

*Being a Progressive in Divinitia**

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In Liberalism's Religion, Cécile Laborde defends a theory of liberal secularism that is compatible with a minimal separation of religion and politics. According to her view, liberal state—she calls it Divinitia—that symbolically establishes the historic majority's religious doctrine and inspires some of its legislation on a conservative interpretation of such religious tradition can be legitimate. In this article I analyse how is it like to belong to the minority of liberal progressive citizens in a country like Divinitia. I argue that their political activism will be defeated by Divinitia's status quo on at least four different grounds. First, in virtue of being a minority, liberal progressive citizens would rarely obtain democratic victories; second, the conservative majority could rightly argue that they do not have reasons to compromise their views in order to accommodate progressives'; third, the conservative majority can rightly complain that counter-majoritarian initiatives advanced by progressives are unfair; and four, Divinitia's public reason reproduces an asymmetry, for religiously inspired reasons can be accessible and therefore justificatory in politics, while the reasons progressives would desire to present in public deliberation would not be accessible to their conservative fellow citizens.

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In June 2018, the lower house of Argentinian congress approved a bill proposing to legalize abortion in the first fourteen weeks of pregnancy. The bill was passed by 129 to 125 votes and set for discussion in the upper house on August 8. Massive demonstrations of support took place, attiring international attention and praise. On August 8, Amnesty International published in *The New York Times* a full-page message to

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Argentinian congress: “The World is Watching.” The women’s movement of several Latin American countries organized mobilizations of support to their Argentinian allies.

The bill was also strongly resisted, with the Catholic Church in the frontline of opposition. British newspaper *The Guardian* reported that Pope Francis I—or Jorge Mario Bergoglio, former archbishop of Argentina’s capital, Buenos Aires—personally requested anti-abortion senators to lobby against the bill. Under Francis I, the Catholic Church has not modified its complete opposition to abortion. The Pope’s words on it are sufficiently telling, as *The Guardian* reports:

speaking at a meeting of an Italian family association, [the Pope] said: “Last century, the whole world was scandalised by what the Nazis did to purify the race. Today, we do the same thing but with white gloves.”¹

Priests, cardinals, and bishops actively opposed the bill in their sermons. While Congress was deliberating, a “mass for life” took place at the cathedral of Buenos Aires. The upper house voted 38 against the bill to 31 in favour of it. On August 9, 2018, newspapers in Argentina and elsewhere reported the defeat of the bill as a victory of the Catholic Church.

In Argentina, a largely Catholic country, abortion is allowed only in cases of rape and when the mother’s health is in danger. Although some interpreted the result as a victory—after all, it won a majority in the lower house—there is discontent among progressive Argentinian citizens that their moral views on this particular issue cannot be decisive in political decisions. Once again, the Catholic Church showed its political muscle in Latin America, a region that counts with nearly 40% of the world’s Catholic population and which, for the first time, is the birthplace of the Pope. Progressives in Argentina complain that the Catholic Church has too much influence and power in their country, which to their eyes is a contradiction to Argentina’s public commitment to protecting liberal and democratic principles, which includes the institutional separation of church and state.

Are progressive citizens of Argentina justified in feeling politically frustrated? Is it legitimate that a historically hegemonic conservative religious tradition inspires legislation and shapes how the public sphere looks like? Cécile Laborde’s defence of ‘minimal secularism’ in *Liberalism’s Religion* (2017) offers important insights for addressing these sort of questions, as she argues that liberal conceptions of justice—to which the Argentinian state claims to be committed—are compatible with legislations that are inspired by conservative interpretations of religious doctrines. Contrary to the feeling of many Argentinian women demonstrating on August 8, the ratified restrictive law on abortion might be legitimate within a liberal state (and therefore not blatantly unjust), even if it is the case that it is inspired by a conservative interpretation of a religious doctrine.

¹ Sherwood, Harriet, “Argentina abortion defeat shows enduring power of the Catholic Church,” *The Guardian*, August 9, 2018, <https://www.theguardian.com/world/2018/aug/09/argentina-abortion-defeat-shows-enduring-power-of-catholic-church>

Progressives, both in the academic world and in society's public sphere, might be tempted to resist Laborde's position. After all, they believe their political views, although susceptible to reasonable disagreement, promote justice. According to them, their political opponents hold views that *do not* promote justice. Progressives are, therefore, in an unstable position: a common criticism in the informal public sphere directed against liberal progressive citizens is that they claim to be proud defenders of toleration and of the promotion and protection of diversity; but that when faced to practices, doctrines, attitudes, or beliefs that depart from their liberal progressive convictions, they abandon their commitments to toleration and diversity. Progressive Argentinians, the criticism could go, are committed to toleration and diversity only if abortion is not criminalized, otherwise they would not consider the restrictive legislation as just and those who defend it as reasonable. In political philosophy the charge also appears. Liberal egalitarians are criticized for having 'a tendency to frame their preferred progressive conception of justice as the only acceptable conception of justice, and to dismiss dissenters as unreasonable' (Laborde 2017: 158).²

Laborde argues that the minimal requirements of secularism in a liberal state allow for a wider range of relationships between religion and politics than liberals, or progressives,³ usually are willing to accept. In particular, she argues that religiously conservative states can be legitimate according to liberal standards of justice. Consequently, she argues that progressives should be willing to accept that, in addition to their preferred ideal worlds of progressive legislation, conservative countries that establish religion and approve legislation in accordance with a conservative interpretation of such religion can also be legitimate.

Laborde illustrates the case for a legitimate religiously conservative state by describing the (fictitious) country of *Divinitia*. This is a state that symbolically recognizes religion; finds inspiration in a religious tradition in the justification of some of its laws, restricts abortion, euthanasia, and 'other practices in bioethics; provides for religious education within the school system; grants rights of collective autonomy to religious groups in the name of freedom of association; and recognizes 'numerous exceptions and accommodations for religiously motivated behaviour' (Laborde 2017: 151–52). The legitimacy of *Divinitia* depends on whether the institutional relationship between the state and religion meets the three criteria of what Laborde calls 'minimal secularism':

- a) 'when a [religious] reason is not generally accessible, it should not be appealed to by state officials to justify state coercion;'
- b) 'when a social identity [for instance, a religious identity] is a marker of vulnerability and domination, it should not be symbolically endorsed and promoted by the state; and'
- c) 'when a practice relates to a comprehensive ethics, it should not be coercively enforced on individuals' (Laborde 2017: 150).

² Here Laborde is paraphrasing Gerald Gaus (2012).

³ I will henceforth use the terms 'liberals' and 'progressives' indistinctively.

The legitimacy of *Divinitia* situates its progressive citizens in an unfortunate position. They *subjectively* consider that certain laws and institutional arrangements of their country are unjust, yet they are required to recognize that they are *objectively* legitimate. Subjective injustice refers to the reasoned judgment of the citizen that x is unjust. In contrast, y is legitimate in virtue of its being justified according to principles are reasonable for all citizens to endorse (in this case, according to conditions a , b , and c of minimal secularism). Progressive citizens might still rightly complain that their views are not adequately taken into consideration and therefore that, even if legislation meets conditions a , b , and c , they have reasons not to accept the legislation of *Divinitia*. Laborde acknowledges this problem, and for this reason adds a fourth condition d for the legitimacy of *Divinitia*. It is a procedural one; it sets a standard of democratic fairness that consists in the inclusion of minorities ‘within fair and inclusive process of democratic deliberation’ (Laborde 2017: 156). If these conditions are met, a progressive citizen of *Divinitia* would have to put up to her bad luck of being born in a country she finds unjust—and, in cases like the Argentinian legislation about abortion, *profoundly* unjust.

The purpose of this article is to investigate what is it like to be a progressive citizen in *Divinitia*. I am interested in analysing how burdensome would it be for a progressive to live in a country that finds inspiration for some of its laws in conservative interpretations of religion. More specifically, I am interested in analysing the *prima facie* validity of transformative political activism that results from the subjective conviction of injustice. I argue that transformative political activism by progressive citizens is not *prima facie* valid once the legitimacy of *Divinitia* is accepted. In other words, the views progressives would wish to advance as reactions to their rejection of religious conservatism are rightly defeated by the conservative justifications of the laws of *Divinitia*. If it is conceded that *Divinitia* is sufficiently conservative as to trigger progressive citizens to engage in politics, then Laborde’s account of minimal secularism reproduces a *status quo* bias. The reason for this is that conditions upon which it would be adequate for a progressive to seek reform in the religiously-conservative tenets of *Divinitia*’s public sphere are very limited.

The conclusion that can be drawn from this argument is that the liberalism defended by Laborde is better suited to accommodate moderate reformism rather than progressive’s radical counter-majoritarian political activism. This is not intended to be a criticism of Laborde’s general account of liberalism. It is only an attempt to make explicit that the underlying understanding of liberalism that Laborde is presenting is in relative tension with what might be some core elements in the way some progressive citizens and movements—perhaps including some variants of the feminist movement—consider their main political motivations.

1. *On how conservative is Divinitia*

Although Laborde claims that a country that finds inspiration for some of its legislation in a conservative interpretation of a religious doctrine can be legitimate according to a standard conception of justice, she does not make explicit references as to *how* conservative such legislation can be. She says, for instance, that in *Divinitia* ‘there are restrictive laws about abortion’ (Laborde 2017: 151), yet she does not specify how restrictive these laws can be. She also suggests that the establishment of the Anglican Church in Great Britain could be understood as conferring Britain some of the features of *Divinitia*, yet she stresses that British legislation about abortion and same-sex marriage is far from being conservative—with the exception of Northern Ireland (Laborde 2017: 153). How conservative can *Divinitia* be?

Religious conservatism in many western democracies is salient in issues that are directly and indirectly related to regulations of sexuality and sexual behaviour. Thus, a conservative interpretation of the religious doctrine of the majority might inspire legislation on abortion, family law, education about sexuality in elementary school, and the definition of the family as heteronomous and monogamous. In recent years, governmental initiatives of mandatory HPV vaccination received vigorous opposition by both vaccination sceptics and religiously conservative groups, the latter most probably because of the fact that HPV is a sexually transmitted disease.⁴ What are the limits that these legislations must observe in *Divinitia*? An immediate constraint to *Divinitia*’s legislation is that its basic structure is regulated by a liberal conception of justice. This means that it is committed to protecting the core set of basic liberal rights such as freedom of conscience, freedom of association, equality before the law, rule of law and equal political rights. *Divinitia* is conservative, but within the limits of liberalism. What are these? A couple of examples can help to illustrate.

Opposition to same-sex marriage is one of the typical positions that conservative religions uphold in western democracies. Can *Divinitia* have a conservative religiously inspired regulation on marriage? Considering that *Divinitia* endorses a liberal conception of justice, its regulations on marriage cannot go against the idea of citizens as free and equal. For instance, there would not be a ban on homosexual relationships, even if some conservative interpretations of the Bible would suggest otherwise. If what is at stake is free and equal citizenship, conservative religion cannot inform legislation.

Yet not all of conservative religion on issues of same sex legislation interferes with free and equal citizenship. Legislation on same sex marriage can be taken to the symbolic realm. Some religiously inspired opponents to state’s recognition of same-sex marriage argue that ‘mar-

⁴ Grimes, David Robert, “We know it’s effective. So why is there opposition to the HPV vaccine?”, *The Guardian*, January 11, 2016, <https://www.theguardian.com/science/blog/2016/jan/11/why-is-there-opposition-hpv-vaccine-cervical-cancer>

riage' is by definition the union of a man and a woman, and that calling 'marriage' any other form of union (a same sex couple, for instance) is a conceptual impossibility. This form of opposing to same sex marriage can be accompanied with the proposal to recognize civil partnership for same sex couples. Thus, same sex unions would be recognized by the state, yet they should not be called—and registered—as marriages. In practice, a same sex union would receive the same rights than a marriage receives, yet they would be named differently.⁵ The inequality that is institutionalized is only symbolic. Can this be a feature of *Divinitia*?

One immediate response would point that this is not a mere *symbolic* unequal recognition, for it entails discriminatory behaviour against those who are in 'civil unions.' Non-recognition of same sex (amorous) relationships as marriage creates an unnecessary instance in which LGBTI members are obliged to disclose a source of discrimination against them. This can happen, for instance, at the moment of filling out registration forms that ask about marital status. This does not affect all equally, but creates situations in which unwanted release of information becomes mandatory and disadvantageous for members of a group that is already in condition of vulnerability. This argument against unequal symbolic recognition shows that the inequality at stake is not entirely symbolic, for it triggers discriminatory behaviour. Therefore, its legitimacy might be contested in virtue of making more salient vulnerable social identities (condition *b* of minimal secularism).

It is possible to think of a case in which this discriminatory behaviour is not triggered and therefore unequal symbolic recognition remains entirely symbolic. Let's assume that society in *Divinitia* does not discriminate against homosexuals, yet it still defends the unequal symbolic recognition—in virtue of a conservative interpretation of a religious doctrine. Under this assumption, unequal recognition remains entirely symbolic as same sex unions and marriage unions would be granted equal rights and no social discrimination would occur against individuals who constitute the former kind of union.⁶ Following the criteria of minimal secularism, in this case unequal symbolic recognition is legitimate if the justification provided for this unequal symbolic recognition is advanced in accessible public reasons (for instance, on the etymology of the word 'marriage,' on its traditional and historic meaning); if it does not deepen social vulnerabilities (that is, that it does not harm LGBTI members in any sense similar to the one described above); if it does not entail that all citizens must accept the truth of a religious doctrine (the regulation is inspired by the religious doctrine, yet it does not impose it); and if fair democratic procedures are ob-

⁵ Notice that, in this example, civil unions would recognize the right to adopt children to same sex couples. Religiously conservatives are usually against such a recognition.

⁶ For a critical analysis of whether purely religious reasons for opposing same sex marriage can be accepted by Laborde's conception of public reason, see (Bardon 2018).

served in the process of its approval. Under these conditions, this form of differentiated recognition can be legitimate. Since disagreement is a permanent condition of democratic regimes, it is normal to assume that there will be reasonable citizens that would deeply disagree with regulation of this sort. They might indeed find it offensive and unjust, and they might have good reasons to support their beliefs. These citizens must however recognize the legitimacy of the regulation and accept its authoritative status.

The second case is abortion. In *Divinitia*, Laborde says, there will be restrictive laws about it. How restrictive these laws can be? This is a harder question to address because disagreements about the permissibility of abortion are often described as an illustration of a debate that leads to reasonable disagreements. In a reasonable disagreement, both parties are epistemically justified in their beliefs, even if these lead to opposite conclusions. Reasonable disagreements are originated by cultural, epistemic, and idiosyncratic reasons—among others. They are particularly challenging in politics because of the urgent need to make decisions, and in cases of reasonable disagreements some sacrifice needs to be done. If a particular issue is a case of reasonable disagreement, and if conditions *a*, *b*, and *c*, are observed, then it seems that the legitimacy of the regulation to be approved would depend on the democratic fairness of the decision. Here democratic majorities are advantaged and therefore a conservative or restrictive legislation—in the case of abortion—would be approved. But how conservative—or restrictive—this legislation can be? What are the limits set by liberal justice in this specific issue?

A typical conservative (and religiously conservative) argument against abortion appeals to the value of protecting (innocent) human lives from being killed. As such, this is a reason that any reasonable person is expected to accept. The source of the disagreement in debates about abortion lies in the difficulty to determine whether abortion involves ‘killing innocent human lives.’ Here the debate turns into a question about the beginning of human life, and on this issue there is opacity: at some point in pregnancy the foetus turns into a human being. This opacity makes the conservative argument a potentially valid one—although not necessarily an unbeatable one. As long as this specific question is not answered beyond any reasonable doubt, it is impossible to reject the conservative’s view as unreasonable.

Although there is opacity, it is possible to identify some limits to the degree of opposition to abortion by the conservative, which means that various of the most radical religiously inspired views on abortion would not be permissible in *Divinitia*. As in the same sex marriage debate, liberal justice sets limits. First, concern for human life might favour the life of the mother when her life is in serious risk as a consequence of the pregnancy. Second, if it is established that the foetus suffers from severe malformations that make its life outside of the uterus non-

viable, then it might be unreasonable to oppose abortion. Third, bans on emergency contraceptives would be ruled out. Reasonable disagreement about the beginning of human life is not about whether human life starts right away after conception—or within the first five days, which is the usual timeframe of efficacy of emergency contraceptives. Here the disagreement is about where to draw the line that indicates the beginning of a *human* life. Today, however, there is consensus that this does not happen right after conception—the main exception among the most vocal actors in this debate being the Catholic Church, which, as a matter of fact, did not embrace this view for the most part of its history—,⁷ but somewhere after the first trimester, which explains why much debate about legislation on decriminalization of abortion usually sets a limit that avoids late abortions. This indicates that emergency contraceptives would not be criminalized in *Divinitia*.⁸ Against very strong convictions by feminists and other progressive citizens, restrictive legislation on abortion based on the indeterminateness about the beginning of human life would, in principle, include the restriction on abortions in cases of pregnancies resulting from sexual violence. Liberal justice, however, *might* require exceptions to this restriction. For instance, in cases in which the victim of sexual violence is underage. Other values protecting the inviolability of human dignity might override the grounds leading to the prohibition in cases of rape, yet it might be the case that the reasons leading *Divinitia* to legitimately approve restrictive legislation on abortion apply to cases of rape as well.

Divinitia's legitimacy in enacting restrictive legislation about abortion, therefore, does not imply that it could be banned altogether. It is most likely that restrictive legislation on abortion would refer only to

⁷ Dworkin argues that in public debate people do not really define their position on abortion in relation to the question of the beginning of life. Instead, he argues, what concerns people the most is an idea about the sacredness of life. In the case of the official view of the Catholic Church, which opposes any form of abortion on the grounds that human life starts at conception, he says that average Catholics do not believe in such views. Many conservative Catholics accept that abortion should be permitted *in some cases*. According to Dworkin, this shows that they consider that, although human life is very important (sacred), there are overriding reasons that lead them to accept it could be sacrificed. Therefore, their opposition cannot be that abortion should not be permitted because it involves the sacrifice of a human life (Dworkin 2011: 39).

⁸ According to the International Consortium for Emergency Contraception, 147 countries have at least one emergency contraception (EC) pill brand registered, 95 of which allow access to EC without prescription, which means free distribution of EC. 60 countries are registered as including EC in their essential medicine lists. 47 countries have no emergency contraceptive pill brands registered, which amounts to a complete restrictive policy. In Argentina, EC is not included in the Essential Medicines List (as of 2005). Access to EC requires medical prescription, the distribution of which is regulated within post-rape care guidelines. Source: International Consortium for Emergency Contraception <http://www.cecinfo.org/country-by-country-information/status-availability-database/> (last accessed September 3, 2018).

cases that relate to the voluntary termination of unwanted (and, controversially, probably also forced) and advanced pregnancies of adult women, when their lives are not under risk. If Argentina were a well ordered society, its current legislation on abortion would be legitimate in spite of its recent multitudinous demonstrations in favour of decriminalization by the feminist movement (and a great number of its supporters that might not describe themselves as feminists). The feminist movement, however, happens to be in the minority and therefore loses to conservatives. In the next section I investigate whether counter-majoritarian political strategies—the only ones that might seem feasible for a political minority such as the feminist movement—are *prima facie* valid in a country like *Divinitia*.

2. Progressives and the status quo in Divinitia

In this section I show that minimal secularism reproduces a *status quo* bias. By this I mean that it justifies the preservation of the *status quo* by making it harder for reformers to advance their transformative projects. I argue that if it is accepted that *Divinitia* can be legitimately conservative, then the conservative majority is morally entitled to preserve the conservative tenets of the public sphere and legislation of its country. Although in *Divinitia* progressive citizens can access procedural democratic mechanisms to transform their society (this is condition *d* of minimal secularism), I claim that they will face a valid opposition grounded on the plausible view that they should respect the legitimate *status quo* of their society.

Divinitia adequately justifies its laws, is inclusive, does not impose a comprehensive ethics, and observes inclusive processes of democratic deliberation. Importantly, progressive citizens of *Divinitia* will consider that some key aspects of the legislation of their country are profoundly unjust. However, given that the country is sufficiently democratic, they have to accept their legitimacy and obey the law in spite of their discontent. Notice that this is not a minor requirement, for it means to put up with legislation that they consider deeply unjust. Although progressive citizens can be politically engaged in order to promote social, political, and legislative change, I will now argue that they will have to struggle with a *status quo* that rightly justifies itself.

Before presenting the *status quo* bias argument, it is important to address a potential objection. It could be argued that the requirement to put up with legislation one disagrees with is a normal feature of a healthy democracy. Indeed, that accepting such kind of requirements is what makes democracy possible. It is not my interest to contest this fundamental feature of democracy. I think, however, that the case at hand in *Divinitia* is different. The population I am referring to as progressives are those who do not embrace the conservative interpretation of the religion that inspires part of the legislation—particularly the one related to the family, sexuality, and reproduction—of *Divinitia*. The

requirement is therefore not only to accept the fact that it is possible to lose in democratic contestation, but that one is losing to a political view that is inspired by a conservative interpretation of the religion embraced by the majority. In other words, to accept that one is being defeated against a majority that promotes its conception of the world in politics. Although restrictive legislation on abortion or on same sex marriage is justified in terms that it respects minimal secularism, it remains true that such legislation is approved *because* it does not contradict the conservative interpretation of the religion embraced by the majority. The requirement is not therefore merely to accept democratic outcomes, but to accept that legislation in matters one considers extremely important is decided in relation to an interpretation of a religious doctrine one deeply disagrees with.⁹ To this requirement it must be added that progressive citizens would be required to accept that their political activism, although legitimate, can be defeated by the conservatives' will to preserve the *status quo*.

The *status quo bias* argument can be illustrated by appealing to David Miller's argument of 'historic precedence.' According to him, the territorial historic majority of a country is entitled to privilege in the public sphere and in the legislation to its cultural and religious identity. Discussing the referendum that proposed to ban the building of minarets in Switzerland, Miller defends the claim that cultural majorities are entitled to ensure that the appearance of public space reflects its own cultural values. As he puts it, 'if such values reflect a Christian heritage, then a Christian public sphere and legislation might remain hegemonic' (Miller 2016: 448). According to him, a people that transform and occupy a territory according to its needs creates a value the enjoyment to which it is entitled to. Part of this value is symbolic, 'as the territory comes to bear the imprint of the national culture' (Miller 2016: 448). Members of the cultural majority understand their historic identity 'partly through their direct experience of the environment they and their predecessors have created' (Miller 2016: 448). The value created by this historic process, Miller concludes, is 'the value of national identity' (Miller 2016: 448). The entitlement to preserve this historically built national identity held by the indigenous majority is what can justify privileging the cultural identity of the majority. Restrictions on cultural or religious expressions of immigrant minorities might be justified by appeals to the entitlement of preservation and privilege of the majority's cultural identity. In the case of the Swiss referendum, this could mean a ban on the building of Islamic minarets for the sake of protecting (Christian) national identity.¹⁰

⁹ What is at stake here is that it is religion what inspires legislation. I am assuming that, whatever its further meaning, in western cases of *Divinitia* (i.e. Argentina), religion concerns existential questions. This understanding of religion is not unusual among political philosophers (Nussbaum 2009: 168; Maclure and Taylor 2011: 12–13).

¹⁰ It is important to annotate that Miller's conclusion does not vindicate the

Minimal secularism provides a straightforward answer to Miller's argument—if used to justify the Swiss ban on the building of minarets in Muslim mosques (Laborde 2017: 138–39). If the national identity of the country is defined in religious terms (as it is the case in the Swiss ban), and if religious identities are markers of vulnerability and domination (as it is also the case in the Swiss case), then privileging a Christian heritage in the name of national identity—even if this is done by attributing to Christianity a cultural, not religious, nature—is not legitimate according to the liberal standards of minimal secularism. The ban is illegitimate because it creates first-class and second-class categories in the definition of Swiss national identity. This categorization is generated by the facts that national identity is defined in terms of religious heritage and that grouping individuals alongside categories of religion is a form of reinforcing social vulnerability of some individuals—that is, the Muslim Swiss minority.¹¹

It is important to notice that the objection to Miller's argument shows that the ban on minarets is illegitimate in the specific case of the Swiss referendum. It does not imply that a ban of such kind will always be illegitimate. If context shows that conditions *a*, *b*, *c* and *d* are met with the ban, then minimal secularism would allow it. If conditions are met, minimal secularism can be compatible with bans on Muslim minarets. Minimal secularism also allows for a majority to privilege its religious or cultural heritage. This is what happens in *Divinitia*. In other words, not all privileging of a conservative, traditional, and religiously inspired culture is illegitimate. Similarly, not all banning of certain religious expressions is illegitimate—although the mere discussion on a ban of this sort might already be an indicator that, for instance, religion is a marker of vulnerable social identities. In a context where this is the case, what can a progressive do in order to transform her society in such a way that it adjusts its institutions and legislation in accordance to what she believes is just?

It is possible to identify two alternatives open to progressive citizens. The first one is to engage in political activism participating in democratic politics. By doing so progressive citizens might eventually succeed in changing what they think needs to be changed. This, however, is a frustrating task, because progressives are a democratic mi-

Swiss referendum entirely. His argument is that it is permissible that a historical cultural majority privileges its cultural heritage by restricting cultural expressions of the cultures of immigrant minorities. This means that restrictions on the building of minarets in Switzerland are permissible. He, however, advances two criticisms to the Swiss referendum: its outcome should not have been entrenched in the constitution and it should have been held at the canton-level and not at the national level (Miller 2016: 452–54).

¹¹ Religious identities are not always markers of social vulnerability. In order to show how this is so, Laborde refers to the cases of Senegal and Madagascar (Laborde 2017: 142). One might wonder whether these are the two exceptions that confirm the rule, thereby making minimal secularism's criterium on vulnerable identities extremely demanding.

nority which therefore might not be able to obtain enough support to transform legislation or institutional arrangements. Progressive citizens can no doubt benefit by the democratic fairness that is in place in a country like *Divinitia*. This ensures political rights and the possibility to actually form political movements that could aspire to democratic influence when the time comes.

A second alternative is to appeal to strategically counter-majoritarian political engagement (for instance, judicial activism). This form of democratic activism consists of addressing the judicial branch of the state in order to press it to promote legislative changes. This counter-majoritarian political engagement has proved efficacious in legislation transformation in several countries; for instance, activism for decriminalization of abortion has taken this strategy in some countries where Catholicism is the historic majority religion.¹² Although this is probably an attractive and promising strategy in terms of efficacy, there are two reasons that challenge it. According to the first, the conservative majority does not have reasons to compromise the *status quo*. According to the second, the conservative majority would be right in arguing that any change would be an unfair imposition upon them. Let's consider each one separately.

Conservatives in *Divinitia* could rightly reject progressives' unreasonable views. For instance, if they were attempting to impose atheism as the state's doctrine. This is not, however, the kind of political initiative I am attributing to progressives of *Divinitia*. I am assuming that they are advancing initiatives that are legitimate according to the framework given by minimal secularism. These are initiatives that could easily be approved in *Divinitia's* neighbour *Secularia*.¹³ In other words, they are legitimate views that, if held by a democratic majority, should be accepted—conservative citizens of *Secularia* would have a duty to accept them even if they are subjectively unjust. However, in *Divinitia* the majority accepts conservative legislation and therefore opposes to the initiatives progressive citizens try to advance. This is not capricious opposition grounded on political sectarianism. Conservatives in *Divinitia*, that is the majority, (rightly) claim that conservative legislation is just and that it has been legitimately approved. They will rightly claim that they do not have reasons to be open to modify the law, because the law respects the three criteria of minimal secularism and they have observed democratic fairness in decision-making processes. Although they can recognize the political reasonableness of the initiatives their fellow progressive citizens advance, they think of them

¹² For instance, in Colombia, where abortion is decriminalized only if pregnancy is the outcome of rape, the life of the new-born is at serious risk due to serious foetal malformations, and the life of the woman is in serious risk due to pregnancy-related complications.

¹³ *Secularia* is the mirror country of *Divinitia*, that is, it is a fictional legitimate country the legislation and public sphere of which are largely inspired by secular and progressive ideals (Laborde 2017: 151).

as unjust and ultimately unacceptable for their society. The conservative majority, therefore, would be right in claiming they do not have any reason to incorporate the views of the progressive minority.

Additionally, conservatives of *Divinitia* could also complain that it would be unfair against them if they were forced to live under a political regime that does not reflect their conservative views in the public sphere. The conservative majority has collectively shaped the public sphere of its society in such a way that, first, reflects their beliefs and traditions and, second, succeeds in giving due respect to its minorities. Hence it would be unfair to suddenly change the public sphere in such a way that does not reflect the beliefs and practices of the conservative majority and that would consider the new legislation as (subjectively) unjust—yet probably (objectively) legitimate. Progressive citizens of *Divinitia* are therefore fated to accept their bad luck of being in *Divinitia* and not in their preferred *Secularia*.

A consequence of the *status quo* bias is that some famous progressive counter-majoritarian victories lose legitimacy precisely in virtue of their counter-majoritarian nature. *Roe vs. Wade*—the 1973 United States' Supreme Court decision that recognized women's right to decide to have an abortion during the first trimester of pregnancy—has been described as having introduced the recognition of a right on a very contested issue that, back in the 70s, might not have enjoyed widespread popular support. The decision of the Court was introduced against a conservative—and probably legitimate—legislation and, most likely, against the conservative social ethos of the population. Even if it is accepted that the decision of the Court advances a legitimate goal, it is also true that it disrupted the legitimate expectation of the conservative majority to live in a country that reflects its social ethos.

Counter-majoritarian decisions are sometimes criticised for being counterproductive. While they might be well intentioned and social justice promoters, the criticism goes, their abruptness generates division and polarization that contributes to perpetuating conflict rather than overcoming it. In other words, in the debate about decriminalization of abortion in the U.S., they suggest that had the Court handled the abortion issue on a step by step basis, abortion would not be such a salient social cleavage in contemporary politics, for it would have been already overcome. Following this line of thought, the adequate form of political activism would be to pursue gradual reforms instead of counter-majoritarian measures. To this *prudential* argument in favour of moderate progressive reformism and against progressive radical counter-majoritarian political engagement it is now possible to add a *principled* one, which defends that, in *Divinitia*, counter majoritarian radical political engagement is likely to be defensible and legitimately so.

An alternative for the political engagement of the progressive citizen of *Divinitia* could be political resistance. By it I mean that progressives' political engagement could not be aimed at transforming legis-

lation but at impeding it from being approved. Given that they are a minority, this form of political engagement might likely be bound to fail. A possibility that is open to progressives in *Divinitia* is to function as watchdogs and control the legitimacy of legislation that is inspired by conservative interpretations of religious doctrines. This strategy is fairly common in the public sphere when public debates turn to abortion or same sex marriage. Progressives usually claim that conservative views are religiously inspired and that the separation of church and state proclaimed in liberal democracies impedes them.

The interpretation that Laborde offers about public reason shows that progressives are wrong in thinking that no religious inspired argument can function adequately as public justification. She maintains that public reasons should be accessible. A reason is accessible when it ‘can be understood and assessed, but need not be endorsed according to common standards’ (Laborde 2017: 120). If ‘actual (not idealized) publics’ find a reason accessible, then such reason is an adequate reason for public justification. Public reason, then, provides the ‘conditions of possibility of public debate’ (Laborde 2017: 120–21) in so far as members of the public are able to understand each other even if they disagree in the substantive content each one advances. Laborde says that her theory of public reason is empirical (Laborde 2017: 128), which means that its determination of the set of public reasons of a particular society, for instance *Divinitia*, would depend upon *Divinitia’s* specific characteristics: how much of an open society *Divinitia* is will highly influence its set of public reasons. As she puts it ‘in pervasively religious communities, religious reasons *strictu sensu* [...] may well provide the only currency of public reason.’ This is so because religious reasons ‘provide a common currency of argument and debate’ (Laborde 2017: 128).

Laborde is right in pointing out that it is highly unlikely that any society has such degree of homogeneity—if that is the case, it might be because of the ‘oppressive use of political power,’ as Rawls famously put it (Rawls 2005: 37). The possibility that a religious doctrine is the currency of public reason shows, however, that argument and public debate in *Divinitia* can be highly influenced by *Divinitia’s* shared public culture. This culture would be inspired by a conservative interpretation of the historic religious doctrine, the key facets of which would be well known and understood by citizens of *Divinitia*. Public education would make sure that everybody gets some understanding of *Divinitia’s* major religious tradition; public holidays will commemorate important events for such religion; legislation will be inspired by religion, and the public sphere will give prominence to the historic religious tradition. In a context like this, it will be only natural that a set of religious reasons will be accessible to any citizen of *Divinitia*, progressive or not.

How does this conception of public reason impact progressives’ political resistance? Given that they have been socialized in *Divinitia* and its institutions, progressive citizens would not be able to claim that

they do not understand, or that they cannot engage with, justifications that appeal to conservative interpretations of religious doctrines, or, for that matter, that include religious references in their justifications. For them, it would not be true that they cannot access such reasons, for they have been raised in a culture which makes sure certain reasons are accessible to anyone. Progressive citizens are dissenters in their society in spite of the fact that conservative religiously inspired reasons are accessible to them.

The kind of dissent progressive citizens espouse originated in the fact that they remain unconvinced by the moral appeal of the reasons (accessible to them) that support part of the legislation of *Divinitia*. Here they face a problem, because it is *their* reasons which will not be adequately socialized in *Divinitia's* public culture. The lack of socialization of their reasons makes them inaccessible to their fellow non-progressive citizens, who might not be able to understand the appeal of feminist-inspired views on why abortion should not be criminalized; or why queer theory-inspired views on gender and sexuality should be taken into consideration the moment legislation on the institution of the family is approved—assuming, of course, that these are the sources of inspiration of the views supporting both abortion and reform in regulations about the institution of the family.

I have argued that the *status quo bias* that *Divinitia* reproduces affects progressive citizens in four different ways. First, the likelihood of gaining democratic majorities is reduced and therefore their political claims will be systematically outvoted. Second, minimal secularism entails that the religious and cultural majority of *Divinitia* can be entitled to preserve its national culture, which implies that they do not have reasons to compromise their views in order to accommodate the political claims of the minority of citizens that constitute the progressive side. Third, from the fact that progressives are constantly outvoted it does not follow that conservatives have a *prima facie* reason to attend their claims. A requirement to do so would be unfair. Fourth, progressive citizens will have limited tools to enter in public deliberation because their fellow citizens might not be able to understand and assess the reasons they would like to advance in order to support their political claims. Being a progressive in *Divinitia* entails the acceptance of a very limited space for hope in the possibility of political, let alone radical, transformation.

3. Conclusion

The purpose of this article has been to explore how is it like to be a progressive in *Divinitia*. Contrary to what it might be initially thought, liberal justice sets clear limits to what can be approved as legislation in *Divinitia*. Legislation about abortion might be determined in terms of the (religiously inspired) question about the beginning of life. However, the current official doctrine of the Catholic Church—that uncon-

ditioned protection of human life, which begins at the moment of conception, should be guaranteed by the state—would not be legitimately approved. Legislation about same-sex marriage might also be defined in relation to the defence of traditional, religiously inspired conceptions of the family. However, liberal justice requires that members of LGBTI population enjoy of the same package of rights that any other citizen enjoys. Again, some of the most conservative oppositions to same sex marriage and relationships would not be accepted in conservative yet minimally liberal *Divinitia*. Although these limitations could be seen as creating a tolerable political environment for *Divinitia's* progressive citizens, in the second part of this article I have shown that minimal secularism is biased towards the preservation of the *status quo*. I argued that the legitimacy of *Divinitia* means that progressive political advocacy loses currency and legitimacy. The political strategies open to progressive citizens for transforming what they think is unacceptable religious conservatism are likely defeated by arguments that defend the *status quo*. Against counter-majoritarian strategies, the conservative majority can reply, first, that they do not have any reason to compromise the views that inform how legislation is shaped, and second, that a requirement to compromise would be unfair. Against what I called progressives' political resistance in public deliberation, the conservative majority can reply that there is an asymmetry between the adequacy of the reasons they offer to progressive citizens in order to justify legislation that is inspired by a conservative interpretation of a religious doctrine, and the adequacy of the reasons progressive citizens offer in order to transform such legislation. In *Divinitia*, the former are likely to be accessible to all citizens, while the latter are not.

As mentioned at the beginning of the article, I have not intended to advance a criticism to Laborde's conception of minimal secularism. I have tried to specify the consequences of accepting the legitimacy of a country like *Divinitia*. Although *Divinitia* would be entitled to inspire its legislation on a conservative interpretation of its hegemonic religious tradition, its institutions will be constrained by a conception of justice that is distinctively liberal. In this article I have made apparent that the liberalism of this conception of justice is of the type that prefers moderation in political activism over radical political activism advocated by some contemporary social movements.

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