reasonableness as a Virtue of Citizenship and the Opacity Respect Requirement," *Philosophy and Social Criticism*, 46 (8), 2020: 901–921 (DOI: 10.1177/0191453720903492, © Sage Publication). In Chap. 6, Sect. 6.3, my analysis partially overlaps with some of the arguments in my paper "Epistemic Injustice in the Political Domain: Powerless Citizens and Institutional Reform," *Ethical Theory and Moral Practice*, 23(5), 2020: 797–813 (DOI: 10.1007/s10677-020-10097-w, © Springer Nature). Chapter 7 is the development of arguments previously presented in "Open Negotiation: The Case of Same-sex Marriage," *LPF Annals*, n. 1, 2015: 1–27 (ISBN 978-88-943179-7-8, © Centro Einaudi). The overlap between this book and these previous works is limited and has been acknowledged in references and footnotes when appropriate.

Contents

Chapter 1
Introduction

> *Defenses of political legitimacy are of two kinds: those which discover a possible convergence of rational support for certain institutions from the separate motivational standpoints of distinct individuals; and those which seek a* common standpoint *that everyone can occupy, which guarantees agreement on what is acceptable.*
>
> Thomas Nagel (*1987: 218, emphasis in original*).

Abstract In this introductory chapter I lay out the general outline of the book. I introduce the traditional notion of liberal legitimacy and observe that traditional approaches of liberal legitimacy tend to fall into a justificatory dilemma. Liberal theories ought to find a balance between two fundamental desiderata: (i) providing normative arguments in support of the legitimacy of a specific political conception; (ii) guaranteeing actual endorsement to political principles and social norms by real-world individuals. I illustrate that these two goals often are in tension with one another, especially in highly conflictual contexts as contemporary multicultural societies. In the chapter I suggest that the only winning strategy to satisfy both desiderata, while being loyal to the overall liberal project, is to clearly establish that these desiderata can be satisfied, though not simultaneously, by implementing different justificatory strategies. According to this twofold model of legitimacy I shall defend in this work, a normative approach of justification for democratic decisions cannot rely solely on standards that are drawn from an idealized analysis, because there is another essential goal, that is, developing a theory that proves also politically efficacious, that cannot be satisfied with the same strategy. This means that a liberal account of legitimate political authority should look for establishing political procedures of decision-making, deliberative settings, ex-post forms of contestation, checks and balances rules that are both normatively justifiable and also efficacious enough to overcome indeterminacy and to be stably supported by the majority of the members of the polity.

Keywords Liberal legitimacy · Disagreement · Stability for the right reasons · Ideal and nonideal theory · Justificatory constituency

1.1   Liberal Legitimacy

Political philosophy is a branch of practical philosophy that focuses on a specific aspect of human interactions primarily, that is, investigating different attempts to guarantee legitimacy to political institutions and to coercive acts imposed by these institutions. A consistent and exhaustive political conception should also provide us with an adequate illustration of the kind of citizenship bonds individuals share when they are members of the same demos. Since the political philosophy project is intrinsically an intersubjective enterprise, a very important aspect of normative political theory is establishing adequate procedures of public justification for political conceptions and decisions. Against this background, in this book my main goal is to propose a renewed version of the paradigm of legitimacy for political authority in democratic settings. This is a widely debated topic in the literature, being a properly foundational aspect of political philosophy as a discipline. Ultimately, my goal is to propose a justificatory framework that I argue is adequate to guide actual decision-making processes and avoid indeterminacy (*guidance*), to define standards that everyone has an equal opportunity to fulfill (*inclusion*), and to grant that citizens exercise their reflexive control over the whole democratic system (*reflexive control*).

Among the philosophical approaches that theoretically engage with justificatory processes for granting legitimacy to political authority, I specifically focus on the liberal tradition. Liberalism, from its origins, has been oriented on striking a balance between establishing justificatory public procedures for political decisions and the attempt to keep at bay social conflicts among individuals over moral and practical matters. Contemporary liberal theories, notwithstanding important differences among them, all share the underlying legitimacy principle according to which a coercive act is justifiable if and only if agents that ought to abide by this rule have reasons to accept it as valid.[1] More precisely, liberal theories characterizes humans as free and equal and as sources of valid claims.[2] Consequently, the liberal notion of

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[1] In the literature there is a wide debate regarding the possibility (or impossibility) of establishing political authority as legitimate, consequently granting a normative ground for political obligation. On this matter, see: Klosko (1987, 2005); Rawls (1964); Simmons (1999); Wolff (1970).

[2] Liberalism, as a philosophical theory, was born within the modern social contract tradition (see Hobbes [1651] 1994; Kant 1991; Locke [1689] 1988 and Rousseau [1762] 2002). Regarding the fundamental normative role played by the ideals of freedom and equality, Kant in his "On the Common Saying: That May Be True in Theory, but It Is of No Use in Practice" ([1793], 1991: 74) claims (emphasis in the original): "Thus the civil condition, regarded merely as a rightful condition, is based a priori on the following principles:

1. The *freedom* of every member of the society as a *human being*.
2. His *equality* with every other as a *subject*.
3. The *independence* of every member of a commonwealth as a *citizen*."

These principles are not so much laws given by a state already established as rather principles in accordance with which alone the establishment of a state is possible in conformity with pure rational principles of external human right."

political legitimacy relies upon the requirement to respect each citizen's autonomy and freedom, thus assuming that every citizen ought to give her assent to coercive power.[3] In other words, liberal accounts of political authority, however different, revolve around two main concepts: the notion of legitimate political authority and the depiction of citizens as free and equal autonomous agents.

Traditionally, liberal political theories have tried to establish a balance between two fundamental goals: (i) providing normative arguments in support of the legitimacy of a specific political conception, focusing both on the theoretical and practical (in the Kantian sense) aspects of this enterprise; (ii) guaranteeing actual endorsement to political principles and social norms by real-world individuals. As we shall see, these two goals often are in tension with one another. Actually, the research that led to the writing of this work was partly prompted by the realization of this inner tension between two of the main goals of political liberalism. Ultimately, the main proposal of this book is defending a justificatory strategy that manages to reach both these goals, while keeping at bay the inner tensions of the liberal paradigm in ways that are not detrimental to the overall project. In outlining my proposal for a revised version of political liberalism, I shall investigate at depth the relational dimension of justice as expressed by the basic notions of liberalism. In doing so, I will defend a revised version of political liberalism that I refer to as *relational liberalism*.[4]

1.2 Disagreement as *raison d'être* of Democracy

Contemporary liberal theories that tackle the issue of political legitimacy ought to deal with the *fact of pluralism* (Rawls, 1993). Assuming pluralism as a fixed aspect of contemporary multicultural democratic contexts is both descriptively adequate and normatively relevant. Indeed, liberal societies, leaving individuals free to reason

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[3] "To this political liberalism says: our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy. […] Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification," Rawls (1993: 137).

[4] In referring to the relational dimension of justice, I assume that in a democratic society people should relate to one another as equals and should enjoy the same fundamental status. Some authors have coupled this ideal of equal democratic citizenship with a relational version of social equality (Anderson, 1999; Scheffler, 2010). In this work I do not engage with this debate about the best account of egalitarianism. My main goal is different: establishing adequate procedures of justification for collective decisions to grant democratic legitimacy in the face of deep disagreement, while respecting the agential autonomy of the subjects involved and defending an ideal of co-authorship for identifying adequate intersubjective interactions in the political domain. Within my proposal the institutional dimension of justice plays a fundamental role, since I assume that the justice of democratic settings relies in a fundamental way on the way in which political institutions organize social cooperation and are responsive to citizens' demands and contestations.

autonomously and to develop their own conception of the good without a prefixed requirement of homogeneity, offer the perfect breeding ground for wide-spread pluralism. In other words, liberalism, as a political conception grounded in the acknowledgment of the autonomy of individuals, has established a cultural tradition in which disagreement is not simply described as the upshot of conflicts among agents, but rather as the expression of agents' liberty.[5] In very general terms, taking a step forward, one of the underlying assumptions of this book is that disagreement can be understood as one of the *raison d'êtres* of democracy as a model of decision-making among individuals in constant conflict.[6] Why is this so? Well, reasoning about a homogeneous society in which citizens happen to share preferences and values, democratic procedures would almost look superfluous, since it would be possible for citizens living in this society to reach collective decisions through some forms of unanimous consent or thanks to not very conflictual deliberative processes. Or, on the other side of the spectrum, liberalism, revolving around the request of respecting the autonomous reflexive agency of free and equal agents, provides ultimate reasons for ruling out any form of justifiable enlightened absolutism. Hence, coupling the normative request of respecting the autonomy of citizens with the fact of pluralism leads us to define democratic procedures of decision-making as the only method for dealing with disagreement that is also compatible with liberalism as a political theory. To sum up, disagreement and conflicts among citizens over preferences, interests and conceptions of the good life are one of the fundamental features of democracy as the most adequate model for collective choices under non-ideal circumstances (Benhabib, 1994; Kolodny, 2014).

I am suggesting that wide-reaching disagreement is one of the indicators of a functioning social domain in which individuals are not forced to adhere to a specific view of life and are free to develop their autonomous conceptions of the good life and set of preferences. Yet, a stable democratic setting ought to find justifiable procedures to manage political conflicts – in order to avoid indeterminacy. It appears that liberal democracies have a double task: establishing decision-making processes and deliberative settings for granting the legitimacy of collective decisions, while assuring that minoritarian perspectives are recognized and not treated as irrelevant or, worst, morally and/or epistemically inferior. The legitimacy of political

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[5] This strong commitment to a normative notion of legitimacy pays respect to the fact that, within a liberal system, every coercion should be ideally justified in the name of safeguarding the freedom and the equality of citizens. On this matter, Kant's words are enlightening: "No-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law – i.e. he must accord to others the same right as he enjoys himself," Kant ([1793] 1991: 74).

[6] Jeremy Waldron, for example, describes disagreement as one of the constitutive features of the political domain and one of the fundamental reasons why majoritarian decisions ought to be respected by all the members of the constituency: "majority-decision commands our respect precisely because it is the one decision-procedure that does not, by some philosophical subterfuge, try to wish the facts of plurality and disagreement away," Waldron (1999: 99).

decisions is partly dependent upon a functioning majority-minority dynamic. However, respecting democratic decisions as the outcome of majority-decision is one thing; imposing a univocal view on every member of the constituency is another. In order to properly respect the autonomy of all the agents involved, no members of the constituency should be pressed to subdue their opinion to the majority's preference (what I call the *no-deference constraint*).

Along these lines, we can claim that liberalism, as a general paradigm of political legitimacy, ought to fully respect two normative requirements: (i) identify what conditions ought to be satisfied in order for a political decision to be authoritative and acknowledged as legitimate by the members of the constituency; (ii) fully respect the reflexive agency of citizens, therefore establishing fair procedures of decision-making and leaving enough room for contestation and possibly for ex-post revisions of specific highly contested decisions.

1.3 The Justificatory Dilemma of Liberalism

In this book my aim is to investigate two lines of research. First, I shall develop a proposal for publicly justifying political principles and regulative ideals that constitute the normative backbone of institutional designs for liberal societies. Second, I shall analyze what are the most adequate processes to reach shared decisions in contexts of deep disagreement. Again, both these aspects of a general liberal conception of democratic legitimacy are made relevant by the recognition of the fact of pluralism. First, it is both theoretically and practically challenging to provide public justification in highly conflictual political contexts. Second, once the fact of pluralism is accepted as a defining feature of liberal societies, wide consensus over political decisions appears to be often out of reach. Liberal legitimacy, as a concept and as a collective enterprise, constantly swings between two opposite vocations: the philosophical requirement of justifying political conceptions *via* normatively binding reasonings and the practical constraint of respecting the fact of pluralism and being attuned to the reality of contemporary social contexts. This ambiguity at the roots of liberal legitimacy is both a source of richness and a cause for concern. Simply put, different authors may have in mind different things when they talk of liberal legitimacy. A political principle *x* can be described as legitimate, since it has been justified through complex normative arguments that idealized agents cannot reasonably reject (*acceptability principle of legitimation*). Or else, the same principle *x* can be described as efficacious and action-guiding, since real-world agents find it practically acceptable and legitimate (*actual acceptance principle of legitimation*).[7]

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[7] Enzo Rossi ([2013](): 561) suggests a taxonomy of four approaches to legitimacy. There is *idealistic voluntarism*, found in Locke and in some sense in Rawls as well, according to which legitimacy is granted by a consensus established with reference to moral commitments that agents assumed in a pre-political stage – an account of natural rights for Locke ([1689] [1988]()); the conception of per-

In developing my account, I will often refer to what I call the *justificatory dilemma of liberalism*. The dilemma rests on the never-resolved tension between justification and legitimacy, as these two concepts call attention to different (and essential) aspects of political authority that often end up at odds with each other (Simmons, 1999). On the one hand, some paradigms of political authority mostly focus on the production of justificatory arguments that should work in any circumstance, as they are conceived as ideal and universalizable, therefore abstracting from specific political contexts (*philosophical-normative desideratum*). On the other hand, another strategy looks for a model of political legitimacy that addresses the real circumstances of justice, primarily focusing on the possibility of granting actual acceptance of political principles by real-world citizens (*realist desideratum*). These two desiderata are both essential for a liberal account of legitimate political authority, and yet it is extremely complicated to satisfy both simultaneously.[8]

These two readings of what it means for a principle of justice (or for a general political conception) 'to be legitimate' rest, in my opinion, on two different interpretations of *the quest for stability*, that so clearly Rawls illustrates at the center of his paradigm of political liberalism (specifically see the introduction of *Political Liberalism*, 1993: xiii–xlix). According to a strictly normative perspective, *stability for the right reasons* is granted thanks to the provision of philosophical arguments that through adequate idealizations show what principles and reasons rational and reasonable agents cannot reasonably reject (Raz, 1985, 1998; Scanlon, 1998, 2003; Wall, 1998, 2010). The legitimate authority of the conception of justice here draws upon the kind of hypothetical consensus that an idealized constituency would reach over the validity and justifiability of the political conception. This perspective links the quest for stability with the attempt to provide stringent philosophical arguments that would be applicable in any circumstance, as they are conceived as ideal and universalizable. This strategy, in attempting a balance between normative ambitions and attunement to the context of implementation of the political conception, gives priority to the first dimension. The legitimate authority of the political conception is asserted here by showing that the members of an idealized constituency would reach a hypothetical and binding consensus on the value of that conception. In this

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sons as free and equal for Rawls (1971, 1993). A second option is *idealistic substantivism*, defended by Mill ([1859] 1979) and Raz (1986), according to which political coercion is legitimated through reference to substantive pre-political moral commitments, specifically wellbeing and autonomy, respectively. The third approach is described as *realist voluntarism*, expounded by David Gauthier (1986), who argues that political order is reached thanks to an agreement among agents who are motivated not by moral reasons, but rather by self-interest against a paradigm of game-theoretic equilibria. Finally, there is *realist substantivism*, introduced by Hume ([1739] 2007), according to which political legitimacy does not require consensus, because we can rely on a naturalistic description of how agents reach spontaneous cooperation through convention.

[8] "The liberalism dilemma becomes in this way clear: how can we reconcile impartiality and neutrality on the one hand, with the assessment of values on the other? As liberals, it looks like we are doomed to be constantly swinging between a sort of schizophrenic (discontinuous) scission and an authoritarian continuity." Sebastiano Maffettone in Dworkin and Maffettone (1996: 195), translation by the author.

sense, this perspective, by tying the possibility of establishing a legitimate political conception to the introduction of a normative justification as stringent and consistent as possible, accepts to limit the universalistic ambitions of the justificatory practice itself. Since idealized philosophical arguments, while authoritative in themselves, are unlikely to be acceptable to all the actual members of the demos, this strategy limits the justificatory constituency to individuals that are in some way already committed to liberal values (Ackerman, 1980, 1983; Forst, 2012; Quong, 2011; Weithman, 2011).[9] By contrast, a second strategy interprets the quest for stability in the footsteps of the social contract tradition, connecting stability with the ability to establish and maintain peaceful coexistence among individuals with different interests, plans of life, and value systems. According to this perspective, the real chances of guaranteeing stability to a liberal institutional context lie in the ability of liberal theory to be inclusive and to respect actual citizens' points of view, therefore avoiding grounding the overall legitimacy of the system onto too demanding standards of morality justified through robust abstractions from reality.[10] To sum up, carving out a general account of liberal legitimacy requires to make a choice between these two strategies: either focusing on normative reasons no reasonable agent can reject or developing a theory about how nonidealized agents can be motivated to be guided by justice-oriented reasons. The first strategy appeals to an idealized account of our rational and practical abilities as free and equal agents. This approach rests on the intuition that, in order to achieve justice, we should appeal to the best description of ourselves we can reasonably expect to be able to abide by. By contrast, the second strategy assumes that we ought to accept the limits that reality imposes to normative reasoning, thus suggesting a priority for inclusivity over philosophical demandingness.

One of the main goals of this book it to argue in favor of a justificatory strategy that tries to be loyal to both these desiderata, in an attempt to overcome the justificatory dilemma of liberalism without the need to resolve it once for all. I am aware that in this way, liberalism would end up assuming the semblance of Janus, always on the edge between two fundamental desiderata. I maintain, though, that the only path forward involves accepting the inner tension running through the liberal paradigm and working forward from this acceptance. In fact, there is no easy way out from the justificatory dilemma of liberalism. Picking one of the two horns and letting go of the other implies either facing a lack of motivational force and detachment from the actual circumstances of social contexts, or letting go of sound normative ambitions for the sake of reaching a contextual agreement over

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[9] "the greater the degree of idealization or abstraction […] the less effectively motivational the proposal which has been justified in this way," D'Agostino (1992: 152).

[10] "the idea of stability has content independent of its normative status of being based on the right considerations. A society can be unstable even if its institutions are based on good reasons. So the idea of stability seems tied to both a prescriptive ideal of public justification and a descriptive ideal of actual stability for the right reasons," D'Agostino and Vallier (2014: 33).

not-too-demanding principles.[11] Instead, we should try to work a way out from the dilemma while keeping both the commitments: the philosophical requirement to provide justificatory reasons that are both normatively binding and motivationally powerful and the realistic stance according to which a legitimate political conception, to be not just desirable, but also feasible, should be consistent with the actual circumstances of justice.

Many authors (D'Agostino, 1992, 1996; Eberle, 2002; Gaus, 2011; Maffettone, 2010; Quong, 2011; Rawls, 1993; Rossi, 2013; Talisse, 2009) have highlighted the inner tensions of the liberal paradigm of political legitimacy. My contribution with this work is to suggest a strategy for solving the dilemma striking a hopefully stable balance between the two desiderata. I maintain that the best way to laid out a workable justificatory strategy that results satisfactory for both the tensive dimensions of liberalism is to clearly distinguish between two aspects of the justificatory project: the ideal and the nonideal stages of the process. I shall defend a fundamental intuition according to which dividing the justificatory labor in two different stages allows to tame the dilemma in a certain sense, because the two stages have different goals and achieve them with very different argumentative strategies and philosophical expectations. Specifically, establishing philosophically compelling justificatory arguments for a normatively binding conception of justice is the focus of the ideal phase. The nonideal phase, instead, focuses on the actual circumstances of politics and on the effort at granting support to the political conception by real-world citizens in context of deep conflicts, individuals' motivational limits, and public contestation of political choices and laws.

According to my proposal, the only winning strategy to satisfy both desiderata, while being loyal to the overall liberal project, is to clearly establish that these desiderata can be satisfied, though not simultaneously, by implementing different justificatory strategies. This conclusion has important consequences for the general paradigm of liberal legitimacy that I defend, and I shall spend Chaps. 2 and 4 in clarifying my stance on this.

1.4 An Epistemic Reading of the Justificatory Dilemma

In the previous section I illustrated the two desiderata of mainstreams paradigms of liberal legitimacy, underscoring that any approach that tries to satisfy both these dimensions always risks falling into a justificatory dilemma. In this section my goal is to reframe this analysis in epistemological terms. According to an epistemic reading of the liberal ideal of legitimacy, the main question we have to answer is the

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[11] "Rawls actually does not think in terms of a coherent integration between a normative-philosophical justification and a factual legitimation. Rather he continues to work within the horizon of a philosophical theory of justice. Nevertheless, in order to settle the central dilemma between stability and pluralism, he must concede that a pure philosophical justification of liberal democracy is itself insufficient to guarantee the equilibrium between these opposing claims," Maffettone (2010: 22).

following: is it realistic to assume that a neutral justification of liberalism would prove robust enough vis-à-vis the personal perspectives – often in conflict between one another – of citizens? Indeed, one of the solutions adopted by contemporary theories of liberal legitimacy for granting public justification to liberal principles of justice implies developing justificatory arguments that are neutral, and therefore robust, with regard to the various comprehensive conceptions privately held by citizens. *Robustness* is an epistemic notion according to which a "theory *T1* is robust vis-à-vis *T2* to the extent that changes in *T2* — including the total rejection of *T2* in favor of some competing theory *T2'* — do not weaken the justification of *T1*. Robustness is to be contrasted with sensitivity; to the extent that the justification of *T1* is affected by changes in *T2 T1* is sensitive to *T2*" (Gaus, 1996: 6). The robustness requirement restrains political justification from appealing to partisan reasons – otherwise the political conception would result sensitive to non-public doctrines from which these partisan reasons are derived.

The robustness requirement expresses a constitutive aspect of the liberal paradigm, that is, the search for public agreement over the legitimacy of a political conception (or more specifically of political decisions), without requiring full agreement by citizens over the grounding reasons for this legitimacy. This means that what is relevant for political legitimacy is to prove that as many citizens as possible can *converge* (D'Agostino, 1996; Gaus, 1996) on the validity of such a conception, notwithstanding the fact that they do not agree on the reasons in support of the validity of this conception. In a sense, the robustness requirement echoes, from the epistemic perspective, the procedural ideal of democracy according to which collective decisions are legitimate in virtue of the equal consideration that should be granted to the interests and preferences of all members of the constituency by means of suitable decision-making procedures. Political decisions should address the demands of the participants involved in decision-making either by meeting their valid claims or by offering a justification for rejecting them. In either case, democratic processes of decision-making should respect the *responsiveness requirement*, that is, ensure that democratic decisions are responsive to citizens' opinions and preferences and respectful of minorities' dissenting opinions (Liveriero & Santoro, 2017; Mackie, 2011).[12] Democratic procedures are responsive when they treat citizens as autonomous reflexive agents, not as patients, primarily passive recipients of political decisions. Along with procedural fairness, responsiveness is the other feature justifying majority rule as a democratic criterion of decision-making in conditions of stable disagreement, because majority rule incorporates the commitment of giving equal weight to citizens' interests and demands. From this commitment it follows that, when public procedures of justification consistently respect the robustness requirement and prove to be adequately responsive to citizens' preferences, then even members of the constituency who are not satisfied with the final decision,

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[12] For an exhaustive analysis of responsiveness as an intrinsic property of the democratic procedure, see Urbinati and Saffon (2013). They include responsiveness among the main features of their account of procedural democracy along with uncertainty; openness and contestation; participation, emendation, and non-triviality.

are still provided with non-partisan reasons to consider this decision as publicly legitimate.[13]

The robustness requirement plays a relevant epistemic role not just within the practice of public justification. Rather, it is also important for granting an adequate normative force for collective procedures of decision-making. Considering a political context of pervasive disagreement, robustness provides us with an epistemic criterion for assessing which decision-making and deliberative processes are adequate to grant that political decisions are indeed acceptable for the majority of the citizens that took part in the public confrontation (Biale & Liveriero, 2017; Bohman, 2006). This reading of the robustness requirement is useful for keeping together two aspects of liberal legitimacy that I have already introduced. First, we have the strictly normative dimension of liberal legitimacy that focuses on establishing public procedures of justification for a liberal conception of justice, aiming at demonstrating that this political conception is indeed robust vis-à-vis a variety of comprehensive conceptions privately held by citizens. Second, a specific political decision can be defined as robust when is the outcome of adequate procedures that respect the agency of every member of the constituency and ensure everybody the possibility of impacting public choices. As we shall see in Chap. 6, democratic processes of decision-making that attempt to satisfy both the robustness requirement and the regulative ideal of respecting the autonomous reflexive agency of citizens prove more successful in reaching political agreements through practices of compromise and negotiation, rather than relying on more idealized forms of consensus.

1.5   Justification for Whom?

In illustrating the liberal justificatory dilemma, I have underscored the methodological differences between a justificatory strategy that appeals to the hypothetical consensus that can be reached by idealized versions of ourselves reasoning over normatively justified action-guiding principles and, alternatively, a strategy that looks at the agreement that citizens can indeed reach under real-world conditions. Again, is liberal legitimacy primarily justified in referring to agents as they *should be*, or rather, what really counts is dealing with actual citizens, characterized by reasoning flaws, incoherent beliefs, epistemic stubbornness, emotion-meddling and all?[14] Answering this question requires us to specify which is the justificatory constituency of reference for the paradigm of liberal legitimacy. This conclusion sounds

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[13] "Though a social order not legitimated by actual consent may be unfree, that unfreedom can be mitigated by our recognition that it is at least *possible* to imagine people giving it their consent," Waldron (1987: 140–141, emphasis in original).

[14] Simone Chambers (2004: 155), looking for a definition of constitutional legitimacy starting from the concept of popular sovereignty, speaks of a hypothetic notion of sovereignty when referring to the ideal/philosophical arguments that tend to abstract from the perspective of real citizens. "It is this type of argument that I call hypothetical popular sovereignty, as it does not directly call on real people but rather deduces from general principles what the 'people' would want and by extension would agree to."

reasonable, for any approach of political justification must start laying out its assumptions about those to whom the justification is addressed.[15] Specifically, the first strategy assumes that the practical normativity of the liberal political conception can be granted if and only if we refer the justification to idealized agents employing the epistemic reasons available to human beings when they reason at their best.[16] The second strategy, instead, has the goal of assuring that actual members of the political constituency adequately support the conception of justice.

Ideally, it seems to me that the constituency of justification should not diverge too much from the actual constituency of implementation of the political conception. However, some authors have proposed to limit the justificatory strategy of liberalism to an idealized constituency (Dworkin, 2000; Habermas, 1995; Quong, 2011). They maintain that doing away with idealization and abstractions from the messy reality would frustrate the normative ambitions of the overall liberal project and endanger the internal coherence of the justificatory enterprise. They claim that the legitimacy of a liberal conception of justice is strictly connected with the ability of liberal theory to prove that there are sound philosophical arguments for demonstrating the 'normative acceptability' of this conception of justice. The *acceptability test* is passed when the justificatory strategy has shown that idealized agents, rational and reasonable, have no compelling reasons to reject the political conception adequately justified.[17] By contrast, other authors have instead underscored that focusing on an idealized version of the constituency requires justificatory arguments that might end up not properly respecting the autonomy of real-world agents and even risking endangering their personal integrity (Gaus & Vallier, 2009; Sen, 2009; Vallier, 2011, 2014, 2016). Moreover, a justificatory strategy that relies on strong idealizations can also be criticized for impracticability, since the motivational force and the action-guiding power of a conception cannot be determined by omitting any reference to the real constituency of applicability (Geuss, 2008; Horton, 2010; Rossi, 2010, 2013, 2014; Rossi & Sleat, 2014; Sleat, 2015).

On similar lines, Catriona McKinnon, in her book *Liberalism and the Defence of Political Constructivism* (2002: 1–28), criticizes versions of liberalism that provide justificatory arguments that are powerful only when directed to citizens who already share liberal commitments. She claims that these approaches rely on a sub-Humean version of motivational internalism, according to which a justified reason is motivationally adequate if and only if the agent to whom it is addressed already possesses

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[15] It is worth noting that Rawls (1987: 1) highlights the fundamental role played by the political constituency when he states that: "The aims of political philosophy depend on the society it addresses."

[16] A very coherent version of this first strategy is employed by Steven Wall (1998) that, defending a perfectionist version of liberalism, claims that justificatory procedures should not be constrained by the search for legitimacy, consequently focusing on how to assure the actual acceptance of principles by real citizens, but rather concentrating on the normative attempt to justify the ideal acceptability of such principles thanks to the reference to good epistemic reasons.

[17] "it would no longer be of interest from the point of view of acceptability, and hence of validity, but only from that of acceptance, that is, of securing social stability," Habermas (1995: 122).

an actual desire for accomplishing the act that is recommended by that reason.
McKinnon claims that in order to satisfy the ideal of inclusivity as well as proving
efficacious in actual political contexts, a valid liberal procedure of justification
should look at ways of including liberal and non-liberal citizens alike. According to
this proposal, liberal strategies ought to refer to an "inclusive constituency of
justification",[18] otherwise they risk running afoul of two of the grounding concepts
of liberalism, namely inclusion and toleration. McKinnon (2002: 16–28) argues that
the practice of political justification should respect two constraints: the intelligibil-
ity constraint and the motivational adequacy constraint.

 (i) The *intelligibility constraint* requires political justification to be framed in
     terms that people are able to understand. Consequently, the justificatory reasons
     that are provided should be intelligible, sound and provide evidence – when
     possible – for supporting political conceptions. Politically justified reasons
     should be able to defeat other competing reasons.[19] I shall come back to this in
     discussing the intelligibility constraint in Chap. 5, since various authors have
     provided quite different interpretations of this constraint, in their attempt to
     justify the public justification principle.
(ii) The *motivational adequacy constraint* requires that political reasons respect the
     fact of pluralism. In this regard, the justification of political conceptions should
     not be too demanding, insisting that all citizens should share the same perspec-
     tive about fundamental political and moral issues. The motivational constraint
     stresses the relevance of disagreement as one of the *raison d'êtres* of liberal
     democracies, consistently with the general paradigm I am here laying out.

A liberal theory that manages to respect both these constraints "searches for reasons
which could become motivating for all, while minimising the diminishment of deep
diversity in its ideal constituency of justification" (McKinnon, 2002: 14).
Consistently with my previous remarks, a liberal theory that ascribes the right
weight both to the strictly philosophical-normative dimension and to the motiva-
tional dimension of the complex notion of political legitimacy, is intrinsically dual-
istic, both in the definition of its goals and in the methodologies employed to reach
them.[20] Political principles need to be soundly justified (for meeting the
philosophical-normative desideratum), but the procedure of justification of these

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[18] "We want the approach we take to the problem of public justification to be inclusive in the sense
that the proposals which it enables us to justify are justified for or to the widest possible (relevant)
community of individuals," D'Agostino (1992: 149).

[19] In this regard, Rawls (1993: 209) claims that: "Earlier we said that political liberalism holds that
under reasonably favourable conditions that make a constitutional democracy possible, political
institutions satisfying the principles of a liberal conception of justice realize political values and
ideals that normally outweigh whatever other values oppose them. The preceding corollaries of
completeness strengthen its stability; allegiance based on chose political values is stronger, and so
the likelihood that they will be outweighed by opposing values is that much less."

[20] "there is no such thing as a clear-cut normative-descriptive distinction: fruitful normative politi-
cal theory has to be in dialogue, as it were, with an empirically grounded understanding of a soci-
ety's forms of legitimation. That is not to say that political philosophy cannot be action-guiding,

principles, in order to be motivationally effective and inclusive toward the entire (nonidealized) political constituency, should not dismiss the role played by private reasons and conceptions of the good that shape citizens' opinions and goals (*realist desideratum*). The validity of a specific political conception, and the possibility for this conception to be assumed as legitimate, depends upon the ability of the justificatory strategy to keep together – notwithstanding the justificatory dilemma – both the acceptability for normative sound reasons the actual acceptance from the point of view of real-world citizens. This is, in my opinion, the fundamental challenge for liberal legitimacy.

1.6 Ideal vs Nonideal Theory

In the previous sections I have briefly noted that one possible way out of the justificatory dilemma of liberalism is to clearly distinguish between an ideal and nonideal stage of the justificatory enterprise. In my opinion, if we focus solely on the ideal stage, we are not able to resolve the justificatory impasse, since normatively compelling arguments in support of a specific conception of justice, relying upon strong idealizations, are in fact too insensitive to the real circumstances of politics. The fact-insensibility of the ideal theory is an essential feature, but it might imply unwelcome consequences. Ideal theory accounts for how justice would work in an idealized – quasi-perfect world – and therefore establishes normative criteria for assessing and revising the nonideal world in the face of the idealized model.[21] However, we have to keep in mind that all idealizations are false statements, hence, there are authors who have questioned the actual ability of ideal theory to be action-guiding, since the compliance of idealized agents with the political conception is already assumed in the structure of the justificatory argument itself.[22] By contrast, nonideal theory is naturally highly-sensitive to the real circumstances of social life, therefore mostly focusing on the feasibility constraints that might impede a theory of justice in proving efficacious and motivationally adequate (Phillips, 1985; Simmons, 2010;

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let alone criticize the status quo. Rather, it cannot do *just* that, on pain of losing grip on its object," Rossi (2013: 568, emphasis in original).

[21] "Viewing the theory of justice as a whole, the ideal part presents a conception of a just society that we are to achieve if we can. Existing institutions are to be judged in the light of this conception and held to be unjust to the extent that they depart from it without sufficient reason," Rawls (1971: 216).

[22] On this matter, Laura Valentini (2009: 333) introduces what she calls a paradox of ideal theory: "the paradox of ideal theory, can be stated as follows:

(a) Any sound theory of justice is action-guiding.
(b) Any sound theory of justice is ideal.
(c) Any ideal theory fails to be action-guiding."

Valentini, 2009).[23] Different nonideal theories can be distinguished gradually, refer-ring to the different levels of sensitivity they show toward political facts and the actual circumstances of justice.[24] Real circumstances of justice are actual constraints on the applicability of a normative political conception, therefore, the more a politi-cal conception is sensitive to nonidealized circumstances, the more it is focused on establishing applicability criteria for political principles (Hall, 2013; Jubb, 2009; Sleat, 2016b; Valentini, 2009, 2012).[25]

Along the lines of this fairly standard distinction between ideal and nonideal theory, I want to emphasize that nonideal theory does not simply deal with the actual conditions of noncompliance and the unfavorable social circumstances of the real-world. The fact that the ideal theory applies robust idealizations to the justifica-tory framework, while nonideal theory attempts at developing arguments starting from actual circumstances, does not necessarily mean that the task of nonideal the-ory must be limited to removing injustices in the light of the regulative ideal pro-vided by the ideal theory. Rather, it is fundamental to stress that even the nonideal theory can play a normative role within the justificatory procedure.[26] As we shall see, once the intrinsic tension between normative and motivational requirements has been brought to the foreground thanks to the analysis of the justificatory dilemma of liberalism, it is not possible to claim that the whole normative task can be

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[23] More recently, a quite vast literature has spurred from the acknowledgment that approaching the topic of individual responsibility in the face of injustice cannot be properly conducted from the perspective of ideal theory. By definition, in fact, ideal theory abstracts away from conditions of oppression to construct an ideal model of intersubjective relationships. This ideal theory approach obfuscates the role of oppression in structuring social practices, relationships, and indent-forming processes. I shall develop this line of argument in Chaps. 6 and 7. For an exhaustive criticism of ideal theory as an ideology that involves "a distortional complex of ideas, values, norms, and beliefs that reflects the nonrepresentative interests and experiences of a small minority of the national population-middle-to-upper-class white males-who are hugely *over-represented* in the professional philosophical population," see Charles Mills (2005, emphasis in original).

[24] There is deep disagreement among theorists about how much fact-sensitive a theory of justice should be. Gerald Cohen (2003), for example, maintains that a good theory of justice should be completely fact-insensitive. By contrast, Rawls holds a view that is fact-sensitive. For an exhaus-tive analysis of the theoretical relation between ideal and nonideal theory on the one hand, and fact-sensitivity on the other, see Farrelly (2007).

[25] Among the actual circumstances of justice that constrains the applicability of theories of justice, we can briefly cite: the impossibility of obtaining strict compliance by citizens; unfavorable his-torical, social or economic conditions; indeterminacy and inconclusiveness in collective methods of decision-making; deep untamed disagreement; human vulnerability; human nature; difficulties in working outreaching institutional reform.

[26] Matt Sleat (2016a: 30–31) correctly notes that we have to distinguish between a commitment by liberal theorists to respect the feasibility constraints imposed by reality and, alternatively, a politi-cal realist approach to political legitimacy. Very often, these two analyses are erroneously over-lapped. Sleat maintains that nonideal approaches within the tradition of liberalism, even though sensitive to the real circumstances of politics, still adhere to the methodology of liberalism of establishing normative reasons for action and for complying with political authority. By contrast, political realism defends a political conception intrinsically different from liberalism, employing a different methodology and assuming completely different overall goals for the political enterprise.

accomplished by ideal theory alone. According to my proposal, the *ideal stage* of the justificatory paradigm fulfills the task of depicting a general framework for a liberal conception of justice, with special emphasis on defining the grounding normative tenets and fundamental regulative principles. This normative framework is outlined employing idealizations and abstractions that regard the epistemic capacities and the inter-subjective attitudes of agents; the economic, social and historic circumstances of the political society, and so on. The *nonideal stage*, instead, has the goal to assess whether and how it is possible to reach reconciliation between this general normative framework justified in the ideal stage and the actual systems of beliefs held by real-life citizens. Furthermore, the nonideal stage deals with conflict management and establishes what forms of political and social contestations are available to citizens in order to testify their disagreement with political decisions.

   Relating to this twofold justificatory approach that I will defend in this work, I conclude that justificatory procedures for democratic decisions cannot rely solely on standards that are drawn from an idealized analysis, for it is essential to keep in mind the goal of developing a theory that proves also *politically efficacious*. This means that a liberal theory of legitimacy concerning democratic settings should look for establishing political procedures of decision-making, deliberative settings, ex-post forms of contestation, checks and balances rules that are both normatively justifiable and also efficacious enough to overcome indeterminacy and to be stably supported by the majority of the members of the polity. An effective democratic ideal, that I assume here would encompass liberal ideals as well, has to define standards that actual democratic systems can strive for and achieve (or at least reasonably aim to achieve) in practice. It follows that an account of liberal-democratic legitimacy that rests on onerous idealizations cannot guide actual democratic procedures efficaciously because it sets standards and goals that actual democratic systems cannot reasonably aim to achieve.[27] These idealized standards, even though normatively relevant in establishing a regulative ideal toward which to strive, often are not helpful in improving the quality of democratic processes, rather they can even have the detrimental effect of delegitimizing real decision-making processes. This happens because out-of-reach goals can frustrate attempts at institutional reform and proposals for structural revisions, since they rely on principles and normative reasons so highly idealized that they suggest that they are not, and cannot be, embodied in actual procedures (Biale & Liveriero, 2017; Farrelly, 2007; Hendrix, 2013; Robeyns, 2008; Weinstock, 2017).[28] Further, ideal theorizing can actually be

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[27] "At the extreme of fact-insensitivity (what we can call extreme ideal theory), one runs the risk of invoking an account of justice that fails to function as an adequate guide for our collective action in the real, non-ideal world," Farrelly (2007: 846).

[28] "For non-ideal theory, the problem with contemporary liberal theory is that its insufficient regard for the facts has impeded its ability to fulfil its normative ambitions of providing guidance for political action and reform. Greater concern for the facts, either in relation to implementing the recommendations of ideal theory in the real (non-ideal) world or through incorporating those facts into normative theorising itself, will produce a theory more suited to guiding action here and now. The more facts one incorporates, the more *realistic* the theory will be," Sleat (2016a: 29, emphasis in original).

more problematic than traditionally envisaged: the language of rights and liberal values, when completely detached from a critical appraisal of real-world asymmetries of power and structural injustices that characterize our democracies, can actually have a perverse effect in mischaracterizing our reality, not allowing a correct uptake of what justice requires from agents in nonideal circumstances.[29]

To avoid these shortfalls and foster both the normative guidance and the efficacy of a liberal political conception, I contend that the debate over the legitimacy of liberal-democratic systems should be developed starting from a technical analysis of the actual, nonidealized, circumstances of justice. This analysis of the actual circumstances of justice is essential for at least three reasons: (i) it favors the development of a model of political legitimacy that takes the motivational aspects of politics seriously; (ii) it is strategic to underscore that the contemporary political debate over the ideal of political equality has been overlooking the epistemic dimension of the basis of equality; (iii) it pushes normative theorizing to acknowledge from the start that in real-world contexts very often, if not always, the principles and values of the ideal theory are twisted by contextual understandings and distortions that are conducive to fostering long-standing social injustices.

As we shall see, the analysis of the actual circumstances of justice is what allows us to unfold structural injustices and unjustified inequalities persisting in our democracies, notwithstanding the wide-spread rhetoric of rights, freedom and equality that characterizes contemporary western democracies. In a fashion similar to other authors that have been criticizing ideal theorizing as blatantly inadequate to unmask and provide solution to address these wide-spread forms of injustice and prejudice (Levy, 2016; Mills, 1997, 2017; Pateman, 1988; Young, 1989), I shall investigate how it is possible that so many unequal treatments and disparity of status and lack of respectful treatments are still part of our democratic societies despite the apparent support for freedom and equality as basic values of our societies. To put it harshly, it looks like sometimes the appeal to the normative discourse of rights is nothing more than a superficial and hollow attempt to pay lip service to these ideals without any real effort to realize them. In this work I contend that as political theorists we should try to make a stop to this destructive slippery slope, accepting the intrinsic limits of ideal theorizing against the actual circumstances of real-world democracies and opening up our research to fact-sensitive proposals that attempt to strike a balance between the quest for an adequate justificatory framework for

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[29] Famously, Charles Mills (1997, 2005) has argued that the ideal theory not only does not provide the theoretical weapons to fight actual injustices, rather the ideal theory is constitutive of the problem itself, since idealizations are prone to ideological distortions of social reality that end up reinforcing asymmetries of power and wide-spread instances of misrecognition. In that respect, ideal theory is a form of ideology in the pejorative sense of false consciousness, and it also prevents individuals from becoming aware of certain types of injustice. Even though I share many of Mills' concerns regarding the risks of ideological distortions, in this work I contend that it is still possible to carve out an important role for the idealized normative level of analysis, as long as we couple it with an adequate critical appraisal of the nonideal circumstances of real-world political societies, where actual asymmetries of power are produced and maintained and where very often political ideals end up being distorted and possibly manipulated.