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From Public Reason to Reasonable Accommodation: Negotiating the Place of Religion in the Public Sphere

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Abstract:

In recent years, debates about the legitimate place of religion in the public sphere have gained prominence in political theory. Departing from Rawls's view of public reason, it has lately been argued that liberal regimes should not only be compatible with, but endorsing of, arguments originating in religious belief systems. Moreover, it has been maintained that the principle of political autonomy obliges every democratic order to enable all its citizens, be they secular or religious, to become the authors of the laws to which they are subjected. Mere toleration, it is often said, strengthens social cohesion in the wrong way because it narrowly defines it as the product of bargaining processes, posited against the backdrop of power structures. The consensus many liberal defenders of religion in the public sphere wish to advance, however, aims at something radically dissimilar: particular institutions and arrangements need to be endorsed "for the right reasons", i.e. based on arguments to which all citizens could hypothetically agree. This paper primarily grapples with the contractarian idea as a lens through which the legitimate place of religion in the public sphere is negotiated. I argue that the emphasis on "right reasons" is mistaken in an essential way: it underrates the impact of power structures on the ways in which particular institutions and arrangements are actually justified or criticized. I shall claim that public reason must rather be conceived in terms of a discursive and dynamic *modus vivendi*. This implies acknowledging the pervasiveness of power structures in society at all times, without giving up on the potential for deliberation among secular and religious citizens. As a case study, the paper looks into the findings of the Bouchard/Taylor commission in Québec (2007-2008) and maintains that the context-sensitive method used by the authors exemplifies this novel, more useful approach to public reason and *modus vivendi*.

Keywords: Habermas, *modus vivendi*, postsecularism, public reason, reasonable accommodation;

I. Introduction[1]

The latest debate about the place of religion in the public sphere has set in motion a number of interesting, and indeed astonishing, revisions in normative political theory: it has led advocates of Critical Theory to engage constructively with the potential of religion for political deliberations; it has motivated liberal thinkers to question the appropriateness of relegating religious practices to the private sphere; and, perhaps most significantly, it has eroded the dichotomy between constitutional democracy and religion that had for a long time been foundational to standard conceptions of modernization. (Bader, 2007; Ungureanu, 2008)

At first sight, these revisions appear to testify to philosophy's somewhat embarrassing tendency to arrive too late on the scene, when various social and cultural phenomena have already surpassed their peak.[2] Observed from outside of philosophy's disciplinary boundaries, it seems as if normative political theory's current focus on the challenge of "postsecularism" masks a maladroit attempt to catch up with crucial insights gained much earlier by the social sciences.[3] Sociologists of religion have since the 1990s profoundly criticized the secularization thesis of the Weberian variety, on the grounds that it did not stand the reality test in a comparative perspective. (Casanova, 1994; Casanova, 2006) Moreover, cultural anthropologists have pointed to the inextricable intertwining of secular and religious narratives, thus shattering the European myth of secularism as merely being the absence of religion. (Asad, 1993; Asad 2003)

In this web of intersecting, and sometimes competing, viewpoints, a question emerges about the argumentative strategies normative political theory should adopt in order to enrich the debate. There are, in principle, two ideal-typical options: Either normative political theory distances itself from the empirical

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[2] This if, of course, an allusion to Hegel's dictum: "The owl of Minerva spreads its wings only with the falling of the dusk." (Hegel, 1991: 23)

[3] This is not to say that everybody endorses the fundamental intuition behind the notion of postsecularism. Quite on the contrary, the discussion about where we currently stand with regard to the secular heritage of the West is highly contentious. The academic discourse about postsecularism has recently been invigorated by Charles Taylor. Taylor claims that we are still living in a secular age. Secularism, thus, provides a common frame for both believers and non-believers, at least in the West. See: Taylor, 2007.

observations made by the social sciences so as to demarcate the legitimate space of religion in a democratic polity; or it deals with the context-sensitive research produced by the social sciences and initiates a process of mutual learning from which different perspectives, across disciplinary boundaries, could benefit.

This paper argues that the second option is more attractive than the first. I shall claim that normative political theory would be moving in the wrong direction if it persistently ignored one crucial insight that can be found in the social science literature: that power structures, and their concrete configurations within a society at a given time, matter when the place of religion in a democratic polity is negotiated. The ideal of public reason, however, is grounded in a notion of political autonomy that undercuts the acknowledgment of these power structures. My argument against public reason does not merely aim at uncovering the insufficiency of normative political theory's engagement with "real politics".[4] I would rather maintain that there are philosophical grounds for modulating the ideal of public reason and the concomitant notion of political autonomy.

These grounds can be teased out by putting forth alternative, more complex conceptions of *modus vivendi*, or so I shall argue. The main claim of this paper is, hence, that political theory can benefit from a reappraisal of the relationship between power and justification. My endorsement of a certain version of *modus vivendi* tries to defend an intermediary position between what Bernard Williams calls "political realism" and "political moralism" (Williams, 2005). On the level of application, this intermediary position implies that contextual, as opposed to abstract, approaches to normative political theory are better suited to deal with religion in the public sphere, because they develop their substantive positions on controversial issues by moving back and forth between principles and cases.[5]

The article has the following structure: section (II) rehearses the main steps that have been taken to advance the early discussion about public reason towards a broader interest in religion as particularly expressed in the work of Jürgen Habermas. In the next section (III), I distinguish between two types of objections that can be

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[4] For a recent exploration of how political theory should approach real politics, see: Geuss, 2008.

[5] In pitting abstract and contextual styles of normative political theory against each other, I do, of course, simplify matters significantly. For example, I do not account for a distinction that has forcefully been stated by Onora O'Neill, namely that "abstraction without idealization" is both feasible and desirable. However, I believe that the contrast I am suggesting is insightful even if subtle differences within each pole are worth spelling out. See: O'Neill, 1990.

levelled against Rawls's idea of public reason and Habermas's recent examination of religion in the political forum: one more superficial, regarding the exact locus of the "institutional translation proviso"; the other more fundamental, regarding the general role of justification in deliberative processes. The final section (IV) examines whether a revised notion of *modus vivendi* that builds on the fundamental criticism discussed in the preceding section can be enlisted to illuminate the legitimate place of religion in the public sphere. To achieve this end, I will draw our attention to the findings of the Bouchard/Taylor commission that worked from 2007 to 2008 in the Canadian province of Québec. My hypothesis says that this report exemplarily exhibits the advantages that a fresh look at the notion of *modus vivendi* can bring about. By relying on a context-sensitive account of open secularism that stands in contrast to, yet does not fully give up on, a standard reading of public reason, the report illustrates the way in which a productive negotiation of religion in the public sphere can be reached.

II. (Rawls and) Habermas on Religion in the Public Sphere

In this part of the paper, I summarize, after a short detour, Jürgen Habermas's main arguments concerning religion in the public sphere.[6] Over the last five years, Habermas has taken a surprising turn in his thinking about the expressive potential of religious beliefs in the public sphere. While up until the late 1990s the question of religious beliefs had barely been raised, Habermas has lately delivered a more organized view of how religious beliefs might fit into his over-all system of postmetaphysical philosophy.

Once again, Habermas proceeds by initiating a conversation with his strongest counterpart from the other side of the Atlantic, John Rawls.[7] The starting point of this conversation is the by now notorious notion of "public reason".[8] As a generic term, "public reason" is concerned with providing criteria for evaluating the validity of arguments circulating in the political forum. To establish which reasons count as public is, thus, to separate acceptable from inacceptable justifications in deliberations among citizens. Since Rawls's ideas have been framing the later discussions, it will be useful to quickly highlight the key issues involved in his

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[6] Habermas's turn towards religion has already sparked a broad secondary literature. See, among others: Harrington, 2007; Chambers, 2007; Lafont, 2007.

[7] For the differences between Habermas's and Rawls's views on religion in the public sphere see: Yates, 2007.

[8] The newly established *Journal of Law, Philosophy and Culture* has dedicated its first issue (2007) on Rawls's seminal text. Contributors include Kent Greenawalt, Jeremy Waldron, and William Galston.

use of the notion. Rawls's project in *Political Liberalism*, and generally in his later philosophy, is to offer a freestanding justification for a constitutional regime in which all citizens can be integrated equally.[9] "Freestanding" means that a political conception of justice must refrain from reaching out to any "comprehensive doctrine". The term "comprehensive doctrine" does not only encompass natural candidates for individual or collective visions of the good life, such as religions and ideologies, but also liberalism in the broad sense. The astonishing assertion in *Political Liberalism* is that liberalism itself can be counted as such a vision of the good life. This is the reason why Rawls conceives of political liberalism as a parsimonious and non- perfectionist version of thick liberalism.[10]

The freestanding conception of justice propagated by Rawls imposes on citizens a "duty of civility" (Rawls, 2005: 444). This duty expresses the obligation of every citizen to make independent use of two kinds of reasons: as a supporter of a comprehensive doctrine, for example as a believer in the precepts of Roman Catholicism or as a left-leaning activist, a person might hold multiple views on matters of communal significance. Nevertheless, these views must not, on Rawls's account, be offered as reasons in civic deliberations. Once they step into the forum of civic deliberations, citizens need to be willing to offer only those reasons for their decisions and actions that can be accepted by all other citizens, irrespective of which comprehensive doctrines they themselves may support.

There is one important disclaimer to add here, though: Rawls wants his ideal of public reason to be applied only to debates of highest importance, or what he calls debates about "constitutional essentials" and "matters of basic justice" (*Idem*: 442). In response to sharp criticism of his earlier views on public reason, Rawls also makes it clear that citizens are in fact allowed to make use of their comprehensive doctrines in deliberative processes as long as they are willing and able to provide "in due course" arguments that can be shared by everyone. He refers to this revision as the "proviso" that specifies a wide view of public reason. (*Idem*: xlix-l) Further, Rawls introduces a crucial distinction between the "political forum" – encompassing judges and their decisions, the discourses of government officials and the announcements of candidates for public office

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[9] For a reconstruction of Rawls's idea of political liberalism see: Alejandro, 1996.

[10] This idea is connected to what Rawls calls the priority of the right over the good. A right-based defense of justice as fairness claims to remain neutral towards the entirety of individual or collective visions of the good life.

– and the "background culture" of civil society. From this distinction it does not follow, however, that citizens who are formally situated outside the political forum should refrain from making use of public reason, as we shall see shortly.

The intuition behind the bracketing of comprehensive doctrines says that, given the fact of "reasonable pluralism" in modern democracies, i.e. given the simultaneous existence of equally justified views of the good, political liberalism "deliberately stays on the surface" (Rawls, 1985: 239). The strategy of public reason entails circumventing divisive conflicts that would, on Rawls's account, inevitably erode the fundament of society once debates about justice became dominated by a clash of idiosyncratic allegiances to particular values. To argue politically, as opposed to metaphysically, depends, thus, on the abstraction from one's deepest commitments.

Note that the requirement of reciprocal acceptability inherent in public reason stands in stark contrast to mere toleration, where not more than a fragile *modus vivendi* between different individuals or groups with their comprehensive doctrines is at stake. A *modus vivendi* offers, in Rawls's view, a solution to the problem of "reasonable pluralism", but it proceeds in the wrong way because it merely establishes a precarious equilibrium point between otherwise antagonized opponents. Instrumental rationality and strategic action are not enough to elucidate "society as a system of fair social cooperation between free and equal persons" (*Idem*: 229). Public reason, on the other hand, aims at deepening the consensus on which diverse societies are built, for it engages all citizens in a conversation about normative foundations. This requirement of neutrality governing civic deliberations evidently has massive consequences for Rawls's interpretation of religion. The overarching question is: "How is it possible […] for those of faith, as well as the nonreligious (secular), to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline?" (Rawls, 2005: 459)

Rawls stipulates that public reason circumscribes a space from which *all* comprehensive doctrines are excluded by the same token. Since secularism figures as a "comprehensive nonreligious doctrine" (*Idem*: 452), public reason must not be mistaken for secularism. The translation of comprehensive doctrines into the register of public reason, thus, instigates a process through which each citizen is forced to leave her

idiosyncratic allegiances behind and articulate her concerns through the common language of citizenship. As has already become clear, not only state officials such as judges, parliamentarians or candidates for public office are bound by the "duty of civility", but also ordinary citizens must in their debates over constitutional essentials and matters of basic justice refrain from advancing visions of the good life. Citizens need to act as if they were "ideal legislators" (*Idem*: 444) in the public sphere when holding officials in the political forum accountable.

Let us now return to Habermas. The German philosopher grapples with Rawls's proposal by sorting out lessons that he deems more valuable than others. While Habermas shares, and indeed stresses, Rawls's focus on civic deliberations, he also sides with those who criticize Rawls for asymmetrically burdening religious people.[11] In what sense can it be argued that the "duty of civility" is unfairly disposed towards believers? On the one hand, Habermas claims, it is a matter of empirical observation to state that religious people cannot simply split their identity into one part governed by the principles of a comprehensive doctrine, and another part governed by the ideal of public reason. In opposition to Rawls, Habermas insists that it is not always possible for a believer to find widely accessible formulations for her positions that correspond to, and map on, the reasons originating in a comprehensive doctrine. It is overly demanding for, and therefore unfair to, the believer to always seek a duplication of her set of reasons, depending on where the discussion takes place. On the other hand, there is also a moral consideration that reveals why Rawls's insistence on public reason might be disingenuous:

> There is a normative resonance to the central objection, as it relates to the integral role that religion plays in the life of a person of faith, in other words to religion's 'seat' in everyday life. A devout person pursues her daily rounds by drawing on belief. Put differently, true belief is not only a doctrine, believed content, but a source of energy that the person who has a faith taps performatively and thus nurtures his or her entire life. (Habermas, 2006: 8)

In this passage, Habermas submits that the obligation to establish a split identity between private believer and public citizen underestimates the moral weight faith possesses. Remember that the duty of civility demands from all citizens to draw a parallel between public reason and comprehensive doctrine. This demand, however, might be doomed to fail if there plainly are no corresponding formulations for one's

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[11] For representative criticisms see Audi/Wolterstorff, 1997; Weithman, 2002.

positions that would be publicly accessible. It is, thus, conceivable to imagine a genuine collision between religious values (or any other comprehensive doctrine) and public reason, because many believers support a specific policy regarding constitutional essentials and matters of basic justice on the grounds that their religion considers it authoritative. It might even be said that a crucial component of faith is precisely that *only* religious values can motivate and orient the believers' standing in civic deliberations.

The moral weight of comprehensive doctrines supplies a strong argument against excluding religious beliefs from the public sphere. The duty of civility advocated by Rawls could in the end lead to a disenfranchisement of religious people, and this would obviously diminish the stabilizing effect of civic deliberations. If religious people are asked to remain mute in the public sphere due to an inability to access public reason, their standpoints cannot become contributions in the process of ideal legislation. This danger of excluding religious people motivates Habermas to modulate Rawls's proposal in one significant respect.

> The liberal state must not transform the requisite institutional separation of religion and politics into an undue mental and psychological burden for those of its citizens who follow a faith. […] Every citizen must know and accept that only secular reasons count beyond the institutional threshold that divides the informal public sphere from parliaments, courts, ministries and administrations. But all that is required here is the epistemic ability to consider one's own faith reflexively from the outside and to relate it to secular views. Religious citizens can well recognize this 'institutional translation proviso' without having to split their identity into a public and a private part the moment they participate in public discourses. They should therefore be allowed to express and justify their convictions in a religious language if they cannot find secular 'translations' for them. (*Idem*: 9-10)

The crucial argument in this passage concerns the distinction between the "informal" and the "formal" public sphere. This distinction is pivotal to Habermas's double-tiered model of deliberation. Democratic *opinion-formation* takes place in the informal, weak public sphere that is characterized by disorder and fluidity. All types of arguments can be exchanged in this branch of the public sphere, because the channels of communication are completely unregulated. In contradistinction to the anarchic structure of opinion-formation, democratic *will-formation* is subject to more organizational restrictions. The main venues for democratic will-formation are located in the formal, arranged public sphere of the judiciary and the parliament. Although Habermas suggests that the informal and the formal public sphere rely on, and communicate with, each other, he conceives of them as distinct branches. (Habermas, 1996)

It is the institutional threshold separating the informal from the formal public sphere that decides over the admissibility of religious beliefs. The state has to be unequivocally secular and firmly rooted in the repudiation of faith-based arguments. While Rawls wants to ban religious beliefs, just like any other comprehensive doctrine for that matter, from the public sphere in general, Habermas argues for the inclusion of believers' standpoints within the anarchic structure of opinion-formation. Respect for the equality of religious people commands such inclusion; further, it is of paramount importance for the society at large not to cut itself off from positive resources of meaning:

> Religious traditions have a special power to articulate moral intuitions, especially with regard to vulnerable forms of communal life. In the event of the corresponding political debates, this potential makes religious speech a serious candidate to transporting possible truth contents, which can then be translated from the vocabulary of a particular religious community into a generally accessible language. However, the institutional thresholds between the 'wild life' of the political public sphere and the formal proceedings within political bodies are also a filter that from the Babel of voices in the informal flows of public communication allows only secular contributions to pass through. (Habermas, 2006: 9)

The hope is that allowing religious beliefs in the public sphere would trigger processes of mutual learning from which all members of society might benefit. Such a learning process is necessary because today the modern world faces the threat of scientism: Recent debates about the freedom of will tend to be overshadowed by results generated from neurological research, and Habermas presumes that a scientifically restricted conception of personhood might narrow down the scope of civic deliberations. We need religious beliefs in the public sphere to counterbalance the "naturalistic self-objectification" fetishized by the natural sciences.[12]

But religious beliefs can only flourish in the public sphere when they are seen as productive in the course of civic deliberations. More than mere toleration is required in a postsecular society. Once religious beliefs are permitted to inform and transform the debates in the public sphere, it would be a waste of resources if secular persons refused to take those beliefs seriously. Hence, Habermas insists that adaptive changes need to affect both religious and secular persons. Believers must become reflexive with regard to other religions

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[12] For a discussion of the relationship between religious and science education see: Audi, 2009.

and accepting of the secular foundations of the state. Non-believers, on the other side, must open themselves to the possibility that religious persons have in fact something meaningful to say in the public sphere. During this process all parties, consequently, have to cooperate in the informal, weak public sphere.

Let us recapitulate the argument about religion in the public sphere as it has been advanced by Habermas: At the heart of his approach lies a concern with both the legitimacy and the social cohesion of the constitutional state. Toleration based on indifference or ignorance is inadequate to address the challenges of deeply diverse societies. This becomes particularly evident in the context of contemporary Europe where past colonialism and present immigration put pressure on political systems to accommodate cultural differences. Habermas envisions the constitutional state as being based at once on private and public autonomy, on the liberal idea of basic rights and on the republican idea of democratic self-government. (Habermas, 2001) Freedom of religion as a legal guarantee is, thus, a meaningful option only if the state enables its citizens to participate actively in the process of ideal legislation. It follows that civil society (the informal component of the public sphere) needs to be inclusive of, and responsive to, all members of a political community, while the state (the formal component of the public sphere) should promote the principle of absolute neutrality towards particular world views. A social arrangement akin to a *modus vivendi* is structurally insufficient to tackle the fact of reasonable pluralism because it undercuts the requirement of public autonomy on which both Rawls and Habermas draw. The next section will address the issue whether Rawls's and Habermas's refutation of *modus vivendi* is indeed as plausible as it appears at first sight.

III. Rethinking *Modus Vivendi*

I would now like to distinguish between two families of criticism that have been levelled against Rawls's and Habermas's approaches: one internal and the other external. The internal criticism questions the exact locus of the translation proviso.[13] Whereas Habermas contends that only state action must take place within the domain of secular reasons, Maeve Cooke has replied that this widening of the scope of public reason is too restrictive, and suggested that religious beliefs should also be granted access to the realms of the

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[13] Here, I focus exclusively on objections from the point of view of democratic theory. In doing so I deliberately ignore another strand of criticism that has been advanced by theologians, who have claimed that Habermas's proposal might be detrimental for the various churches existing within society. See for instance: Esterbauer, 2006.

judiciary and the parliament as long as they satisfy the "condition of non-authoritarianism" (Cooke, 2007: 234). "Non-authoritarianism" applies to believers and non-believers alike if and only if they reject uncritical modes of deliberating and acting. This approach to public reason pushes the bar even higher, well above the institutional translation proviso suggested by Habermas, and basically abandons the categories of the secular and the religious for democratic theory. On the other side of the spectrum are those who would like to strengthen public reason in terms of secular commitments. (D'Arcais, 2007) Accordingly, Habermas has been accused of inviting fundamentalist tendencies to take over the informal public sphere, because he sacrificed the imperative of neutrality in the anarchic structure of opinion-formation. Here, the criticism involves that Habermas went too far in his attempt to accommodate the concerns of believers. (Lafont, 2007)

Both strands of internal criticism share, albeit their massive differences regarding the boundaries for articulating religious beliefs, a common framework as they strive for the isolation of a political space where consensus via the use of public reason is indeed possible. The argument then revolves around the specific construction of the civic arena in which deliberations are supposed to guarantee the legitimacy and social cohesion of a democratic polity.

This family of criticisms can be contrasted with another class of objections to the Rawlsian and Habermasian projects that goes beyond examining the locus of the institutional threshold. One of the main characteristics of their discussions about the role of religion in the public sphere lies, as we have witnessed, in the assertion that tolerance as indifference and ignorance is insufficient to accommodate the concerns of believers in a democratic polity. The underlying charge is not so much that toleration is "repressive", as Herbert Marcuse has famously proclaimed, but rather that it fails to provide religious people with opportunities to refer to their profoundly felt convictions about controversial issues in the course of deliberations, without asking them to translate these convictions into the neutral language of citizenship. This failure to make voices heard can create a legitimacy deficit that might endanger the stability of the democratic polity, because, within a liberal framework, legitimacy can only be fostered through political autonomy, that is, through laws for which all citizens can claim authorship. A *modus vivendi* between

different comprehensive doctrines would be too instable to secure social cohesion. What is, therefore, needed is an espousal of constitutional essentials and matters of basic justice "for the right reasons".

However, sceptics have argued that this focus on agreement "for the right reasons" might be fallacious, since it fatally misconstrues the power relations pervading every political order. Against Rawls and Habermas, they have forcefully maintained that the ideal of neutrality on which public reason rests is both illusionary and dangerous. The ideal is illusionary, for the standards of reasoning according to which arguments in the public sphere are evaluated inevitably bear the hallmarks of power structures within a society. It is also dangerous, because the existence of power structures is covered up by the claim that public reason remains independent of, and even antithetical to, these power structures. The main contention of these sceptics is that, since all institutions and arrangements in the public sphere are imbricated with power relations, it would be incorrect to make legitimacy and social cohesion reliant on a conception of justice that is radically dissimilar from a *modus vivendi*. Following this train of thought, it is fruitless to seek to establish criteria for a just society, without taking into account the power relations that shape the very conditions under which these criteria are produced and brought to use.

This reflection gives rise to the need to reconsider the notion of *modus vivendi* as it is commonly conceived. Rawls and Habermas draw a very bleak picture of *modus vivendi* so as to make their alternative search for legitimacy and social cohesion for the "right reasons" appear more attractive. Duncan Ivison has explored the tension between public reason and *modus vivendi* in more depth with regard to the challenges that liberalism faces in the context of postcolonialism.[14] Ivison asks us to consider whether the ideal of public reason can help address the grievances of those who have been disenfranchised in the public sphere over a long period. In the postcolonial states that Ivison analyzes (Canada and Australia), aboriginal peoples are especially vulnerable to unfair treatment in, and orchestrated exclusion from, the public sphere. Nevertheless, appealing to the availability of public reason does nothing to alleviate the suffering of such minorities, as they usually lack the material and symbolic means to challenge and alter the conditions under which the public is negotiated. Another point of importance is that the Rawlsian scheme focuses too much

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[14] In fact, Ivison seems to have applied the revised notion of *modus vivendi* to a number of contexts, including the issue of citizenship and the history of political thought. See: Ivison, 1997; Ivison, 2000.

on comprehensive doctrines as distinct systems of values, while the fact of the matter is that social, cultural and political identities intersect and converse with each other. Ivison then comes up with an insightful distinction between two ways of conceiving of *modus vivendi*:

> (1) *A simple or static modus vivendi*: The parties are motivated to comply with political norms only where it is in their interest to do so, where 'interest' is narrowly defined in terms of individual or group self-interest.
>
> (2) *A discursive and dynamic modus vivendi*: The parties are motivated to comply with political norms where it is in their interest to do so, but (a) these interests include moral interests, and (b) over time, the demands and practices of social and political cooperation may come to be seen as fair and reasonable. However, the content of what is 'fair and reasonable' is always incompletely theorized and tied to the constellation of 'registers' or discourses […] present at any given time in the public sphere. (Ivison, 2002: 84-85)

Accepting the idea of a discursive and dynamic *modus vivendi* implies that the appeal to a freestanding justification of principles of justice must be modified in order to account for the fact that what counts as public reason is itself a matter of societal and historical struggles. Supporters of a discursive and dynamic *modus vivendi*, thus, reject the idea of a freestanding justification, without giving up on the concept of public reason as such. Citizens might accordingly be thought of as having different sets of preferences for endorsing a political regime or a social arrangement, yet power structures effectively have to be acknowledged as playing a role in shaping these preferences. If we rethink public reason in terms of a discursive and dynamic *modus vivendi*, we abstain from seeing these power structures as negative obstacles on our path to attain legitimacy and foster social cohesion. Rather, they are taken as constitutive of real politics. It is important to emphasize that this does not eradicate the possibility of consensus. The members of the public sphere might still arrive at some form of agreement over the "practices of social and political cooperation", but this concord always remains open to contestation and cannot be anchored in an abstract set of "right reasons".

Jocelyn Maclure has argued in a similar vein that we need to "loosen the grip of Neo-Kantianism" if we wish to defend a plausible account of public reason. (Maclure, 2006) By "Neo-Kantianism" he means that the generalizability test, identified as the Kantian residue in recent approaches to public reason, is a burdensome heritage we should do away with. Public reason of the Rawlsian and Habermasian variety

remains tributary to Neo-Kantianism due to its reliance on the notion that only those arguments that could elicit agreement from all citizens are deemed valid.

In analogy to Ivison's claim about the persistence and ubiquity of power structures, Maclure insists that a lasting consensus about the limits of public reason has its place in ideal theory, but not in real politics. To decide whether a singular argument passes the generalizability test is not a technical issue that can be solved *in abstracto*, or through expert knowledge. Rather, deliberative theories of democracy have to pay close attention to those fora in which particular measures are debated. Further, both Rawls and Habermas fail to grasp the essential contestability of the domain of public reason. While they accept, and indeed endorse, reasonable disagreement in the realm of isolated "comprehensive doctrines", they reject it vehemently when attempting to establish the limits of public reason itself. This is, from Maclure's perspective, a dubious assumption given that people's standpoints vis-à-vis constitutional essentials and matters of basic justice regularly differ on the most basic level.[15]

Although Maclure maintains that the conflictual nature of public reason must be recognized, he does not side with proponents of agonistic democracy who are sceptical of any form of consensus.[16] Agreement is in fact viable, yet the debate about fair terms of social and political cooperation remains by its very nature open-ended and contingent. Just like Ivison, Maclure urges us to reflect on the practice of public reason under non-ideal conditions, thereby highlighting the importance of responsiveness as a civic ethos. Citizens act responsively if they manage to acknowledge the claims of minorities who have not succeeded in formulating their viewpoints in a publicly accessible language. Maclure conceives of this "ethical sensitivity" as a complimentary virtue that citizens need to cultivate along with the requirement to disclose their own claims in the public sphere.

If we take these two rejoinders from the outside of mainstream liberalism seriously, we manage to navigate between overly consensualist modes of public reason such as Rawls's and Habermas's, and overly

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[15] For another critique of the freestanding justification of justice, see: Steinberger, 2000.

[16] See for instance: Mouffe, 1993; Mouffe, 2000; Mouffe, 2005.

conflictual views that deny the feasibility and desirability of agreement in general.[17] We can then scrutinize the relationship between power and justification, which is pivotal for the idea of public reason as well as for the discussion of religion, in a new and instructive light. If the attempt to eradicate power from the justification of a political regime or a social arrangement is conceptually futile, it becomes mandatory to analyze the existing power structures in their current configuration so as to comprehend which justificatory moves can hopefully be successful and which justificatory moves will probably fail. In the case of religion in the public sphere, this means that abstract theorizing about the problem of postsecularism falls short of dealing with the issue in its full complexity. This argument does, of course, not imply that abstract reasoning *per se* is useless; it only hopes to give real practices more visibility in the agenda of normative political theory.[18]

IV. "Reasonable Accommodation" as an Example of *Modus Vivendi* Secularism

In this section of the paper, I argue that the ideas put forth by Ivison and Maclure can shed light on debates about the place of religion in the public sphere. Since both Rawls and Habermas base their discussion of religion on a simplistic depiction of social cooperation as *modus vivendi*, a different conception of *modus vivendi* will also be consequential for the discussion of religion. The case study through which I hope to corroborate this premise shall focus on the Bouchard/Taylor-commission and its final report. (Bouchard/Taylor, 2008a) The core ideas developed from the commission's hearings with Québec citizens exhibit an astonishing resemblance to the model I have sketched in the preceding section. My interpretive strategy is to outline some methodological steps that the commission has taken to reach its substantive positions on the issue of accommodating cultural differences.[19]

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[17] There are, however, other formulations of public reason that are closely related to the revised notion of *modus vivendi* I am pursuing here. I am particularly thinking of Henry Richardson's idea of a "deep compromise" as opposed to consensus, even if this proposal is based on a disavowal of "bare compromise" identified with *modus vivendi*. See: Richardson, 2002; for other moves in a similar direction see: Arnsperger/Picavet, 2004; Bohmann/Richardson, 2009.

[18] This understanding of normative political theory is strongly influenced by Joseph Carens's views on that matter. See: Carens, 2000; Carens, 2004.

[19] As a contrastive foil, consider the perfectly abstract case for religious accommodation provided in: Bou-Habib, 2006. The author submits that religious accommodation is a duty because religion must be considered as derivatively good for one's personal integrity. However, the article remains on such a high level of abstraction that the "grey area" (*Idem*: 124) of religious accommodation remains largely and purposefully unexplored. The problem with this approach seems to me that almost all harmonization measures in fact take place within this grey area. If political theory cannot guide the mapping of this realm, it lacks, on my account, distinctive value.

Let us begin with some background information: The Bouchard/Taylor commission on "Accommodation Practices Related to Cultural Differences" was established by the Québec government in 2007 to deal with tensions over cultural and religious differences in the Canadian province. A number of conflicts that had arisen from increasing cultural and religious diversity within Québec finally culminated in an "accommodation crisis". The commission organized several public consultations whose purpose was to make audible the voices of concerned citizens.[20] Other goals of the commission consisted of taking stock of those harmonization measures that had already been in place and of elaborating policy recommendations to the Québec government.

Harmonization measures comprise both the reasonable accommodation (i.e., the legal route) and the concerted adjustment (i.e., the citizen route) of cultural and religious differences. They aim at "ensuring respect for the right to equality, in particular in combating so-called indirect discrimination, which, following the strict application of an institutional standard, infringes an individual's right to equality" (Bouchard/Taylor, 2008b: 7). The conceptual groundwork for such harmonization measures can be found in a particular notion of equality that recognizes the importance of differential treatment in exceptional cases.[21] The authors maintain that the "duty of accommodation […] does not require that a regulation or a statute be abrogated but only that its discriminatory effects be mitigated" (*Idem*: 24). This means that the universal principle of equality can be upheld even if exceptions in the application of the law are granted under specific circumstances.

Further, Bouchard and Taylor state that promoting harmonization measures is not a limitless duty. There are guidelines as to what claims deserve differential treatment and what counts as reasonable. The argument advanced by Bouchard and Taylor is that societal norms at a given time provide a frame of reference for evaluating harmonization measures. The "common public culture" (*Idem*: 35) constitutes a starting point for balancing competing claims in the public sphere. Crucially, the report thus proceeds by drawing a descriptive list of Quebec's essential characteristics as a modern society, including its commitment to liberal democracy, to French as the official language, and to its integration policy.

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[20] For the results of these public consultations see: Bouchard/Taylor, 2008c.

[21] For a review of the various arguments for granting exceptions on the grounds of religious conduct see: Bedi, 2007.

Building on this representation of Quebec's common public culture, the report then attempts to formulate flexible rules for assessing harmonization measures: Undue hardship restricts harmonization measures if differential treatment would impose "disproportionate costs" on the accommodating institution or if it would lead to an "infringement of other people's rights" (*Idem*: 53). Another rule is inferred from "ethical reference points" without which solutions to problems of cultural diversity cannot be developed. At the heart of this civic ethos is a "culture of compromise" (*Idem*: 55) that allows for the resolution of stalemates between absolute opposites.

The next step illustrates the application of these guidelines in concrete situations. Bouchard and Taylor underline the context-sensitivity of any evaluation of harmonization measures: "By definition, any accommodation or adjustment request arises in a specific context, which must be taken into account in the decision-making process. Each request must thus be evaluated on a case-by-case basis". (*Idem*: 59) Yet, the report proposes substantial positions on a number of issues, such as gender equality, coeducation, classroom etiquette, and religious holidays. Here, the commission's approach is heavily indebted to a notion of "open secularism" (*Idem*: 45-47) that envisages the institutional balancing of the moral equality of persons on the one hand, and of the freedom of conscience and religion on the other hand, as its main goal. Hence, Bouchard and Taylor endorse both the separation of church and state, and the neutrality of the state with regard to particular worldviews, while admitting that the coexistence of these values can often create dilemmas that institutions need to resolve in a pragmatic vein. (Bouchard/Taylor, 2008a: 137)

For our purposes, however, the substantial positions as such are less revealing than the way in which they have been adopted. The report's structure makes it clear that the authors grapple with the controversy about religion in the public sphere in terms of a problem that calls for context-sensitive solutions. Context-sensitivity involves judgments that start from an interpretation of the essential characteristics of the "common public culture". Some of these characteristics are of such importance that they have historically become non-negotiable and therefore ineligible for accommodation requests. One example for such supreme values is gender equality. The report considers gender equality so ingrained in Québec's self-understanding as a liberal democracy that any request to deviate from it, for religious or other reasons, will most likely be

rejected. (Bouchard/Taylor, 2008b: 59) However, numerous other examples show that exceptions, established via the citizen or the legal route, are crucial for protecting individuals from indirect discrimination.[22]

The scope of harmonization measures is, thus, defined through a series of trade-offs between abstract principles and the constraints of concrete contexts. The result of these trade-offs is a society governed by a novel type of neutrality "understood not as 'bracketing' of conflicting religious or secular ideas, but as the 'search for a balancing', of an equilibrium of sorts between them. Neutrality by addition, rather than by subtraction: with the pluralistic pantheon as a model and not the bare walls of public buildings from which symbols of the faith are banished." (Ferrara, 2008: 191)

The Bouchard/Taylor report can, on my account, be read in informative contradistinction to the abstract way of thinking we have encountered in Rawls's and Habermas's work. This is not only the case because the report is full of policy-driven suggestions that are supposed to guide real practices. Rather, it is the methodology through which the authors uphold their substantial positions on controversial issues that lets us realize the advantages of a context-sensitive approach. Bouchard and Taylor move back and forth between principles and cases, without giving either priority. In doing so, they embrace the view that justifying harmonization measures is always conditioned by, and made possible through, the power structures inherent in society. The report, thus, reflects a dynamic and discursive *modus vivendi* as described by Ivison.

This brings me to a potential criticism of this paper. A Rawlsian or Habermasian objection to my presentation would aim at debunking the assertion that a contextual approach yields considerable benefits over more abstract versions of normative political theory. The objection would, further, try to show that the concept of public reason can serve useful functions despite of, or maybe due to, its obvious detachment from real politics. Ideal theory, it might be demurred, sets itself the ambitious task to guide behaviour under non-ideal conditions, whilst not forgetting about the limits of the practically possible. The dissenter might finally come up with a quote like this:

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[22] The most famous example discussed by Bouchard and Taylor concerns the decision of Canada's Supreme Court to allow Sikh children to wear the ceremonial dagger, the *kirpan*, in the classroom. See: Gereluk/Race, 2007.

> We ask in effect what a perfectly just, or nearly just, constitutional regime might be like, and whether it may come about and be made stable under the circumstances of justice […]. In this way, justice as fairness is realistically utopian: it probed the limits of the realistically practicable, that is, how far in our world […] a democratic regime can attain complete realization of its appropriate political values – democratic perfection, if you like. (Rawls, 2001: 13)

In response to this, let me summarize and sharpen my argument: I have suggested that any moralistic appeal to a "perfectly just" order, be it labelled ideal theory or realistic utopia, does not advance our understanding of the place of religion in the public sphere. Normative political theory needs to be sufficiently realist to come to terms with the fact that social arrangements are in some respect always similar to a *modus vivendi*. This does not imply that seeking agreement in deeply diverse societies is a hollow or unworkable enterprise. Indeed, in times of religiously coloured violence around the world, the promise of a peaceful future crucially depends on the creation of some sort of consensus concerning the recognition of cultural differences.

But this can only be achieved once the justification of a particular form of agreement is seen in conjunction with, and not in opposition to, power structures. Acknowledging the pervasiveness and ubiquity of power structures, hence, obliges us to explore the actual conditions under which appeals to fairness and reasonableness are made. Admittedly, this leaves political theory with a less ambitious task than the one envisioned by Rawls and Habermas. However, in paying close attention to real practices, political theory might follow its normative vocation in a more productive and original way.

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