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EDITORIALE

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### **A Short Introduction: Public Ethics beyond Liberalism?**

Although, as has been noted, public ethics (or political ethics) does not have a fully defined field (1), we can say in general terms that it is structured around two main dimensions. On the one hand, public ethics can be seen as a branch of moral reflection that deals with the “normative justification” of the decisions of the “public” institutions in relation, mainly, to issues of justice and allocation of rights; on the other hand, it regard, in a deontological perspective, the behavior of those occupying public office (2). As is apparent, the first dimension involves the use of evaluation criteria of public choices that, in turn, are developed within more general theories of foundation and justification of moral choices. In this regard, public ethics has its main reference in normative ethics (3) even if it involves a plurality of levels of analysis (4).

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(1) For C.A. VIANO, *Etica pubblica*, Roma, Laterza, 2002, p. VI, public ethics "does not have, even as a first approximation, a specific field, well structured, which apply" (my translation).

(2) Secondo D.F. THOMPSON, *Political Ethics*, [http://scholar.harvard.edu/search/site/thompson?page=6&f\[0\]=sm\\_og\\_group\\_ref%3Anode%3A8003](http://scholar.harvard.edu/search/site/thompson?page=6&f[0]=sm_og_group_ref%3Anode%3A8003), “Political ethics (sometimes called political morality or public ethics) is the practice of making moral judgments about political action, and the study of that practice. As a field of study, it is divided into two branches, each with distinctive problems and with different though overlapping literatures. One branch, the ethics of process (or the ethics of office), focuses on public officials and the methods they use. The other branch, the ethics of policy (or ethics and public policy) concentrates on judgments about policies and laws”.

(3) C.A. VIANO, *Etica pubblica*, cit., p. 107, for which normative ethics is "the matrix of public ethics" (my translation).

(4) This applies in particular to the connection between normative ethics and meta-ethics. This aspect is, for example, underlined by C.S. NINO, *Introduzione all'analisi del diritto*, Giappichelli, Torino 1996, p. 370, that shows that demand

The second dimension has a more direct reference in “applied ethics” and tries to define the problems and behavior of those who exercise political or public roles (5).

If one looks at the reflection on these dimensions of public ethics, it can be noted that what appears more precarious (from the theoretical point of view) is the first. This, on the contrary, does not appear to be the status of the second that seems to be prevalent not only in the public debate, but also have found more stable theoretical alternatives. As we shall see, this can be supported, for example, in relation to the so called problem of the “exemption” (6), that is the relevance or otherwise of moral rules for those who occupy public roles that can be summed up in a line from moralism (legal or political) to the thesis of the autonomy of politics (7).

The ethics that seeks to provide answers to problems of normative justification is a reflexive discipline. Among its tasks, in fact, there is not only the identification of criteria for justification (teleological, deontological, related to some concept of virtuous life), but constitutively to outline the distinction between private and public space. It is a crucial problem that also implies the solution of the coexistence of different personal choices. It can be said that public ethics is based on the identification of the space assigned to the individual choices and, at the same time, it must find a way to connect, and then coexist, the different options of subjects (8). This of course involves the definition of

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(normative) "when does a law or a decision is right?" presupposes that (meta-ethics) that asks, "how can you justify the judgment according to which a certain law or a certain decision is right?" (my translation).

(5) In this regard, it can be seen as "moral judgment on certain political behavior" (my translation). Cf. G. Pellegrino, *Etica pubblica. Una piccola introduzione*, Luiss University Press, 2015, p. 16.

(6) G. PELLEGRINO, *La lista*, <https://www.dropbox.com/s/nq6z0ea6v0k4an0/Etica%20pubblica1.1.pptx?dl=0>

(7) Of course there are many other problems that require an ethical solution, which, as we shall see, those of “do ‘wrong to do right’” and that, that follows, of the use of “immoral means”. See D.F. THOMPSON, *Political Ethics*, cit.

(8) F. VIOLA, *Il senso dell'etica*, [www.unipa.it/viola/Senso\\_della\\_etica.pdf](http://www.unipa.it/viola/Senso_della_etica.pdf), analyzes the impossibility of establishing such a distinction both on the subjects, both on the object of relations.

what is public and the identification of the institutions that define the choices (9).

A framework of this series of relations can be found in one of the moments of the genesis of the issues of public ethics. In the reflection that J. Locke develops in his *A Letter Concerning Toleration* (10), where, as well known, is addressed the problem of religious freedom after the Protestant Reformation and the consequent presence of a plurality of beliefs and faiths, the solution is based on the separation between private and public fields and on the impossibility to establish any truth with respect to faith and therefore in that of identifying common choices. The fact that for Locke among the aims of the State there is not the need to ensure a particular religion depends on the rational inability to fix, in some way, what is the true religion. The State cannot impose a particular religion (or moral conviction) and must act according to the separation between the public sphere and the private sphere (assigned the religious freedom). The issue of religious freedom shows that, even if in a period of history in which there is not a specific processing of guidelines of collective choice, “the real keystone of the formation of public ethics” is “the dissolution of the idea that there was a unique private moral” (11) and therefore, lacking a “minimal common private morality”, the fact of pluralism.

Public ethics can therefore be said to be constitutively linked, although the emergence of this data becomes fully evident during the twentieth century, to the presence of different private and moral situations. It is based, as has been noted, on the disappearance of the “assumption of uniformity of private morality” and it seeks to “solve the problem of the coexistence of diverse life plans in the same society”: essentially “to public ethics is assigned ... the task of making it possible to adopt different moral projects within the same society” (12).

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(9) This distinction has a dual connotation: one refers to the distinction between private and public spheres, the other to the identification of "public" subjects.

(10) J. LOCKE, *Lettera sulla tolleranza*, Laterza, Roma-Bari, 1994 (1689).

(11) C.A. VIANO, *Etica pubblica*, cit., p. 107.

(12) Ibid., pp. 103, for which, “once abandoned the utilitarian approach ... the liberal democratic societies must build a public ethics foreseeing very different systems of private morality”.

This requirement is developed historically in different ways: in a first step, it refers primarily to the issue of social equity and becomes, in a second, relative to what J. Rawls called “the fact of pluralism” (13). In the first case, public ethics arises in relation to the fact that “not all citizens are able to provide for themselves in their well-being: moral indications are necessary to guide the legislation, which is asked to provide the most weak part of the society” (14). On this basis, “the idea that there is also a public ethics, alongside the private, arises when the legislation no longer appears as a sufficient instrument to provide for the welfare of society” (15). In the second case, the reference is to the presence of a “a plurality of conflicting ... comprehensive doctrines, religious, philosophical, and moral,” and, therefore, the problem of how to “reach agreement” and open the way to “a mutual understanding” (16). In this context, the distinction between private and public (17) has as requirement that public decisions are not the result of a particular ethical conception (18).

These issues (principles of justice to be taken in relation to the diversity of subjective situations and coexistence between conceptions of good moral life) involve the necessity of identifying the best way in which to solve these problems, that is in a way, somehow, in compliance

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(13) J. RAWLS, *Political Liberalism*, Columbia University Press, New York, 1993.

(14) C.A. VIANO, *Etica pubblica*, cit., p. VII.

(15) Ivi.

(16) J. RAWLS, *The Idea of Public Reason. Revisited*, in Id., *The Law of Peoples. With "The Idea of Public Reason Revisited"*, Harvard University Press, Cambridge, Mass. 1999, pp. 131-132.

(17) For C. A. VIANO, *Etica pubblica*, cit., p. VI, “you could say that [public ethics] refers to the public aspects of our lives, and that in this sense is distinguished from ethics private”, but that, however, notes that “draw a line between public and private ... it is rather difficult”.

(18) It can be said that the identification of the boundaries of the relationship between public and private is one of the main points of public ethics. What can be noted is that such a limitation is not only variable in time, but that it is entirely transversal, that is, touches different aspects of social life. Consider, sexual morality (as happened in the US with the judgment *Bowers vs. Hardwick* of the US Supreme Court in 1986, which legitimized the criminal prohibition of certain forms of all private sexual choice) or a whole range of problems arising under bioethics and concern, for example, the doctor-patient relationship. On *Bowers*, see R. Dworkin, *La comunità liberale*, in “Teoria politica”, I, 1990.

to the interest of all (i. e. the public interest). The solution prevailing in Western systems find a theoretical foundation in the approach of the egalitarian liberalism and, in particular, in the theory of J. Rawls. It is a solution that is developed, for domestic societies, in relation to the vision of public life as a moment of social cooperation. In the perspective of Rawls which means that must be defined both the sharing of the benefits of such cooperation, both that is necessary to identify the rights and freedoms that belong to everyone. The two principles that underpin the liberal solution of Rawls are those of *impartiality* and *neutrality*. According to the first, you can establish the principles of justice on which must be based institutions and public decisions, while, with reference to the second, it is possible to set the role and intervention of public space. Both these principles have as a basis the distinction between *right* and *good* and the primacy of the former over the latter.

This primacy means the inability to establish what can be seen as good for all: both the justice of the distribution, both the assignment of rights can only take place considering the plurality of the different conceptions of the good. This means, on the basis of impartial principles of justice, the priority of freedom on the goals of welfare (economic utility) and on the simultaneous identification of a principle of equality that takes into account individual differences (difference principle)<sup>(19)</sup>. As for the public space, the primacy of the right over the good has as a consequence the need that public decisions, given the pluralism of views, are neutral, i.e. do not favor particular visions of the good. This is achieved, for Rawls, if, in the space of public reason, public decisions do not reflect a particular vision of the good, but are the result of reasons that take into account the multiplicity of different conceptions of the good<sup>(20)</sup>. This solution is based on the separation between the sphere of political discourse and conceptions of the good and, at the same time, puts a limit to the topics that may be proposed within the public deliberation. For Rawls, are excluded from the public reason the reasons based on “a comprehensive religious or secular doctrine”, and those with respect to which, in the public debate, we cannot expect “that others, as

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(19) As widely known, these issues are the focus of J. RAWLS, *A Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge, Mass., 1999 (1971)

(20) These reflections are, as known, the subject of J. RAWLS, *Political Liberalism*, cit.

free and equal citizens might also reasonably be expected reasonably to endorse” (21). For Rawls, this results in the need that, starting from common minimum principles, public decisions are not justified in the light of substantial conceptions (which are part of private choices), but only in the light of arguments acceptable to the different conceptions (22). It is a solution that implies a clear distinction between public activities and decisions and moral convictions (23).

It can be said that this solution based on impartiality/neutrality and the distinction between right and good has been practiced in the majority of Western states: what should be noted is that this approach is no longer able to provide adequate answers to the different problems that the evolution of contemporary society raises. The main problem is related to the question posed by globalization and the consequent internationalization of political decisions. The main problems can be summarized as follows:

- difficulty of identifying the effective subject of public deliberation. This is true both in relation to the requirements deriving from an economic system independent of the national regulations, both as regards the presence of authoritative supranational instances. The liberal solution (at least that of Rawls) is closely related to the national dimension of public decisions and does not appear to offer satisfactory answers to the ways in which it can be directed decisions that are beyond the control of nation states. The gradual loss of importance of the national entities (and consequently of the subject of public ethics) don't find in the liberal approaches an adequate theorization.

- This aspect can be further emphasized in relation to the problem of the possibility of realization of global justice. Full awareness

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(21) J. RAWLS, *The Idea of Public Reason. Revisited*, cit., p. 140.

(22) According to the position of J. RAWLS, *ibid*, p. 148, this means, for example, that in the discussion on marriages between same-sex persons their eventual prohibition cannot be sustained in the light of prejudices about being homosexual, but only in relation to the possible impact that may have, for example on child rearing.

(23) Neutrality is opposed to perfectionism, namely the idea that there is a way of good life to implement. On these aspects, G. BONGIOVANNI, *L'etica pubblica tra pluralismo e perfezionismo*, in *Rendiconti degli anni 2007-2008 dell'Accademia delle Scienze dell'Istituto di Bologna. Classe di Scienze morali*, Bononia University Press, Bologna, 2009.

of the global dimension of economic relations raises the question of the realization of equitable relationships between nations. It is a theme that Rawlsian and egalitarian liberalism denies both referring to the responsibility of each people, both for the inability to locate a power able to implement any decision taken at the supranational level. In the *The Law of Peoples*, Rawls denies the possibility of the application of the principles of national justice (in particular the principle of difference) to the supranational level and provides only a general duty of solidarity (with precise limits) between peoples (24). Similarly, T. Nagel denies, on the basis of an “Hobbesian” consideration (no justice without authority) the opportunity to think about justice between peoples (25).

- The liberal solution, and the distinction between right and good, appears inadequate in the face of political and legal issues raised by multicultural societies. If the paradox of multiculturalism, that is the fact that the coexistence of different cultures is possible only on the basis of certain (neutral) common principles, is accurately identified, it is not possible to say that there is a theoretical response in relation to its political and legal. The realization of a multicultural constitutional democracy and the changes of its institutions that follow are not the focus of liberal thought (26).

These transformations (to which could be added other) require an update of the liberal principles and the identification of new standards of public ethics. It is the need of an upgrade that requires the overcoming of the single dimension of the nation state (where nevertheless appears necessary to rethink decisive aspects of liberal democracies such as the role and function of the principle of majority) and put a new set of issues among which stands out that of global justice.

As we noted, we can say that the reflection that deals with the behavior of the public has a more stable dimension. It revolves around

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(24) J. RAWLS, *The Law of Peoples*, Harvard University Press, Cambridge, Mass., 1999.

(25) T. NAGEL, *The Problem of Global Justice*, in “Philosophy & Public Affairs”, 2005.

(26) G. GOZZI, *Democrazia e diritti nelle società multiculturali: verso una “democrazia costituzionale multiculturale*, in “Scienza e politica”, n. 40, 2009.

what moral criteria should guide the behavior and decision of the public. There are several aspects that can be identified:

- in the first place, as we have noted, the problem of the possibility of acting in a morally incorrect way to obtain correct results. It is the use of “immoral means”, namely of choices that do not respect the moral principles but that have an end potentially justifiable (27). In this case, the choice has to move between two extremes: namely what it claims “that certain means are never justified” and that for which the choice should be left to the political decision-maker. This of course involves the evaluation of the context and of the reference problem (28);

- Secondly, there is the problem of possible conflict of interest between the private role and the political role: more and more frequent, starting from the Italian case, it appears the mixing of private interest and public role. This of course is not limited to situations of direct conflict, but also micro-behaviors that, in public administration, tend to favor the interests close to own interests (revolving doors, lobbying, nepotism, outside income, whistleblowing) (29);

- thirdly there is the very broad field of corruption and the difficulties of identifying the different behaviors that can lead to such phenomena. In particular, it seems important to be able to distinguish between “individual and institutional corruption” (30) and be able to determine the legal cases coming within the phenomenon, both reforms and possible solutions that may can be appropriate.

These issues are of course only examples of the problems posed by the behavior of the public subjects: it can be said, as we have already noted, that the solution moves between the autonomy of politics and the prevalence of moral standards.

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(27) For D.F. THOMPSON, *Political Ethics*, cit., “Torture is their most plausible example”.

(28) Ibid.

(29) Ibid.

(30) Ibid.



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The last problem we referred (ethics of public obligation) are without doubt the most discussed and most to the test of public opinion. These issues are important and decisive, but it is necessary to emphasize that public ethics has a dimension that concerns the public decisions affecting justice and the rights of individuals. As we, in a very summary, have tried to indicate is likely this space that requires new thinking and solutions.

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