

RELIGIOUS ARGUMENTS IN POLITICAL DISCUSSION
A THEORY OF PUBLIC JUSTIFICATION

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ABSTRACT

Religious Arguments in Political Discussion: A Theory of Public Justification

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This dissertation focuses on the role of faith-based reasoning in political discussion, and more specifically on the compatibility of public religious arguments with liberal and democratic premises regarding the justification of political decisions, *i.e.* decisions made in the name of the state. Public justification is a requirement of legitimacy in liberal democracy: but under which conditions is a decision publicly justified? Are all arguments valid?

Religious arguments are often considered with suspicion: they are particular, therefore convincing for only some citizens and rejected by others. It seems unfair, for those who do not share religious beliefs, to use these arguments to justify political decisions. The same objection, however, is also true for many other non-religious arguments, like utilitarian arguments or liberal arguments themselves.

The purpose of the dissertation is to examine different strategies aiming to justify the exclusion of certain arguments, and then to offer a new model of political discussion. The claim defended is that absolutist arguments, meaning arguments that are based on the recognition of the existence of an extra-social source of normative validity, do not respect the requirements of public justification and consequently should be excluded from political discussion. The distinction between absolutist and non-absolutist arguments does not overlap with the distinction between religious and secular arguments: it thus cannot be argued that all religious arguments should always be excluded, or that they could always be included.

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Introduction

Religion and political theory

This text focuses on the question of the legitimacy of the use of religious arguments to justify political decisions in a liberal democracy.

Political theory has raised the question of religion in three different ways. Until recently, two approaches were dominant: on the one hand the problem of separation, based on an understanding of religion as an institution and a social phenomenon; on the other hand the problem of accommodation, centered on the idea of religious freedom. Each problem corresponds to one of the two clauses of the First Amendment: the non-establishment clause corresponds to the problem of separation and the free exercise clause corresponds to the problem of accommodation.

Since the 1980s, however, a new way for political theorists to approach religion has emerged: inspired mostly from John Rawls and his heirs, this approach views religion as a doctrine, as a particular conception of the good, a set of principles, values, moral considerations. It questions the role of such religious doctrines in political discussion. It is what we call the problem of justification, and it is the approach developed in this text.

The problem of separation focuses on the institutional and legal relations between Church and State, and more generally on the relations between religious authority and political authority and the existence of certain religious symbols within

the public sphere. It is associated with famous legal cases. In 1984, the Supreme Court decides that the presence of Christmas decorations, including a Christmas tree and a crèche, in the city of Pawtucket, Rhode Island, does not violate the non-establishment clause of the First Amendment, because “the city has a secular purpose for including the crèche” and that “including the crèche does not create excessive entanglement between religion and government.”¹ In 2011, the European Court of Human Rights rules that the display of a crucifix in Italian classrooms does not violate the European Convention of Human Rights since

in deciding to keep crucifixes in the classrooms of the State school (...), the authorities acted within the limits of the margin of appreciation left to the respondent State in the context of its obligation to respect, in the exercise of the functions it assumes in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.²

The problem of accommodation focuses on cases in which the demands of the state collide with the demands of religion: the obligation to wear a turban is incompatible with the obligation to wear a helmet when riding a motorcycle; the interdiction for women to become priests in the Catholic Church is incompatible with the non-discrimination laws; the use of peyote in certain rituals of the Native American Church is incompatible with the prohibition of drugs. For this reason, certain religious individuals ask to be exempted from certain obligations, or to have special rights. Whereas the problem of separation focuses on the role and place of religion in the state and in public spaces, the problem of accommodation focuses on individuals and the liberty they have to believe or not believe, and to practice religion how they see fit.

¹ Lynch v. Donnelly 465 U.S. 668. Burger, Opinion of the Court.

² Case of Lautsi and others v. Italy, Grand Chamber, 18 March 2011.

The problem of justification raises the question of the legitimacy of the role that could be played by religious convictions in the justification of political decisions. Religion is here understood as a set of norms that might be taken into consideration in the formation of opinions and the deliberation concerning what should be done politically.

Justification of political decisions is a necessary condition of legitimacy in liberal democracy. This means that the exercise of political power must be supported by good reasons. Any decision or measure taken in the name of the state and that would not be justified would be considered as arbitrary, and therefore illegitimate. But if the legislator explains his vote against the legalization of abortion with religious arguments, is his vote justified? Are biblical prescriptions and religious considerations in general among the “good reasons” that we should use?

There is, obviously, always a legal right, in a liberal democracy, protecting the liberty of each individual to formulate any argument, reason or conviction he wants. There are sometimes limitations on what a law can do, or what the motivations of the law can be. The Lemon Test, for example, is used by the Supreme Court to decide whether a law or a decision is in violation of the non-establishment clause:

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion (...); finally, the statute must not foster “an excessive government entanglement with religion.”³

The Lemon Test, however, is applied to statutes, not to the arguments introduced by judges concerning such statutes. The Lemon Test would forbid a law

³ Lemon v. Lurtzman 403 U.S. 602, Burger, Opinion of the Court.

allowing to publicly fund certain churches or a law making prayer mandatory in public schools. A law forbidding abortion, on the other hand, would be considered as compatible with the non-establishment clause, as such a law would not advance nor inhibit religion and would not question the separation of church and state. But the Lemon Test does not tell us if all arguments are allowed to defend or reject such a law. Should we accept that a legislator refers to his religious beliefs to justify his vote? Same sex marriage is also not a problem in itself for the First Amendment; but is it legitimate to reject the law in the name of the belief that homosexuality is a sin?

The Lemon Test is insufficient, precisely because it actually deals with the problem of separation and not with the problem of justification. The problem of justification is not about what is legally possible but about what is morally permissible. The point is precisely to find out whether there is a moral obligation to refrain from using religious arguments to justify political decisions or not.

This approach differs significantly from the other two approaches. The problem of accommodation is about the way in which religion is regulated, controlled or protected by political authority: it is about cases in which religion is an object of political power, like in the current case of religious signs in public schools. The problem of accommodation questions the legitimacy of a right to wear religious signs in public schools; the problem of justification questions the legitimacy of arguments that might be introduced to justify or deny such a right. Besides, the problem of justification is also relevant for questions that do not directly concern religion, like abortion or homosexuality.

The problem of justification is also different from the problem of separation that questions the relations between religion and politics as institutions. The

separation of Church and State is, moreover, compatible with the idea that religious considerations might legitimately be used to justify political decisions. There are places where a strict separation of Church and State coexists with a strong influence of religious doctrines in society and in political discussions, for example in the United States. There could also be places where there would be both an established church and no use of religious arguments in the public sphere.

The purpose of this text is not to evaluate the power actually exercised by religion in contemporary liberal democracies. It is not to measure the way in which religion influences political decision-making. It is also not a sociological study of the role of churches, religious associations or leaders in civil society. The purpose of this text is to discuss the compatibility of the use of religious arguments in the justification of political decisions with liberal and democratic principles of legitimacy. When legislators vote on abortion, do they have a moral right to appeal exclusively to religious considerations? When citizens vote to choose their representatives, should they analyze the political programs of the candidates based on their religious beliefs? Even when church is separated from state, citizens are not separated from believers: should they think differently depending on whether they are acting as citizens or as believers? Should a good citizen bracket his religious convictions when acting as a citizen?

It is through individuals that religion can play a political role in contemporary liberal democracies. Whether there is an established church or a separation of church and state, religion can be used to nourish reflections on political issues. The relevant question is whether such a use is legitimate or not.

Origins of the debate

The problem of justification emerged in the 1980s in political theory. It was partly caused by the publication of Rawls's *A Theory of Justice* in 1971. Although Rawls is not particularly interested in religion in this text, the main ideas leading to the formulation of the problem are already clearly exposed: rawlsian liberalism is based on the priority of the right over the good, and therefore suggests that a society could function very well without ever referring to metaphysical conceptions of the good. A significant number of scholars take then an interest in the question of justification, without singling out religious doctrines that they associate with all comprehensive doctrines: Bruce Ackerman, Charles Larmore and Thomas Nagel claim that political liberalism is neutral towards all conceptions of the good, religious or not.⁴

A few years later, the debate over the use of religious arguments takes shape around a small number of scholars: Robert Audi, Kent Greenawalt, Michael Perry, Nicholas Wolterstorff, and more recently Jürgen Habermas and Christopher Eberle. They are the authors who are the most commonly associated with the problem of justification as we defined it, and they offered the most complete arguments on the question.

The time when political and legal theory raised the problem of justification corresponds to a time when, in politics, the question of the relation between religion and politics was reemerging. Questions concerning the definition of human life and sexuality were raised: when it became necessary to discuss abortion and

⁴ See Bruce ACKERMAN. *Social Justice in the Liberal State*; Bruce ACKERMAN. *Why Dialogue?*; Thomas NAGEL. *Moral Conflict and Political Legitimacy*; Charles LARMORE. *Political Liberalism*.

homosexuality, some citizens would bring in their religious beliefs. For others, however, this should be avoided. In 1984, Mario Cuomo, Catholic and democratic governor of New York, made a speech at the University of Notre-Dame about abortion. He claimed that there should be a distinction between his role as a religious citizen and his role as a governor:

As a Catholic I accept the church's teaching authority. While in the past some Catholic theologians may appear to have disagreed on the morality of some abortions (it wasn't, I think, until 1869 that excommunication was attached to all abortions without distinction), and while some theologians still do, I accept the bishops' position that abortion is to be avoided.

Respectfully, and after careful consideration of the position and arguments of the bishops, I have concluded that the approach of a constitutional amendment is not the best way for us to seek to deal with abortion. I believe that legal interdicting of abortion by either the federal government or the individual states is not a plausible possibility and even if it could be obtained, it wouldn't work.⁵

A few weeks after Cuomo gave this speech, Ronald Reagan was elected President, with the support of many religious groups. Religion was always politically important in the United States, but the 1980s represent a turning point with the emergence of new powerful political and religious groups, like Moral Majority or the Christian Coalition of America.

As the problem of justification emerged mostly in Anglo-Saxon political theory, it might seem that it is not relevant for other countries, especially for France. Admittedly, the problem of justification is largely ignored in French political theory. In France, most citizens would consider the political use of religious arguments as improper. The objection would therefore be twofold: on the one hand people use

⁵ Mario CUOMO. Religious Belief and Public Morality: A Catholic Governor's Perspective. p. 21.

religious arguments very rarely and on the other hand, even when that happens, the majority of citizens rejects such arguments.

The answer to the first part of the objection is that even though there are only a very limited number of situations in which some citizens would use religious arguments, such situations are however very significant: they are about family, about sexuality or about bioethics, issues that tend to be highly symbolic and that get a lot of attention from the population.

The second part of the objection suggests that the majority of French citizens, and probably citizens in other European countries, would reject religious arguments as well as the idea that such arguments might be legitimately used in political discussions. The answer to this is that the fact that such arguments are considered as wrong or misguided by the majority of citizens does not mean that they are incompatible with the liberal and democratic understanding of political legitimacy. In France, it might be possible that the principle of *laïcité*, considered as a fundamental principle of the French Republic, would be incompatible with the use of religious arguments. But there is a significant difference between the characteristics of particular cultures and the requirements that are to be directly derived from liberal democracy. In other words, if a citizen or a legislator in France, to justify a political decision, uses a religious argument, is it only a violation of the principle of *laïcité* or is it also a violation of the liberal and democratic principle of legitimacy? Liberal democracy, and not *laïcité*, is our starting point.

The problem of justification is a normative question concerning what we should do and what we should not do when justifying a political decision. It is independent of the question of the probability of a religious justification to be

introduced and to be accepted by a majority of citizens. Even if there was only one citizen in the entire society who would appeal to religious arguments, and even if everyone else was rejecting these arguments, the question still remains to know whether the behavior of this citizen is legitimate or not, whether she is “*morally criticizable* for exercising her moral and legal rights in a certain way, viz., by supporting her favored laws on religious grounds.”⁶

Theoretical and methodological considerations

Our approach of the problem of justification starts from a certain number of basic assumptions. One of these assumptions is the normative principle that liberal democracy is desirable. It is possible that the question of the use of religious arguments in the justification of political decisions is not relevant for other political regimes. It does not mean that the values on which liberal democracy is based are better or truer than the values on which other regimes are based, but only that the fact that the principle of liberal democracy is largely shared in contemporary societies makes it a relevant assumption.

The liberal dimension of democracy that is assumed here refers to a very broad understanding of liberalism. It basically means that political legitimacy depends on the guarantee of a certain number of individual rights: a democracy that would not respect Human Rights would therefore not be considered as a liberal democracy. Liberal democracy should then be understood as a society in which the people is sovereign, even though power might not be exercised directly, and in which all citizens have equal rights.

⁶ Christopher J. EBERLE. Religion and Liberal Democracy. p. 293.

A second important assumption concerns our understanding of religion. We do not try to define the concept of religion and do not even pretend that it can be identified by a certain number of characteristics. Each political theory approach of religion focuses however on one specific dimension of religion. The problem of separation is mostly interested in religion as an institution, an organized social structure, identifiable by certain codes, rites, symbols, rules. The problem of accommodation focuses on religion as an individual and social phenomenon, combining beliefs and practices: religion is then understood as what people believe and how they choose to live according to a certain number of principles. The problem of justification focuses on religion as a doctrine, as a set of norms that tell us how things should be and what individuals and societies should do. This does not mean that the institutional dimension, the individual phenomenon or the normative doctrine are sufficient or necessary conditions of the concept of religion. But for each problem, only one dimension is relevant. And it is not incompatible with the fact that each problem focuses on a dimension that might not be relevant for religion in general. In other words, we are not claiming that religion can be defined as a normative doctrine, or that there is always a normative doctrine in religion. We are only saying that the only part of religion that is relevant for us, for the problem of justification, is its normative dimension.

Besides, even though the problem of justification raises the question of the use of religious arguments, it more generally raises the question of which arguments, religious or not, might be used to justify political decisions. We only start from religious arguments because they are usually easily recognizable and intuitively considered as disturbing. But if we aim to know whether religious arguments can be

legitimately used in the justification of political decisions or not, this supposes to know more generally which arguments are legitimate and which arguments are not legitimate. It is possible that some non-religious arguments will be considered illegitimate, and it is also possible that religious arguments should not be treated as a single category that could be either legitimate or illegitimate.

The method of analytical political theory is used to discuss the problem of justification. This method implies a certain way to understand what is the object of political theory as well as a certain way to understand how we should analyze this object. Analytical political theory is normative political theory, meaning it “deals with the rules of morality as applied to states.”⁷ Political theory does not have anything to say about issues of individual morality and it is possible that the rules of morality that apply to states are different from, or maybe even incompatible with, the rules of morality that apply to individuals. Political theory cannot tell an individual what he should do to live a better life, but it can tell society what kind of limits should be imposed on how people choose to live their lives. In consequence, political theory is only interested in a small number of normative questions, those that relate to the political community and the way in which it is organized.

Analytical political theory also corresponds to a certain way to deal with such normative questions: “start with what we think we know and use that as a basis to investigate what we don’t know.”⁸ As for any kind of scientific investigation, there are some basic assumptions that cannot be questioned. Here, for example, the idea that liberal democracy is desirable is one of these assumptions; the idea that the

⁷ David LEOPOLD, Marc STEARS. Introduction. p. 4.

⁸ Daniel MCDERMOTT. Analytical Political Philosophy. p. 12.

exercise of political power should be legitimate is another. But contrary to scientific investigations, when it comes to political theory, such assumptions are normative principles concerning what is morally desirable and not how things really are. Starting from such assumptions, the analytical method aims to identify one or several possible answers to the normative question “is the use of religious arguments in the justification of political decisions legitimate?”; the question is understood based on a certain interpretation of what legitimacy refers to in a liberal democracy. The first chapter is devoted to the presentation of this interpretation.

The justification for such a method is twofold. First, we want to focus on concepts and arguments independently of their particular and contextual interpretations: our arguments are in consequence meant to be valid for all liberal democracies. Second, the reflection is based on normative assumptions; any other normative consideration will be derived from such basic assumptions. Therefore, we hope to formulate an argument that can be considered as valid by all those who share our basic normative assumptions, including for example the desirability of liberal democracy and the conception of legitimacy in a liberal democracy as requiring public justification.

Structure of the text

To decide whether it is legitimate or not to justify political decisions by appealing to religious arguments, it is necessary to start from the concept of legitimacy in a liberal democracy, what such a concept of legitimacy implies for relations between religion and politics and how justification of decisions is constructed. The first three chapters lay the foundations for the reflection.

Chapter 1 focuses on the concept of legitimacy. Before being able to identify the requirements of legitimacy in a liberal democracy, legitimacy itself has to be defined. It is here interpreted as the basis of a moral right to exercise political power, but distinguished from the moral obligation to obey for those who are submitted to this power. A descriptive conception of the concept is offered, relevant for any type of legitimacy, and then a normative conception of legitimacy in liberal democracy is formulated. The main argument of the first chapter is that legitimacy in a liberal democracy should be understood as requiring public justification, meaning that all political decisions should be supported by adequate arguments, that can be considered as adequate by all. The original question can therefore be reformulated: to decide whether religious arguments can be legitimately used in the justification of political decisions, we need to know whether religious arguments can be considered as adequate arguments.

Legitimacy in a liberal democracy is entirely independent from religion, and yet religion has not disappeared from contemporary liberal and democratic societies. Chapter 2 focuses on the consequences of our conception of legitimacy: does liberal democracy need a certain degree of secularization? The chapter discusses the concept of secularization, analyzes its development and its use in social sciences, and identifies many different dimensions. A new typology distinguishing between 8 forms of secularization is then defended. One of those dimensions, political profound secularization, is identified as a requirement of liberal democracy. This tells us that the source of political legitimacy cannot be religious, but it does not tell us yet if religion can legitimately play a political role in the justification of decisions, through the beliefs of citizens.

The problem of justification is about the moral duties of citizens towards one another, and not about the organization of the relations between politics and religion. In other words, what needs to be formulated is a model of political discussion: the foundations of this project are laid in Chapter 3, in which the concept of political discussion is defined and defended. It is through political discussion that public justification is constructed. To offer a certain conception of public justification therefore means to offer a certain model of political discussion, meaning specifying the seven characteristics that will say what participants in the discussion should do and should not do, which arguments they should use and should not use.

Chapter 4 presents and discusses Rawls's model of political discussion: public reason. Three categories of objections are analyzed. First, it is sometimes considered that rawlsian liberalism is not liberal enough and does not respect the liberty of religious believers to use the arguments they find the most convincing, including religious arguments. Second, some accuse the liberal conception of misunderstanding religion and what it represents for religious believers. Finally, some worry about the fact that public reason would be insufficient, to the extent that it does not tell us how to discuss deeply moral questions. This last objection is the most powerful and invites us to keep looking for a model of political discussion guaranteeing the identification of public justification.

We analyze in Chapter 5 five other models of political discussion that were offered by Robert Audi, Kent Greenawalt, Jürgen Habermas, Michael Perry and Nicholas Wolterstorff. For each, the seven characteristics are reconstructed. Each model is discussed, criticized and ultimately rejected: none of them seems able to

secure the construction of public justification as required by our conception of liberal democracy.

In Chapter 6, a new model of political discussion is offered. To decide if religious arguments should be excluded from this discussion, we have to ask whether such an exclusion could be justified. If it turns out that the introduction of religious arguments is not incompatible with certain values of liberal democracy and does not entail negative consequences, then the conclusion would follow that the exclusion cannot be justified. Several interpretations of the reasons why religious arguments should be excluded are discussed; all of them fail to justify the exclusion of religious arguments. There is in fact a group of arguments that is not legitimate, but this group does not correspond to the category of religious arguments: the illegitimate arguments are absolutist arguments, meaning arguments that rely on the recognition of the existence of an extra-social source of normative validity. Such absolutist arguments, religious or not, should be excluded because they are incompatible with the requirements of public justification, and therefore also with the liberal and democratic conception of legitimacy.

Finally, Chapter 7 illustrates the new model of political discussion with the question of stem cell research. Arguments that have been used in political discussions in France and in the United States are identified and carefully examined, in order to reveal the hypotheses on which they are based and to determine whether they are absolutist, and therefore illegitimate, or not. The chapter aims to show that not all religious arguments are absolutist, that not all secular arguments are non-absolutist, and that all possible political propositions, from interdiction to unlimited authorization of stem cell research, can be supported with non-absolutist arguments,

meaning with arguments that can be used as a public justification and that respect the conditions of legitimacy in liberal democracy.

I - Political Legitimacy

The question of the use of religious arguments in political discussion is not about relations between politics and religion but about conditions of political legitimacy in liberal democracy. The purpose of Chapter 1 is to propose a descriptive definition of legitimacy as well as a normative definition of legitimacy in liberal democracy. Legitimacy is considered as desirable because it corresponds to a moral right to exercise political power (A). It is based on a certain type of beliefs that identifies a norm or a set of norms as the source of legitimacy (B). In liberal democracy, this set of norms includes the principle of public justification (C).

A - What is the purpose of legitimacy?

The concept of legitimacy is considered as desirable because it corresponds to a moral right to exercise political power. The alternative to legitimacy is the exclusive use of force. Such use of force is desirable neither for those who exercise it nor for those on whom it is exercised. For those who exercise power, it is preferable to have legitimacy, to the extent that legitimacy guarantees a moral right to rule. This moral right secures a certain degree of obedience, since it is expected that the ruled obey more easily and more voluntarily a government that they perceive as legitimate than a government that they perceive as illegitimate. Rulers could therefore be obeyed without having to use force to threaten and coerce individuals. Legitimacy, from the perspective of rulers, can reduce the costs of obedience.

For the ruled, the calculation is similar: they still have to obey but costs are reduced, to the extent that coercion by an illegitimate power is considered as more violent than the exercise of a legitimate authority, since the former is arbitrary and the latter is justified.

In other words, force only gives a physical capacity to rule, whereas legitimacy gives a moral right to rule. As Allen Buchanan writes:

An entity has political legitimacy if and only if it is morally justified in wielding political power, where to wield political power is to attempt to exercise a monopoly, within a jurisdiction, in the making, application, and enforcement of laws.⁹

The moral justification of a government to exercise political power is the characteristic of legitimacy. Force however does not disappear in a legitimate system: the use of coercion is itself justified whenever a government is legitimate.

The moral right to rule does not however necessarily entail a moral obligation to obey for those who are submitted to political power. This distinction between legitimacy and political obligation is based on two claims. First, even though the government has the moral right to exercise political power, including the right to impose sanctions, it seems unreasonable to consider that citizens would not have the moral right to try to resist such sanctions. Hobbes was the first one to make such a distinction:

If the sovereign command a man, though justly condemned, to kill, wound, or maim himself; or not to resist those that assault him; or to abstain from the use of food, air, medicine, or any other thing without which he cannot live; yet hath that man the liberty to disobey.¹⁰

⁹ Allen BUCHANAN. *Political Legitimacy and Democracy*. pp. 689-690.

¹⁰ Thomas HOBBS. *The Leviathan*. Chapter 21.

This liberty to disobey does not mean that the sovereign is not legitimate, but rather than legitimacy does not necessarily entail a political obligation, meaning a moral duty to obey.

The distinction between legitimacy and political obligation is also justified by the idea of civil disobedience. The legitimacy of a government does not guarantee that all decisions made by this government are good, or just. It is possible that certain citizens contest decisions and decide to disobey: this, in itself, is not a global questioning of the legitimacy of government. In the case of civil disobedience, the legitimacy of the government does not mean that citizens always have to obey, precisely because it does not guarantee that all its decisions are always good. As Jeremy Waldron puts it, “the rightness of their disobedience does not in itself entail the wrongness of punishing them.”¹¹

The fact that the government hopes, or maybe demands, that the ruled obey and the legal obligation that they have to actually obey should not be confused with a moral obligation to obey.

There is, however, a connection between legitimacy and obedience. We can rightfully expect that obedience increases with legitimacy, since legitimacy reduces the motivation for disobedience. There are many different reasons for individuals to disobey; the absence of legitimacy of those who exercise political power is one of them. Legitimacy might not guarantee that the ruled accept and approve every single decision

¹¹ Jeremy WALDRON. *Theoretical Foundations of Liberalism*. p. 139.

made by the rulers, but it supposes that the ruled recognize the moral right of the rulers to rule.

Legitimacy is a right that should be understood as a moral justification of the exercise of political power, and this legitimacy is a necessary but insufficient condition of political obligation. Rulers, whether they are legitimate or not, exercise coercion on the ruled; the difference between a legitimate government and an illegitimate one is that for the former coercion is justified, whereas for the latter it is arbitrary.

B - A non-normative conception of legitimacy

There can be many different ways in which governments can be legitimate: every time, there is a specific interpretation of what legitimacy means, what its source is. This interpretation refers to a set of norms. There cannot be legitimacy without a reference to such a set of norms. The concept of legitimacy itself, however, does not tell us which norms can be used or if some of them are better than others. The source of legitimacy can be heredity, divine appointment, wisdom or popularity: each set of norms tells a specific story and defines the way in which the rulers should be designed.

Legitimacy can be defined as the observable phenomenon that expresses the belief, on the part of the political community, in a specific set of norms considered as valid sources of legitimacy. This definition is descriptive to the extent that it does not evaluate the normative validity of different realizations of legitimacy and of the reference to specific sets of norms. In other words, such a conception of legitimacy cannot allow us to judge whether a government to which we are not submitted ourselves should be

considered as legitimate or not. It can simply allow us to answer the question “is this government legitimate?” meaning “do those who are submitted to this government consider it as legitimate?” According to Christopher Morris,

These queries are primarily nonnormative and are answered by discovering people’s beliefs or attitudes. The broadly sociological accounts, derived from Weber and still influential, that would have us understand the state’s legitimacy in terms of the attitudes of subjects are nonnormative in this manner.¹²

This descriptive conception of legitimacy has two dimensions. The first one is objective: it corresponds to the fact that legitimacy is a political phenomenon that can be observed (1). The second dimension is subjective: it corresponds to the fact that legitimacy is necessarily based on a belief (2).

1) Legitimacy as a phenomenon

Legitimacy can be observed, meaning it has an objective dimension that we can identify in a political community even though we do not belong to this community. This dimension allows us to say whether the society is legitimate from the perspective of its individuals. Legitimacy as a phenomenon refers to the fact that political authority is not threatened by major contestation motivated by the desire of the ruled to get rid of a wrongful ruler. To say that a government is legitimate therefore entails that there is a certain degree of stability.

¹² Christopher MORRIS. *An Essay on the Modern State*. p. 102.

This dimension corresponds to what Weber calls the “validity” of the legitimate order.¹³ Although theoretically, the right to rule does not entail a duty to obey, in fact obedience is more easily obtained when the government is legitimate. To control *ex post*, sociologically, the fact that such an action occurred, is what we call here the objective dimension of legitimacy:

The legitimacy of a system of domination may be treated sociologically only as the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct ensue. (...) What is important is the fact that in a given case the particular claim to legitimacy is to a significant degree and according to its type treated as ‘valid’: that this fact confirms the position of the persons claiming authority and that it helps to determine the choice of means of its exercise.¹⁴

Although such an objective dimension of stability is a necessary condition of legitimacy, it is not a sufficient condition: all stable political communities are not necessarily legitimate. The absence of contestation can also be explained by the impossibility to contest. Obvious and recurrent instability, however, is the sign that the legitimacy of the government can be questioned, either in its sources or in its realizations. Legitimacy is questioned in its sources whenever members of a political community reject the entire system and demand a new form of legitimacy. Legitimacy is questioned in its realization when members of a political community still believe in the validity of the set of norms identified as the source of legitimacy, but consider that the government does not respect this set of norms.

¹³ Max WEBER. *Economy and Society: An Outline of Interpretive Sociology*. p. 31: “Action, especially social action which involves a social relationship, may be guided by the belief in the existence of a legitimate order. The probability that action will actually be so governed will be called the ‘validity’ (*Geltung*) of the order in question.”

¹⁴ *Ibid.* p. 214.

2) Legitimacy as a belief

The observable dimension is explained by the reference to a certain set of norms that have to be accepted by a significant majority of the members of the political community as the source of legitimacy. This means that legitimacy is always a “*normatively dependent concept*, which, in order to have a certain content (and specifiable limits), is in need of further normative resources.”¹⁵ In other words, there can be no legitimacy without a reference to a specific set of norms, but the choice of the specific set of norms is independent from legitimacy itself.

The main argument identifying legitimacy to a belief without specifying the type of the belief is Weber’s: each ideal type of legitimacy is associated to a particular belief. Whether we are aware of it or not, legitimacy is always based on a belief:

It should be kept clearly in mind that the basis of every authority, and correspondingly of every kind of willingness to obey, is a *belief*, a belief by virtue of which persons exercising authority are lent prestige.¹⁶

The fact that legitimacy is always based on a belief is part of the descriptive definition of legitimacy: beliefs are here treated as scientific objects that are to be described, not evaluated.

¹⁵ Rainer FORST. *The Limits of Toleration*. p. 314. Forst is applying the idea of a “normatively dependent concept” to “toleration” and not to “legitimacy.”

¹⁶ Max WEBER. *Economy and Society: An Outline of Interpretive Sociology*. p. 263.

C - A normative conception of legitimacy in a liberal democracy

Most conceptions of legitimacy used in political theory are however normative conceptions, identifying a specific set of norms that is considered better, more just, than any other. Our definition is doubly normative. First we claim that liberal and democratic legitimacy is better than any other form of legitimacy. Arguments supporting this claim are however circular and fail to be convincing for anyone who is not already convinced. Liberal democracy is better than theocracy or authoritarianism because we value liberty and equality that are better realized in it; but we value liberty and equality because they are shared by the large majority of the citizens, which is a democratic argument, and because they are values that we have chosen, which is a liberal argument.

Second, and more importantly, we defend a specific understanding of this liberal and democratic legitimacy that includes three different elements. The first element is democratic and corresponds to a procedure of identification of the ruler, in which all citizens have an equal voice. We cannot share equally the exercise of political power, but we can share equally the right to choose who can, temporarily, exercise this power. Democratic legitimacy is given *ex ante*, in the way rulers are chosen.

The second element is liberal and supposes that legitimacy is continually evaluated. In its purest form, liberal legitimacy does not care about who is ruling, but only focuses on how power is exercised. It is about the content of political decisions and only the analysis of the content of these decisions can reveal, *ex post*, whether the exercise of power is legitimate. In the liberal tradition, a government is legitimate only if it is limited: “liberal thinkers have argued that there are some things which governments

ought to be prohibited from doing.”¹⁷ This usually takes the form of a constitution identifying a certain number of individual rights that should always be guaranteed, even against the opinion of the majority.

We also need a third element, a regulative principle that will guide the implementation of liberal and democratic ideals in decision-making: the principle of public justification is a principle according to which the exercise of political power in a liberal democracy needs to be justified, meaning needs to be supported by adequate arguments. The moral justification of the government requires the public justification of the way in which it exercises power.

The principle of public justification has mostly been defended by the advocates of political liberalism. Stephen Macedo identifies it as one of the main characteristics of liberalism:

Among the core features of liberalism as I understand it, is a concern not simply with political outcomes (such as whether important rights are protected at the end of the day), but also with the way that public officials and citizens go about justifying the use of political power. (...) Liberal, democratic politics is not only about individual rights and limited government, in other words, it is also about public justification: reason-giving and reason-demanding, and the insistence that power be backed by reasons.¹⁸

All liberals, meaning all advocates of liberal democracy as we have defined it, should see that public justification is a requirement of liberal and democratic legitimacy. This idea of justification is common to the liberal tradition in general, not specific to any of its particular interpretations.

¹⁷ Charles LARMORE. *Political Liberalism*. p. 339.

¹⁸ Stephen MACEDO. In *Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?* p. 12

Many political theorists defend public justification, but there are disagreements concerning what public justification means, what it aims at and which arguments should be considered as adequate. The conception of public justification that we defend is not as demanding as the conception defended by most liberals, according to which “a coercive law L is justified in a public P if and only if each member i of P has sufficient reason(s) R_i to endorse L .”¹⁹ In Rawls’s terms:

Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions (...) are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons.²⁰

This does not mean that every citizen should in fact approve every single law. Public justification is counterfactual: it is the justification that would have been possible in an ideal situation. This is however still too demanding. For such a public justification to be possible, the arguments supporting the decision must be considered as convincing for everyone, and therefore such arguments cannot be derived from particular conceptions of the good.

The conception of public justification that we defend here is different. It is not necessary that arguments are convincing for every citizen, meaning that every single one would agree on the validity of their content. The principle of public justification only requires that every law is based on an adequate argument.

¹⁹ Kevin VALLIER, Fred D’AGOSTINO. Public Justification. This is for example the conception of public justification defended by John Rawls, Charles Larmore or Gerald Gaus.

²⁰ John RAWLS. The Idea of Public Reason Revisited. p. 771.

An argument is formulated as following: the proposition X (for example a law) is necessary to achieve the objective Y (for example the value of individual liberty). In other words, we should do X because X allows us to realize Y and we believe that realizing Y is good. An argument is adequate provided it has two characteristics: the objective is considered by all participants in the discussion as desirable; and there is a logical relation, perceived by all as being logical, between the objective and the proposition. This means we can all understand why the proposition allows us to realize the objective, and we all agree that the realization of the objective is desirable.

It is therefore possible to consider that an argument is adequate without considering that it is convincing. That is the case if it is believed that the proposition X is not the best way to realize Y; or that the objective Y is good, but not as good as other objectives that conflict with it.

There is a significant difference between an adequate argument and a convincing argument. Public justification only requires that all citizens can understand that a law is based on adequate arguments, not that they find such arguments convincing.

II - Render Unto Caesar the Things Which are God's:

The Democratic and Liberal Requirement of Political Profound Secularization

Legitimacy, as it has been defined for liberal democracy, is independent of religion. It does not suppose to recognize the validity of a religion and it does not require that religious principles are used to guide decision-making. And yet religion has not disappeared in liberal democracy. Should religion disappear in a liberal democracy? Should it transform itself? Should it be privatized?

The purpose of Chapter 2 is to find out whether liberal democracy requires a certain type of secularization. This implies to know what secularization means. Different interpretations of the concept are analyzed (A) and a new typology is offered (B); this typology will then be used to discuss the relations between liberal democracy and secularization. We argue that the principle of public justification identified previously necessitates a specific dimension of secularization, called political profound secularization, although it cannot be associated with it (C).

A - The controversy over the concept of secularization

Social scientists adopted the concept of secularization in the 19th century. It already had acquired a variety of new possible meanings, from the shrinking of religious influence to the end of religion altogether. But no one questioned the validity of the

concept: “the consensus was such that not only did the theory remain uncontested but apparently it was not even necessary to test it, since everybody took it for granted.”²¹ All of them assumed that the role of religion would be transformed as an effect of modernization. Durkheim argued that even though religion was here to stay, it would have to go through significant changes; Weber interpreted the rationalization of the modern world as leading to disenchantment; Freud predicted the defeat of religion in its unavoidable fight against science.²²

At the moment it became possible to observe secularization as an empirical process in European societies, after World War II, it also became obvious that some societies that were expected to secularize did not. The realization of some of the predictions concerning religion in the modern world thus opened what was called the “secularization debate.” When social scientists raised the question of the validity of the theory of secularization, it became apparent that this question hinged on the definition of the concept.

To get the most comprehensive understanding of what secularization means, we examined the categorizations made by ten different theorists. Seven of them (Casanova, Coleman, Dobbelaere, Lauwers, Shiner, Taylor and Tschannen) have made a special effort to make sense of the various disagreements concerning the concept of secularization. The three others (Chaves, Habermas and Wilson) have defined the concept in an innovative and invaluable way.

²¹ José CASANOVA. *Public Religions in the Modern World*. p. 17.

²² Émile DURKHEIM. *The Elementary Forms of Religious Life*. p. 432; Max WEBER. *Sciences as a Vocation*. p. 155; Sigmund FREUD. *The Future of an Illusion*. p. 49.

Three major narratives can be identified. The first interpretation is the most controversial: religion and modernity are incompatible. It assumes that religious beliefs and practices will diminish in modern times and will eventually lead to the disappearance of religion. The second interpretation is the least controversial: secularization affects the structures of society and therefore modifies the relations of religion to the other spheres of life. It describes secularization as a historical process of separation, whereby religion becomes distinct from the rest of society but does not disappear. In the third narrative, secularization is understood as the process of internal transformation through which religion is adapting to modernity.

Based on the definitions and categorizations offered by all of the authors mentioned, 27 different interpretations that have been attributed to the concept can be identified: asymptotic demise of religion (Coleman); conformity with “this world” (Shiner); decline in the significance of religion (Wilson); decline of belief and practice (Taylor); decline of religion (Casanova, Shiner); declining religious authority (Chaves); desacralization of the world (Shiner); differentiation (Casanova, Tschannen); disenchantment (Weber); disengagement of society from religion (Shiner); falling-away from religious beliefs (Freud); individualization (Shiner); laicization (Dobbelaere); new conditions of belief (Taylor); persistence of the sacred and its emergence in new sites (Coleman); pluralization (Lauwers); privatization (Casanova, Coleman); movement from a “sacred” to a “secular” society (Shiner); rationalization (Lauwers, Tschannen); religious change (Dobbelaere); religious involvement (Dobbelaere); secularized public spaces (Taylor); transformation of religion (Durkheim); transposition of religion into the secular

realm (Coleman); transposition of religious beliefs and institutions (Shiner); twofold learning process (Habermas); and worldliness (Tschannen).

B - Towards a new typology of secularization

The reconciliation of the different interpretations requires the formulation of a new understanding of the concept that allows for a plurality of various, and sometimes incompatible, dimensions without abandoning the idea of a single framework.

There are different kinds of secularization between which we should clearly distinguish based on the fact that their objects are different. Each kind of secularization is a different answer to the question: what is secular? There are four possible answers. The first answer is individuals: the first kind of secularization is therefore individual secularization. On this level, the relevant unit of analysis is the individual himself. The second answer is society. Saying that society is secular refers to processes of differentiation and presence of religious groups in civil society. We call this social secularization. The third answer is politics. It focuses on the political and legal systems, on the relations between state and law, on the one hand, and religion, on the other. We call this political secularization. The fourth answer is religion. This refers to the transformations that religion can go through, to the fact that it evolves in order to survive in a secular environment. We call this theological secularization.

Two degrees of secularization can also be distinguished. By superficial, we mean the manifestation of religion as something that has a concrete presence in the real world. It refers to the organization of religion, implying the existence and functioning of

religious groups, religious institutions and religious practices. By profound, we mean the fundamental level of motivation and beliefs. It focuses on religion as a source of normativity.

Superficial secularization is evaluated in terms of visible presence or absence: depending on what the object is, it can refer to the absence of individual religious practice, the weak presence or invisibility of religious groups on the social level, the official and legal institutional separation of church and state or, concerning the theological dimension, to the evolution in ways of being religious, resulting from a transformation of religion itself.

Profound secularization is conceived of in terms of more or less power or influence. Individuals are considered as profoundly secularized if they do not hold religious beliefs or do not use these beliefs to make decisions. On the level of society, it is what has often been referred to as the process of differentiation of spheres, which includes not only their theoretical separation but also the fact that they each function according to different sets of norms. Politics is profoundly secularized if political authority has nothing to do with religious authority. On the theological level, it refers to the transformation of the ambitions of the religious doctrines, for example when sacred texts are no longer considered as factually valid descriptions of historical events but as metaphorical narratives and normative symbols. Table 1 illustrates and clarifies the differences between the 8 forms of secularization and details the pre-secular situation against which each process of secularization is developed.

Table 1: Typology of secularization

	PRE-SECULAR	SUPERFICIALLY SECULARIZED	PROFOUNDLY SECULARIZED
INDIVIDUALS	Belief and practice	<i>Individual Superficial Secularization</i> No religious practice	<i>Individual Profound Secularization</i> Agnosticism and atheism
SOCIETY	All-encompassing religion	<i>Social Superficial Secularization</i> Few (or no) religious groups in civil society	<i>Social Profound Secularization</i> Differentiated society
POLITICS	Established church and theocracy	<i>Political Superficial Secularization</i> Non-establishment	<i>Political Profound Secularization</i> Secular political justification
RELIGION	Absolute dogmatic religion	<i>Theological Superficial Secularization</i> Privatization and individualization of religious practice	<i>Theological Profound Secularization</i> Liberalization and relativization of religious doctrines

C - Political profound secularization

In Chapter 1, democratic and liberal legitimacy was defined as including the requirement of public justification. One of the dimensions of secularization, political profound secularization, was associated to the principle of secular political justification. Public justification and secular political justification are connected, but should not be confused.

Secular political justification means that what justifies the right to rule, i.e. what is the source of legitimacy, is a set of secular norms, and not a set of religious norms. The justification that political profound secularization refers to corresponds to the justification of political power, meaning to legitimacy. A government is profoundly secularized when power is exercised on the basis of an appeal to a secular conception of legitimacy: the source of legitimacy is not religious.

Secular political justification does not necessarily entail public justification; however public justification necessarily presupposes secular political justification. In other words, a profoundly secularized state is not always a liberal democracy but a liberal democracy is always a profoundly secularized state. Liberal democracy cannot be based on a religious interpretation of legitimacy: the norms of legitimacy identified in Chapter 1 are all secular.

Secular political justification only refers to the source of legitimacy. The opposite of political profound secularization, its pre-secular situation, would be a theocratic state in which laws are subordinated to religious principles. Political profound secularization

describes the shift from a pre-secular society, where the source of legitimacy is religious, to a secular society, where the source of legitimacy is secular. This however does not mean, in itself, that public justification cannot use religious arguments. It is obvious that the use of religious arguments in public justification cannot be mandatory, since such an obligation would be incompatible with secular political justification; but it is not clear yet whether it is allowed or not. It means that secular norms of legitimacy have priority over religious norms.

Political profound secularization is the only form of secularization that is demanded by liberal democracy. However, it is only possible if society is differentiated, meaning if there is already social profound secularization, and it seems difficult if religion is not superficially and profoundly secularized, meaning if religion is not modernized. But liberal democracy does not require political superficial secularization: the existence of an established church is compatible with liberal democracy and with political profound secularization.

A certain dimension of secularization is necessary in liberal democracy: it means that the source of legitimacy has to be a set of secular norms. Does this mean there is an incompatibility between religion and democracy? Political profound secularization excludes religion from the formulation and explication of the principle of public justification, but it is not enough to exclude it from the practice of public justification. The source of legitimacy can be secular even when religion returns through the beliefs of citizens in the construction of public justification. To the extent that citizens in a liberal democracy play a direct role, it is possible that some of them decide to re-enchant politics

and use their religious convictions to guide their political choices. Even if religion loses its power from the perspective of the state, it does not follow that religion loses its power from the perspective of the citizens.

The principle of public justification implies that political decisions should be supported by adequate arguments. This principle itself is secular: the idea that we should use arguments to explain why a decision is right is itself rationalist and does not appeal to any kind of religious norm. But this principle in itself does not tell us whether religious arguments can be adequate arguments. In other words, if religion does not intervene in the definition of the criteria of legitimacy in liberal democracy, it remains possible that it comes back indirectly through public justification.

III - Political Discussion

Liberal and democratic legitimacy requires public justification. To decide whether religious arguments can be considered as adequate arguments, we need to turn to political discussion. Political discussion is where arguments are formulated and discussed, it is where public justification is constructed. It works according to a certain number of rules that form a model of political discussion. One of these rules specifies the types of arguments that are admissible.

We first argue that the concept of political discussion is better than the concept of deliberation (A). We then analyze the values that constitute the framework of political discussion and identify the 7 characteristics of a complete model of political discussion (B).

A - Political discussion or deliberative democracy?

Deliberation, as used in the theory of deliberative democracy, is a concept more commonly used in political theory than political discussion. The idea of deliberative democracy is the following:

By a deliberative democracy I shall mean, roughly, an association whose affairs are governed by the public deliberation of its members.²³

Political power is exercised by all in the public sphere, through communication. The idea of deliberative democracy is deeply connected to Habermas's discourse

²³ Joshua COHEN. *Deliberation and Democratic Legitimacy*. p. 342.

principle: “Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses.”²⁴ This makes impartial justification possible. Although we all have different conceptions of the good life, we are all rational beings and we are all able to identify norms that could be valid for all. Impartiality is based on deliberation: individuals, through this process, reject irrational elements and only retain rational ones, on which all can agree.

The idea of justification is at the core of the theory of deliberation. Deliberation is what makes decisions justified, and therefore legitimate. It is because deliberation is led in a rational way that it generates legitimacy. Rationality justifies the framework and the rules of deliberation as much as the quality of decisions resulting from it.

Logic and consistency are central rules of rationality. They tell us that if the proposition P1 is incompatible with the proposition P2, meaning if the validity of one entails the invalidity of the other, then P1 and P2 cannot be both valid at the same time. Deliberation guarantees the identification of the valid proposition. Whenever a question cannot be treated rationally, deliberation is impossible; whenever it can be, deliberation allows finding the right answer.

It is however impossible to keep the deliberation going forever in a democracy. When a question is raised, an answer is expected within a certain limited timeframe. Deliberation cannot work under time constraints and it is impossible to foresee when rational consensus will be achieved. The rule of reason alone is not enough; the rule of

²⁴ Jürgen HABERMAS. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. p. 107.

majority is a political necessity, even in the case of deliberation. Voting makes the identification of a majoritarian position possible; this position will be considered as the temporary result of deliberation, valid until proven wrong, meaning until the minority succeeds in changing the mind of the majority. The majoritarian principle is included in the theory of deliberation and is justified by the idea of rationality and the power of persuasion of the arguments:

The majority rule is a fair and rational decision procedure, not because legitimacy resides in numbers but because if a majority of people are convinced at one point on the basis of reasons formulated as closely as possible as a result of a process of discursive deliberation that conclusion A is the right thing to do, then this conclusion can remain valid until challenged by good reasons by some other group.²⁵

Deliberative democracy is an attractive ideal: it promises a better participation, a meaningful communication between the spheres of the formation of political opinions and the sphere of decision-making, and rationality guarantees the validity of decisions. But deliberative democracy faces two significant objections, both of them associated with an excessive belief in rationalism, in the power of reason, and both related to an epistemic conception of democracy.

Habermas's conception of deliberation, for example, is based on the idea that deliberative democracy is better than any other conception because of its epistemic dimension: it produces better, more valid, results. Deliberation, in other words, has a cognitive dimension. It is not only that deliberation is more just or more egalitarian, but that it produces "results that are objectively rational."²⁶ This idea is based on two

²⁵ Seyla BENHABIB. *Toward a Deliberative Model of Democratic Legitimacy*. p. 72.

²⁶ Maeve COOKE. *Five Arguments for Deliberative Democracy*. p. 952.

assumptions that are very problematic. Our rejection of the concept of deliberation is grounded on the rejection of these two assumptions. Both assumptions are clearly identified by Maeve Cooke:

In his writings in general, Habermas construes public deliberation as open-ended, fair, and inclusive argumentation in which participants are concerned to find the single right answer. This idea of deliberation has a built-in transformative aspect: since participants engage in discussion with one another with a view to finding the single right answer, they must be prepared for the possibility that they will have to modify or give up their existing perceptions, interpretations, and evaluations, if the reasons on which they rest no longer prove sustainable.²⁷

(1) Participants are seeking the single right answer.

Deliberation offers a solution to the problems raised by the possibility of a tyranny of the majority: majority could decide to silence and oppress minority, and it could make bad decisions. What if the majority is wrong? What if its decisions are based on a mistaken reasoning? In deliberative theory, the validity of the decision is based on deliberation, and deliberation aims to identify the single right answer. There can be no wrong decision.

The conception of public justification defended here is incompatible with the idea that there exists a single right answer. All political decisions result from a temporary and fragile equilibrium. Political discussion cannot discover the single right answer because it does not exist. Even if deliberation could go on forever, no consensus could be reached.

(2) Deliberation implies a transformative dimension.

²⁷ Maeve COOKE. *A Secular State for a Postsecular Society? Postmetaphysical Political Theory and the Place of Religion*. p. 228.

This second problem is the direct consequence of the first one: if deliberation aims to reach the single right answer, then the positions of individuals have to be changed and/or given up through the process. The only force in play is the one of the best argument: “no force except that of the better argument is exercised.”²⁸ The process of deliberation reveals the irrationality of certain positions, which have to be abandoned.

Such an assumption might be desirable: if a position is proven irrational, we want to believe that nobody will hold on to it. But this does not appropriately describe the way political issues are dealt with. In parliaments for example, representatives tend to defend the positions defended by the political party they belong to, as opposed to positions that are the most rational. Empirical studies have shown that party discipline guides political choices much more than deliberation.²⁹ This does not mean that a true deliberation does not happen elsewhere, for example in civil society. However the objection remains: even though the ability of an individual to abandon her personal convictions because of rational arguments can be admired, such ability cannot be expected from all citizens. If there is not a single right answer possible, there are also different legitimate conceptions of what a good and convincing argument is, and of what the appropriate reaction should be.

Political discussion does not imply the demanding conception of rationality entailed by deliberation.

²⁸ Jürgen HABERMAS. *The Legitimation Crisis*. p. 108.

²⁹ See for example Nicolas SAUGER. *Party Discipline and Coalition Management*; John OWENS. *Explaining Party Cohesion and Discipline in Democratic Legislatures*; Howard ROSENTHAL, Erik VOETEN. *Analyzing Roll Calls with Perfect Spatial Voting: France 1946-1958*.

B - The construction of public justification

Public justification is constructed through political discussion, and therefore depends on the rules of political discussion. The framework of liberal democracy imposes two types of rules to political discussion: rules concerning the kind of decisions that can be justified (1) and rules concerning the way in which public justification is constructed (2).

1) Limited political decisions

Legitimacy can only be achieved within a particular framework, constituted by a particular set of norms. These norms are in consequence considered as fundamental: they are the basis of the political organization. They identify the conditions under which those who rule have the moral right to do so. This means that not all political decisions can be justified. The liberal and democratic conception of legitimacy requires justification as much as it constrains it.

Justifying means “make just.” There is however no a priori definition of what can be considered as just. Considering that a decision is justified means considering that the arguments supporting this decision are good. Those who participate in the construction of justification therefore have the power to decide what is the force and validity of the arguments. In other words, the result of this justification always depends on these participants.

Concerning legitimacy in a liberal democracy, it is not justification but public justification that is required, meaning a justification that is addressed to all those on

whom political power is exercised. But here, arguments are not necessarily considered as valid, convincing or good by all citizens. The principle of public justification can be respected even though not all citizens consider that the arguments used to justify the decision are convincing. Public justification is in consequence both more and less demanding than private justification, meaning the justification in the perspective of each citizen. It is more demanding because it is subjected to a certain number of rules, derived from its public dimension, that might exclude the use of certain arguments, even though these arguments might have been considered as convincing by some citizens. It is less demanding because it only requires adequate arguments, meaning a potential justification for all, as opposed to convincing arguments, meaning an actual justification for all.

The framework of legitimacy is what gives stability to the system. The norms that constitute this framework cannot be modified without the system itself being as a result transformed as well. In liberal democracy, the framework includes for example Human Rights, equality and individual liberty. Giving up one of these norms means giving up liberal democracy. On the contrary, justification is always temporary. It is always ongoing and it accepts changes of opinion, wanderings, regress. This temporary justification only exists through the reference to the unchanging and unquestionable legitimacy.

Liberal democracy only exists within a certain set of norms, but there is no precise definition of these norms. The definitions partly depend on the specific context in which liberal democracy is achieved. Such norms can be questioned; however, the questioning will focus on the specific conceptions that should be given rather than on the desirability

of the norms themselves. It is possible and legitimate to question what equality refers to and to criticize the specific definition used by the current political and legal systems but questioning the normative validity of equality is illegitimate.

There is no a priori and exhaustive list of good decisions, since each decision has to be publicly justified and since justification is always contingent. There is, however, a certain number of decisions that are necessarily illegitimate: even based on arguments that would be considered as convincing by a majority of citizens, a decision implying to recognize a certain hierarchy between citizens, and therefore rejecting the fundamental equality of all, is impossible in liberal democracy. Political discussion cannot justify it. Political discussion can only justify what is compatible with the norms constituting the framework of liberal democracy.

2) The characteristics of a model of political discussion

Offering a model of political discussion means offering a coherent set of rules that will specify the conditions under which public justification can be constructed. There are different possible models varying concerning the types of arguments that are considered as legitimate. A complete model of political discussion provides an answer to 7 different questions.

Question 1 – To which questions is the model applied?

Some models are only meant to be applied for certain questions, for example to “constitutional essentials and questions of basic justice.”³⁰ Possible answers include: the model should apply to all moral and political questions; it should apply to all political questions, but to political questions only; it should apply to a particular type of political questions (coercive laws, controversial questions, etc.).

Question 2 – To which actors is the model applied?

There are two main answers to this question: the model can be applied to all citizens or only to public officials (members of government, representatives, judges, etc.). In many cases, the model applies to all but to each group differently: depending on the role and responsibility of each individual, restrictions may vary.

Question 3 – To which spaces is the model applied?

Nobody pretends that a model should be applied to the private sphere. However, public space might still be too broad and some scholars want to apply the model only for certain parts of this public space. Habermas has theorized this plurality of spaces within the public sphere:

In complex societies, the public sphere consists of an intermediary structure between the political system, on the one hand, and the private sectors of the lifeworld and functional systems, on the other. (...) Moreover, the public sphere is differentiated into levels according to the density of communication, organizational complexity, and range – from the *episodic* publics found in taverns, coffee houses, or on the streets; through the *occasional* or “arranged” publics of particular presentations and events, such as theater performances, rock concerts, party assemblies, or church

³⁰ John RAWLS. *Political Liberalism*. p. 214.

congresses; up to the *abstract* public sphere of isolated readers, listeners, and viewers scattered across large geographical areas, or even around the globe, and brought together only through the mass media.³¹

This question does not overlap with the previous one: we can say, for example, that the model applies to everyone evolving in the political public sphere (courts and parliaments), or that the model applies only to public officials but in the entire public sphere, including when they give a speech at a university or in an interview with a journalist.

Question 4 – To which actions is the model applied?

Political discussion includes at least three different steps: the formation of opinions, the exchange of arguments and the moment when the decision is made (usually through a vote). Models can apply to any combination of these three steps.

Question 5 – Does the model impose a duty of sincerity or is hypocrisy allowed?

Sincerity here refers to the correspondence of arguments introduced by an individual to his actual personal motivation. Hypocrisy therefore means that an individual is using arguments, but that he himself is not deeply convinced by the arguments he uses, or at least that these arguments are not as convincing as other arguments. There are only two possible answers: imposing the correspondence between the formulated arguments and the personal motivation or not.

³¹ Jürgen HABERMAS. *Between Facts and Norms*. p. 373-374.

Question 6 – Is it a moral duty or a legal obligation?

This question focuses on the way in which the model is applied. There are two possibilities. On the one hand, the model could be understood as a moral duty, meaning that we expect citizens to abide by the rules of political discussion because they belong to our normative conception of citizenship. On the other hand, the model could be applied through a legal obligation, in which case not respecting the model would mean being punished.

Question 7 – Which criterion is used to decide whether arguments can be introduced?

This last question is the most important for us: which arguments are we allowed to use in public justification? Which criterion is used to distinguish between legitimate and illegitimate arguments? All models include such a criterion, even in the most permissive cases, in which the criterion is identified with the limits of free speech. When religious arguments are considered as illegitimate, models are considered exclusivist; when religious arguments are considered as legitimate, models are considered inclusivist. If some religious arguments are considered as illegitimate and others as legitimate, the model cannot be said to be either exclusivist or inclusivist. There are many different possible answers to this question: the model can impose, for example, a criterion of legality, of secularity, of accessibility, of public reason, of neutrality, or of fallibilism. Different criteria can also be combined.

With this structure of models of political discussion in mind, we can now turn to different models that have been defended in political theory.

IV - John Rawls's Public Reason

A - The model of public reason

The problem of justification became central in political theory since John Rawls raised it, indirectly, in *A Theory of Justice*, through the idea of the priority of the right over the good, and more directly in the 1990s, especially in *Political Liberalism*. Even though his model of public reason is usually considered as an exclusivist model, this is only partially true.

Originally, Rawls is not interested in religion. When he launches the controversy on the contribution of religious arguments, he is actually trying to identify the conditions under which political legitimacy in a liberal democracy can be guaranteed. This is how Rawls defines his project:

How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines? This is a problem of political justice, not a problem about the highest good.³²

Liberal democracy is characterized by the fact of pluralism: each citizen has a particular conception of the good, and there are many different and incompatible conceptions of the good. A stable and just society cannot aim at unanimity, but it can aim at legitimacy. In political liberalism, legitimacy is something very specific:

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

³² John RAWLS. *Political Liberalism*. p. xxv.

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.³³

Liberal legitimacy is based on the idea of a general acceptability, justified by the fact that each individual has access to a common human reason. The consequence follows: some principles are justified by this reason alone, which makes them acceptable for all, but others are not. Therefore, it is not legitimate to appeal to principles that cannot be discovered by reason alone and that cannot be the object of a general acceptability to justify the exercise of political power. The principle of liberal legitimacy entails a certain ideal of democratic citizenship that imposes “a moral, not a legal, duty – the duty of civility – to be able to explain to one another (...) how the principles and policies they advocate and vote for can be supported by the political values of public reason.”³⁴

This is roughly how Rawls’s argument could be summarized: legitimacy in a modern society requires the justification of the exercise of political power; power is justified with principles that are acceptable to all; comprehensive doctrines, whether they are moral, philosophical or religious, cannot be acceptable to all and therefore cannot be used as public justification. The characteristics of the model of public reason are the following:

1 – Public reason is only applied to “constitutional essentials and questions of basic justice.”³⁵

³³ *Ibid.* p. 137.

³⁴ *Ibid.* p. 217.

³⁵ *Ibid.* p. 214.

2 – The model is applied to all citizens, not only to public officials.

3 – Public reason only applies to citizens “when they engage in political advocacy in the public forum.”³⁶ It does not apply to private spaces or to non political discussions that occur in the public sphere.

4 – The model is applied only to certain actions, for example to campaigning, parliamentary debates and votes on fundamental questions.³⁷

These first characteristics are summarized by Rawls and show that his model is much less restrictive than what most people assume:

It is imperative to realize that the idea of public reason does not apply to all political discussions of fundamental questions, but only to discussions of those questions in what I refer to as the public political forum. This forum may be divided into three parts: the discourse of judges in their decisions, and especially of the judges of a supreme court; the discourse of government officials, especially chief executives and legislators; and finally, the discourse of candidates for public office and their campaign managers, especially in their public oratory, party platforms, and political statements.³⁸

5 – Rawls expects citizens to only use arguments they personally, “in good faith,”³⁹ find convincing.

6 – Public reason is a moral duty, not a legal one.⁴⁰

7 – Only arguments that are acceptable to all are legitimate, meaning all comprehensive doctrines are excluded. Religious arguments, derived from doctrines that

³⁶ *Ibid.* p. 252.

³⁷ *Ibid.* p. 252

³⁸ John RAWLS. *The Idea of Public Reason Revisited*. p. 767.

³⁹ John RAWLS. *Political Liberalism*. p. 236.

⁴⁰ *Ibid.* p. 217.

are by definition comprehensive, are excluded, like many other arguments including utilitarian arguments. This is why Rawls's model is, ultimately, exclusivist.

Public reason is not, however, excessively exclusivist, for two reasons. First, it does not apply to all questions and it applies more to certain citizens than to others. Second, Rawls limits the impact of the restriction with the famous *proviso*:

This requirement (of public reason) still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support. I refer to this requirement as *the proviso*.⁴¹

⁴¹ John RAWLS. The Idea of Public Reason Revisited. p. 776.

Table 2: John Rawls's model of political discussion

1. WHICH QUESTIONS?	Constitutional essentials and questions of basic justice
2. WHICH ACTORS?	All citizens
3. WHICH SPACES?	Public forum and official forums
4. WHICH ACTIONS?	Debates and vote
5. CORRESPONDENCE WITH PERSONAL MOTIVATION?	Correspondence with personal motivation
6. MORAL OR LEGAL DUTY?	Moral duty
7. WHICH CRITERION ALLOWS TO INCLUDE ARGUMENTS?	Acceptability for all

Two sections of *Political Liberalism* are particularly important in Rawls's discussion of public reason.

The first one is the most famous footnote of political theory. Rawls wants to show that all political questions, including the most difficult ones, can be answered with public reason alone. He uses the case of abortion as an example: he claims that "any reasonable balance of these three values (the due respect for human life, the ordered reproduction of political society over time, the equality of women as equal citizens) will give a woman a

duly qualified right to decide whether or not to end her pregnancy during the first trimester.”⁴² In other words, public reason justifies the right to abortion, but does not seem to allow us to make abortion illegal. Even though we might agree that there should be a right to abortion, it seems highly controversial to claim that this would be the only legitimate decision. This issue requires raising the question of the moral status of the fetus. Rawls is here considering that the moral status of a fetus is not equal to the moral status of a human being. But this is precisely the problem: how do we know if the fetus is like a human being or not? All answers seem to be equally derived from comprehensive doctrines.

The second section focuses more directly on religion. Rawls mentions two examples that might be considered as problematic for public reason: abolitionists and Martin Luther King. In both cases, political progress was defended with religious arguments. Were such arguments compatible with public reason? Rawls claims that they are, because in both cases “the political forces they led were among the necessary historical conditions to establish political justice, as does indeed seem plausible in their situation.”⁴³ Because society is not well-ordered and because the introduction of religious arguments aims precisely to establish a well-ordered society, they are not incompatible with public reason.

The combination of both examples seems problematic: would religious arguments be allowed only when they support good and liberal policies? The main difference might

⁴² John RAWLS. *Political Liberalism*. p. 243, note 32.

⁴³ *Ibid.* p. 250-251.

simply be that liberals on the first issue side against religion whereas they side with religion on the second one.

Rawlsian theory rests on a number of basic assumptions that are, by definition, impossible to justify. Political values characteristic of liberalism belong to these assumptions: citizens are free and equal; social unity is good in itself; reasonable pluralism is unavoidable; neutrality towards comprehensive doctrines is good in itself. The central assumption is also the central weakness of liberalism: it is the idea of a priority of the right over the good, which justifies the distinction between the political and the metaphysical. As a political and not metaphysical conception, liberalism rests on a priority of the right:

The concept of justice is independent from and prior to the concept of goodness in the sense that its principles limit the conceptions of the good which are permissible. A just basic structure and its background institutions establish a framework within which permissible conceptions can be advanced. Elsewhere I have called this relation between a conception of justice and conceptions of the good the priority of right (since the just falls under the right). I believe this priority is characteristic of liberalism as a political doctrine and something like it seems essential to any conception of justice reasonable for a democratic state.⁴⁴

This priority is what gives liberalism itself a status different from the status of comprehensive doctrines. But not only the priority is problematic, but the distinction itself between right and good is very controversial. A critique of this assumption has been developed in Michael Sandel's *Liberalism and the Limits of Justice*: Sandel claims that no conception of justice can be developed independently of a comprehensive doctrine, meaning independently of a conception of the good. But neither Rawls's assumption of a

⁴⁴ John RAWLS. Justice as Fairness: Political, not Metaphysical. pp. 249-250.

priority of the right nor Sandel's conviction of the opposite can be justified: in both cases, it is a leap of faith.

B - Limits and objections

Three main objections have been raised against Rawls's public reason.

The first objection argues that Rawlsian liberalism is not liberal enough. Rawlsian liberalism, it is argued, does not consider all citizens as free and equal. Public reason, since it imposes some restrictions on political discussion, excludes certain arguments and therefore excludes those who wanted to introduce those arguments. A citizen who forms his political opinions based on religious considerations would be treated by Rawlsian liberalism as a second class citizen: he does not have the liberty to express his political opinions, and the other citizens do not have the opportunity to hear them. The incompatibility of such a situation with the fundamental principles of political liberalism is summarized by Douglas G. Smith:

If citizens feel compelled as a moral duty to refrain from utilizing religious or other comprehensive doctrines as grounds for public justification or choice, arguably their liberty has been constrained in a meaningful sense. The liberty of the listeners in society may also be constrained because with less information comes a decreased number of options. This result seems to be at odds with liberalism itself.⁴⁵

Public reason creates an asymmetry between what it demands from religious citizens and what it demands from nonreligious citizens: this is incompatible with the liberal principle that requires that all citizens are treated equally.

⁴⁵ Douglas G. SMITH. *The Illiberalism of Liberalism: Religious Discourse in the Public Square*. p. 1613.

From the perspective of liberalism, however, such an asymmetry does not exist. All citizens, whether religious or not, have beliefs and convictions. All have a particular conception of the good. And all of them must refrain from deriving arguments from such conceptions of the good when they engage in political discussion.

Such an objection, besides, seem to ignore the fact that public reason is a moral duty and not a legal obligation. Restrictions can only be applied by citizens themselves. Since citizens decide themselves whether they want to respect public reason or not, it seems impossible to consider that they are not free, meaning that public reason entails some kind of restriction of freedom. If religious believers refrain from introducing religious considerations, it is only because they have decided to do so.

The second objection accuses the rawlsian model of political discussion of imposing a misguided conception of religion. The rawlsian model of political discussion rests on a conception of religion that some theorists find very problematic. Demanding the exclusion of comprehensive doctrines, including religious doctrines, reveals a very liberal understanding of religion, which is not necessarily the conception that religious believers themselves have of religion.

The liberal conception of religion is usually defined in reference to John Locke, who famously associated churches with free and voluntary associations, therefore submitting religion to the willpower of each individual. One would only be religious because he consciously decided to be religious. This, obviously, sounds excessively liberal. Even liberals know that individuals are not only and exclusively the result of their own choices. And yet, the liberal tradition rightly reminds us that nothing can force us to

believe anything. Power stops where conscience begins. This is what Locke has in mind when he distinguishes between the “civil interests” and the “care of souls.” As a result, Locke claims that “the whole jurisdiction of the magistrate reached only to these civil concernments, and that all civil power, right and dominion, is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the salvation of souls.”⁴⁶

Such a conception of the distinction between the interests of the state and the interests of the church implies the idea of a distinction between a public sphere and a private sphere; religion, in the liberal tradition, belongs to the latter. But because of that, religion is not different from all the other traditions, doctrines or beliefs that individuals might have.

Patrick Neal and Stephen Carter have criticized this conception of religion that is considered as completely private and as having no relevance for the public sphere. Liberals misunderstand religion: for many religious believers, religion is not something that exists in a part of their life but that is independent of the others, it is something that guides their entire life, as a private individual and as a citizen. Patrick Neal has rejected the idea of bracketing religious doctrines when engaging in political debates, since religious doctrines are precisely central in the way religious believers approach political issues.⁴⁷ Stephen Carter claims that the liberal conception is dangerous for religion:

⁴⁶ John LOCKE. *A Letter Concerning Toleration*.

⁴⁷ Patrick NEAL. *Political Liberalism, Public Reason, and the Citizen of Faith*. pp. 285-188.

In its stated zeal to cherish religious belief under the protective mantle of 'neutrality,' liberalism is really derogating religious belief in favor of other, more 'rational' methods of understanding the world. The great risk lying a bit further down this path is that religion, far from being cherished, will be diminished, and that religious belief will ultimately become a kind of hobby: something so private that it is as irrelevant to public life as the building of model airplanes.⁴⁸

Such an objection is excessive: it overestimates the privatization demanded by liberalism as well as the risk of weakening or disappearance of religion that would follow. The neutrality of public reason does not mean neutrality of public sphere: religion has a legitimate place in civil society.

The last objection argues that liberalism is insufficient precisely because it is minimal and pretends to be independent of all conceptions of the good. Two versions of this argument exist: the first is a normative critique, accusing political liberalism of impoverishing political discussion and excluding all moral resources from decision making; the second is a philosophical critique, rejecting the idea of an unencumbered self, "a self understood as prior to and independent of purposes and ends."⁴⁹

If comprehensive doctrines are bracketed, how can we ever find answers to controversial political questions? How are we to discuss questions concerning the good, without ever introducing conceptions of the good? The Rawlsian model might work very well for most political questions but it seems unable to tell us how to discuss questions that cannot be answered without referring to a certain conception of the good or to a

⁴⁸ Stephen L. CARTER. *Evolutionism, Creationism, and Treating Religion as a Hobby*. p. 978.

⁴⁹ Michael SANDEL. *The Procedural Republic and the Unencumbered Self*. p. 86.

certain conception of human life, like questions of bioethics. This is the most serious objection raised against public reason.

The more philosophical version of the question relies on the idea that what liberalism requires is impossible: the problem is not so much that public reason does not give us the tools to discuss certain questions, but rather that liberalism is wrong about who we are and how we make choices. It is the argument developed by Michael Sandel, that can be roughly summarized as following: in order for the priority of the right to make sense, rawlsian theory needs a demanding conception of an unencumbered self. But human beings are not unencumbered, they do not exist independently of the specific context that makes them who they are, within a particular tradition and within a particular world. Rawlsian liberalism rests on an assumption that cannot be justified.

The objections against Rawls's public reason are serious enough that we cannot be satisfied with it. We must keep looking for a model of political discussion that would at the same time gives us sufficient guidelines to discuss all possible political issues and guarantees that public justification, and therefore legitimacy, is achieved through political discussion.

V - Alternative Models of Political Discussion

This chapter focuses on 5 different theorists: Robert Audi, Kent Greenawalt, Jürgen Habermas, Michael Perry and Nicholas Wolterstorff. Each has formulated a model of political discussion different from Rawls's. Not all of them give explicit answers to the 7 characteristics identified earlier, but we try to reconstruct such answers when possible.

A - Robert Audi

Audi describes explicitly his model of political discussion as an exclusivist model, meaning as a model that excludes religious arguments. Two elements in his model deserve close attention: his definition of religious arguments (1) and his surrogacy conception of justified coercion (2). We will then attempt to identify the 7 characteristics of his model (3).

1) Religious arguments

Audi has made a significant contribution to the question of the definition of religious arguments by distinguishing between four different criteria that could allow us to recognize a religious argument.

The first criterion is the content criterion:

On this standard, an argument with essentially religious content (as opposed to, say, merely quoted religious statements) is religious. Paradigmatically, this is theistic content such as a reference to a divine command.⁵⁰

It is the type of religious argument that can be easily recognized. The three other criteria identified by Audi could lead us to describe as religious an argument that does not make any explicit religious reference and that uses exclusively secular vocabulary.

The second criterion is the epistemic criterion.

I propose to call an argument epistemically religious provided that (a) its premises, or (b) its conclusion, or (c) both, or (d) its premises *warranting* its conclusion, cannot be known, or at least justifiably accepted, apart from reliance on religious considerations, for example scripture or revelation.⁵¹

This allows us to say that an argument is religious although it does not have a religious content, and although it does not use a religious vocabulary. It is indeed possible that the premises or conclusion or relation between them can only make sense based on certain religious beliefs, without that the argument itself makes an explicit and direct reference to a religious text.

The third criterion is motivational: an argument is religious because what motivates the individual to formulate and defend it, or what motives him at least partly, is a religious objective, like for example the objective to live one's life according to God's will. This criterion does not focus on the content of the argument, that can be religious or not, or on the conditions under which the argument can make sense to those it is offered to. It "applies primarily to reasoning processes and only derivatively to arguments as the

⁵⁰ Robert AUDI. The Place of Religious Argument in a Free and Democratic Society. *San Diego Law Review*, fall 1993, vol. 30, n°4, p. 679.

⁵¹ Robert AUDI. The Place of Religious Argument in a Free and Democratic Society. *San Diego Law Review*, fall 1993, vol. 30, n°4, p. 680-681.

abstract structures realized in those processes.”⁵² We cannot however use this criterion since we do not have access to the personal motivations of the individuals offering arguments. It is possible that some arguments exchanged in a political debate are religious in this motivational sense, but except if the person offering the argument acknowledges his religious motivation, we have no legitimate ground to apply this criterion.

The last criterion is a historical criterion, according to which an argument

is religious in the historical sense provided that, as used on that occasion, it genetically traces, explicitly or implicitly, by some mainly cognitive chain, such as a chain of beliefs, to one or more arguments that are religious in one of the above senses, or to one or more propositions that are either religious in content or epistemically dependent on a proposition that is religious in content.⁵³

For example, the argument that suicide is wrong because it is wrong to take an innocent life actually derives from other ideas, such as the proposition that the value of each life comes from the fact that it was given to us by God. This is an important type of arguments because it allows us to take into consideration the fact that some arguments, without using religious vocabulary and without even requiring appealing to religious beliefs to make sense, can owe their force of persuasion to their association to religious arguments.

⁵² Robert AUDI. The Place of Religious Argument in a Free and Democratic Society. *San Diego Law Review*, fall 1993, vol. 30, n°4, p. 683.

⁵³ Robert AUDI. The Place of Religious Argument in a Free and Democratic Society. *San Diego Law Review*, fall 1993, vol. 30, n°4, p. 683.

The most important element of this categorization of religious argument is that some arguments can be superficially secular, meaning that they can be formulated in a vocabulary that is exclusively secular, and still be considered as a religious argument.

2) The surrogacy conception of justified coercion

Audi argues that liberal democracy itself entails a restrictive model of political discussion, because of the particular conception of justification of coercion on which it is based. Coercion means forcing individuals to behave in a certain way: for example, it takes the form of sanctions that are attached to specific actions or behaviors. It therefore modifies the conditions under which an individual can make choices and decisions, since certain choices and decisions are associated to an artificially increased cost. Killing a neighbor, without the coercion imposed by a law banning murder, has a pretty low cost; the guarantee that, if you get caught, you will spend a few decades in prison increases this cost and significantly changes the conditions under which you will decide whether to kill your neighbor or not.

Not all coercion is necessarily arbitrary or unjustified. In the case of murder, it is easy to see why coercion is justified. It is however more difficult in many other cases, including for example the interdiction of homosexuality. The argument defended by Audi is that coercion is only justified when it gives “high priority to respect for the self-determination of persons.”⁵⁴ His conception of a surrogacy conception of justified coercion is based on this idea:

⁵⁴ Robert AUDI. *The Place of Religious Argument in a Free and Democratic Society*. p. 688.

Coercing a person, for a particular reason, to perform an action, in a given set of circumstances, is fully justified only if at least the following three conditions hold in the circumstances (perhaps with further qualification they, or some extension of them, are also sufficient for justified coercion). (a) Someone else (most often, fellow citizens in the cases that concern us) has a (moral) right, in the circumstances, to have this action performed by the person – certainly a feature of most cases in which a liberal democracy can reasonably coerce its citizens – or at least the person morally ought to perform the action in the circumstances, for example to abstain from stealing from others. (b) If fully rational (hence willing to imagine a reversal of positions or roles between oneself and others) and adequately informed about the situation, the person would see that (a) holds and would, for the reason in question, say from a sense of how theft creates mistrust and chaos, or for some essentially related reason, perform the action, or at least tend to do so. (c) The action in question is both an ‘important’ kind of conduct (as opposed to breaking a casual promise to meet for lunch at the usual place) and one that may be reasonably believed to affect someone else (and perhaps not of a highly personal kind at all). Thus, it is permissible, on grounds of the general welfare, to coerce people to pay taxes only if they ought to do so in the circumstances, can see this, and would (if fully rational and adequately informed) be appropriately motivated by seeing it; whereas it is not permissible to coerce someone to give up, say, smoking, provided it does not significantly affect others.⁵⁵

The key idea of this conception of justification is that coerced citizens themselves should agree with coercion, if they had all relevant information. Coercion justified by religious arguments could not fulfill all three conditions, since it would not be enough to be rational and fully informed to understand that it is a moral duty.

The main problem of such a conception is its fundamental assumption, meaning that it is possible to say what moral duties we all have, or in other words that there are moral truths.⁵⁶ Audi therefore denies that human beings can disagree about what should be done in a particular situation. Although there is a significant agreement on certain

⁵⁵ Robert AUDI. *Religious Commitment and Secular Reason*. pp. 65-66.

⁵⁶ Audi uses the concept of moral truth and claims that it can be discovered through secular as well as religious ways: “How could God, conceived as omniscient and omnibenevolent, not require, or at least wish, our conformity to a true moral principle? And given that God should be believed to wish us to conform to true moral principles, it is at best difficult to see how God could *both* allow some people to reject all forms of theism and leave them unable to find a secular path to moral truths” (*Ibid.* p. 129).

issues, like murder or rape, it is difficult to see how there could be a moral truth concerning more controversial questions.

Audi cannot justify his assumption that there are moral truths. If he is right, then his conception of justified coercion is valid, but it also becomes useless since justification ends up being identified with moral truth. Coercion is only justified when it imposes a moral behavior or forbid an immoral one: it does not do anything else but say what is moral and what is immoral.

The assumption that there are moral truths and that it is possible to agree about them, if we are rational and fully informed, has been criticized by Nicholas Wolterstorff:

Disagreements among fully informed and rational persons over most matters of any complexity, and thus over most issues of coercive legislation, are a fundamental feature of our human condition. Rationality does not typically yield consensus. Rationality coupled with information typically leaves us disagreeing with each other.⁵⁷

Audi recognizes that Wolterstorff is partly right and that there are some unavoidable disagreements on certain ethical questions. He insists, however, that thoughtful people agree on a majority of questions, for example that “it is wrong to treat people unequally on grounds of race or ethnicity, to punish people for crimes they did not commit, and to torture people as punishment.”⁵⁸ But those are obviously not the most complicated cases; what really matters for a theory of justification is cases that are very controversial. Audi avoids what is the main problem of justification with his conception

⁵⁷ Nicholas WOLTERSTORFF. *The Paradoxical Role of Coercion in the Theory of Political Liberalism*. p. 147.

⁵⁸ Robert AUDI. *Natural Reason, Religious Conviction, and the Justification of Coercion in Democratic Societies*. p. 15.

of coercion: we are not trying to justify the interdiction of murder but to justify decisions concerning abortion, euthanasia, same sex marriage or reproductive cloning.

Based on this conception of justified coercion, Audi defends two principles: the principle of secular rationale and the principle of secular motivation. The first one says that “one has a prima facie obligation not to advocate or support any law or public policy that restricts human conduct unless one has, and is willing to offer, adequate secular reason for this advocacy or support.”⁵⁹ The second is the idea “that one also has a prima facie obligation to abstain from such advocacy or support unless one is sufficiently *motivated* by adequate secular reason.”⁶⁰

3) The characteristics of Robert Audi’s model of political discussion

1 – The model is applied only to coercive laws.

2 / 3 / 4 – The three characteristics specifying the context of the application are treated together by Audi: all actors are concerned, but all to different degrees depending on the role they play and the type of action.⁶¹

5 – The model applies to motivation as well as to arguments, so it requires a correspondence between the arguments that are introduced by an individual and the arguments that have actually motivated him.

⁵⁹ Robert AUDI. *The Place of Religious Argument in a Free and Democratic Society*. pp. 191-192.

⁶⁰ *Ibid.* p. 192.

⁶¹ Robert AUDI. *Religious Commitment and Secular Reason*. p. 174.

6 – It is a moral duty, not a legal obligation. It would anyway be impossible to attach a legal sanction to the lack of good faith corresponding to the principle of secular motivation.

7 – This last character is less clearly discussed by Audi. Obviously, religious arguments are excluded, but Audi recognized that other arguments are also excluded: “we must add to the requirement of secularity that the reasons be appropriately accessible.”⁶²

B - Kent Greenawalt

Greenawalt discusses the question of the appropriate relations between religion and politics only for the United States: “It is this author’s position that on the topics discussed, one cannot reasonably reach a full conclusion about liberal democracies in general.”⁶³ So his model is only valid for the American case. Greenawalt is the only theorist who claims an intermediary position, between exclusivism and inclusivism (1). We then examine the assumptions (2) and the characteristics (3) of his model of political discussion.

1) Between exclusivism and inclusivism

Greenawalt acknowledges that both sides have valid arguments and that a reasonable position would be an intermediary one:

⁶² *Ibid.* pp. 67-68.

⁶³ Kent GREENAWALT. *The Role of Religion in a Liberal Democracy: Dilemmas and Possible Resolutions.* p. 509.

Legislation must be justified in terms of secular objectives, but when people reasonably think that rational analysis and an acceptable rational secular morality cannot resolve critical questions of fact, fundamental questions of value, or the weighing of competing harms, they do appropriately rely on religious convictions that help them answer these questions. Not only is such reliance appropriate for ordinary citizens, legislators may rely on their own religious convictions and those of their constituents in similar instances; occasionally such reliance is warranted even for judges. Though reliance on religious convictions is appropriate in these settings, argument in religious terms is often an inapt form of public dialogue. Reliance on conceptions of the good and other “fundamental” beliefs is often also proper.⁶⁴

It would be better to exclusively use public reasons, but sometimes it might be appropriate to use particular conceptions of the good, including religious arguments, precisely because it is not possible to properly discuss all questions only with public reasons.

However, Greenawalt does not completely reject Rawls’s model of political discussion. On many different points, he agrees with him: he considers that public reason is a self-restraint, that its requirements vary depending on the role of each individual and that it does not always rule out the introduction of comprehensive doctrines.⁶⁵ He also recognizes that Rawls’s model is not as exclusivist as many critics have argued: “on the wide spectrum of views about public reasons, both our views represent intermediate positions that are not too far apart.”⁶⁶ He distinguishes himself from Rawls, however, based on three problems: the distinction between “constitutional essentials and matters of basic justice on the one hand, and ‘ordinary’ political issues on the other;” the “relation

⁶⁴ Kent GREENAWALT. *Religious Convictions and Lawmaking*. p. 357.

⁶⁵ Kent GREENAWALT. *Some Problems with public Reason in John Rawls’s Political Liberalism*. p. 1304.

⁶⁶ *Ibid.* p. 1304.

between one's appropriate reliance on comprehensive perspectives and public reasons;" and "the fundamental assumption that fairness in liberal democracies *in general* requires reliance on public reasons in respect to constitutional issues and matters of basic justice."⁶⁷ Concerning the first problem, Greenawalt rejects the idea that certain controversial arguments might be introduced on certain questions but not on others. On the use of comprehensive doctrines, Greenawalt disagrees with the importance of good faith: it is a requirement that is difficult, or maybe impossible, to respect. Finally, Greenawalt claims that existing liberal democracies are very different from each other and that different models of political discussion should consequently be applied.

2) Basic assumptions of Greenawalt's position

Greenawalt's position is based on two main arguments: religious arguments are not necessarily inaccessible; and for certain political questions, rational secular arguments are insufficient.

Greenawalt distinguishes between accessible and non-accessible arguments, as well as between religious and non-religious arguments; both distinctions, however, do not overlap. Arguments derived from comprehensive doctrines, including religious ones, are not necessarily inaccessible. What really matters for the legitimacy of democratic decisions is not that the arguments used to justify them are non-comprehensive but that they are accessible to all. And Greenawalt claims that religious arguments can, like any other argument, be accessible, just like secular arguments can be inaccessible.

⁶⁷ *Ibid.* pp. 1304-1305.

It becomes thus necessary to define what an accessible argument is and how it is possible to know whether an argument is accessible or not. Religious beliefs are often based on inaccessible grounds, like personal experience. But there might be accessible grounds of religious beliefs, like a philosophical argument aiming to prove the existence of God. Besides, “many religious people do not concede that their religious convictions, in their entirety or in crucial elements, lie outside the domain of accessible arguments.”⁶⁸ There seems to be an obvious objection to this argument: why should we trust what religious believers tell us? Greenawalt convincingly responds that there is no more reason to believe the individual who rejects the argument as inaccessible than to believe the one who offers it and considers it as accessible. We all want to pretend that what we believe is rationally grounded and accessible, whereas what people we disagree with believe is irrational and inaccessible. But “the truth is that we all believe in the arguments we do for various complex psychological and social reasons.”⁶⁹ We are not neutral towards the arguments exchanged in political discussion, whether they are our own arguments or arguments introduced by others and with which we disagree.

The distinction between accessible and inaccessible arguments is obviously difficult to make. But what really matters is not to precisely identify which arguments fit in which category, but rather to understand that the categories of religious and inaccessible arguments do not always and necessarily overlap.

⁶⁸ Kent GREENAWALT. *Private Consciences and Public Reasons*. p. 42.

⁶⁹ *Ibid.* p. 43.

The second central argument is that some political questions can only be discussed when conceptions of the good, i.e. particular and inaccessible conceptions, are introduced. This is what justifies that the introduction of inaccessible arguments, including religious arguments, is unavoidable. For certain questions, public reasons are simply insufficient.

The harms to animals that restrictions on factory farming would prevent are perfectly comprehensible in secular terms. With respect to such issues, the good citizen should remain open to reasons that all members of society can evaluate. If those reasons yield a decisive answer, the citizen should accept it. Nevertheless, shared principles of justice, shared methods of assessing values, and shared ways of determining facts will often prove inconclusive. The problem is not solely that considerations on each side may be neatly balanced. Rather, common reasoning may be radically inconclusive, as seems to me true about the status of animals. (...) In reaching a conclusion, everyone must rely on a sense of the place that nonhuman creatures inhabit in our world that is not fully based on shared premises or ways of reasoning. If this much of my account is accurate, it follows that people cannot be expected to rely exclusively on shared premises and ways of reasoning. If people can appropriately rely on personal intuitions and perspectives, they should also be able to rely on religious perspectives.⁷⁰

Because it is impossible to solve certain questions without using particular moral conceptions, it is impossible and non-desirable to demand from citizens that they only use shared reasons. The argument is very convincing: how can we ever make a decision concerning abortion without relying on a certain idea of what human life is, what it is worth, and when it begins? Greenawalt insists, however, that the use of particular moral conceptions should be limited to personal reflections and avoided in public discourse,

⁷⁰ Kent GREENAWALT. *Religious Convictions and Political Choice: Some Further Thoughts*. p. 1022.

even though this “leaves a disturbing discrepancy between the reasons people may have and rely upon, and the reasons they should assert in public advocacy.”⁷¹

3) The characteristics of Kent Greenawalt’s model of political discussion

1 – The model is applied to all questions; Greenawalt explicitly rejects Rawls’s idea of a distinction between different types of questions.⁷²

2 – All actors should respect some self-restraint, but not all in the same way. The restriction applies more to public officials and “quasi-public” citizens, “like newspaper editors and presidents of large corporations.”⁷³ The demands of the model are less insistent for ordinary citizens.

3 – Greenawalt does not give any indication of the application of his model in terms of specific spaces, but it is clear that the model is applied beyond the limits of the political public sphere, meaning beyond the institutional sphere.

4 – The model is applied to public discourse and not to the formation of opinions. Each individual, ordinary citizen or public official, can introduce non-public reasons to form his judgment but must then use only public reasons when formulating publicly his arguments.

⁷¹ *Ibid.* p. 1023.

⁷² Kent GREENAWALT. Some Problems with Public Reason in John Rawls’s *Political Liberalism*. p. 1308.

⁷³ Kent GREENAWALT. *Private Consciences and Public Reasons*. p. 7.

5 – Since the restriction only applies to public discourse, no correspondence between formulated arguments and real motivation is demanded. Greenawalt argues that “asking people to present positions in secular terms does not require the extreme mental agility of asking that they try to decide without reliance on religious premises that color their views.”⁷⁴

6 – All citizens and public officials have a legal right to use any kind of arguments they want. The restriction implied by Greenawalt’s model is a moral duty.

7 – The arguments that can legitimately be included in political discussion are accessible arguments. The justification for this exclusion of non-accessible reasons has two dimensions:

The first is that it is fundamentally unfair to coerce people, or to use the corporate authority and power of the state, when the grounds for doing so are not ones that all those affected could be expected to accept if they made reasonable judgments. The second dimension of the argument is that the political life of a society will be healthiest and most stable if political issues are resolved in premises and grounds that are fully available to everyone in the society.⁷⁵

Public accessibility is defined as concerning “the force of grounds, not just the percentage of citizens who happen to accept them.”⁷⁶ Greenawalt rejects however that there is a clear distinction between public and non-public reasons: “in respect to many

⁷⁴ Kent GREENAWALT. *Religious Convictions and Political Choice: Some Further Thoughts*. p. 1046.

⁷⁵ Kent GREENAWALT. *Private Consciences and Public Reasons*. p. 72.

⁷⁶ Kent GREENAWALT. *Religious Expression in the Public Square – The Building Blocks for an Intermediate Position*. p. 1412, footnote 3.

reasons for decisions, it may be wiser to talk of degrees of publicness, rather than public or not.”⁷⁷

C - Jürgen Habermas

The model of political discussion offered by Jürgen Habermas is based on the argument that religion can be useful, or maybe even necessary, since it can give access to certain truth contents (1). Habermas attempts to combine the exclusivist and the inclusivist position through the idea of translation, that would both guarantee that non-religious citizens can understand the decisions and allow religious citizens to express their deepest convictions (2). The characteristics of Habermas’s model of political discussion will then be presented (3).

1) Religious traditions as bearers of “truth contents”

Religions can formulate convincing moral intuitions, and always have done so. Western philosophy, for example, has been deeply influenced by religions and many religious ideas have been adapted by secular philosophy. Philosophy is not independent of religion:

Greek concepts such as ‘autonomy’ and ‘individuality’ or Roman concepts such as ‘emancipation’ and ‘solidarity’ have long since been shot through with meanings of a Judeo-Christian origin. Philosophy has recurrently found in its encounters with religious traditions, and they include Muslim traditions as well, that it receives innovative stimulation if it succeeds in

⁷⁷ Kent GREENAWALT. *Natural Law and Public Reasons*. p. 531.

liberating the cognitive substance from its dogmatic encapsulation in the melting pot of rational discourse.⁷⁸

The role that religion can play in democracy is therefore not only legitimate, it is also essential: without religion, something would be missing and that would make us unable to access certain ideas, certain principles, and even certain truths: “world religions may be bearers of ‘truth contents,’ in the sense of suppressed or untapped moral intuitions.”⁷⁹ Habermas’s rejection of Rawls’s public reason is therefore not justified by the idea that certain questions cannot be dealt with neutrally and impartially, but by the idea that religious considerations provide certain elements that we need and that we cannot find anywhere else: “moral sentiments, which until now could be expressed only in a rather exclusionary way through religious language, might find general resonance as soon as they find a redemptive formulation for what has been almost forgotten, but is still implicitly missed.”⁸⁰

2) Translation

Habermas’s translation proviso is presented as a response to the problems of Rawls’s public reason. It says that “all citizens should be free to decide whether they want to use religious language in the public sphere,” but that they “accept that the potential truth contents of religious utterances must be translated into a generally

⁷⁸ Jürgen HABERMAS. Religion in the Public Sphere. p. 17.

⁷⁹ Jürgen HABERMAS. “The Political”: The Rational Meaning of a Questionable Inheritance of Political Theology. p. 27.

⁸⁰ Jürgen HABERMAS. Faith and Knowledge.

accessible language before they can find their way onto the agendas of parliaments, courts, or administrative bodies and influence their decisions.”⁸¹

Citizens have to work on this translation. Whenever translation is impossible, citizens can use religious arguments, but this right does not apply for public officials beyond the institutional threshold. The translation model therefore is based on a strict distinction between the institutional public sphere and the informal public sphere.

According to Habermas, translation allows to express religious contents without using a religious formulation: religious believers would therefore be able to share some moral considerations derived from religious traditions, in a way that makes them accessible for non-religious citizens. Through translation, Habermas claims to achieve the “liberal goal of ensuring that all legally enforceable and publicly sanctioned decisions can be formulated *and justified* in a universally accessible language without having to restrict the polyphonic diversity of public voices at its very source.”⁸² Translation does entail some extra effort, but it is done by religious as well as non-religious citizens, so it is compatible with the principle of treating all citizens as equals.

The necessary predispositions for translation are very demanding for both believers and non-believers. It requires an “epistemic mind-set that cannot be legally imposed,”⁸³ and that is necessary for translation to be possible. It implies for non-

⁸¹ Jürgen Habermas. “The Political”: The Rational Meaning of a Questionable Inheritance of Political Theology. p. 25-26.

⁸² Jürgen HABERMAS. “The Political”: The Rational Meaning of a Questionable Inheritance of Political Theology. p. 26.

⁸³ *Ibid.* p. 26.

believers a “reflection on the limits of a secular or postmetaphysical kind of reasoning.”⁸⁴ This epistemic mind-set has two dimensions. The first concerns what we consider as true: it supposes that all participants recognize the potential validity of arguments introduced by others. It is not enough to listen what others have to say, we should listen while considering that what they say might be true. This is however problematic since it means that atheists should accept the possibility that religious convictions based on the belief in the existence of God are true. The second dimension of the epistemic mind-set concerns what “true” means: if all participants have to accept that religion might be bearer of a truth content, then all participants must accept that there are moral truths. Adopting this epistemic mind-set therefore implies accepting that religious intuitions might be true or false, although many citizens would argue that such an evaluation is impossible.

There is another difficulty with Habermas’s translation proviso. Habermas claims that, in cases where translation fails, religious citizens would have the right to use religious language. But who is to be judge of the success or failure of translation? It seems obvious that translation can never be perfect; if it is never really good, how do we know when it is bad enough that citizens are allowed to use religious language? This is ultimately the core problem: it is difficult to believe that there is any way to translate, in a universally accessible language, the idea that homosexuality is an abomination.

⁸⁴ *Ibid.* p. 27.

3) The characteristics of Jürgen Habermas's model of political discussion

1 – Habermas does not indicate that the model is only applicable for a certain type of political questions, but he clearly mentions the idea of the political sphere. We assume that his model is meant to be applied to all political questions, but to political questions only.

2 – Translation is part of our civility duty and therefore should be respected by all citizens. However, the demands of the model are more insistent for public officials than for ordinary citizens. Only ordinary citizens have the right to use a religious vocabulary in case translation failed, public officials do not have this right.

3 – There is a clear distinction between the institutional public sphere and the informal public sphere, which includes both the private sphere and civil society. The restrictions of the model apply much more to the former than to the latter: there can be no exception to the requirement of neutrality and to the use of a universally accessible language in the institutional public sphere.

4 – Habermas distinguishes between the language used to formulate and justify decisions and the language used for personal reflections. The model only applies to the former.

5 – Habermas does not discuss the question of the correspondence between formulated arguments and real motivation, but the distinction made in the 4th

characteristic indicates that the absence of correspondence would not be a problem for him.

6 – The model is applied by moral duty, not by legal obligation, and it is based on a conception of what citizens owe to each other.

7 – The key criterion to make the distinction between admissible and non-admissible arguments is accessibility, which includes secularity. Habermas insists that decisions must always be formulated in a language that all citizens can understand, and therefore that excludes religious vocabulary; however he does not indicate how to recognize accessible language.

D - Michael Perry

Michael Perry's position has significantly evolved since he started to work on the problem of justification (1). We will focus on his ideal of ecumenical politics (2) and then specify the 7 characteristics of his model (3).

1) Exclusivist or inclusivist?

Perry has defended two different positions in the past decades. He tends however to overstate the significance of this shift. He was not always, indeed, the inclusivist he is today. But already in 1985, when he was supposed to defend an exclusivist position, he criticized Greenawalt, himself defending an intermediary position, for not distancing

himself enough from the ideal of neutrality.⁸⁵ Perry always criticized the positions of Bruce Ackerman and Thomas Nagel,⁸⁶ even in the 1980s, although he later claimed he was then defending a “thoroughgoing exclusionist position.”⁸⁷

Perry started in the middle of the 1990s to consider himself an inclusivist. Although he repeatedly affirms that he gave up exclusivism and then adopted inclusivism, he never explicitly explained how exactly his position evolved. In *Love and Power*, which corresponds to his least inclusivist period, he raised a surprising objection against exclusivist models: the only convincing criterion that can be used to exclude certain arguments is in fact, according to him, useless, because it concerns arguments that are never used. He admits that “a simple belief that acts are morally wrong, whether religiously based or not, is never an appropriate ground of prohibition.”⁸⁸ Such beliefs, it follows, should be excluded from political discussion. But Perry claims that no political decision is ever exclusively justified by such an argument:

It is virtually *never* the case that coercive legislation is grounded, or need be grounded, on (or solely on) such a reason. Coercive legislation is virtually *always* based (in part, at least) on a belief that the prohibited way of acting or living involves either physical or psychological harm (or both), whether to persons who live or act the prohibited way, to other persons or entities, or to both. That is, coercive legislation, like legislation generally, virtually always has an ‘earthly’ or ‘worldly’ or, to use the Supreme Court’s word, ‘secular’ purpose: a purpose (goal, objective) intelligible or comprehensible

⁸⁵ Michael PERRY. Comment on “The Limits of Rationality and the Place of Religious Conviction: Protecting Animals and the Environment.” p. 1067.

⁸⁶ Michael PERRY. Neutral Politics?

⁸⁷ Michael PERRY. *Under God?* p. 132, footnote 7.

⁸⁸ Michael PERRY. *Love and Power*. p. 115.

in earthly terms as distinct from solely ‘heavenly’ or ‘otherworldly’ or ‘spiritual’ terms.⁸⁹

This objection would probably be more convincing if Perry was not repeating that this is all “virtually” true. It might be that the type of questions that is concerned is rare, but this does not make the criterion irrelevant. And the most surprising thing is that Perry, although he obviously believes that it is unnecessary to exclude arguments based on such unjustified beliefs that something is wrong, insists that the criterion he defends to distinguish between admissible and inadmissible arguments would put all such beliefs in the latter category. After having repeated that Greenawalt’s model is too restrictive because he argues that “the role of religious-moral convictions in political-justificatory discourse should be more circumscribed than that of secular-moral conditions”⁹⁰ and that the restriction of his model is anyway useless, Perry claims an even more exclusivist position.

2) The ideal of ecumenical politics

The ideal of ecumenical politics was presented at the beginning of the 1990s; it is therefore very possible that Perry abandoned it since then, although he never explicitly did so. We present it, however, because it is a unique model that has never been defended by anyone else.

⁸⁹ *Ibid.* p. 115.

⁹⁰ Michael PERRY. *Love and Power*. p. 17.

The term ecumenical already says a lot about Perry's position: it is an ideal of politics "in which beliefs about human good, including disputed beliefs, are central."⁹¹ It is even sometimes described as a religious politics:

Ecumenical politics is, in part, a *religious* politics, in this sense: a politics in which persons with religious convictions about the good or fitting way for human beings to live their lives rely on those convictions, not only in making political choices but in publicly deliberating about and in publicly justifying such choices.⁹²

This ideal is implemented through ecumenical political dialogue, which itself is based on several contextual and existential conditions.⁹³ The relevant conditions for us are the two attitudes Perry identifies: fallibilism and pluralism. Fallibilism is defined as "to embrace the ideal of self-critical rationality:"⁹⁴ each participant in the dialogue must accept that he can learn from others and must recognize that he might be wrong about certain things. Pluralism describes the attitude of whoever understands "that a morally pluralistic context, with its attendant variety of ways of life, can often be a more fertile soil for dialogue leading to deepening moral insight – than can a monistic context."⁹⁵

Besides these two attitudes, dialogue also requires two virtues: public intelligibility and public accessibility.⁹⁶ Those virtues are the criteria that makes it possible to distinguish between admissible and inadmissible arguments. Public

⁹¹ *Ibid.* p. 43.

⁹² *Ibid.* p. 112.

⁹³ *Ibid.* pp. 84-112.

⁹⁴ *Ibid.* p. 100.

⁹⁵ *Ibid.* p. 100.

⁹⁶ *Ibid.* p. 106.

intelligibility is described as the attempt “to elaborate one’s position in a manner intelligible or comprehensible to those who speak a different religious or moral language – to the point of translating one’s position, to the extent possible, into a shared (‘mediating’) language.”⁹⁷ Public accessibility is described as “the habit of trying to defend one’s position in a manner neither sectarian nor authoritarian.”⁹⁸ Perry distinguishes these demands of intelligibility and accessibility from the demands of public reason:

Many convictions, including (especially?) fundamental convictions about human existence – for example, the conviction that life is ultimately meaningless – are not shared. That a conviction is not shared does not mean that reliance on it in political argument is necessarily inconsistent with the accessibility standard.⁹⁹

Accessibility and intelligibility only require that arguments are not sectarian, not authoritarian and presented in a language that can be understood by all. Since Perry claims that “a religious politics need not be intolerant any more than it need be authoritarian or dogmatic,”¹⁰⁰ religious arguments are not necessarily excluded from such an ecumenical dialogue.

Perry later abandoned the virtues of accessibility and intelligibility and preferred to defend an attitude of political self-restraint:¹⁰¹ religious believers should avoid arguments that are controversial within their own religious tradition. It is, according to

⁹⁷ *Ibid.* p. 106.

⁹⁸ *Ibid.* p. 106.

⁹⁹ *Ibid.* p. 119.

¹⁰⁰ *Ibid.* p. 137.

¹⁰¹ Michael PERRY. *Under God?* p. 62.

him, “*undeniable* that there is an increasingly widespread, transdenominational disagreement among Christians over whether, according to the Bible, homosexual sexual conduct is invariably immoral – immoral without regard to any particularities of context.”¹⁰² Disagreements indicate the possibility of a mistake: this is why believers should avoid controversial claims. The attitude of self-restraint is, however, much less restrictive than Greenawalt’s position.

3) The characteristics of Michael Perry’s models of political discussion

1 – Even in the most exclusivist model, the restriction only applied to coercive laws.¹⁰³

2 – Perry rejects the idea of a distinction between ordinary citizens and public officials: all are concerned by his models.

3 – Restrictions are applied to all types of public discourse, but religious arguments are more appropriately used in public culture rather than in political debates.

4 – Perry does not specify to which actions his models are applied but it seems to concern the public formulation of arguments more than the formation of opinions.

5 – The question of the correspondence between formulated arguments and real motivation is never discussed by Perry.

¹⁰² *Ibid.* p. 62.

¹⁰³ Michael PERRY. *The Political Morality of Liberal Democracy*. p. 114.

6 – The model is based on a moral duty: it is a question of political morality:

The inquiry here is not about what citizens should be legally permitted to do: permitted to do as a matter of constitutional (or other) law. Rather, the inquiry is about what, within the confines of what they are, or should be legally permitted to do, citizens should do *as a matter of political morality*. To say that, as a matter of political morality, citizens should be legally permitted to do something (e.g., use racial epithets) is not to say that, as a matter of morality, political or otherwise, they should do it.¹⁰⁴

7 – The first model of Perry excludes arguments that are incompatible with the virtues of public intelligibility and public accessibility. The second model does not impose any exclusion but advises religious believers to refrain from using arguments that are controversial within their own religious tradition.

E - Nicholas Wolterstorff

Wolterstorff defends an inclusivist model. He rejects the assumptions of the liberal position (1). He claims that his position is in fact more liberal than the liberal position, since it allows for more liberty (2). The characteristics of his model, called the consocial position, are then presented (3).

1) The fragile foundations of the liberal position

The liberal position is represented by John Rawls and Robert Audi. Wolterstorff claims that this position rests on unconvincing conceptions of coercion and rationality.

To discuss coercion, Wolterstorff uses the example of a child, coerced by his parents into playing the piano. It seems that coercion is justified by the benefits that the

¹⁰⁴ Michael PERRY. Religious Morality and Political Choice: Further Thoughts – and Second Thoughts – on Love and Power. p. 706.

child will get in the future from knowing how to play the piano and enjoying it. In other words, coercion is justified because it is done for the good of the child and not for the good of his parents. The liberal conception goes further: it is also necessary to show that if the individual (here, the child) was fully informed and rational, he would recognize that coercion is exercised for his own good and in consequence would himself justify coercion.

It is as if, for my coercion of my child to be justified, it is not enough for me, the parent, to have a (good) reason for regarding the package consisting of the coerced action and the accompanying coercion as a good thing; the child must also have a reason for regarding the coerced action as a good thing.¹⁰⁵

Wolterstorff objects that if the child recognized the coercion as justified, then it is no coercion anymore. Whoever imposes certain obligations on himself is an autonomous being, not a coerced one. As long as the child believes that playing the piano is a good thing, he is not coerced by his parents. The liberal position is therefore based on a paradox: it is necessary in a liberal democracy to justify coercion, but justified coercion is no coercion, and in consequence liberal democracy aims to eliminate all forms of coercion. This is what he calls “actualized non-coercivism:”

The role of citizen of a liberal democracy requires that one refrain from supporting coercive legislation until such time as one (entitledly) believes that one’s own reason for thinking the legislation a good thing is shared by all one’s fellows.¹⁰⁶

In this liberal conception of coercion, all real coercion is unjustified, illegitimate, and therefore should be forbidden. It is necessarily connected to exclusivism since

¹⁰⁵ Nicholas WOLTERSTORFF. *The Paradoxical Role of Coercion in the Theory of Political Liberalism*. p. 141.

¹⁰⁶ *Ibid.* p. 144.

religious reasons cannot be shared by all, and therefore cannot be used to justify coercion. Wolterstorff recognizes that liberals never defend such a demanding conception of coercion and instead defend an conditionalized non-coercivism: what matters is not that all people actually agree that coercion is justified, but that all citizens offer reasons explaining why coercion is a good thing for everyone. This, however, is still too demanding for Wolterstorff, because such a weaker liberal conception of coercion rests on a problematic conception of rationality.

Contrary to what Robert Audi argues, Wolterstorff believes that rational and fully informed citizens can disagree about many political questions. Contrary to what John Rawls argues, Wolterstorff believes that such citizens can also disagree about “what is rational to believe.”¹⁰⁷ The liberal position rests on an epistemological theory that is never developed, and usually not even acknowledged: the concept of rationality is under-theorized, and yet it plays a key role in this position.

2) The illiberalism of exclusivism

Wolterstorff justifies his consocial position with two arguments. The first argument is that inclusivism does a better job than exclusivism at respecting the beliefs of citizens. When they demand that religious citizens bracket their beliefs, liberals imply that such a bracketing would be possible. But the idea of recognizing a priority of political values over religious beliefs might itself be incompatible with the religious

¹⁰⁷ *Ibid.* p. 151.

convictions of some citizens. For some of them, using religious arguments is not an option: they do not know any other way to discuss important questions.

The second argument is that inclusivism recognizes particularities and the capacity of such particularities to enrich political debates. The respect owed to all citizens includes the respect of who they are, including of their particularities. Besides, if we exclude moral considerations that are derived from religious traditions, political discussion ends up being impoverished.

3) The characteristics of Nicholas Wolterstorff's model of political discussion

Since Wolterstorff's model is inclusivist, there is no need for him to specify all different characteristics of his consocial position: no restriction is applied, whatever the questions are, whoever the actors are. The only important characteristic is the last one: almost everything is admissible in Wolterstorff's model. Three types of restrictions, however, still apply. First, restrictions apply on the manner discussion is led: we have to observe certain rules, including respect, civility and the ability to listen to other participants. Second, the debates "are to be conducted and resolved in accord with the rules provided by the laws of the land and the provisions of the Constitution."¹⁰⁸ Finally, a

¹⁰⁸ Nicholas WOLTERSTORFF. The Role of Religion in Decision and Discussion of Political Issues. p. 113.

more general restriction applies concerning the goals of political discussion: “the goal is political justice, not the achievement of one’s own interests.”¹⁰⁹

All these models are illustrated in a table highlighting their differences and similarities. The first 6 characteristics must be interpreted through the last one, meaning through the criterion that distinguishes between admissible and non-admissible arguments. Since all the examined models present significant shortcomings, it is necessary to formulate a new model of political discussion.

¹⁰⁹ *Ibid.* p. 113.

Table 3: The models of political discussion of Robert Audi, Kent Greenawalt, Jürgen Habermas, Michael Perry and Nicholas Wolterstorff

	AUDI	GREENAWALT	HABERMAS	PERRY	WOLTERSTORFF
1. WHICH QUESTION?	Coercive decisions	All questions, especially highly controversial moral questions	All political questions	Coercive laws	All questions
2. WHICH ACTORS?		Distinction of degree between ordinary citizens and public officials	All citizens, but to a lesser degree for ordinary citizens	All citizens	All citizens
3. WHICH SPACES?	All actors, depending on the spaces and actions	Public sphere, not limited to political institutions	Institutional public sphere	Public space	Public space
4. WHICH ACTIONS?		Public formulation of arguments	Public formulation of arguments	Public formulation of arguments	All actions
5. CORRESPONDENCE WITH PERSONAL MOTIVATION?	Correspondence with personal motivation	No correspondence	No correspondence	/	/
6. MORAL OR LEGAL DUTY?	Moral duty	Moral duty	Moral duty	Moral duty	Moral duty
7. WHICH CRITERION ALLOWS TO INCLUDE ARGUMENTS?	Secularity and accessibility	Public accessibility	Accessible and secular language	PERRY 1: public accessibility and intelligibility PERRY 2: awareness of fallibility of certain	Civility, respect of citizens and laws, seeking justice

VI - Religious Arguments and Public Justification

A model of political discussion that would exclude some or all religious arguments needs to justify this exclusion with good reasons. If we fail to identify some danger that might be associated with the use of religious arguments, we will be unable to show that something prevails over the liberty of religious believers to use their beliefs however they want. We first define religious arguments (A). We then examine different interpretations of what makes religious arguments illegitimate (B). Finally, we offer a new interpretation and a new model of political discussion (C).

A - What is a religious argument?

Identifying religious arguments obviously requires knowing what an argument, religious or not, is. Political arguments, that interest us most specifically, are formulated as following: the proposition P is necessary to achieve the goal G , where the proposition is a political decision or measure and the goal is usually formulated in terms of values (political values such as justice, equality, freedom, or non-political values such as dignity, salvation or the good).

An argument can be religious in different ways, depending on how it uses or integrates the religious dimension and depending on the role this religious dimension plays in the argument. It seems obvious that an argument that would rely on a direct religious reference and would not provide any non-religious reason should be distinguished from an argument that is based on non-religious grounds but alludes to a

religious myth as an illustration. In the first case, religion is the source of the force of the argument; it is what makes it successful, insofar as it is, as an argument. In the second, religion is a rhetorical tool but the argument might still make sense without it. This distinction is useful because it suggests that not all religious arguments are the same, and therefore that possibly some are dangerous while others are harmless. It will be important to find out whether a religious argument should be excluded because of its nature or because of the specific role that it plays.

At least three types of religious arguments should be distinguished:

Religious Argument 1 (RA1) – An argument that uses religion as a metaphor, an illustration or an example, in which the religious dimension plays an instrumental role. It is the kind of religious argument that can be translated: *P* and *G* remain the same once the religious dimension removed from it, although the argument itself might lose from its force or its power of persuasion.

Religious Argument 2 (RA2) – An argument that is made in terms of a religious value (as opposed to a value that could also, but not only, be understood as secular), meaning where *G* is a religious goal, like salvation or the desire to live one's life according to God's will.

Religious Argument 3 (RA3) – An argument for which the logical relation between *P* and *G* is only accessible on the basis of a specific set of fundamental religious assumptions. It is the only type of religious argument identified by Richard Rorty, who

describes it as “an argument whose premises are accepted by some people because they believe that these premises express the will of God.”¹¹⁰

These different ways in which an argument can refer to religion are obviously not mutually exclusive; all three can coexist in one argument.

B - Interpretations of the possible danger of religious arguments

There are four main interpretations of what makes a religious argument illegitimate in political discussion: religious arguments are conservative (1); they are divisive (2); they are infallible (3); and they are incompatible with liberal values and principles (4).

1) Religious arguments are conservative

The first reason explaining why it is usually assumed by those advocating a secular public sphere that religious arguments are dangerous is a reason that is almost never confessed, but often believed:¹¹¹ religious arguments are conservative arguments. Most political theorists are politically, if not philosophically, liberals: most of them believe that women should have the right to decide whether or not they want to have a child and that adults should have the right to engage in consenting homosexual relations. On both issues, religious voices made themselves heard in the public square. Twice they

¹¹⁰ Richard RORTY. *Philosophy and Social Hope*. p. 172.

¹¹¹ Steven SHIFFRIN. *Religion and Democracy*. pp. 1646-1647: “this concern is rarely expressed in the literature, but it is often the first thing mentioned in conversation. Many liberal or radical intellectuals are simply frightened by religious arguments.”

defended what many see as the wrong side of the debate. There is little doubt that the interventions of religious actors against abortion and homosexuality influence our perception of the dangerousness of religion. What is less certain is that this is a good reason to demand the exclusion of religious arguments from the political public sphere. And the fact that this reason is never confessed probably reveals that we know that it is not a legitimate one.

It is crucial to make a clear distinction between religious argument and conservative argument, not only because not all conservative arguments are religious but also because not all religious arguments are conservative. Examples of religiously-influenced political activity that could be considered as good by many liberals are actually more numerous than we might first assume; they include notably Martin Luther King and the civil rights movement, Gustavo Gutiérrez and Liberation Theology, the Bishops' Pastoral Letter and economic and social justice. The Old Testament can be used to forbid homosexuality as well as to promote the welfare state and help the poor:

And if a man lie with mankind, as with womankind, both of them have committed abomination: they shall surely be put to death; their blood shall be upon them (Leviticus 20:13)

For he will deliver the needy when he crieth, And the poor, that hath no helper.

He will have pity on the poor and needy, And the souls of the needy he will save.

He will redeem their soul from oppression and violence; And precious will be their blood in his sight. (Psalm 72:12-14)

Once we give up the utopic (and illegitimate) temptation to dismiss only conservative religious arguments but not the ones defending policies about which we

agree, we are left with three possibilities. Firstly, we could argue that the danger comes from the conservative dimension of religious arguments. But conservative arguments are perfectly compatible with liberal democracy. If religious arguments are only dangerous insofar as they are conservative, and if conservative arguments cannot legitimately be excluded from political discussion, then the conclusion follows that all types of arguments can be accepted, including conservative ones, whether they are religious or not. Secondly, we could say that the danger comes from the religiousness of the arguments. If that is the case, all religious arguments, insofar as they are religious, should be excluded from political discussion, whether they are conservative or not. This position demands that the religious arguments in favor of the welfare state as well the religious arguments against abortion be excluded. Finally, we could argue that the danger comes not from the religiousness itself but from something else that is usually associated with religious arguments but is not identified with it. If that is the case, then it could be possible to find a principle to distinguish between some dangerous religious arguments that should be excluded from political discussion and some harmless religious arguments that could be included. If the danger does not come from the religious nature of arguments, it also implies that the identification of the danger will allow us to exclude all dangerous arguments, be they religious or not. This is the position defended here.

2) Religious arguments lead to political instability

Liberalism was imagined as an answer to the European religious wars, as an answer to the obviously diverse and irreconcilable religious doctrines. If we aim at designing the conditions and characteristics of a fair and stable society, anything that

could jeopardize this goal should be closely watched, regulated, and maybe excluded from the fragile public sphere.

There is something in the liberal tradition like an “old Lockean fear that public and political religions inherently threaten political unity and stability,”¹¹² a constant reminder that mixing religion and politics can lead to civil wars. It is this fear of division that led liberals to believe that “the only way to avert the threat religion posed to stability was to relegate religious practice to a private sphere of thought and conduct.”¹¹³

The idea that religious arguments are dangerous because they are divisive is mostly mentioned by authors who reject it. It is, indeed, an argument easy to dismiss for different reasons. First, incommensurable values or doctrines for which people would be ready to fight are not necessarily religious; the example of nationalism, which has caused more civil wars than religion, suffices to show that religion is not a higher threat to the stability of a society than many other movements or traditions. Second, it should be obvious that the impact of religion on politics following the Reformation could hardly be further away from its impact in contemporary liberal societies. Not only have societies evolved and developed high standards of religious tolerance, but religions themselves have come to accept religious freedom. Finally, it could be argued that the disruption caused by religion might not lead to a civil war but to disagreements that would endanger

¹¹² Veit BADER. *Religious Pluralism: Secularism or Priority for Democracy?* p. 598.

¹¹³ Paul J. WEITHMAN. *Religion and the Liberalism of Reasoned Respect*. p. 1. Paul Weithman actually does not adhere himself to this hypothesis that public religion would lead to political instability and believes this explanation is mistaken: “When religious pluralism first showed itself on a large scale, there was a real danger that using religion as a basis of social cooperation would lead to a civil strife and armed conflict, as in fact it did. Things in the Western democracies are different now” (p. 5).

the ethical consensus on which the society is based. But it is very unlikely that such a consensus, even a very minimal one, could ever be found; thus, religious arguments are unlikely to “destroy a realistic possibility of agreement that would otherwise exist.”¹¹⁴

Religious wars, and the fear it might happen again, most probably played a significant role in the shaping of the liberal tradition and its approach of the question of religion. However, the argument that the danger of the contribution of religious arguments in political discussion comes from the belief that it would lead to violence and wars has to be dismissed, not only because the likelihood of a new religious war in a liberal society is extremely low, but also because religion does not have the monopoly of potentially leading to political instability.

3) Religious arguments are infallible

The idea that religious arguments are dangerous because of their nature as infallible statements seems at first sight very convincing. Michael Perry made this claim in *Love and Power*. The ideal of neutral politics is abandoned and replaced by what Perry calls the ideal of “ecumenical politics.”¹¹⁵ Instead of excluding all supposedly non-neutral arguments, Perry wants to encourage the use of beliefs and conceptions of the good. But

¹¹⁴ Philip L. QUINN. *Political Liberalisms and Their Exclusions of the Religious*. p. 49.

¹¹⁵ Michael J. PERRY. *Love and Power: the Role of Religion and Morality in American Politics*. p. 43: “The ideal of politics I begin elaborating and defending in this chapter is one in which beliefs about human good, including disputed beliefs, are central. I call this ideal ‘ecumenical’ politics.”

all participants in the ecumenical dialogue must respect the attitude of fallibilism: “to be a fallibilist is essentially to embrace the ideal of self-critical rationality.”¹¹⁶

Requiring such an attitude of fallibilism and self-critical rationality seems persuasive; it is true that there can be no real discussion if two different and incompatible positions are confronting one another without ever accepting to change, which is necessary in order to move to a negotiation or maybe a compromise. Infallible arguments facing each other do not make a discussion but a dead end.

The argument, however, does not hold. There are two different ways to understand the requirement of fallibilism and both of them prove unsatisfying.

Fallibilism can refer to the relation between the argument and truth. Having an attitude of fallibilism would then mean that the argument is understood as falsifiable: if it does not correspond to the reality of facts, it will be abandoned. It is this meaning that Karl Popper famously associated with the concept: fallibilism is “the view, or the acceptance of the fact, that we may err, and that the quest for certainty (or even the quest for high probability) is a mistaken quest.”¹¹⁷ It means that all arguments and beliefs can be, or maybe even should be, discussed and criticized. All statements are considered as fallible: they might be wrong.

But applying this kind of fallibilism to moral claims is highly problematic. Popper uses the concept in an attempt to define scientific truth, a truth concerning facts and not

¹¹⁶ *Ibid.* p. 100.

¹¹⁷ Karl POPPER. *The Open Society and Its Enemies*. Vol. 2, p. 426.

values.¹¹⁸ That moral claims can be said to be true in the sense that they correspond to some reality is itself a very controversial statement. If fallibilism is applied to religious arguments in political discussion, it implies that such arguments can be more or less true. It is unfair as well as unnecessary to impose on all participants in a political discussion the idea that moral claims can, somehow, correspond to moral facts.

Fallibilism can also refer to the relation between the argument and the person offering it. This claim is easier than the first one, as it does not imply any imposition of a specific conception of moral truth. The focus is on the extent to which the person offering the argument is convinced by the truth of the claim, as opposed to the extent to which the claim is actually true. The idea would be that religious arguments are dangerous because those who offer them consider them as dogmatic, uncompromising, incompatible with negotiations. They put an end to dialogue because the person offering the argument refuses criticisms.

Such an attitude of refusing discussion and criticisms might be morally wrong, but it cannot be political dangerous. Discussion and criticism follow the expression of any statement in political discussion no matter what. The citizen offering an argument has no power at all over the argument once it is out. It does not matter whether he himself welcomes the criticism or not, as the criticism will happen anyway.

In other words, fallibilism cannot be a condition to be included in political discussion; it is already a transformation imposed on all arguments offered in political

¹¹⁸ *Ibid.* p. 420: “An assertion, proposition, statement, or belief, is true if, and only if, it corresponds to the facts.”

discussion. Religious arguments are fallible the same way all other arguments are. The degree to which we hold our convictions to be true is irrelevant and could hardly be considered as a source of danger.

4) Religious arguments do not abide by the rules and values of liberalism

The idea that the danger of religious arguments comes from their incompatibility with some of the requirements of liberalism is associated with the names of Bruce Ackerman, Robert Audi, Ronald Dworkin, Charles Larmore, Thomas Nagel and John Rawls.¹¹⁹

The argument is roughly the following: it is wrong to appeal to religious values in political discussion because it would “undermine the conditions necessary for the pursuit of basic justice.”¹²⁰ More specifically, such an appeal would be incompatible with the liberal requirement of public justification. This requirement is itself justified by the idea of a common reason shared by all human beings. In other words, the reasons used to justify political decisions have to be reasons “we might reasonably expect that [other citizens], as free and equal citizens, might reasonably also accept.”¹²¹

¹¹⁹ Bruce ACKERMAN. *Why Dialogue?*; Robert AUDI. *The Place of Religious Argument in a Free and Democratic Society*; Ronald DWORKIN. *A Matter of Principle*; Charles LARMORE. *Political Liberalism*; Thomas NAGEL. *Moral Conflict and Political Legitimacy*; John RAWLS. *Political Liberalism*.

¹²⁰ Paul J. WEITHMAN. *Religion and the Liberalism of Reasoned Respect*. pp. 4-5.

¹²¹ John RAWLS. *The Idea of Public Reason Revisited*. p. 771.

For John Rawls, it is the “public reason”¹²² which tells us what can be used or not in political discussion. Only two types of arguments are compatible with the very demanding Rawlsian public reason: the arguments abiding by the general rules of rationality, “principles of reasoning and rules of evidence”¹²³ and the arguments whose content respects the limits of public reason, such as liberal political values¹²⁴ and “presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial.”¹²⁵ In other words, comprehensive doctrines, religious or not, are excluded. The explanation for this neutrality towards comprehensive doctrines is that, according to the liberal principle of legitimacy, a law or political decision cannot be legitimate if it is not justified by reasons that can be reasonably expected to be accepted by all. If the justification of a law were based on a comprehensive doctrine, all citizens not sharing this doctrine would be unable to understand the reasons supporting the law; it would be, for them, unjustifiable and therefore arbitrary.

The idea that religious arguments are, to some extent, incompatible with liberal values or with the liberal requirement of public justification, has been defended on different grounds. I would like to briefly discuss two different positions: (1) the argument that they should be excluded because they are not neutral and (2) the argument that

¹²² John RAWLS. *Political Liberalism*. pp. 212-254.

¹²³ *Ibid.* p. 224.

¹²⁴ Liberal political values include both values of political justice (equal political and civil liberty, equality of opportunity, social equality and economic reciprocity, etc) and the values of public reason (reasonableness, readiness to honor the moral duty of civility, etc): *Ibid.* p. 224.

¹²⁵ *Ibid.* p. 224.

religious arguments should be excluded because non-religious citizens cannot understand them.

(1) Religious arguments should be excluded because they are not neutral and neutrality is necessary to abide by the liberal principle of legitimacy.

As many liberals have noted, the concept of neutrality has often been misunderstood. Neutral does not mean morally neutral; it was never intended to be a synonym of skepticism¹²⁶ or of unlimited moral relativism. The most convincing formulation of this argument is found in Ackerman's "Why Dialogue?" In this paper, he defends the idea of a "conversational restraint" as the model of political discussion allowing citizens who disagree about the moral truth to come to an agreement about political decisions:

The basic idea is very simple. When you and I learn that we disagree about one or another dimension of the moral truth, we should not search for some common value that will trump this disagreement; nor should we try to translate it into some putatively neutral framework; nor should we seek to transcend it by talking about how some unearthly creature might resolve it. We should simply say *nothing at all* about this disagreement and put the moral ideals that divide us off the conversational agenda of the liberal state.¹²⁷

Like Rawls, Ackerman starts from the assumption of the fact of pluralism: citizens do not agree and will never agree on some propositions. And yet, the different sets of incompatible and incommensurable propositions overlap, revealing a specific set of propositions, that he calls the "*L*-propositions," that can be used in political

¹²⁶ Charles LARMORE. Political Liberalism. p. 341.

¹²⁷ Bruce ACKERMAN. Why Dialogue? p. 16.

discussions. This set of propositions is neutral, not in the sense that it is neutral toward morality but in the sense that it is neutral toward the non-*L*-propositions.

Two very powerful objections have been frequently made against the argument of neutrality. The first objection is the famous claim that neutrality cannot be neutrally justified. Ackerman recognizes that “it would be a category mistake to imagine that there could be a Neutral justification for the practice of Neutral justification.”¹²⁸

The second objection criticizes not only the absence of neutral justification but neutrality itself. Larry Alexander has criticized the liberal assumption of a difference of epistemological status between religious and secular reasons.¹²⁹ Alexander argues that liberalism, contrary to what many liberals aver, is a comprehensive doctrine. As such, it has the same nature as religious and moral comprehensive doctrines; if religion is not neutral, neither is liberalism. There is only one way to access knowledge, not a religious one and a secular one. What Alexander calls the unity of epistemology suggests that liberalism not only is not neutral but that it is actually “the ‘religion’ of secularism.”¹³⁰ If political discussion welcomes the non-neutral liberal arguments, then it has no legitimate ground to exclude the non-neutral religious arguments. Stephen L. Carter makes a similar argument, criticizing the idea of neutrality on the ground that it is used to conceal moral liberal claims and “the society’s broader prejudice against religious devotion.”¹³¹

¹²⁸ *Ibid.* p. 387.

¹²⁹ Larry ALEXANDER. Liberalism, Religion and the Unity of Epistemology.

¹³⁰ *Ibid.* p. 790.

¹³¹ Stephen L. CARTER. *The Culture of Disbelief*.

(2) Citizens need to be able to understand the laws and their justifications. The exclusion of religious arguments from political discussion is justified because religious arguments cannot be understood by all insofar as they appeal to a particular conception of the good that does not count among the shared beliefs of a liberal society. This argument has taken two different forms: the idea that laws have to be understood by all has been taken to mean either that they should be *acceptable by all* or that they should be *accessible to all*.

Weithman for example has argued that public justification should be acceptable by all:

Public political argument is argument in the public forum in which citizens try to convince one another to pass legislation or to adopt policies. To offer others an argument that depends on reasons of a sort that they cannot reasonably be expected to accept displays a willingness to coerce them, via the law or policy in question, for reasons they could reasonably reject. This fails to respect their capacity for and interest in affirming the grounds on which they are coerced, and the grounds on which their power is exercised. If therefore fails to respect the capacities and interests others have as citizens.¹³²

Simply replacing the term *true* by the concept of *reasonable*, what Rawls and many after him, including Paul Weithman, have done, does not solve the highly difficult definitional issue: what does it mean to reasonably object? What exactly can we all be reasonably expected to accept? It seems that the requirement of general acceptability is unrealistic and ignores the many and unsolvable disagreements among citizens. Reasonable disagreement is the fundamental assumption of democracy: where to draw the line between an illegitimate reasonable rejection and a legitimate reasonable

¹³² Paul J. WEITHMAN. Religion and the Liberalism of Reasoned Respect. p. 8.

disagreement? Disagreeing with some democratic laws happens quite frequently; it is the sign of a healthy democracy. And religious reasons are not the only type of reasons on which disagreement is possible or likely.

The second interpretation of the argument is that understanding means *accessible to all*. In other words, religious arguments would be dangerous because only religious citizens have access to their meaning; they remain meaningless for non-religious citizens. This interpretation rightly distinguishes between understanding an argument, in the sense of having access to its meaning, and acknowledging its validity. But it is ignoring all the basic assumptions of communication to conclude that because he is not religious, a secular citizen cannot have access to the meaning of religious arguments. The purpose of translation or metaphors, among many other tools of expression, is precisely to make meanings accessible to others. The same way we are all able to understand the meaning of fictional stories, we are able to understand arguments even though we believe they do not correspond to any kind of reality. The only reason I know I am disagreeing with a religious argument, if I am not a religious believer, is because I understand what the argument means.

C - A new model of political discussion: non-absolutist justification

1) (Some) religious arguments appeal to an absolute source of moral truth

The claim defended here is that what makes some arguments dangerous is that they appeal to on an absolutist conception of moral truth: as such, they are incompatible

with political discussion. This moral absolutism is the belief that some supra-social authority is the source of moral validity: moral truth has to be found and not created by human beings. It is the structure of these absolutist arguments, rather than their meaning, that makes their use in political discussion dangerous: their force rests not on a reference to political values, common sense or logic but on the appeal to some kind of moral absolutism.

Before going into the details of the argument, it is important to notice that such an identification of the source of danger could not possibly be used to distinguish between religious dangerous arguments and secular harmless arguments. Religion does not have the monopoly of absolutism. Only a specific type of religious argument is necessarily absolutist; it is however possible to characterize an argument as religious, for example because of the use of a religious metaphor (corresponding to the first type of religious argument, RA1), although the argument does not require the recognition of an external source of moral truth to make sense. In other words, only those arguments, religious or not, that are by nature heteronomous are incompatible with political discussion. It is also important to say that absolutist arguments, religious or not, can usually be formulated in a non-absolutist way; even though something is usually lost in translation, the same political position can be defended using non-absolutist rationales.

This argument is, to some extent, similar to the previous one: it could be argued that, because of their reliance on moral absolutism, statements are inaccessible, non-neutral, and non-public in the Rawlsian sense. However, the distinction is justified for two reasons. First, the criterion of the appeal to an absolute source of moral truth is more

specific that the many diverging and controversial definitions of accessible, neutral or public. It therefore seems safer to avoid such vague terms. Second, not all inaccessible or non-neutral statements are absolutist; not all bad, unpersuasive arguments are illegitimate.¹³³

The danger of absolutist arguments is that they can result in not just a political decision being imposed on all people but also the validity of moral absolutism itself, *i.e.* the imposition of fundamental assumptions that are not part of the framework of political discussion, therefore transforming the very nature of political discussion, and in consequence as well the very nature of political legitimacy. Rorty is right to claim that such “unarguable first principles, either philosophical or religious” are “conversation-stoppers.”¹³⁴ As he clearly shows, no appropriate response or argument can allow us to continue the discussion after an absolutist argument is made:

It is hard to figure out what [...] *would* be an appropriate response by nonreligious interlocutors to the claim that abortion is required (or forbidden) by the will of God. [Stephen L. Carter] does not think it good enough to say: OK, but since I don't think there is such a thing as the will of God, and since I doubt that we'll get anywhere arguing theism vs. atheism, let's see if we have some shared premises on the basis of which to continue our argument about abortion. He thinks such a reply would be condescending and trivializing. But are we atheist interlocutors supposed to try to keep the conversation going by saying, 'Gee! I'm impressed. You

¹³³ Kent Greenawalt for example claims that “public accessibility concerns the force of grounds, not just the percentage of citizens who happen to accept them” (Kent GREENAWALT. *Religious Expression in the Public Square – a Building Blocks for an Intermediate Position*. p. 1412, footnote 3). But if inaccessibility is identified with lack of persuasiveness, then all arguments that I consider as unconvincing are inaccessible, and therefore should not be used in political discussion. Such a requirement seems to exclude all sound and reasonable disagreement from the discussion.

¹³⁴ Richard RORTY. *Religion in Public Square: a Reconsideration*. pp. 148-149.

must have a really deep, sincere faith'? Suppose we try that. What happens then? What can *either* party do for an encore?¹³⁵

This excludes, among others, religious arguments RA2 and RA3 and natural law arguments from a public justification that aims at providing political legitimacy in a liberal democracy. Arguments RA1 that use religion as a metaphor or rhetorical tool but remain convincing without the recognition of an absolute moral validity, are not considered as absolutist and therefore are not politically dangerous in a liberal democracy. Absolutist arguments only make sense as arguments, meaning as offering a logical relation between a proposition and a desirable goal, under the condition that the absolutist first principles are assumed. Since such absolutist first principles are not part of the set of liberal and democratic unarguable first principles that constitute the framework of political discussion, they automatically entail the creation of a new type of discussion, from which all those who do not share the absolutist assumptions are excluded.

The exclusion of absolutist arguments from public justification guarantees the legitimacy of political decisions, without denying the possibility of disagreements. An argument was defined earlier as a proposition *P* justified by the will to achieve the goal *G*. Disagreements concerning the validity of arguments exist; they are at the core of political discussion. Four types of disagreement can be identified:

Disagreement 1 (D1) – *P* might not be the only way or the best way to realize *G* but *G* is considered as a legitimate goal.

¹³⁵ Richard RORTY. *Philosophy and Social Hope*. p. 171.

Disagreement 2 (D2) – *G* is not considered as a goal of utmost importance, meaning that it is considered as good in general but that other goals should prevail.

Disagreement 3 (D3) – *G* is not considered as a legitimate goal.

Disagreement 4 (D4) – *P* and *G* are not considered as logically related.

D1 and D2 are at the foundation of democracy and pluralism, whereas both D3 and D4 are incompatible with political discussion, because the disagreement that is here at stake is too fundamental to become the object of any compromise, negotiation or argumentation. D1 and D2 are part of the daily democratic life. Although we all agree that male-female parity is a good thing, we probably disagree on whether a law fixing quotas in companies or in the parliament is a good way to achieve it; it corresponds to D1. D2 expresses a disagreement concerning the interpretation of a goal, the ranking of different goals or the desirability of a goal; the fact that some citizens believe equality prevails over liberty whereas others believe the opposite is at the source of many political disagreements, for example concerning taxation. In both D1 and D2, enough is shared among the participants in the discussion that all of them can respond, criticize and offer counter-arguments. In D3 and D4, the discussion reaches a break point.

What is required by political discussion is the possibility to question, review and criticize arguments. The point of the discussion is to offer a space where participants get a chance to persuade and be persuaded. The intention is not to create a consensus but to reach an impermanent compromise and to keep the discussion going. It does not mean that individuals offering the arguments must welcome this criticism or even take it into

account, but rather that such a criticism is possible. Political discussion demands the possibility for criticism, not necessarily self-criticism.

2) Two examples of absolutist arguments

Two examples will clearly show what absolutist arguments, religious or not, are.

The first example is Jeremy Waldron's discussion of John Locke.¹³⁶ Waldron notes that the many allusions liberal theorists make to Lockean arguments tend to ignore the fact that they are based on theological considerations. Here is for example how Locke justifies the redistribution of wealth:

We know God hath not left one man so to the mercy of another, that he may starve him if he please: God, the Lord and Father of all, has given no one of his children such a property in his peculiar portion of the things of this world, but that he has given his needy brother a right to the surplusage of his goods; so that it cannot justly be denied him, when his pressing wants call for it.¹³⁷

The proposition *P*, sharing wealth with the poor, is supported by the goal *G* which could be expressed as the duty to respect God's will or the desire to do good. Waldron rightly argues that, even though the argument could be formulated in secular terms, something would be missing:

We might rephrase this as follows: "A needy person has a right to the surplus goods of a rich person if they are necessary to keep him from perishing." If we do, however, someone is likely to ask us for an *argument* to support this controversial proposition. In Locke, the argument is based on

¹³⁶ Jeremy WALDRON. Religious Contributions in Public Deliberation. pp. 844-845.

¹³⁷ John LOCKE. *The Two Treatises of Government and a Letter Concerning Toleration*. p. 29.

the seminal fact of God's creating the world for the sustenance of all men.¹³⁸

For whoever believes in the word of God, the argument is convincing and powerful: the proposition *P* to share wealth is compellingly supported by the goal *G* to have one's life guided by religious norms. However, whoever does not consider that living according to religious principles is a desirable goal will fail to see the logical relation between *P* and *G*; not only he will disagree with the argument (even though he might agree with the proposition itself of redistribution) but he will find himself unable to enter a process of argumentation. In other words, although the argument is a good one for believers, it is no argument at all for non-believers. Locke's argument for the redistribution of wealth should in consequence be excluded from political discussion.

On the question of redistribution of wealth, it is however easy to find non-absolutist arguments to support the proposition, arguments that do not gain their force of conviction solely from the recognition of an absolute and supra-social source of moral validity. It means that the same *P* could be defended with a different *G*, more likely to be acknowledged by all as a potential goal, like social justice and solidarity.

The second example concerns an absolutist non-religious argument. It is the argument made by John Finnis about homosexuality. John Finnis belongs to the New Natural Law Theorists; the arguments he offers are therefore supposedly based only on an appeal to norms embedded in nature, and thus universal and absolute. The argument he makes is the following: the proposition of criminalization of homosexual acts between consenting adults is justified by the fact that such acts are evil by nature, incompatible

¹³⁸ Jeremy WALDRON. Religious Contributions in Public Deliberation. p. 845.

with the realization of the common good that is our highest goal. Here is how Finnis explains the evil nature of homosexuality:

Copulation of humans with animals is repudiated because it treats human sexual activity and satisfaction as something appropriately sought in a manner as divorced from the actualization of an intelligible common good as is the instinctive coupling of beasts – and so treats human bodily life, in one of its most intense activities, as appropriately lived as merely animals. The deliberate genital coupling of persons of the same sex is repudiated for a very similar reason. It is not simply that it is sterile Nor is it simply that it cannot really actualize the mutual devotion which some homosexual persons hope to manifest and experience by it It is also that it treats human sexual capacities in a way which is deeply hostile to the self-understanding of those members of the community who are willing to commit themselves to real marriage in the understanding that sexual joys are not mere instruments or accompaniments to, or mere compensations for, the accomplishment of marriage's responsibilities, but rather enable spouses to actualize and experience their intelligent commitment to share in those responsibilities, in that genuine self-giving.¹³⁹

Even though the argument is not based on religious premises, it is still based on the recognition of a meaningful and normative nature. Finnis's condemnation of homosexuality is based on a very specific conception of nature, according to which common good is actualized through marriage, where marriage is the union of a man and a woman and where any kind of sexual activity that does not aim at actualizing the common good of marriage, regarding "sexual capacities, organs and acts as instruments for gratifying the individual 'selves' who have them,"¹⁴⁰ is wrong. Finnis believes that his knowledge of what nature tells us about human beings and the common good teaches that considering sex as a source of individual pleasure is evil. No reference is made to any divine will or religious text; the role of the supra-social source of moral truth is here played by nature and not by any god. For Finnis's statement to be considered as an

¹³⁹ John M. FINNIS. *Law, Morality and 'Sexual Orientation.'* p. 1069

¹⁴⁰ *Ibid.* p. 1070.

argument, it is required to acknowledge that there is a very specific kind of common good to achieve and that it is possible to fix a list of goods and evils. Imposing this conception of nature, which is neither demonstrated by facts nor commonly shared in our societies, is illegitimate; for this reason, Finnis's argument should not be used in political discussion.

Excluding absolutist arguments means excluding what Rorty calls the "*mere* appeal to authority."¹⁴¹ When the entire strength of the argument is based on the recognition of an authority that cannot be demonstrated or argued for based on statements understood by all as arguments providing admissible reasons, the use of the argument in the political discussion leads to the end of the discussion.

3) The characteristics of a non-absolutist model of justification

An absolutist argument is not dangerous in itself; the mere mention of such an argument does not put liberal democracy in jeopardy. It only becomes dangerous if it is the basis of public justification, when it is the basis offered publicly, officially, to support a political decision. The fact that the danger only happens with justification implies that the application of the restriction criterion only applies under certain conditions.

If the danger comes from the possibility that the absolutist argument might become a public justification, then only those arguments made in political sphere, as opposed to the public sphere, should be concerned. The public sphere is much broader than the political sphere; it encompasses all members and groups of civil society that are neither private nor political. In consequence, the restrictions do not apply to the non-

¹⁴¹ Richard RORTY. Religion in Public Square. p. 147.

political parts of the public sphere, including universities, media or churches. It is unnecessary, and unfair, to demand from religious leaders to not use religious absolutist arguments when they talk about politics.

It follows from this limited application of the restriction to political issues that only those actors are concerned that actually take part in the political sphere. In other words, it applies only to those who directly take part in the process of the making of political decisions and of interpreting them, like legislators and judges. Contrary to these public officials, the power of citizens is limited to voting and influencing the decision-making. In consequence, only public officials should refrain from using absolutist arguments, including religious ones, every time they make decisions and express themselves as public officials.

What is required in a liberal democracy is a public justification that makes sense without relying on the recognition of a supra-social source of moral validity. If such a public justification exists, then it abides by the principles of political legitimacy. What ultimately matters is that such a public justification is available. Some might argue that public officials have a moral duty to be honest and to use arguments they themselves find compelling. But this is a moral question. Politically, when it comes to the conditions of legitimacy, it does not matter whether there is a correspondence between personal beliefs and the non-absolutist arguments offered. It is enough that a sufficient non-absolutist argument is available as public justification.

Table 4: The non-absolutist model of political discussion

1. WHICH QUESTIONS?	All political questions
2. WHICH ACTORS?	Public officials
3. WHICH SPACES?	Political public sphere
4. WHICH ACTIONS?	Public formulation of arguments
5. CORRESPONDENCE WITH PERSONAL MOTIVATION?	No correspondence
6. MORAL OR LEGAL DUTY?	Moral duty
7. WHICH CRITERION ALLOWS TO INCLUDE ARGUMENTS?	Non-absolutism

VII - Political discussions on stem cell research

The non-absolutist model of political discussion is applied to the case of stem cell research, one of the most difficult bioethical questions. We first explain what these stem cells are (A), then what the law in France and in the United States says about stem cell research (B). Finally, we identify and examine different arguments, religious and secular, to see if they are absolutist or not and therefore if they could legitimately be introduced in political discussion or not (C).

A - What is stem cell research?

Stem cells have two main characteristics: they are undifferentiated and they can regenerate. This means that a stem cell can develop into new identical stem cells as well as create new differentiated cells, meaning cells of a specific type (blood cells, skin cells, organ cells, etc). Those two characteristics make them extremely useful for therapeutic research: stem cells represent today the hope of becoming able to treat or cure pathologies that medicine cannot treat or cure yet, like Alzheimer or Parkinson diseases. This could be done by using stem cells to regenerate or create human organs or tissues.

Stem cells can be totipotent, pluripotent or multipotent. Totipotent cells have the highest potential: they can create new individuals. For example, the zygote (the cell formed by the fusion of the gametes) is a totipotent stem cell: if divided in two, each new cell can create a new individual (this can naturally happen with twinning). Pluripotent cells can develop in any cell of the human body but they cannot form a new individual.

Pluripotent cells are found in the blastocyst, which is the name given to the embryo five days after conception. Multipotent cells can develop into a certain number of differentiated cells, but not in any type of cell: they are already programmed and correspond to a specific organ or tissue. For example, hematopoietic cells are multipotent stem cells: they can develop into any type of blood cell, but not in anything else.

Stem cells can have three different origins. First, they can come from embryos. Those are the cells that scientists are the most interested in, because they are pluripotent cells (extracted from the embryo at the blastocyst stage). Then, there are adult stem cells, called somatic stem cells: they are found in bone marrow or blood. Finally, there are stem cells in the blood of the umbilical cord. Adult stem cells and stem cells from the umbilical cords can be extracted relatively easily. Embryonic stem cells, however, can only be extracted through the destruction of the embryo.

Because of their unique potential, embryonic stem cells interest scientists much more than others types of stem cells. Even though scientists have recently shown that adult stem cells can be reprogrammed into pluripotent cells that could develop into any kind of human cell, meaning the equivalent of embryonic stem cells, there is a wide consensus on the fact that research on embryonic stem cells remains necessary.¹⁴² The dilemma is therefore the following: many individuals are suffering today from pathologies that nobody knows how to treat. The most promising path to treatment is research on embryonic stem cells, meaning on stem cells that have the potential to

¹⁴² Shinya Yamanaka and his team have successfully reprogrammed adult stem cells and created what they call induced pluripotent stem cells (iPS cells). But Yamanaka as well as many other stem cell scientists have acknowledged that research on embryonic stem cells should be pursued.

develop into any type of human cell. Such research however involves destroying embryos. In other words, if we want to try to help those who are suffering, our only option today is to destroy human embryos. This raises three types of ethical questions: is the destruction of embryos ethically acceptable (1)? Is the use of embryos or embryonic stem cells for research purposes ethically acceptable (2)? Is it ethically acceptable to develop techniques and knowledge that could be used for wrongful purposes in the future (3)?

1) The problem of the destruction of embryos

The problem of the destruction of embryos raises a question that has been intensely debated on the question of abortion, meaning the question of the moral status of the embryo: is the human embryo the equivalent of a human being?

The question actually becomes more complicated because embryonic stem cells can come from four different categories of embryos, each category raising specific issues.

The first category is aborted embryos. If we recognize a right for women to put an end to a pregnancy up to a certain point, as is the case in most modern democracies, then those aborted embryos can be used for research. In such a case, embryos would not be destroyed for the purpose of research: they would be destroyed for other reasons.

The second category is frozen embryos. Most countries have allowed individuals to use medically assisted procreation. Embryos can be destroyed for three different reasons: because of some anomaly of the embryo; because the prenatal diagnosis shows that the embryo has the genes of a specific and serious disease; because the parent or

parents decided to discard them. In all three cases, embryos are destroyed independently of research.

Abortion and medically assisted procreation show that, in our societies today, it is not illegal to destroy embryos and it happens quite frequently. The two other categories are however more problematic.

The third category is embryos created for the purpose of research. In this case, embryos are created in a laboratory with the only intent of destroying them to extract embryonic stem cells.

The last category is cloned embryos. In this case, not only embryos are created in a laboratory with the only intent of destroying them to extract embryonic stem cells, but they are created using a technique called somatic nuclear transfer, which makes it possible to create a new embryo using the somatic cell of a living individual, therefore creating a cloned embryo of this individual.

2) The problem of research using embryos

It is however possible to accept that embryos are destroyed under some circumstances, as for example with abortion or medically assisted procreation, and still refuse that research on embryonic stem cells be allowed. For some, the problem is not so much the destruction of embryos but the utilisation of embryos for research purpose, meaning the use of human embryos.

3) The problem of the consequences of research

Finally the last problem is the problem of the consequences of the research. Here, the focus is on what will become possible through the new scientific discovery and whether it could be used in a wrongful manner. For example, anyone defending therapeutic cloning, meaning the creation of cloned embryos for the development of embryonic stem cells identical to those of an individual in need of a cell therapy, acknowledges that reproductive cloning, meaning the creation of cloned embryos for the purpose of making babies identical to a living human being, should be forbidden. However, the technique is exactly the same: whoever knows how to do therapeutic cloning can also do reproductive cloning. It therefore begs the question: if we allow research including therapeutic cloning, meaning if we allow scientists to master the cloning technique, are we not making it possible for people to use this technique for reproductive cloning? Are we not making reproductive cloning possible?

Of these three issues, the most interesting for us is the first one because it raises the question of the moral status of the embryo. It seems that no position can be taken, no answer to the question “should stem cell research be authorized?” can be given, without relying on a specific understanding of the moral status of the embryo. But commonly shared values are not enough to formulate an understanding of the moral status of the embryo. Science, for example, can give us details concerning the way an embryo develops: it does not however specify at which point it becomes a human being in the moral sense of the term. There can be no commonly shared conception of the moral status of the embryo. In consequence, it is only possible to make laws concerning stem cell

research if we appeal to particular moral conceptions, meaning to what Rawls calls comprehensive doctrines, including religious doctrines.

B - Comparison of French and American legislations

Since we know it is possible to use embryonic stem cells for research purposes, we had to think about the best way to deal with this issue through law: should we authorize or outlaw this research? Should we use public funds to finance it? How to limit the research?

From Austria and Lithuania, where all research is forbidden, to Sweden and Great Britain, where governments have allowed it, paid for it and even authorized therapeutic cloning, there is a wide range of possible legislations. France and the US represent two opposite perspectives that are particularly interesting for the question of the use of religious arguments since it is commonly believed that religion plays a significant political role in the US, whereas it is supposed to be completely absent from French politics.

1) French legislation on stem cell research

In France, the texts concerning research on embryonic stem cells can be found in the law on bioethics. The first version of this law was written in July 1994.¹⁴³ It states that

¹⁴³ The first version of the law on bioethics consists in three different laws: a law concerning the use of nominative data for purpose research (loi n° 94-548); a law on the respect of the human body (loi n°94-653) and a law concerning the donation and use of parts and products of the human body, procreation and prenatal diagnosis (loi n°94-654).

research on embryos and that the creation of human embryos for research purposes are forbidden.

In 2004, the law was revised and for the first time the specific question of research on embryonic stem cells was raised. Concerning research on embryonic stem cells derived from embryos that were not created for research purposes, the law stated that research is forbidden, but that exemptions from this interdiction would be possible under certain circumstances: research projects can be authorized to use embryonic stem cells if they can justify the need for such cells.¹⁴⁴ This means that, since 2004 and until July 2013, French law says that embryonic stem cell research is forbidden, except in cases when it is not. This pretty inconsistent legislation was changed in July 2013, after several attempts in 2011 and in March 2013 to finally officially authorize regulated research. Concretely, the exact same research projects are possible under the previous law of interdiction as under the current law of authorization, and the exact same conditions and regulations apply. The main change has been symbolic.

2) US legislation on stem cell research.

Contrary to what we might expect, the US has never forbidden stem cell research. It has, however, forbidden to use federal funds for this research. This is because of an amendment of the Appropriation Act of the Departments of Labor, Health, and Human Services. This amendment, the Dickey-Wicker Amendment, states that:

None of the funds made available in this Act may be used for --

¹⁴⁴ Loi n°2004-800.

- (1) the creation of a human embryo or embryos for research purposes; or
- (2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death (...)¹⁴⁵

This law concerns only the use of public funds. This however has significant consequences for scientists, since it means that nothing used in a stem cell research project can be federally funded: the income of the researchers, the building where the research is pursued, the microscopes that are being used must all be paid for by private funds.

In 2001, this interdiction is reaffirmed by President George W. Bush. He authorizes publicly funded research on stem cell lines that have been isolated already but forbid to fund other projects:

As a result of private research, more than 60 genetically diverse stem cell lines already exist. They were created from embryos that have already been destroyed, and they have the ability to regenerate themselves indefinitely, creating ongoing opportunities for research. I have concluded that we should allow federal funds to be used for research on these existing stem cell lines, where the life-and-death decision has already been made.¹⁴⁶

In the following years, two attempts are made to remove this interdiction and allow the use of public funds for stem cells research. The Stem Cell Research Enhancement Act is voted by the House of Representatives and the Senate in 2006, but President George W. Bush vetoes it. Another text is passed in 2007, again followed by the veto of President George W. Bush.

¹⁴⁵ Public Law 104-99, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, Section 128. This amendment is called the Dickey-Wiker Amendment because of Jay Dickey, the Arkansas Representative who introduced it.

¹⁴⁶ George W. Bush, "President Discusses Stem Cell Research", 9 August 2001.

In March 2009, President Barack Obama signs the Executive Order 13505 entitled “Removing Barriers to Responsible Scientific Research Involving Human Stem Cells” and allows publicly funded research. It however does not significantly change the situation since the Dickey-Wicker Amendment remains valid and still forbids that a publicly funded research project involves the destruction of embryos. The current situation therefore requires to make the distinction between stem cell research and the destruction of embryos: as long as the destruction itself is not publicly funded, a research project that uses the stem cells of the destroyed embryos can be publicly funded. A new law is required to remove the Dickey-Wicker Amendment, but no text has been introduced yet.

C - Arguments on stem cell research

Since it is impossible to examine all the arguments used concerning stem cell research, we focused on the arguments that seemed the most interesting for us: we examine 4 religious arguments (1), then 2 secular arguments (2), and finally 3 examples of public justifications using only non-absolutist arguments and allowing to justify all possible answers to the question “should we allow stem cell research?” (3).

1) Four religious arguments

The four religious arguments we identified come from the testimonies of people who were interviewed by the National Bioethics Advisory Commission as experts of various religious traditions. These arguments are derived from the Catholic, Protestant,

Jewish and and Muslim traditions, but they obviously do not represent the whole tradition.

(1) An argument derived from the Catholic tradition

Even though there are Catholic theologians who “no do not consider the human embryo in its earliest stages (prior to the development of the primitive streak or to implantation) to constitute an individualized human entity with the settled inherent potential to become a human person,”¹⁴⁷ the official position of the Catholic church is that the embryo is a human person from the moment of conception. And because of the sacred dimension of all human life, including prenatal life, all destruction of embryos is forbidden. A Catholic argument could therefore be formulated as following:

Argument 1 (A1) – Embryonic stem cell research should be forbidden because stem cells can only be obtained with the destruction of the embryo, and the embryo is, from its conception, a human being whose dignity should be respect. The protection of the embryo is necessary to achieve the overall objective of respecting the sacred dimension of all human life.

(2) An argument derived from the Protestant tradition

Protestantism is characterized by a strong diversity. We decided to focus on the position of the United Church of Christ (UCC), one of the most important Protestant denominations in the United States. Ronald Cole-Turner, a theology professor and expert

¹⁴⁷ Margaret A. FARLEY. Roman Catholic Views on Research Involving Human Embryonic Stem Cells. p. D-4.

of bioethical issues, is a reverend of the UCC. He published interesting texts from the UCC Committee on Genetics, defining their position on stem cell research:

We on the United Church of Christ Committee on Genetics are opposed to the idea that human pre-embryo research, such as human germline experimentation or research involving cloned pre-embryos, should be permitted but left largely unregulated if funded privately, or that there is no federal responsibility for the ethics of such research if federal funds are not used. We believe that this approach merely seeks to avoid the difficult public deliberation that should occur prior to such research.¹⁴⁸

The embryo is considered as deserving a certain respect, justified by its potential to become a human person, but it is not considered as the equivalent of a human person. This is how this specific Protestant argument could be formulated:

Argument 2 (A2) – Stem cell research can be authorized because the embryo is not a human person and because stem cell research can make significant scientific progress possible.

(3) An argument derived from the Muslim tradition

It is impossible to identify clearly, in the Koran, a moment when there is ensoulment, meaning when the embryo gets a soul. However, Abdulaziz Sachedina argues that the following is “acceptable to all schools of thought in Islam.”¹⁴⁹

The silence of the Koran over a criterion for moral status (i.e., when the ensoulment occurs) of the fetus allows the jurists to make a distinction between a biological and a moral person, placing the latter stage after, at least, the first trimester of pregnancy.¹⁵⁰

¹⁴⁸ Ronald COLE-TURNER (ed.). *Human Cloning: Religious Responses*. Appendix II, p. 150.

¹⁴⁹ Abdulaziz SACHEDINA. *Islamic Perspectives on Research with Human Embryonic Stem Cells*. p. G-5.

¹⁵⁰ *Ibid.* p. G-6.

The ensoulment corresponds to the moment when the embryo becomes a moral person: in other words, the embryo is not always considered as a person. Until it does become a person, it can therefore be used for stem cell research.¹⁵¹ An argument derived from the Muslim tradition could be formulated as following:

Argument 3 (A3) – Stem cell research can be authorized since it requires the destruction of the embryo at a stage where the embryo is not a moral person and therefore its destruction is not problematic. Research will allow to achieve the objective of medical progress, while respecting the sacred dimension of human life.

(4) An argument derived from the Jewish tradition

In the Jewish tradition, the embryo in the first stages of its development does not have the moral status of a human being. This status is only acquired at the 40th day after conception:

Central to all understanding of embryology in the Talmud and subsequent halachic response is that before the 40th day after conception, the embryo and fetus are to be considered “like water.”¹⁵²

Before the 40th day, the respect owed to the embryo is justified by the fact that it is considered as “the thigh of its mother,” and as such it should be protected since “our bodies belong to God (...). God, as owner of our bodies, can and does impose conditions on our use of our bodies.”¹⁵³ Because we owe respect to the human body, we owe respect to the embryo when it is part of a woman’s body: this is why abortion is not authorized.

¹⁵¹ *Ibid.* p. G-3.

¹⁵² Laurie ZOLOTH. *The Ethics of the Eighth Day: Jewish Bioethics and Genetic Medicine. A Jewish Contribution to the Discourse.* p. J-13.

¹⁵³ Elliot DORFF. *Stem Cell Research.* p. C-3.

However, independently of a woman's body, we do not owe the same respect to the embryo:

Stem cells for research purposes also can be procured from donated sperm and eggs mixed together and cultured in a petri dish. Genetic materials outside the uterus have no legal status in Jewish law, for they are not even a part of a human being until implanted in a woman's womb, and even then, during the first 40 days of gestation, their status is "as if they were simply water." Abortion is still prohibited during that time, except for therapeutic purposes, for in the uterus such gametes have the potential of growing into a human being. Outside the womb, however, at least at this time, they have no such potential. As a result, frozen embryos may be discarded or used for reasonable purposes and so may the stem cells that are procured from them.¹⁵⁴

Like in Islam, there is in the Jewish tradition a clear and crucial distinction between the biological person and the moral person. As a consequence, an argument derived from the Jewish tradition could be formulated as following:

Argument 4 (A4) – Stem cell research can be authorized since the destruction of the embryos is not problematic in cases where the embryo was legitimately aborted and in cases where the embryo was created *in vitro*. Research would allow to achieve the objective of medical progress, and would respect the sacred dimension of human life.

In arguments A1, A3 and A4, the proposition (the authorization or interdiction of stem cell research) is justified by the reference to a particular conception of the embryo (the embryo is a moral person since conception; the embryo is not a moral person until ensoulment occurs; the embryo can be destroyed if it is not part of a human body). These conceptions are the basic assumptions of the arguments. The validity of such assumptions

¹⁵⁴ *Ibid.* p. C-4.

cannot be justified: they are all absolutist arguments. If you do not share the basic assumption, you fail to understand the relation between the proposition and the objective.

A2, however, is not justified by an absolutist particular conception of the embryo but by the consequences that would result from stem cell research. A2 is based on 4 different hypotheses:

Argument 2 / Hypothesis 1 (A2H1) – The embryo is not a human person.

Argument 2 / Hypothesis 2 (A2H2) – The ban on public funding makes it impossible to control stem cell research.

Argument 2 / Hypothesis 3 (A2H3) – We all share the responsibility of controlling stem cell research.

Argument 2 / Hypothesis 4 (A2H4) – Consequences of research are positive.

Contrary to the hypothesis of A1, A3 and A4 concerning the status of the embryo, A2H1 is not absolutist. An absolutist argument is characterized by 3 elements: it is supposed to be valid independently of all context; it rests on prescriptive hypotheses from which norms are derived; and it cannot be derived from the framework of liberal democracy. The hypothesis that the embryo is not a human person is supposed to be valid independently of all context. However, contrary to the hypotheses of A1, A3 and A4, no norm can be derived from it (that the embryo is not a human person does not mean we should destroy it) and the hypothesis itself can be derived from the framework of liberal democracy (liberal democracies have commonly considered the embryo, through law, as

being different from human beings; the embryo does not have the rights and duties that all human beings have).

None of the other 3 hypotheses of A2 implies to recognize the existence of an extra-social source of moral validity. Even if the argument was formulated with reference to religious texts, the argument would remain a religious argument from type AR1: its proposition (authorization of research) and its objective (medical progress) make sense once the religious dimension is removed. The objective is considered by all as being desirable, and there is a logical relation between the objective and the proposition.

2) Two secular arguments

The two main secular positions in the controversy over stem cell research are represented by David Baltimore and Robert P. George in their debate in the *Wall Street Journal* in July 2001.

According to Robert P. George, the question of stem cell research implies the question of the moral status of the embryo. And he considers that the answer is obvious: embryos are alive, they belong to the human species and all human beings are owed the same dignity: “It is not that a human embryo merely has the potential to ‘become a life’ or ‘become a human being.’ He or she (for sex is determined at the beginning of life) is already a living human being.”¹⁵⁵ George claims that this argument is not religious:

There is the claim that the argument for the human status of the early embryo depends on controversial religious premises about ‘ensoulment.’ It does not. The question is not about embryos’ eternal destiny. That is a

¹⁵⁵ Robert P. GEORGE. Stem Cell Research: A Debate --- Don’t Destroy Human Life.

religious matter. (One on which the Catholic Church, by the way, has no official position.) There is no need for those of us who oppose embryo destruction to appeal to religion. The science will do just fine. We would be very pleased if those on the other side would agree that the scientific facts about when new human beings begin should determine whether government should fund research requiring their deliberate destruction.¹⁵⁶

Even though the argument is not formulated in a religious vocabulary, it does not mean that the argument is not absolutist. George's argument could be reformulated as following:

Argument 5 (A5) – Stem cell research should be banned because it requires the destruction of embryos and the destruction of embryos is incompatible with human dignity.

Few people reject the concept of dignity and the idea that a certain respect is owed to each human being. But beyond this minimal agreement, controversies appear on what this respect means, what dignity demands from each of us and what rights it gives us. George's argument, and more generally the argument of all those who justify the ban on stem cell research on the grounds of human dignity, rests on 3 different hypotheses:

Argument 5 / Hypothesis 1 (A5H1) – Human dignity is the dignity of all human beings, since conception.

Argument 5 / Hypothesis 2 (A5H2) – Human dignity is an absolute value, and it has priority over all other considerations.

Argument 5 / Hypothesis 3 (A5H3) – Human dignity is not compatible with the destruction of embryos for research purposes.

¹⁵⁶ *Ibid.*

The question of when an embryo becomes a human being cannot be answered scientifically. There is a slow development; if the embryo is not a human being (in the sense of a moral person) at conception, when does it become one? What is the threshold of dignity? A5H1 assumes that a zygote, the cell formed by the fusion of the gametes, is a human being and has dignity: such a claim cannot be justified or rationally argued for, it can only be assumed. It is an absolutist hypothesis.

The second hypothesis, however, can legitimately be assumed in political discussion. The concept of dignity is considered as a fundamental concept of liberal democracies and it appears in many constitutions and declarations of Human Rights. If it is legitimate to consider that dignity is desirable: that alone justifies that it is sometimes considered as more important than other norms. A5H2 is not problematic.

The last hypothesis focuses on what dignity entails. George's argument is based on the idea that dignity means an unconditional right to life. But in fact, it is also possible to interpret dignity as being applicable to dead people: all societies have invented ways of dealing with the dead in a dignified way. Research on human corpses is for example authorized, although under certain conditions that ensure that the dignity of the dead is observed. Denying that an embryo is a moral person and has a right to life does not mean that we do not owe them any respect. Even those who defend stem cell research recognize that there should be limits to what can be done to embryos:

Many, if not most, who support the use of human embryos for HESC (Human Embryonic Stem Cell) research would likely agree with opponents of the research that there are some circumstances where the use of human embryos would display a lack of appropriate respect for human life, for

example, were they to be offered for consumption to contestants in a reality TV competition or destroyed for the production of cosmetics.¹⁵⁷

A5H3 defines dignity as associated with the principle according to which all life is sacred and must be protected. This, however, is based on a particular conception of life that cannot be itself justified by the values of the framework of political discussion. It is, in consequence, absolutist.

Because of A5H1 and A5H3, which must necessarily be assumed in order for the argument to make sense, A5 is absolutist and therefore illegitimate in political discussion. Both hypotheses are totally independent from the framework of political discussion, they are *detached* from this framework and therefore absolutist.

The argument developed by David Baltimore is the following:

Argument 6 (A6) – Stem cell research should be authorized and publicly funded to make medical progress possible and avoid the problems of privately funded research.

The argument rests on 3 different hypotheses:

Argument 6 / Hypothesis 1 (A6H1) – Stem cell research, more than any other type of research, can lead to significant medical progress.

Argument 6 / Hypothesis 2 (A6H2) – Privately funded research is more problematic than publicly funded research.

Argument 6 / Hypothesis 3 (A6H3) – The positive consequences of stem cell research outweigh its negative consequences.

¹⁵⁷ Andrew SIEGEL. Ethics of Stem Cell Research.

The hypothesis A6H1 is based on an interpretation of facts. In itself, it does not give any type of normative guidance: it does not tell us what we should do, and therefore cannot be considered as absolutist. The same is true of A6H2, which is about the evaluation of the problems of publicly funded and privately funded research.

The last hypothesis is what gives the argument its force of persuasion. It is based on a consequentialist type of reasoning: if positive consequences outweigh negative consequences, then research should be authorized. Consequentialism is not absolutist, since it can be considered as adequate by all: we all understand, without having to appeal to the idea of the existence of an extra-social source of moral validity, that if we have to choose between two options, if the first brings about consequences that we think are positive and the second brings about consequences that we think are negative, all things being equal, we will always choose the first option.

A6H3 is controversial: deontological reasoning based on values that constitute the framework of liberal democracy can show the weaknesses of consequentialism. A6 itself is therefore a very controversial argument, but it is nonetheless a non-absolutist argument and therefore an adequate argument.

A5 is a secular absolutist argument, relying on hypotheses that appeal to something that goes beyond the framework of liberal democracy. The relation between the proposition and the objective only makes sense for those who share the particular fundamental assumptions. A6, however, is both secular and non-absolutist: it does not mean it is necessarily convincing, but the relation between the proposition and the

objective does not require to recognize the existence of an extra-social source of moral validity.

3) Other possible public justifications: some non-absolutist arguments for and against stem cell research

Out of the 6 previously mentioned arguments, only 2 are non-absolutist (A2 and A6) and both support stem cell research. It should not be concluded, however, that the non-absolutist model of political discussion can only support certain decisions, and that it would be for example impossible to argue with legitimate arguments against stem cell research. We present here 3 arguments that can be used to justify the ban of stem cell research.

There is an easy way to turn any absolutist argument into a non-absolutist argument: the statement “we should do X because it is demanded by Y, and Y is true” has to be replaced by the statement “we should do X because the majority of citizens believe that X is demanded by Y and also believes that Y is true, and following the opinion of the majority is right.” Here, it means we could use the following non-absolutist argument:

Argument 7 (A7) – Stem cell research requires the destruction of embryos, and the majority of citizens believes that this destruction is incompatible with the dignity of the embryos and should therefore be forbidden. It is right to follow the majoritarian opinion, so stem cell research should be banned because it is what a majority of citizens want.

This could be considered as hypocritical, but the difference between A7 and A5 is significant: A7 is compatible with our understanding of legitimacy, A5 is not. In A5, the force of the argument rests on the recognition of the validity of an absolutist principle concerning the status of the embryo; in A7, the force of the argument rests on a democratic principle that we all know and accept. A7 in itself does not assume that the destruction of the embryos is in fact incompatible with their dignity, and therefore avoids absolutism. It does not mean that A7 is not controversial and cannot be questioned, criticized or even rejected; it means, however, that it is an adequate argument. The hypotheses of A7 are the following:

Argument 7 / Hypothesis 1 (A7H1) – A majority of citizens considers that stem cell research should be banned because the destruction of embryos is incompatible with human dignity.

Argument 7 / Hypothesis 2 (A7H2) – We should follow the opinion of the majority rather than the opinion of the minority because majority rule is considered as legitimate in democracy.

The first hypothesis describes a factual situation and could therefore be empirically verified, although such a verification might be very difficult to do. But no norm is derived from this hypothesis only: it is not absolutist. The second hypothesis clearly refers to a normative principle: when a society is divided, it is fair and wise to follow the majoritarian opinion. Even though such a principle is part of the framework of liberal democracy, there might be disagreements concerning the priority of such a principle over other values (for example we would not want to let the majority oppress a

minority). That is the weakness of the majority argument: in itself it does not allow to evaluate the content of the opinion of the majority.

The first hypothesis can be contested based on an interpretation of facts, the second based on an interpretation of a normative principle and its relation to other normative principles. But the argument itself is adequate, and therefore legitimate.

The ban on stem cell research could also be justified by a consequentialist argument. Many different non-absolutist arguments could be used:

Argument 8 (A8) – Stem cell research should be banned because it is very expensive, its results are uncertain and the money spent on stem cell research is not spent on research that would have more certain results.

Argument 8bis (A8bis) – Stem cell research should be banned because it can only benefit a small number of privileged people and it would create inequalities.

Argument 8ter (A8ter) – Stem cell research should be banned because the techniques developed in stem cell research could be used for wrongful purposes.

These 3 arguments could legitimately be used in political discussion.

Finally, it is possible to create non-absolutist arguments from the framework of political discussion, and more precisely from shared values, common sense and science. We can offer specific interpretations of values and principles that are shared by all. Arguments are based on hypotheses, but we should distinguish between 3 different types of hypotheses:

Hypothesis 1 (H1) – Hypotheses can be accepted because they are derived from the basic principles of political discussion.

Hypothesis 2 (H2) – Hypotheses are not directly derived from the basic principles of political discussion, but they can be supported by arguments that only refer to these principles.

Hypothesis 3 (H3) – Hypotheses are not directly derived from the basic principles of political discussion, and they cannot be supported by arguments that only refer to these principles.

The hypothesis that dignity is an important value and that it is desirable corresponds to H1: it can be used and there is no need to justify it. The hypothesis that dignity should be understood as a right to life cannot be justified with arguments that only refer to the basic principles of political discussion: it corresponds to H3, it is absolutist and therefore any argument relying on such hypothesis is also absolutist and illegitimate.

There is however a conception of dignity that corresponds to H2, meaning that is non-absolutist. The most famous formulation of this conception is Kant's: "Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end."¹⁵⁸ Such an interpretation of dignity refers to the values of liberty and equality: dignity expresses the right of each individual to be considered as free person, meaning as being able to set his own ends, and this is a right that we all equally have. This interpretation corresponds to

¹⁵⁸ Immanuel KANT.

H2 since it is based on values that are themselves part of the framework of political discussion.

Kantian dignity can therefore be used in arguments in political discussion and can support a limited authorization as well as a ban of stem cell research:

Argument 9 (A9) – Stem cell research should be banned because it uses embryos as means to an end, not as ends, which is incompatible with dignity.

Argument 9bis (A9bis) – Stem cell research should be authorized for embryos that result from medically assisted procreation and that parents want to discard, since they were created as ends and not as means, so it is compatible with dignity. Creation of *in vitro* embryos for research purposes should however be banned since it treats embryos solely as means.

Both A9 and A9bis only refer to values that are part of the framework of liberal democracy and to particular interpretations of these values that can be justified with exclusive reference to this framework. They are, in consequence, non-absolutist.

The case of stem cell research shows that, when science cannot help us make a decision, we can use other considerations. These considerations, however, are limited: out of the 9 arguments we identified, 4 are absolutist (A1, A3, A4 and A5) and 5 are non-absolutist (A2, A6, A7, A8, A9) and can be used in political discussion.

Conclusion

From religious arguments to public justification

In order to be able to answer the question “is it legitimate, in a liberal democracy, to use religious arguments to justify political decisions?,” it was necessary to focus not only on those religious arguments but more fundamentally on the concepts of legitimacy and public justification. It is based on those concepts that it was possible to formulate an answer: religious arguments are not a relevant category from the perspective of public justification, the distinction that really matters is not between religious and secular arguments but between non-absolutist, adequate and legitimate arguments on the one hand, and absolutist arguments on the other.

We offered a model of political discussion based on a conception of public justification understood as non-absolutist justification. Political power is only legitimate when justified, meaning when it is supported by adequate arguments. An adequate argument has two characteristics: its objective is considered by all as desirable, and there is a logical relation, considered by all as being logical, between the objective and the supported proposition. Religious arguments, like any other argument, can be adequate arguments.

Characteristics of the model of non-absolutist justification

The model of non-absolutist justification is largely inspired by the works of political and legal theorists (Rawls, Audi, Greenawalt, Habermas, Perry and

Wolterstorff). It distinguishes itself from their models of political discussion on certain points.

First, in the model of non-absolutist justification, it is the concept of public justification and not the idea of respect owed by citizens to other citizens that explains the need for restraint.

Second, the model is not applied to all citizens but only to public officials. There is no difference of degree between public officials and ordinary citizens; ordinary citizens are simply not expected to refrain from using absolutist arguments, since the introduction of absolutist arguments by ordinary citizens does not concern public justification and legitimacy.

Thirdly, the main difference is about the type of arguments that is considered as illegitimate. Contrary to Rawlsian public reason, not all comprehensive doctrines are excluded. Some of these doctrines, including religious doctrines, as long as they are non-absolutist, can be used.

Finally, even though the model is mainly conceived as a liberal model, it is very different from other liberal models of political discussion: the model of non-absolutist justification is not supposed to be neutral towards conceptions of the good. Moreover, our understanding of public justification is different from the usual liberal understanding, as it does not require that all citizens could understand why political power is justified. And finally, our model leaves room for deep and various disagreements.

Response to three possible objections

Three major objections could be raised against the model of non-absolutist justification. We try here to respond to these possible objections.

(1) The first objection concerns the possibility to transform any absolutist argument into a non-absolutist argument. What is the point of the model if, ultimately, everything can be said as long as it is said differently? It is enough to use the argument of the rule of the majority to avoid the appeal to the existence of a source of moral validity.

The difference is however significant: in one case the law is considered legitimate; in the other, it is considered illegitimate. In a liberal democracy, the distinction between legitimate and illegitimate matters tremendously. If the argument uses the rule of the majority to justify the law, the temporary dimension of the justification is very clear: if the majority changes its mind, the argument will become invalid and the law will stop being supported by a public justification, and therefore will be considered as illegitimate.

This objection brings us to clarify an important point: our model of political discussion focuses on public justification, not on the content of decisions themselves. The model tells us if an argument is legitimate or not, not if the decision it supports is itself legitimate or not. There are obviously substantive criteria to decide if a decision is considered as legitimate or not, but this issue is independent of the issue of justification. It is enough to accept that it is possible for a decision to be illegitimate while being supported by arguments that are themselves legitimate.

(2) A second objection questions the ability of our model of non-absolutist justification to respond to the objections usually formulated against exclusivist models. Does our model resist better than Rawlsian public reason to the 3 objections identified in Chapter 4?

First, it was argued that any exclusivist model fails to respect the liberty of all citizens to use the arguments they want to use. We respond that there is only a moral duty to refrain from using certain arguments, and that, more importantly, only a very limited number of citizens, the public officials, should observe this moral duty. No restriction is imposed on ordinary citizens.

Second, it was argued that liberal models rest on a misconception of religion as something private and irrelevant in the political sphere. This is not a valid critique against the model of non-absolutist justification since this model does not assume any particular conception of religion. It is possible that religion is sometimes incompatible with the idea of a distinction between life as a citizen and life as a believer; this is also not a problem for ordinary citizens, who are not required to make such a distinction.

Lastly, it was argued that an exclusivist model would make it difficult, and maybe even impossible, to discuss controversial moral questions. Is the discussion on abortion rich enough if all arguments concerning the status of the embryo are excluded? The model of non-absolutist justification does not exclude all such arguments, only the absolutist arguments concerning the status of the embryo. In consequence, conceptions of the good are often considered as legitimate and can be introduced in political discussion, making political discussion much richer than if all such conceptions were bracketed.

(3) The last objection focuses on the assumptions of the framework of liberal democracy: aren't the principles and values of the model absolutist? Isn't difficult to demand the exclusion of absolutist arguments if the model itself is based on absolutist principles? In other words, can liberal democracy itself be justified by adequate non-absolutist arguments, i.e. can it respect the principle of public justification that it imposes?

It is fair to say that democratic and liberal principles are just as unquestionable, dogmatic and non-neutral as absolutist principles, religious or not. We do not claim that there is any difference of epistemological status between such principles, given as hypothesis for our reflection, and absolutist principles, that we want to exclude from political discussion. The only thing we say is that if we take democratic and liberal principles as our starting assumption, then it appears that they are incompatible with absolutist principles concerning the justification of political decisions.

This does not mean that arguments appealing to values such as equality, liberty or Human Rights are similar to absolutist arguments or that the distinction between such arguments and absolutist arguments is arbitrary. Absolutism is precisely defined in relation to democratic and liberal principles: absolutist arguments are arguments that are detached from democratic and liberal principles, meaning that can be justified neither by the political values that we all share, nor by common sense. By definition, democratic and liberal principles cannot be absolutist arguments: they are precisely the foundation on which absolutist arguments do not rest.

This, however, does not respond to the more fundamental question of the justification of democratic and liberal principles. It is Böckenförde's objection: "The liberal secular state lives on premises that it cannot itself guarantee."¹⁵⁹ The liberal state cannot justify itself neutrally, its justification depends on arguments that are themselves not liberal, non-neutral, absolutist or religious.

It is possible that liberalism itself rests on an absolutist foundation, including the kind of absolutist foundation it then aims to exclude from political discussion. Our focus was however not the justification of liberalism, but the justification of political decisions within a liberal framework. The question of whether there is a liberal justification of the foundations of liberalism is independent from our question and we do not claim to have an answer to it.

The model defended here, admittedly, only makes sense for democratic and liberal societies. If it is valid, it is only for such societies. But we have not developed any argument to convince anyone of the validity of democratic and liberal principles. Therefore, we can respond to the objections of those starting from the same assumptions, not to the objections of those who reject the normative foundations of our reflection.

We hope to convince those who also start from the starting point of liberal democracy that public justification is required for legitimacy and to convince them that this public justification should be understood as demanding that only adequate arguments are used to support decisions, and that adequate arguments are non-absolutist arguments.

¹⁵⁹ Ernst-Wolfgang BÖCKENFÖRDER. *State, Society, and Liberty: Studies in Political Theory and Constitution Law*. p. 112.

Our argument is directed to those who, while they share the same basic assumptions concerning the desirability of liberal democracy, do not define legitimacy or public justification in the same way and in consequence have different conclusions concerning the use of religious and absolutist arguments in political discussions. But we do not hope to convince those who reject this basic assumption: the theory of public justification developed here, like the model of political discussion that is derived from it, only makes sense in relation to the particular framework of liberal democracy. This is both the limitation and the foundation of our reflection.

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