

Judging Democracy in the 21st Century: Crisis or Transformation?

Alessandro Ferrara*

Time and again, today, the word ‘democracy’ is heard in association with the word ‘crisis.’ ‘Post-democracy’ has become a standard term in contemporary political theory (see Crouch 2004) and prominent global authors do not shy away from presenting democracy as ‘an exemplary case of the loss of the power to signify’ (Nancy 2011, 58) or as an ‘emblem’, and from urging on us that ‘the only way to make truth out of the world we’re living in is to dispel the aura of the word *democracy* and assume the burden of not being a democrat’ (Badiou 2011, 7). Other intellectuals, like Wendy Brown, claim that today democracy has become a ‘gloss of legitimacy for its inversion’ (Brown 2011) insofar as ‘even democracy’s most important if superficial icon, “free elections”, have become circuses of marketing and management, from spectacles of fund-raising to spectacles of targeted voter “mobilization”’ (Ibid.).

This thesis of the ‘crisis of democracy’ strikes me as facile, glib and ultimately misleading. Not only it flies in the face of a historical process which has led democracy, in a time span of less than 4 decades, to sink roots in geographical areas where previously it never had had any strong foothold: Central and Eastern Europe, Latin America, South-East Asia, South Africa and recently, in the course of a still open-ended process, North Africa and the Middle East;¹ not only it flies in the face of the evidence of millions of people who, in all parts of the world, have risked and do risk their lives in order to obtain democracy; but above all it orients our attention in the wrong direction.

* Alessandro Ferrara is Professor of Political Philosophy at the University of Rome ‘Tor Vergata’ and former president of the Italian Association of Political Philosophy.

¹ This impressive affirmation of democracy during the last decades is well documented by the UN Human Development Report 2010, *The Real Wealth of Nations: Pathways to Human Development*. Written before the Arab Spring, the Report describes the advances of democracy in Europe and Central Asia, followed by Latin America and the Caribbean: ‘Among developing countries in Europe and Central Asia the only democratic country in 1988 was Turkey. Over the following three years 11 of the 23 countries in the region became democracies, with 2 more turning democratic since 1991. In Latin America and the Caribbean most

Let me use a botanical metaphor to illustrate this point. A plant needs a favorable and fertile soil in order to flourish: its genetic endowment cannot make the miracle of turning it into a self-sustaining organism if the soil does not nourish its roots. Thus, the same plant, with the same genetic endowment, will flourish or will wither depending on the quality of the soil where it must grow. The soil on which the plant of democracy now depends has become increasingly inhospitable and this metaphor allows us to make sense of the moment of truth contained in the ‘crisis of democracy’-thesis: namely, the observation that the historical moment when democracy becomes a ‘horizon’—when for nearly half of humanity it has ceased being one out of several forms of legitimate government and it has become ‘the’ legitimate form of government—also marks a moment when neo-oligarchic tendencies rear their head in societies that already are democratic and when populist anti-political attitudes gain center-stage.²

Furthermore, the botanical metaphor in a way sets the dual task that I will pursue in this paper. In Section 1, I will focus on ten aspects that have jointly contributed to make the soil—the larger societal, historical, cultural and economic context where 21st century democracies must function—more *inhospitable* than ever. In Section 2, I will reconstruct one of the main adaptive countermeasures, contained in the framework of Rawls’ ‘political liberalism’, that can enable the democratic plant to survive and to still remain faithful to its distinctive nature, namely to the idea of self-legislation on the part of the citizens. In Section 3, I will outline a number of suggestions for developing further such framework and enhancing the effectiveness of democracy’s response to the challenge of hyperpluralism, and finally, in the concluding remarks, it will be argued that the proper description for the ‘state of democracy’ in the 21st century is that of a transformation, initiated but still awaiting completion, in the direction of a multivariate democratic polity sustained by an expanded and decentered public ethos.

1. Old and new inhospitable conditions for democracy

We do not start from scratch when we analyze the new inhospitable conditions that democracy has to face in order to function—as a political regime—in the complex societies of the second half of the 20th century. A copious literature exists, which cannot be surveyed here, except for briefly recalling one of the most concise accounts offered by Frank Michelman in 1997. Michelman (1997, 154) mentions:

countries were not democratic in 1971, and several democracies reverted to authoritarianism during the 1970s. Following a subsequent wave of political change, almost 80 percent of the countries were democratic by 1990. By 2008, with regime changes in Ecuador and Peru, the share reached 87 percent. East Asia and the Pacific and Sub-Saharan Africa also reflect reforms—just 6 percent of governments in both regions were democratic in 1970; by 2008 the share had risen to 44 percent in East Asia and the Pacific and 38 percent in Sub-Saharan Africa, UN Human Development Report, 68-69. The years 2011-12 show evidence of an incipient extension of this process to several countries of the Middle East and North Africa.

² This and other ideas presented here are developed in greater detail in my *The Democratic Horizon. Hyperpluralism and the Renewal of Political Liberalism*. Cambridge University Press, Cambridge, 2013, forthcoming.

a) The immense extension of the electorates, which in the new era of universal suffrage reach tens and sometime hundreds of millions of voters, and in the case of India one billion voters. This undisputable fact contributes to instill, or to enhance an already present perception of the irrelevance of one's vote—a perception hardly thrown into question by the 'electoral ties' that have punctuated the first decade of the 21st century (Bush vs. Gore in the US, Berlusconi vs. Prodi in Italy and Calderon vs. Obrador in Mexico)—and puts an incentive on 'rational ignorance' on the part of the ordinary citizen.³

b) The institutional complexity of contemporary societies—where the diverse layers of representation, from local to national, make it difficult to grasp the relation between one's vote and its real political consequences. The institutional complexity is compounded by the technical complexity of the political issues, which again discourages active participation on the part of lay persons and interfere with the accountability of elected officials. In other words, in our societies it has become more difficult than in the past for a citizen to understand who is to be considered responsible for what and to assess to what policies he is concretely contributing through her vote (Bovens 1997).

c) The increased cultural pluralism of constituencies, typical of societies where migratory fluxes combine with a public culture receptive to openness and the value of diversity. The combination of these factors renders consensus on political values and *constitutional essentials* more unstable and difficult to reach relative to societies that are either more impermeable to immigration or more inclined to accept the public hegemony of the culture of the majority—a condition of *hyperpluralism* which in the next section will form the focus of a renewed version of political liberalism, understood as one of the possible adaptive responses that democracy can develop.

d) The anonymous quality of the processes of political will-formation, i.e. the emerging of a public orientation and opinion less and less out of direct interaction among citizens assembled in public places and now almost exclusively via simultaneous, yet isolated, exposure to a variety of media outputs or at best through exposure to such messages within small like-minded groups,⁴ a condition which is under reconsideration today in the light of the rise of social media and their impact on the formation of public opinion.

To these four conditions mentioned by Michelman a fifth one is worth adding, which is also rooted in the historical context of the last third of the 20th century.

e) The same migratory fluxes which have accrued societal pluralism also have contributed to make citizenship less inclusive and more selective. Contemporary

³ 'Rational ignorance' is the response of the citizen who finds futile to invest time in acquiring all the knowledge necessary for an autonomous and considered judgment on highly complex issues, given the neglectable influence of a single ballot in an election where tens or hundreds of millions vote (See Fishkin 1995).

⁴ See the now classical study by Habermas (1962).

democracies are further and further removed from the canonical image of a political community of free and equals encompassing all the human beings who live within the same political space, as geographically delimited by State borders. Instead, they resemble more and more the ancient democracies, inhabited by citizens who would decide of the fate of denizens of various kinds and of slaves.⁵ Within the number of all those who live within the borders of a contemporary democratic nation-state are now included many who are not citizens at all: resident aliens, immigrants awaiting legal residency, illegal aliens who have no chance of becoming residents, refugees, people enslaved by human-trafficking rackets.

However, all this is history now, consolidated wisdom about the difficulties of democracy in complex societies. Entirely new conditions, even more inhospitable, have emerged, which still await full elucidation. Among these *new* inhospitable conditions, that induce a de-democratization of democratic societies, we can certainly include: f) the prevailing of finance within the capitalist economy (a factor that further increases the difficulty, on the part of government, to steer the economic cycle), g) the generalized acceleration of societal time, h) the globalization-induced tendency toward supranational integration, i) the transformation of the public sphere caused by the economic difficulties of traditional media, and the rise of new social media, j) the wide scale and generalized use of opinion polls and its influence on the perceived legitimacy of executive action. Let me briefly survey them:

f) Democracy has always had an ambivalent relation with the capitalist economy, but it is an undeniable historical fact that modern representative democracy could stabilize and flourish only in combination with a capitalist economy. During the last three decades, however, capitalism has undergone a momentous transformation, in conjunction with globalization—a transformation that has revived traits of rampant inequality and brutality typical of earlier stages of capitalism at the onset of the industrial revolution. The value of labor has constantly been diminishing in the West over the last few decades and this process, linked in turn both with technical rationalization and with the geopolitical availability of a global labor market, exerts a societal impact which goes well beyond industrial relations or even the whole of the economic sphere.⁶ We are probably witnessing the terminal decline of employed labor *qua* generator of wealth and social prestige also in the tertiary sector, among white collars. Not only the great manufacturing industry undergoes a steady decline—paradoxically, Detroit has more to fear from Wall Street than from unionized labor force—but, more generally, the prevailing of financial capital in the economy tilts the scales in favor of capital and rent and mercilessly reduces the income, the relative

5 Still enlightening in this respect are Walzer's reflections in the Chapter on 'Membership' of his *Spheres of Justice* (1984, 53-61).

6 An indicator of this general trend is the systematic decline of the labor share in favor of capital share over the last few decades in all economies, a decline that reaches beyond 10% in Finland, Austria, Germany, Sweden, New Zealand and has a peak of 15% in Ireland, as attested by the International Labor Organization, *Global Wage Report* (2010, 27). For a similar analysis, see also International Monetary Fund, *Economic Outlook "Spillovers and Cycles in the Global Economy"* (2007, 174).

wealth, the purchasing power, and consequently also the political influence, of the employed middle class. Wage labor becomes flexible, precarious, less well paid, subcontracted and outsourced and also loses its historical representation: it becomes increasingly de-unionized and loses the capacity to attract consensus on its requests. The income of high-prestige managers, top professionals, stars in the arts, in show-business and in sports reaches spectacular levels unrelated with the everyday reality of the rest of the working people. Starting from the 1980's, finance appears to be more capable of generating wealth than production and manufacture in general, and its instruments become ever more 'virtual', disjoined from all measurable and material benchmark in the 'real world'. A firm is worth what the sum total of its equities are worth, and the value of its equities becomes a function of the expected capital gain that they can generate in the short run. Paraphrasing Charles Horton Cooley, the great social theorist and associate of George Herbert Mead, one could be tempted to say that the value of a share in today's stock-exchange market is the fantasy that people make of the potential growth of its value. Even ordinary language registers this momentous change: sea-changes in the stock market, ushering in a bearish or a bullish mode, are often explained through the 'sentiment' of the operators turning positive or negative. In this respect Wall Street, not the 'real economy', calls the shots: bubbles and their bursting are entirely its own creations, first the bubble of the *dot.coms*, then the housing one, then the *subprime mortgages* one. It is not difficult to detect here yet another inhospitable condition for contemporary democracy, especially considering that it is only since the era of the New Deal, not even a century ago, that a democratic government had managed to curb the classical capitalist cycle of expansion and recession. This new difficulty is compounded by a crucial difference that separates that context from ours. Roosevelt faced an economic crisis that originated at home and at home could be solved, through appropriate legislation by Congress, supported by a large popular consensus on labor protection and needs. President Obama faces an economic crisis that originates from the Wall Street generated bubbles, but whose solution no longer depends solely on Congressional legislation, in support of which no large prevailing consensus is in sight anyway, and requires international cooperation which his Administration can only plead for. In a globalized economy, the collapse of the euro in the wake of a possible default of one or more medium-sized countries, could drag the whole world economy into a depression of catastrophic magnitude, but the measures necessary to avoid such an outcome lie beyond the legislative reach of one parliament and the executive action of one government alone, even of the most powerful.

g) The acceleration of societal time contributes to a verticalization of social and political relations. In all walks of social life, there is always less and less time for deliberation, collegiality, consultation. A political party, a 21st century global firm, but also a successful NGO which wishes to keep abreast and be visible in a crowded public sphere, the editorial staff of a newspaper which wishes not to be left behind by the competition, must take a stance, make a statement, sell and invest, make the most of an opportunity for visibility, publish news before the competition in a

world in which time is the ‘real time’ of Internet. In turn, this process puts a greater emphasis on the recognizability, the discretionality and ultimately on the power of the political leader, of the CEO, of the coordinator, of the editor in chief—regardless of the organizational efforts that some political, institutional, corporate cultures may make in the opposite direction.⁷ It lies beyond democracy’s powers to slow down the tempo of social life in the age of Internet and of global connectivity in real time, but democracy will have to face the challenge of somehow neutralizing the verticalizing, perhaps even authoritarian, implications of acceleration.⁸

h) The globalization of the finance economy and the growing inability of the ‘average’ nation-State to meet such global challenges as migratory waves, terrorism and organized crime, climate change and international security jointly fuel a powerful trend towards supranational integration of countries of more or less similar history, culture, traditions and geo-political location. The EU is often cited as an exemplary pacesetter in a process that has afterwards been replicated under the names of ASEAN, Mercosur, Ecowas, and so on. This process, saluted by many as a welcome beginning of a trend to overcome the political fragmentation of the ‘world’ in 193 State entities, in fact confronts democracy with the necessity to survive, in forms which remain to be investigated, the dissolving of that nexus of one nation, one state apparatus, one national market, and common culture, language and memories which had been at the basis of its flourishing in the modern Westphalian system of the nation-states. As Habermas pointed out over a decade ago, today it’s the states that are immersed in the global economy rather than national economies being delimited by state borders (Habermas 2001, 66-67). This irreversible fact of world-history calls for new patterns of coordination and integration among existing states, and these new patterns in turn bring to the fore of political philosophy key-words such as *governance*, as opposed to classical government, *soft-law*, *best practices*, *benchmarking* and *moral suasion* (Bohman 2007). In this context it is yet to be clarified what form will be assumed by the legislative authorship of citizens—namely, that ideal of obeying laws which one has contributed to make which constitutes the definitional trait of democracy across the diversity of its manifestations, from Athenian direct democracy to Westminster representative democracy.⁹

i) The public sphere of the democratic societies is undergoing another powerful mutation after only a few decades from that ‘structural transformation’ described by Habermas in his pioneering work of 1962 and revisited in *Between Facts and Norms* (Habermas 1962; Habermas 1992). On the one hand, the atomized audience of the generalist big media (radio and TV) experiences forms of incipient re-aggregation

7 After Virilio 1986, Hartmut Rosa and William Scheuerman have investigated the effects of acceleration respectively on contemporary social life and more specifically on the democratic process: see Rosa 2005; Scheuerman 2004; Rosa & Scheuerman 2010.

8 On the political consequences of acceleration and some reflections on citizenship in times of social acceleration, see Scheuerman 2010, 287-306.

9 On the case of the European Union, and critically reconsidering the imputation of a ‘democratic deficit’, see Moravcsik 2002, 40, 4, 603-24 and Moravcsik 2008, 331-340.

under the effect of the new *social media*—*Facebook*, *Twitter*, the *blogs*, etc. Now the flow of communication is addressed to tens, perhaps a few hundred people included in social networks that in turn are connected with one another by the social media. These networks, in turn, no longer consist of atoms, but of social molecules constituted by individuals who are acquainted with one another. The role of *opinion leaders* who filter communication and orient its decoding becomes relevant once again. The great gap between powerful, economically costly, broadcasting stations and a plethora of dispersed and passive individual receivers begins to show signs of being bridged. In the so-called web 2.0 the blogs, the single social networks, even the individual webmasters enjoy a much higher potential for having their messages reach the same broad audience formerly within the reach only of the big broadcasting corporations. On the other hand, however, the availability of news and information in the web is contributing to a massive and pervasive crisis of the quality press.¹⁰ Newspapers always come late in selling already known news that can be obtained faster and free of any cost on the net. The adaptive response, on the part of the quality press, has already been widely investigated by students of journalism and mass-media: newspapers tend to become like weeklies and to offer qualified comments to the news already circulating on the net. The demand for ‘authoritative comments’, however, is much less robust than the demand for fresh news, and this causes both the decline of the sales of quality newspapers and their diminishing appeal on the advertising market. Hence democracy in the future will have to reckon with a public sphere and processes of public opinion formation that will be influenced by these novel trends and transformations.

j) Finally, a whole separate dimension in this transformation of the public sphere is constituted by the ever more extensive use of opinion polls in order to measure the popularity and consensus that blesses the political initiatives of the government. Why should this trend represent a potential alteration of the democratic order? Consider the perception of the legitimacy of a head of government—whether a president or a prime minister—before and after the invention of sample surveys and their massive use. Earlier, the ‘perceived’ legitimacy was basically linked with the latest electoral results. Its variations in between two general elections were the object of mere supposition and of polemics between opposing camps. Nowadays, instead, thanks to the regular and massive use of polls, the perceived legitimacy of a leader takes on the fluctuating pattern of the stock exchange: it rises or declines as a function of diverse variables, it exhibits different degrees depending on the kind of policies pursued, it displays ascending or declining trends, sudden falls and rebounds. These oscillations as perceived in real time bestow different degrees of force and credibility to the actions of the executive and above all induce the other branches of power to react differently—and thus basically alter the established *checks and balances*—to executive initiatives at the margins of legality and jurisdictional boundaries. For example, assertive action at the edge of the jurisdictional prerogative, and the other

¹⁰ See Federal Trade Commission Staff 2010.

branches' response, is one thing if such action is undertaken by a head of government who is supported by a 65% consensus, and a quite different thing when the polls show a consensus declining below 50%, even if by hypothesis the latest electoral result obviously remains unchanged. On this alteration of the pattern and balance of democratic legitimacy in the United States, the country which first has experienced the regular and widespread use of opinion polls, enlightening pages have been written by Bruce Ackerman in *The Decline and Fall of the American Republic* (2010, 131-135). Finally, this new predicament becomes even more problematic if considered in conjunction with the phenomenon of societal acceleration: governments tend to commit themselves only to policies which are likely to generate good results at the opinion polls and cannot afford the luxury of suffering a decline in view of an after all uncertain come back in the more distant future.

These are some of the inhospitable conditions, inherent in the socio-historical context of 21st century complex societies, that democracy must learn to neutralize if it is to continue to flourish or at least not to turn into the empty simulacrum that crisis-theorists accuse it of having already become. In the next section I will briefly present one of the adaptive responses that can enable the democratic plant to flourish again in the more impervious soil of our time.

2. Responding to the inhospitable conditions: political liberalism and democratic dualism

Some of these conditions have already generated responses and counter-tendencies, the most important of which is the rise of a 'dualist conception of democratic constitutionalism'. According to the dualistic model, first formulated in the volume *Foundations* (1991) of Bruce Ackerman's *We the People*, in the inhospitable context described above it makes sense to apply the classical standard of the 'consent of the governed', in order to assess the legitimacy of a political order, only to the 'higher' level of law and of the institutional framework—i.e., to the level which coincides with the *constitutional essentials* or what Rawls has called the 'basic structure'. Instead, the political justification of all the legislative, administrative and judicial acts of 'ordinary' or 'sub-constitutional' level is best understood as resting simply on their consistency with the constitutional framework (needless to add, when mechanisms of *judicial review* are in place).¹¹ Ackerman's dualistic approach, adopted also by Frank Michelman in his reflections on democratic constitutionalism, has been subsequently integrated into Rawls' *Political Liberalism*, as attested by Rawls' 'principle of liberal legitimacy', in the following terms: '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' (Rawls 1993,

¹¹ See Ackerman 1991, 6-7. For a critical view of this dualist view of democratic legitimacy, see Waldron 1999, 7-20.

137).

As with all definitions, also this Rawlsian reformulation of the legitimacy of government or of the ‘exercise of political power’ speaks to us through what it does *not* say. The crucial sentence ‘in accordance with a constitution’ stands over against the alternative formulations that have been used in the past and to some extent are still on offer. For example, Rawls’ idea of the legitimate exercise of coercive power stands over against the idea that coercive power is legitimate when it is exercised ‘in accordance with the will of the majority as expressed in the latest elections’, or ‘in accordance with what the public wishes, as attested by reliable polls’, or ‘in accordance with our political tradition’, or ‘in accordance with the Bible, the Qur’ân, or any other sacred text’ or ‘in accordance with our manifest destiny’, or ‘in accordance with our idea of morality’.

Furthermore, Rawls’ formula sets the requirement that the constitution be endorsed, in its essential elements, by *all* the citizens (not just the well-to-do, the believers, those belonging to a certain ethnicity, a certain geographical territory, a certain gender, and so on) and be endorsed by all the citizens *as free and equal* (as opposed to being endorsed in a situation in which some are more equal than others and in a position to put pressure on the recalcitrant ones).

Finally, the citizens’ endorsement of the essential elements of the constitution must proceed *from principles and ideals acceptable to their common human reason*. Also in this case Rawls’ formula speaks to us through the excluded alternative. The consent of the governed must be based on considerations of justice as opposed to considerations of *prudence*, such as the fear of the consequences of refusing to consent. In other words, a constitution accepted out of preoccupation for the political consequences of the conflict ensuing from lack of agreement can at best legitimate a *modus vivendi*, a truce, a cease-fire among parties that secretly keep their arms as ultimate guarantee for their defense, but cannot legitimize the ‘stable and just’ society where political power is exercised ‘properly’ over time. This is the normative core of political liberalism, and it operates in conjunction with a number of related concepts—such as a political conception of justice, public reason, the reasonable, the overlapping consensus, the burdens of judgment, and many others that cannot be addressed here.

Let me illustrate three senses in which this definition of the legitimate exercise of democratic power can be understood as a creative self-transformative adaptation of the democratic plant to the new inhospitable conditions and then, in the next Section, I will outline a few directions in which this normative framework can be further expanded.

a) First, in incorporating, within his definition of the legitimate exercise of political power, Ackermans’ view of ‘democratic dualism’, Rawls responds to the inhospitable conditions outlined above by revisiting the traditional liberal understanding of the ‘consent of the governed’ as the ground of legitimacy. Given those conditions, it is simply misguided and unrealistic to interpret that standard as the requirement that citizens should endorse, as justified by reasons of principle, *all*

details of the legislative, executive and judicial activity of the democratic institutions. If the democratic plant is to survive, we must settle for a different criterion of legitimacy that exempts single aspects of such activity from justification in the eyes of all the citizens and reconciles ourselves with the reality of groups of citizens—considered from a religious, ethnic, economic, gender or other perspective—who will always dissent and consider one or another verdict, statute, or decree unjust and coercive from their own point of view. And yet the idea of the consent of the governed must and can remain the lodestar for assessing the legitimate exercise of democratic authority when properly reformulated as a reflective judgment passed on the constitutional essentials with which all of the subordinate legislative, judicial and executive acts must conform and be consistent.

b) According to Ackerman, the *dualist* model of democratic political legitimacy implies a rejection of two competing models of democracy—the ‘monist’ and the ‘foundationalist’—as less adequate in general and, furthermore, as less adequate responses to the new predicament of the 21st century. The monist model rejects the distinction between the two levels of constitutional and ordinary politics as paternalistic and potentially elitist, if not anti-democratic. Democracy, according to this monistic view, should vest the power of law-making—independently of the nature of the statutes approved—entirely in the hands of the legitimate winners of the latest elections, assuming these have been held under conditions of fairness and equity among the involved parties. According to this view, whenever a non-elected body or institution checks on the credentials of the legislative products of the parliamentary majority, there a democratic deficit occurs.¹² The foundationalist model instead, exemplified by the kind of rights-based approach advocated by Dworkin, shares with the Ackermanian-Rawlsian view the dualist understanding of democratic legitimacy, but conceives of the constitution as a device for safeguarding some fundamental, natural-law grounded, right, as the right to equality in Dworkin’s case. No democratic deficit occurs then when rights are affirmed against majorities—usually through the intervention of deliberative bodies, courts, that are independent of electoral majorities (Dworkin 1996, 17-18). Rather, the democratic process is understood as one of the means, and often not the most adequate, for the affirmation of these rights.

c) The dualist model dissolves the imaginary, so popular in the European democracies influenced by the French revolution, of the centrality of parliamentary law-making as the branch of government most closely related to popular sovereignty. Consequently, it also deemphasizes the idea that regular parliamentary elections are the locus of the conferring of a mandate on the part of the sovereign. As Rawls eloquently puts it, ‘parliamentary supremacy is rejected’ (Rawls 1993, 233), but at the same time ultimate power cannot be left ‘even to a supreme court’: rather, ultimate

¹² For a moderate version of this monistic view, which accepts the distinction of constitutional and ordinary politics but rejects the attribution of the function of constitutional review to an unelected judicial body and favors its attribution to the some segment of the elected legislative branch, see Bellamy 2007.

power 'is held by the three branches in a duly specified relation with one another with each responsible to the people' (Rawls 1993, 232). If the legislative branch, in its daily and routine operation, is not endowed with a special relation to popular sovereignty, then normal politics, understood as puzzle-solving at the crossroads of interests and lobby-sponsored issues, cannot be demonized as a 'corruption' or highjacking of popular sovereignty, for the simple reason that during its operation the people, qua holder of sovereignty, is *silent* altogether, not active, as in the Jacobin imaginary. The sovereignty-holder does not concern itself with amendments to budget laws or with laws regulating import and export. It only speaks out when constitutional amendments are at issue, especially so in politics where popular ratification of parliamentary proposals for amendment is mandatory.

To re-cap: according to 'political liberalism', democracy can respond to the ever more inhospitable conditions under which it must operate by way of self-correcting its own central notion of democratic legitimacy along dualist lines and thus opening itself up to a judicial, over and beyond the classical parliamentary, safeguarding of its fundamental rights against the power of electoral majorities now more permeable to the influence of money and media. Much more can be done, however, and in the following section five suggestions will be offered for ways of further enhancing political liberalism's potential for helping democracy meet the challenges connected with the new inhospitable conditions of our time, notably the challenge of a ubiquitous hyperpluralism.

3. New directions for expanding the framework of political liberalism

John Rawls' political liberalism can function as a promising framework for rethinking democracy, if taken in no scholastic sense, but rather as an open project to be developed in a number of mutually enriching directions. The idea is that it contains methodological treasures whose fruitfulness for a reflection on democratic politics still awaits full appreciation—among them the idea of public reason, whose intrinsic standard of *reasonability* sits somewhat uncomfortably between the normativity of voluntary endorsement on the part of the participants and the a priori cogency of principles and is best understood in terms of exemplarity.¹³ Against the widespread and influential interpretation of the work of the later Rawls as a somewhat unfortunate fall from the philosophical (foundational) heights of *A Theory of Justice* to an adaptive, quasi-realistic reorientation of the axis of inquiry from justice to stability, *Political Liberalism* still provides the most innovative political-philosophical framework for making sense of how a democratic polity can come to terms—of all the new inhospitable conditions reviewed above—with diversity and pluralism without giving up the distinction between the force of legitimate law and the force of power and hegemony. The link of the reasonable to the exemplary opens up political

13 For a reconstruction of the nexus of exemplarity and the normativity of the reasonable, see Ferrara 2008, 72-79.

liberalism, among all the contemporary approaches to democracy, to the ‘aesthetic sources’ of normativity (exemplarity, identity, judgment, the imagination) which remain confined to the periphery in other approaches.

First, public reason has become a standard term in today’s political philosophy, but perhaps the idea of a ‘public imagination’ also deserves consideration. Democracy cannot afford leaving political imagination theoretically unattended. Hence the suggestion can be put forward to understand democratic politics *at its best*—i.e., when it brings existing normative principles and practices on the ground into an *exemplary congruence* or when through exemplary practices it articulates new normative standards and political values—as a way of promoting the public priority of certain ends through good reasons that set the political imagination in motion and thus motivate people to act. The ‘public imagination’ is sometimes inspired by the exemplary congruence of facts on the ground and ideal norms, as in the case of the first election of President Obama. At other times, however, a more radical function is played by the public imagination when political novelty is being produced. Natural rights, legitimate government as resting on the ‘consent of the governed’, the right to the ‘pursuit of happiness’, *liberté, égalité, fraternité*, the abolition of slavery, universal suffrage, human rights, the social rights protected by the welfare state, gender equality, the idea of privacy, the idea of sustainability and of rights of the future generations: none of these notions has gained political acceptance by virtue of its following from antecedently and independently established principles, though often political rhetoric has struck that chord. Rather, these notions have come to be accepted by virtue of the new vistas they open on human dignity and what it means to respect it, relative the traditional, received views of the respective epochs. In this process, the imagination plays as crucial a role as reason. For public reason can corroborate our sense of being justified in endorsing these new norms, but only public political imagination, by offering us a prefiguration of how our life in common would be transformed by their enactment, can motivate us to go through the pains of struggling against entrenched interpretations and ideologies.

Although it cannot be expected to be in operation all the time, democratic politics at its best works as a standard for a normative understanding of democracy and is equally distinct from the routine politics—politics as ‘the science and art of political government’ and as ‘the conducting of political affairs’—which we experience during most of our political lives and from populist mobilization. While the first kind of democratic politics prioritizes our diverse ends through reasons that even when desirably good leave however the imagination unaffected and mobilize no one, the populist imagination creates public signifiers that motivate people to act but have only a tenuous connection with good reasons.

The ‘aesthetic analogy’¹⁴—often politics, since Plato’s *Statesman*, has been compared with art—helps us once again to sharpen our perception of democratic politics. To formulate it in a Kantian vocabulary, just as the aesthetic ability of a work

14 On the use of this phrase, see Ferrara 1999, 197-201.

of art to ‘set the imagination in motion’, to make the imagination enter a ‘free play’ with our concepts or ‘the understanding’ (Kant 1790, § 9) and eventually generate a sense of the ‘furtherance of life’ (Ibid.), depends on the co-presence of both genius and taste,¹⁵ so we experience democratic politics at ‘less than its best’—which may well be the case most of the time—both when its claims are supported by reasons irreprehensible but devoid of ‘vision’ or when they are fueled by imaginal constructs¹⁶ that do not survive scrutiny in the space of reasons. So the first direction for expanding the framework of political liberalism is to put on its agenda the investigation of the public function of imagination alongside public reason.

Second, in response to the need, in turn connected with the exponential expansion of democracy worldwide, for developing a keener sense not so much of formally democratic procedures but a sense of when the operation of these procedures against the backdrop of a public ethos deserves the qualification of ‘truly democratic’, a case can be made for putting on the agenda of a renewed political liberalism a reflection on how to best conceive of the democratic ethos of a ‘late-modern’ or ‘post-modern’ society. If by judgment we understand the faculty of connecting a particular with some context-transcending notion—either via *subsumption* as ‘an instance of’ (determinant judgment), or by way of creating the context-transcending notion of which the particular is an instance (purely reflective judgment)—and by political judgment we understand the ability to exercise ‘purely reflective judgment’ in political matters, then ‘democratic judgment’ is a special case of political judgment. It is the kind of judgment through which we assess whether a political process that formally appears to fulfill certain procedural requirements in fact truly deserves the qualification of ‘democratic’. If meeting procedural requisites is only one of the necessary conditions for a political process to be considered democratic, then the non-procedural aspect that enters such judgment concerns basically the kind of ethos which permeates the operation of the procedures at all level, from general elections to the local institutional segments of the polity.

Considering a democratic ethos as a catalogue of political virtues deemed desirable and striven after by the citizens, and taking once again *Political Liberalism* as a useful frame of reference, we might want to update and expand the list of political virtues that jointly enable a political conception of justice to operate and at the same time constitute the necessary dispositional prerequisites for the maintenance of an overlapping consensus over time. Rawls mentions among these virtues of political cooperation ‘the virtues of tolerance and being ready to meet others halfway’, the ‘virtue of reasonableness’ and ‘the sense of fairness’ (Rawls 1993, 157), as well as the ‘virtue of civility’ (Ibid.). These virtues can with no effort be included within the set of dispositions that, drawing on the reflections of Montesquieu, Rousseau, Tocqueville, Emerson, Thoreau and others, arguably characterizes the democratic ethos: an orientation towards the common good, towards equality and towards the

15 For Kant genius alone without taste can produce only ‘would-be’ works of art, whereas taste alone without genius can at best produce ‘spiritless’ or manneristic pieces of fine art. See Ibid., § 48 and §49.

16 On the notion of the ‘imaginal’, see Bottici 2014, Part I Section 3.

value of individuality. Is this well consolidated picture of the democratic ethos fully adequate to what is demanded for democratic regimes to flourish in the inhospitable conditions of the 21st century? New and additional dispositions are perhaps needed. If, within the prohibitively extended range of these new historical conditions, we focus on hyperpluralism or permanent disagreement on a broader and deeper range of fundamental political issues than usually contemplated by liberal-democratic doctrine,¹⁷ then we might consider adding to the received idea of the democratic ethos the virtue of *openness*. Openness—understood as the quality of a public culture oriented towards favoring unconventional solutions more often than any non-democratic public culture does, and motivated by an attitude of receptiveness to novelty, of exploration of new possibilities for a life form, a historical horizon, a social configuration¹⁸— somehow addresses the same concerns for which other authors in recent years have suggested *new* democratic virtues. Relative to Taylor’s *agape*,¹⁹ Derrida’s *hospitality*²⁰ and White’s *presumptive generosity*,²¹ *openness* seems to enable the public culture of a contemporary democracy to address hyperpluralism without being affected by the drawbacks of a) entering a relation somehow of tension with rights and principles or b) not allowing for the conceptualization of a negative counterpart identified as ‘excessive’, as it seems to be the case with *agape* and *hospitality*. Furthermore, *openness* seems (perhaps to a greater extent than *presumptive generosity*) the democratic virtue that best tracks exemplarity

17 Hyperpluralism, somewhat more technically defined, is a condition in which for significant segments of the citizenry one or other of the basic constitutional essentials—the idea of equality among all citizens, gender equality, the idea of the citizen as a self-authenticating source of valid claims, freedom of conscience, the consequent ban on apostasy, etc.—are somehow problematical in the light of their comprehensive conception of the good. See Ferrara 2012, 38, 4-5, 437-38.

18 For a more detailed discussion, see my *The Democratic Horizon*, Chapter 2.

19 *Agape* is an ethos revolving around the theistic intuition of a ‘divine affirmation of the human, more total than humans can ever attain’, see Taylor 1989, 521. According to Taylor, however, the original meaning of *agape* needs to be properly recovered if an ethos inspired by it is to exert some influence on today’s democratic societies. The hero of *agape* is the good Samaritan, but the parable has to be reconstructed beyond its conventional, received and somewhat enervated meaning: the good Samaritan stands not simply for our universalist moral consciousness, which knows of no tribal boundaries, but also and more radically for a capacity to enter a relation of charity, benevolence or *agape* with a concrete person, whose path unexpectedly and contingently crosses with ours. See Taylor 2007, 738.

20 As in Taylor’s *agape*, also Derrida’s ‘absolute’ or ‘unconditional’ *hospitality* is predicated against the idea of a philosophical ethics based on a principle or law and the subject’s ability to apply it. In Derrida’s words, *hospitality* properly understood ‘must not pay a debt, or be governed by a duty: it is gracious, and “must” not open itself to the guest [invited or visitor], either “conforming to duty” or even, to use the Kantian distinction again, “out of duty.” This unconditional law of *hospitality*, if such a thing is thinkable, would then be a law without imperative, without order and without duty. *A law without law, in short* [emphasis mine]’ (Derrida 2000, 83).

21 *Presumptive generosity*, rooted in the weak-ontological figure of foreknowledge of mortality, is meant by Stephen K. White as a virtue of limited scope and duration. It is not a recipe for leaving the democratic citizen ‘weak-kneed’ before arrogant manifestations of power or intolerance or oppression, on the part of the majority or of the minorities. It is only meant as an ‘initial disposition’, indeed very germane to the ‘openness’ advocated in my argument, to be practiced in moments when nascent social movements, newly politicized minorities, new political ideas begin to push their way into the public sphere. In White’s words, it is meant as an ‘initial gesture toward that thin bond of negative solidarity among creatures whose dignity and equality reside in their peculiar foreknowledge of mortality’ (White 2009, 107).

and therefore, indirectly, the virtue that allows public reason to track what is ‘most reasonable’ for us.

Thirdly, over and beyond calling for an expansion of our classical democratic virtues, the condition of hyperpluralism raises for political liberalism another challenge: namely, to engage the reasons of free and equal citizens disagreeing on constitutional essentials and to do so more adequately and effectively than through the tools deployed by Rawls in order to reconcile the Lockean defenders of the ‘liberties of the moderns’ and the Rousseauian defenders of the ‘liberties of the ancients.’ Public reason risks idling unproductively when the stock of ‘shared premises’, to draw ‘shareable conclusions’ from, is too thin. Then public reason cannot be the method of choice, unless one is prepared to adopt Jonathan Quong’s interpretive strategy of *immunizing* political liberalism by directing the principle of legitimacy to a subset of the citizens (*instead of all* the citizens) and excluding the less than fully reasonable.²² This way of interpreting political liberalism creates a triple set of difficulties: a) it makes political liberalism internally inconsistent, in that the circle of ‘all citizens as free and equal’ undergoes a sudden reduction that turns the enforcement of the constitutional essentials on those who never *would* endorse them into an instance of ‘liberal oppression’; b) makes political liberalism vulnerable to the accusation, on the part of agonist critics, of entrenching and moralizing the pure fact of hegemony; c) runs against the grain of Rawls’ intention to spell out the conditions for the stability of a free and just society, in that the exclusion of potentially large numbers of citizens all too soon creates the conditions of *instability*.

A more promising strategy for reinterpreting political liberalism runs instead in the opposite direction: in lieu of immunizing the liberal principle of legitimacy against the adverse judgment of ‘less than reasonable’ citizens, the challenge should be taken up of making the unreasonable reasonable. This strategy can be pursued by way of supplementing public reason with recourse to ‘conjectural’ arguments, mentioned in passing by Rawls,²³ but never truly explored in their theoretical and ethical underpinnings. Conjectural arguments may produce the convergence on premises from which then public reason proceeds or can actually even directly deliver the goods of justifying fundamentals as the acceptance of the burdens of judgment to those not yet endorsing them—something that public reason cannot do because it *presupposes* their acceptance on the part of the reasonable actor.²⁴

22 Quong argues that a proper agenda of political liberalism includes a very modest task: ‘to understand what kinds of arguments, if any, citizens *already committed* to certain basic liberal norms can legitimately offer to one another [...] Political liberalism, in my account, is thus a theory that explains how the public justification of political power is possible amongst an *idealized* constituency of persons who are committed to certain fundamental, but fairly abstract, liberal values’ (Quong 2011, 5).

23 ‘Conjecture’ constitutes for Rawls one of the forms of argumentation, different from public reason, that occur in the public space. While public reason aims at generating binding conclusions from shared premises, conjectural arguments (like ‘declarations’ and ‘witnessing’) do not presuppose that premises are shared. Conjectural arguments contribute to strengthen public reason in that they can attract more citizens to participate in its process, but this is true, as Rawls reminds us, only insofar as they are ‘sincere and not manipulative.’ See Rawls 1999, 156.

24 On conjectural arguments, different approaches to them (e.g. by Andrew March and by Lucas Swaine), see

Conjectural arguments, however, no less than public reason, might fail at convincing the unconvinced, and this raises the most difficult challenge for rethinking political liberalism in the light of the inhospitable condition of hyperpluralism. What to do when not just public reason, but even the ‘liberal principle of legitimacy’ idles without grip on the political reality of the polity because not *all* the citizens endorse the constitutional essentials ‘in the light of principles and ideals acceptable to their common human reason’? (Rawls 1993, 137).

In this case, a *fourth* suggestion for rethinking political liberalism consists of questioning the assumption, hitherto tacitly accepted by everyone, that the polity moves all of a piece, holistically, through the various stages of political conflict, *modus vivendi*, constitutional consensus and finally overlapping consensus. At this juncture, however, it might be worth to reconsider the domestic polity of *Political Liberalism* in the light of Rawls’ subsequent view of a global world order. In fact, even a cursory look at *The Law of Peoples* corroborates the idea that Rawls envisaged the possibility, in the case of ‘the world’ *qua* political entity, of a multivariate political entity premised on a mix of principled and prudential, justice-oriented and balance or security oriented, considerations endorsed by different groups of actors. One larger component of ‘the world’ includes peoples that relate via principles of justice to one another in the context of a ‘Society of Peoples’, another component includes the same peoples as relating to other types of peoples (peoples ruled through ‘benevolent absolutism’, ‘burdened societies’ and ‘outlaw states’) on a mix of considerations of justice and prudential considerations about the use of force, not to mention the fact that also the three kinds of peoples not included in the Society of Peoples do interact with one another on some basis which remains to be determined.

Furthermore, the liberal-democratic and decent peoples included in the ‘Society of Peoples’ enter a relation among themselves that certainly cannot be understood as a *modus vivendi*. Rather they relate to one another on the basis of an idea of justice which must be *more limited* than the full political conception of justice at the center of liberal-democratic polities: in fact, such idea of justice in international relations includes only a very reduced version of the second principle and does not include the premise of the full equality of citizens. That premise is indeed shared only by liberal-democratic peoples. Moreover, if it were shared across the divide between liberal and decent peoples, Rawls would have no reason for devising two separate and subsequent runs of the original position for outlining fair terms of cooperation.

Thus, even when faced with a kind of hyperpluralism intractable for public reason, but also impermeable to conjectural arguments, a properly renewed and expanded political liberalism is not helpless: among the conceptual resources that it can offer to contemporary democracies we find the idea of a *multivariate polity*, where some of the citizens embrace *all* the constitutional essentials in the light of principles rooted in their comprehensive moral conceptions (as in the standard version of political liberalism), while other citizens or groups of citizens embrace

Chs. 3 and 4 of my *The Democratic Horizon*.

some of the constitutional essentials in the light of principles and *other* constitutional essentials out of prudential reasons, and then a third group of citizens embraces *all* of the constitutional essentials out of prudential reasons. To complete this point, the multivariate democratic polity, understood as one among a series of possible models of democratic polity compatible with political liberalism, could open itself up to (though it would not necessarily need to) a multicultural version of political liberalism.

Hyperpluralism, however, represents a challenge not just *within* the domestic scale—where the three new resources of a) the political virtue of openness, b) conjectural arguments and c) the multivariate polity could be of help. It also poses a more general philosophical challenge: Is political liberalism really as neutral as it purports to be? Agonistic theorists, radical democrats and theorists of ‘the political’ or of biopolitics voice doubts about it. Instead, nothing in principle seems to prevent the framework of political liberalism, originally understood by Rawls as a reconstruction of how a Western society of free and equal citizens, deeply divided between supporters of the ‘liberties of the moderns’ and supporters of the ‘liberties of the ancients’, can exist over time without oppression, from being generalized and rendered applicable to a much broader range of societies deeply divided *in their own ways*.

The necessary condition for achieving this result is a re-examination of the implicit view of the democratic culture or ethos which undergirds *Political Liberalism* in order to explore whether its basic concepts—the political conception of justice, the two moral powers of the citizen, the political conception of the person, the burdens of judgment, the rational and the reasonable, the overlapping consensus, public reason and reasonability, the liberal principle of legitimacy—could have a resonance and play a similar function in the context of *significantly different* configurations of political values, political virtues, implicit democratic ethos, and competing comprehensive conceptions.

Then a *fifth* suggestion for expanding the framework of political liberalism, inspired by the studies on the Axial Age and on ‘multiple modernities’, leads to investigating whether democratic cultures or kinds of democratic ethos, anchored in different religious and civilizational contexts, do share enough common ground as to be considered variants of a recognizable *democratic* ethos and yet remain different enough in the political virtues and values presupposed as to generate *multiple versions* of the ‘just and stable society of free and equal citizens’ at the center of political liberalism.

The pluralistic spirit of *Political Liberalism* comes to full fruition in the implication, underlying the discussion of ‘multiple democracies’, that the important distinction, drawn in *The Law of Peoples*, between liberal and decent peoples ought to be completed with the effort to distinguish a plurality of transitional paths for the *democratization* of decent societies. A reformulated and expanded version of political liberalism as the best conception of democracy for the 21st century might want to keep the ‘democratization’ and ‘westernization’ of decent societies as

separate as the research program of ‘multiple modernities’ has taught us to separate the ‘modernization’ and ‘westernization’ of traditional societies (which instead the ideological theories of modernization of the 1960’s conflated in one and the same notion). From this way of proceeding the Rawlsian program of political liberalism has everything to gain: from being the narrative of the transition to liberal-democracy of some mainly Protestant polities where the remote echo of the religious wars of 17th century Europe still is audible, it could become the framework in terms of which partially overlapping, partially diverging narratives can be constructed of *any* decent society’s transition to democracy. From being a normative account that originated in a specific context (that of a Harvard professor reflecting on the political experience of his part of the world), the framework of political liberalism could, in the global world, receive transformative inputs from elsewhere and in response to quite diverse experiences. In a sense, openness and reflexivity—openness to diversity and the fact of pluralism, openness to the burdens of judgment, openness to non-liberal decent polities, openness to the aesthetic sources of normativity, as well as the reflexivity of philosophy’s applying tolerance and pluralism to itself—are at the core of political liberalism and put it in the best position for confronting hyperpluralism and, more generally, the new inhospitable conditions of democracy.

4. Concluding remarks

Democracy’s successful response to the new context within which it must operate in the 21st century cannot just rest on the quality of our theoretical grasp of it. It requires institutional design and institution-building, the alignment of interests, social groups and the favor of contingent historical processes that often lie beyond the power of politics to control. At the same time, democracy’s resilience as a form of governance can only benefit from innovative reflections on central junctures of its operation, for example on what democracy ‘beyond the nation-state’ might mean, on the new powers that we might want to identify and keep separate and balanced, on ways of reinvigorating its public sphere and make it benefit from the new social media, on ways of curbing the new absolute power of the markets through legal and institutional devices that are more effective of the ones which were used to curb the absolute power of kings.

Political liberalism can play an important role in this process. It has broken new ground in the age-old debate on the legitimate exercise of power and on political justification. By loosening the core of normativity from the hold of first principles, ‘self-evident truths’, transcendently anchored laws and harnessing it to public reason and the reasonable, it has also freed us from the spell of Plato’s cave without delivering us hostage to skepticism or relativism, as in earlier attempts to rehabilitate the inside of the cave as the true locus of politics. In this new philosophical territory, yet to be fully explored, the lesson conveyed by political liberalism is that the normativity cogent for those who live in a democratic horizon marked by hyperpluralism is the normativity of what is *reasonable for us*—where what is reasonable for us cannot be determined independently of who we want to be, without at that very

moment collapsing the specificity of public reason into some form of traditional theoretical or practical reason. With this philosophical move, altogether absent from *A Theory of Justice*, Rawls ventured into a view of the normative which opens it up to its aesthetic sources—exemplarity, judgment, identity and the imagination. This is the most promising direction today towards which the legacy of political liberalism could be developed. Democracy, in the new historical context where it finds itself, can only benefit from a political philosophy built around a reflexively pluralist core and which—differently from other conceptions that also emphasize pluralism, permanent contestation and agonism—never gives up the distinction between the legitimation of power through *de facto* consensus and the exercise of power what *deserves* legitimation. In this sense, democracy in the 21st century is best described not as a form of rule confronting its terminal crisis, but as a form of rule undergoing another transformation, perhaps of the same magnitude of the one which once led from direct Athenian-style democracy to modern representative democracy. Rethinking the ethos of democracy, de-Westernizing it, devising forms of justification that truly include every citizen, loosening up the grip of the ‘uniform polity’, are ways to fix important parts of the boat on which we are sailing.

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