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**GLOBAL PUBLIC REASON: AN INTERNAL
ACCOUNT AND MULTIPLE JUSTIFICATORY
STRATEGIES**

Ph.D. Thesis

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Introduction

Global public reason

The main theme of this thesis is to conceptualize a conception of global public reason. Global public reason is, here, understood as the idea that does not belong to a particular political system, namely to liberal democratic systems. It is conceived, rather, in terms of the conception of politics itself, as belonging to political practice. It is perceived as the reason and reasoning of individuals, societies and nonstate actors, who discourse a variety of political and moral issues. Global public reason can also be characterized as a conception that specifies a space for deliberation, in which public political reasoning can be possible. It is then argued that public reason has the capacity to be considered in different contexts and that its normative force can be seen in the relation between various societies and publics. Global public reasons are said to be diverse reasons offered by societies, individuals and organisations to justify international institutional orders and decision-making procedures. These are democratic procedures and quite significant, in the sense that no society can claim to have the legitimate exercise of coercive power without engaging in procedures that are seen, by the light of global public reason, to be fair and legitimate.

One can wonder why we should talk about global public reason in a world where the political debate is circumscribed by power relations. I will then be arguing that it is exactly for this reason, namely various unequal relations in which both individuals and societies stand to one another and the injustices that follow from this inequality, that this notion of global public reason is needed. This notion aspires to achieve two goals in the relations between different societies. First, it tries to build a sphere of deliberation and reasoning in which most contentious issues and disagreements can be debated through a reasonable way of dialogue. Thus, the *dialogical* nature of the relations between different societies and peoples

is emphasised and given weight (Bernstein 2007). In this common sphere, peoples, individuals and organizations offer their reasons for the policies and institutions that govern them, and critically reflect on the principles and the ways these institutions operate. While this notion adheres to tolerating differences and to a mutual relation between societies based on respect (Rawls, *LP*, 122), it takes the practice of critical reflection of the reasons, offered by participants and the scrutiny of policies and institutions as significant to the integrity of public reason and reasoning. One plausible way to achieve a kind of agreement, among liberal and nonliberal societies, on certain political principles and democratic values is to appeal to the strategy of internal reasoning, in which a diversity of reasons that are reinforced by peoples' value commitments can be offered in support of the political principles. This strategy or methodology allows participants of these societies to search for reasons, whenever there is a disagreement on the principles, policies and institutions. Although it depends on the conflicts and disagreements within values to find internal reasons, this strategy does not aim to leave these conflicts unresolved. The conflict within the values of one society will help another, to offer reasons that could be appealing to them, to endorse principles and values that are supposed to give legitimacy to the exercise of political power, and bring more stability to the society. I will be explaining more about this strategy of internal reasons and the role of internal conflict in it.¹

Second, the notion of global public reason tries to contribute to the creation of a public that is global in its scope and site or domain, and which engages with the rules and policies of international institutions, and tries to set the proper standards of argument about the legitimacy of global governance and politics. It tries to bridge the gap between local questions of social justice and the impact that this would have at the global level. Because the

¹ For a full and detailed discussion of this strategy and its functioning, see chapter 3 below.

decisions and rules that are made in global governance affect a wide variety of peoples, ranging from their basic rights and liberties to their life prospects, people through global public reason can participate in and challenge these decision makings. However, the main problem is that those who live in poverty in one part of the world are deprived of the basic capabilities to participate in an international debate and, therefore, global public reason should address this lack of capability for reasoning (Sen 1992; 2009). The site or domain of global public reason is then characterised by the participation of all those peoples and organizations that demand justification of the norms, values and principles, which regulate a variety of relations between different societies. They demand that their capabilities for reasoning, deliberation and public scrutiny are not hindered by the rules and decisions made by governments and their representatives. The capability to reason, following Sen's capability-based approach, is a valuable functioning which reflects the opportunity of a person or community or public to freely pursue what they think is valuable. A person's or public's advantages and disadvantages are assessed in terms of their having such capabilities and, consequently, their ability to achieve a variety of combinations of functionings (Sen 2009: 231-8). When considering the unequal capabilities to reason that exist between different societies –as some enjoy a more powerful position, economically and militarily– it will then become apparent that the task of global public reason is to address these inequalities. It should also try to expand the domain of global politics to the inclusion of different possible agents of discourse, such as the discourse of individuals and nonstate actors, who demand to be part of the exercise of public reason and reasoning.

It is then important to consider that the scope, site and constituency of public reason have global characters. The *scope* of global public reason is characterized by the broad list of questions that are matters of public deliberation and reasoning. There are a substantial

number of justice-related issues at the inter-trans-national level that are of global concern, such as global poverty, environmental concerns, health and pandemics, immigration and border control and human rights, as well as global governance. These are all political issues and decisions that could be matters of discussion between societies, whether liberal or nonliberal. One could argue that their relations, at different levels, might be influenced by these decisions. For instance, the causes and impacts of poverty and its related issues in one country are matters of not only a local concern, but of a global concern (Pogge 2002). Thus, any notion of international or global public reason requires a consideration of these extensive issues, which necessarily specify the scope of this notion.

The *site* or domain of global public reason is constituted by the discourse of citizens – coming from different nations– expressing their protests and discontents with the ways international governing bodies handle various issues that directly or indirectly affect them, as well as with the abuses of transnational power that affect people in developing countries (Miller 2010). In other words, the site or domain of global public reason can be identified as global politics. The *constituency* of global public reason is, then, the distinct publics, peoples, societies and governments that engage in public reasoning on political principles and values and other moral issues that concern them all, since they share the space and world and are tied together in different ways.

There is also another, equally, important reason for advancing and developing a conception of global public reason. Political philosophy today has not developed or, at least, has done little to advance a theory of global public reason.² Rawls offers a theory of public reason in *Political Liberalism*, that is suited to a specific context, namely to liberal

² There are obviously some philosophical efforts and articulations by Joshua Cohen, in some of his works cited here; and Amartya Sen (2009); and some others who are cited in the bibliography.

constitutional democracies. In *The Law of Peoples*, he sketches over a notion of public reason suited to the international society of peoples, based on the principles of the law of peoples. “The Law of Peoples proceeds from the international political world as we see it, and concerns what the foreign policy of a reasonably just liberal people should be.” (*LP*, 83)³ I will be arguing, however, that Rawls does not offer a theoretical framework for global public reason, which belongs to a conception of international political justice and one that addresses a variety of political issues and decisions that are of global concern.⁴

The global public reason, that is advanced here, differs substantially from Rawls’s notion of public reason for the society of peoples, which is based on the notion of toleration. Toleration can be seen as a necessary condition, but not sufficient for global public reason. It is clear from *The Law of Peoples*, that Rawls’s public reason for the society of peoples provides no basis on which its scope, site and constituency can be extended to cover the issues of justice. In the relation between liberal and decent nonliberal peoples, his notion is intended only to see how decent societies can subscribe to the law of peoples, and to formulate minimal requirements that liberal peoples are meant to set for nonliberal peoples who could agree to them. His notion of an international public reason is shallow and limited to toleration.

To consider the political relations between different societies, in the inter-transnational context, various kinds of conflict arise with regard to political principles, ideals and moral values as well as policy issues. Toleration can work towards this disagreement and conflict by accommodating them on the basis of mutual respect, as Rawls argues, but avoid

³ See also Freeman (2006: 244).

⁴ Some have explored avenues within Rawls’s work to suggest a conception of global or, more modestly, international public reason. See Brown (2010); Smith (2011).

making any relativist claims about the diversity of beliefs and practices. However, toleration would provide a shallow basis for global public reason, if it is not accompanied by the strategy of internal reasons and reasoning. Based on this, I will argue for an *inclusive* view of global public reason that requires us to rethink the rigid dichotomy between public and non-public reasons in the global context. The example of environmental concerns will be offered to illustrate this point. (See chapter 5, section 2)

All these issues will be discussed and investigated in chapter 5, where full-fledged arguments will be developed for global public reason, based on the preceding findings and discussions and the theoretical framework that will be established in the preliminary chapters.

Public reason reconsidered

In order to arrive at establishing global public reason as a theoretical conception and as a notion of practical reason, I will have to examine the idea of public reason as formulated and advanced by Rawls. More specifically, I start, this thesis, from the point where Rawls argues that the idea of public reason is, characteristically, the idea of liberal democratic societies. I start by critiquing this point and state that the ideal of public reason can function in nonliberal societies. Bearing this in mind, public reason in nonliberal societies will be different from Rawls's notion of public reason in liberal democracies, that is to say, different from the idea of democracy's public reason. Even if it is admitted that every society has its own public reason, including decent nonliberal societies, according to Rawls's account and argument, public reason cannot be practised in these societies, simply because, the argument continues, the justification of political power, and therefore of laws and institutions, in such societies would be in terms of "comprehensive doctrines," and not in terms of a "freestanding" political conception of justice. I argue that public reason will be operationalized in nonliberal

societies, once it is understood in terms of a strategy of multiple justifications and therefore public deliberation would proceed according to certain constraints.

In chapter 1, I will examine the main arguments provided by Rawls for the idea of public reason. The chapter tries to identify the main shortcomings that the account of democracy's public reason will have as a result of reconsidering this idea in light of a new interpretation of public reason. The assumption that Rawls relies on in defining democracy's public reason is that although constitutional democracies are marked by the existence of reasonable comprehensive moral, philosophical and religious doctrines, individuals in democratic societies, nevertheless, all affirm the same political conception. The content of public reason is then constituted by a liberal political conception of justice. The political character of this conception of justice requires it to be independent from any comprehensive doctrine that may exist in democratic societies. But what holds these democratic pluralistic societies together despite existing incompatible, though reasonable comprehensive religious doctrines, according to Rawls, is the idea of an overlapping consensus. However, I will argue that one problematic issue with regard to public reason and justification is to envisage this justification in terms of shared reasons on which *everyone* would agree.

The idea of the overlapping consensus is then tied to the idea of public reason in that the former is meant to prepare the grounds for citizens to accept the political conception of justice based on their moral views, and public reason sets the constraints in accordance with this conception, which should provide the public basis of justification. A consensus on a political conception of justice requires participants in the forums of public reason to give reasons and justifications that can be publicly accessible to all, and to essentially rest on political values. Rawls's emphasis on this point is that a public standard of justification is

proper when it can be appealed to in the justification process of the basic institutions of a society.

What this notion of public reason assumes is that there are shared and external reasons according to which all would be expected to endorse the political conception of justice. It requires that citizens and public officials to justify, to one another, the enforcement of laws and policies by appeal to reasons that are fundamentally centred on these political conceptions of justice. In other words, each has to give reasons for supporting a law that can be shared by others and deemed to be conclusive from the point of view of each. This basically addresses the problem of how a political conception or law can be justified by everyone, regardless of what comprehensive doctrines they hold.

It is argued that public reason requires a reinterpretation, so it is suitable for different and variable socio-political contexts, and for that reason it is more adequate to be associated with a conception of politics and political practice. I argue that public reason in nonliberal societies has different contents and characteristics. This will be the subject matter of chapter 2.

Chapter 2, then, will explore the possibilities for finding a conception of legitimacy that could be understood in relation to nonliberal regimes. The test of legitimacy of such regimes depends on meeting two conditions. First, they should meet the basic legitimation demand, that is, states become part of the solution to the “first” political Hobbesian question. To be precise, states meet this legitimacy demand when they provide security, protection, trust, and the conditions of cooperation. Second, they should provide a space for public deliberation and argument in which citizens can participate. If these nonliberal polities can be characterized as legitimate based on the above political grounds, then the exercise of coercive political power requires justification and the question that arises is that whether it is justified

in terms of dominant comprehensive views, and if so, whether there is a wide disagreement about what these comprehensive views require.

I will then argue that since in the design of laws and institutions, in these societies, there will be reference to religious doctrines, then any enforcement of laws should depend on diverse or *multiple justificatory strategies*, rather than on one single source or strategy. This point is, particularly, important in pluralistic societies, where different religions other than the majority's religious doctrine demand participation in the decision making process.

Thus, in non-liberal societies the justification of the exercise of coercive power is offered, in most cases, in terms of religious-based legal codes, for example, in terms of the Islamic law, *Sharia*. In this context, the claim is that consensus cannot be generated within members of society, merely on the basis of the Islamic legal codes without reference to other legal sources and other moral and political value systems. One sound argument for this claim is that enforcing Islamic law as the only source of legislation, and thus the ultimate moral and political system of values, will have to take seriously the diversity of cultural and religious views inherent in Muslim-majority societies, which are pluralistic in their societal formations. The plurality of cultural and religious groups within some of these societies will, in turn, produce disagreements between the state and society and among individuals, when it comes to supporting or rejecting a law. These disagreements will be, mainly, on what these specific legal codes require and whether the state and its public institutions, justifiably and legitimately, interpret such religious legal codes.

Any indoctrinated law, i.e., laws that are fused with religious doctrines and guided by a system of moral values, which are dependent on the tenets of the religion, requires multiple interpretations and appeal to sources, other than the doctrinal source, in order to generate consensus. In the strategy of multiple justifications, there will be reference to value

commitments in order to prove the truth or falsity of an argument. What is distinctive about it is that this justificatory strategy does not assume that there is an independent or external reason to which everyone would agree. The reasons that are given, will be derived, if that is right, from within substantive value commitments themselves. Thus, a variety of reasons can enter the process of justification, insofar as coercion is not used to impose one reason over others.

The cogency of a justificatory strategy that provides justification, for example, for a liberal value and principle, in nonliberal societies, seems to depend on whether people in these societies would accept the principle, not on the basis of its superior cognitive validity or truth content, but whether it can be endorsed by them from within their substantive value commitments. A justification given in support of a law cannot attract the endorsement of all, no matter how legitimate the procedures are in reaching a certain outcome, if the justification itself is not based on diverse reasons. It is for this reason that one can argue that a legitimate system cannot claim that it is capable of offering justifications to all affected parties, without acknowledging the existence of conflicts and disagreements and the need to employ different sources and diverse justificatory strategies.

I will provide a context –which is the Muslim majority societies– for the existing disagreements and conflicts regarding the interpretation of the religious law and doctrine. In this context there is a wide disagreement, among theologians, philosophers and moderns as to how to interpret the law and what the doctrine requires in terms of its implementation. If a polity is based on Islamic doctrine for its legislation and the process of law making, then the most problematic issue would be the existence of a diversity of interpretations of the scripture. This is problematic because citizens have to be satisfied that the justification of power and institutions is not given in terms of one single perspective. If the state wishes to

unify these interpretations into a single interpretation then it risks sliding into a theocratic tyranny. It is then argued that public deliberation in nonliberal societies has to be constrained, and this constraint or limitation is represented in the claim that a religious doctrine, as a single justificatory strategy, cannot be used in justifying public laws and policies.

This constraint on what the law requires and how it should be interpreted, in societies dominated by a comprehensive doctrine, demands a conception of public reason that could provide justification to social and political institutions and generate consensus. In nonliberal societies, then, this conception functions differently from democracy's public reason. It does allow multiple arguments, including religious arguments, to offer reasons and justifications for the law. The peculiarity of public reason in nonliberal societies is that it is not informed by a freestanding political conception, but by different political and moral conceptions. However, what it might be promising in the working ideas of this notion, in these societies, is that the disagreements about the requirements of the religious law and different interpretations of this law could lead to the emergence of a space of legal deliberation and reasoning not dominated by the implementation of the religious law. The appeal to multiple justificatory strategies has the advantage to *displace* the religious law from the public sphere and, then, to be seen as only one reason among others.

This conception of public reason makes use of, and depends for its functioning in different contexts on, the strategy of internal reasons, which will be discussed in chapter 3.

Public reason and the strategy of internal reasons and reasoning

In chapter 3, I will propose a justificatory strategy, namely the strategy of internal reasons and reasoning that depends on the presence of internal conflicts within and between value commitments. I argue that in this justificatory strategy, we should not exclude that subjects

will appeal to their internal reasons to justify laws and policies, and individuals might not appeal to some external reasons that are not enhanced by subjects' value commitments.

Internal reasons are those that individuals have for lending support to certain political principles. External reasons, however, are those that individuals are supposed to have for accepting a law or a decision, without relying on their value commitments. The claim that will be made here is that there are no external reasons, but only internal reasons, according to which people would accept and embrace the political and liberal principles.

Most (classical) liberals presume that liberty should be the norm and on the basis of this presumption, freedom of speech, for instance, is considered to be justified not only in liberal societies, but also across different contexts, and any reasonable doctrine and rational person should be willing to accept it. They view people's endorsement of liberal principles as a matter of reasonability and rationality, and not something that should be reinforced by appeal to their substantive value commitments. It is argued that an alternative strategy is to look for reasons that are coming from within these value commitments to support, say, freedom of speech. They contend that the argument for freedom of speech could be based on the claim that we should tolerate other views just in case they are right. There is a strong demand, suggested by this argument, placed on the acceptance and justification of freedom of speech. In other words, this strong demand on the justification of freedom of speech by reference to the rationality of persons rules out any other justificatory strategy, which appeals to persons' value commitments to support such a liberal principle.

The task of a global notion of public reason is to find internal reasons, in the local and global context, that could lend support and justify free speech. An alternative justificatory approach, therefore, would be that whether censorship of blasphemy can be justified based on substantive value commitments and to look for arguments, through public reasoning, that

appeal to Islamic doctrine to prove that censorship of blasphemy is wrong. The advantage of the strategy of internal reasons and reasoning is that people in their public deliberation would not be burdened with a strong demand such as adopting principles that they may not happen to endorse by reference to their value commitments. However, any reference to such values should be based on the capacity to provide reasons that are publicly debated and subject to mutual criticism. This capacity is particularly important to show whether those who appeal to values that they have strong commitments to, can offer others reasons in the public sphere that are politically valid.

After establishing, in chapter 2, that there are wide disagreements and conflicts within and between values regarding how to interpret and implement the law –and the example of Muslim societies are offered as bearers of this internal conflict, it will then be argued that one can find reasons from within these values to support political principles. For these purposes, the strategy of internal reasons depends on the fact that there is an internal conflict within a value that in itself reproduces disagreement and conflict of values. Internal conflict –which is a necessary condition for internal reasons to work– is that a certain conviction (whether Islamic, Christian, Jewish, Buddhist or any other moral conviction) has it within itself values and commitments that have the possibility to conflict with each other.

A Muslim, for instance, believes that freedom of religion, thought and expression are not in the advantage of Islamic faith and identity, since they could encourage apostasy within Muslims, particularly in Muslim-populated societies, and put the authority of the religious law and doctrine under question. To counter the Muslim's argument against freedom of religion, the liberal and secularist need to appeal to some of her other values that are *in tension or conflict* with her commitment to oppose the freedom of religion.

The idea of values being in a state of internal conflict helps clarify the point that some reasons that are considered internally persuasive and true from the point of view of specific value commitments could support particular liberal principles. It also addresses the problematic issue of external reasons as assumed to be those reasons that every rational and reasonable agent would accept. When, for example, Muslims are internally conflicted about the acceptance of some liberal values, one cannot appeal to a method of justification of these values based on the presupposition that reasonable Muslims should accept them. Instead, the alternative method would be that these values can be justified if there are available resources within Islam, to which Muslims have fundamental commitments, that could lend support to such values. These conflicts are akin to moral conflicts that any moral agent experiences in her life, and they represent the agent's oscillation between two sets of conflicting values that one of them should give way to the other.

Detecting internal reasons within a value is a strategy that allows moral agents to provide justifications based on value commitments and provide reasons that have the capability to survive public reasoning. This capability depends on the extent that these reasons can be persuasive to others based on equal terms of respect. Internal conflict then provides resources within a value commitment for internal reasons to emerge and to rely on these reasons in an argument for supporting, say, liberal and secular values. This is a strategy that avoids such universal formulations such as the assumption that, if a doctrine is reasonable enough, then there are reasons to believe that the doctrine would accept such values.

One possible challenge to the argument for internal reasons, and the absence of external reasons, in supporting the liberal principles will be relativism. The externalist theorist will argue that, when disagreements occur between value commitments and moral

judgements, there will be no scope for appealing to reasons that stand outside of these internal reasons and, consequently, every value commitment will claim the truth of their values. I will be arguing that relativism will not follow from the above argument.

In the context of our discussion of internal reasons, relativism implies only if the internal conflict within and between values does not exist. Internal conflict within a value system, by definition, implies that some moral values and judgements can be wrong in the course of ethical reasoning. These values are in conflict with some other values in a disagreement the resolution of which requires, in most cases, that a commitment to a value is inconsistent with holding other values. For relativism to maintain its theoretical consistency, it has to deny conflicts within value systems, and a relativist has to endorse that two conflicting values or moral judgements over a moral or political issue are not actually in conflict, but each has a *relativistic* justification.

To reject relativism, one can argue, that there is no value commitment that is completely unconflicted and that it is hardly the case that any value commitment holds perfectly and wholly coherent value systems. So, for instance, Muslims –and, in fact, others who hold other beliefs- are conflicted and disagreeing over such values as the interpretation and implementation of Islamic law and over their differing adherences to values such as freedom and equality.

It is not only that relativism gives an incoherent description of our moral claims regarding certain moral and political issues. But, the danger that relativism poses for value commitments lies precisely in leaving human societies with their distinct and various “conceptual schemes,” in Davidson’s language, that we can make no effort –and it is a futile effort after all- to understand these variations. Human societies, according to relativism, therefore are left with nonnegotiable and uncomprehending politics of identity. In this

specific sense of relativism, identities and commitments to fundamental values become so valorized that the diversity of values and opinions will be considered by the relativist as an argument for cultural diversity and the unreachability, and the poverty, of communication between value commitments. Relativism would claim that its thesis about reasons is correct, if there is no overarching reason that all can subscribe to. This implies, in this context, that Muslims have to consider their commitments to Islamic identity as fundamentally nonnegotiable and not subject to criticism and public reasoning. I will be arguing, in chapter 3, that relativism cannot provide a convincing argument against the argument, that will be advanced here, for internal reasons and reasoning.

In chapter 4, I will be arguing that the strategy of internal reasons and reasoning is a strategy that can be viewed also in terms of the idea of overlapping consensus. The important point is that consensus is not based on the assumption that all subjects and citizens would agree on a single external reason, which is deemed to have no connection with their diverse value commitments. It is, rather, argued that consensus can be modelled on the way that individuals, in their public deliberation and reasoning, provide a diversity of internal reasons which can also serve as justifying reasons for laws and policies that are essential for the stability of society.

It will be argued here that when individuals, officials and peoples engage in public political deliberation and in giving reasons and justifications, these reasons should undergo a process of public validity, viz., subjects must be able to show that their reasons can be subject to a process of critique and revision, if they have to be convincing to others. What the strategy of internal reason, *as an account of public reason*, suggests is that citizens give reasons, considering that they are derived from and supported by their value commitments, which they sincerely hold and believe in.

In this chapter, a weaker version of the idea of overlapping consensus will be offered that meets the objection that people cannot share the same reason and justification in their public reasoning. A weaker notion of overlapping consensus then is the idea that, in public discussion, people do not have the same reasons to justify a principle. They, instead, come to agree on it only when it is supported by their internal reasons. This would allow individuals to present their internal reasons as justifications for what is in question, and to see these reasons not as deriving from some values that are external to their values, but as reasons that are supported and reinforced by their substantive value commitments. Here, I will present an argument for how support, based on internal reasons –drawn from value commitments– for the freedom of speech in opposition to the censorship of blasphemy can be possible (see chapter 4, section 3).

Consensus in nonliberal societies, for example, is not based on a single justificatory strategy (see chapter 2). Officials cannot justify law and the coercive use of political power by appeal to exclusively religious-based reasons or even some other principles that do not attract the consensus of the majority of citizens. Rather, they need to appeal to a strategy that makes use of different reasons, but these reasons have to be publicly subject to criticism, scrutiny and revision. Consensus cannot be based on the claim that citizens will agree on some proposed principles, without leaving some scope for reasonable disagreements that represent the plurality of moral convictions within societies.

This notion of consensus does not presuppose that everyone will agree, provided that they are reasonable, on a single overarching conception or reason. It supposes, on the contrary, that if internal reasons can be provided to support a proposed conception or principle, then an overlapping consensus can be achieved on the principle. The starting point here is, then, the strategy of internal reasons in which a diversity of reasons, and not an

external reason, can be given as justifications for the principles in question. The extended or global notion of public reason –that is proposed throughout– takes the reasonability of persons and doctrines not as a condition of their entry into the practice of public reason. It, instead, engages all in the public political forum and tries to pin down reasonable and rational persons through a process of public reasoning.

The strong demand that the liberal account of the overlapping consensus suggests is that it requires shared reasons to affirm the freestanding political conception of justice. The only way to do this, as the argument for the liberal overlapping consensus has it, is to accept not only the principles of the freestanding conception, but also the justification, or the public justification of it. The alternative view which includes a weaker notion of overlapping consensus requires that the proposed liberal principles will be supported by different internal reasons and not by appeal to a single external reason. When consensus is legitimately generated by appeal to multiple justificatory strategies on the laws and policies, then the claim to bring everyone to accept a political conception, that is not justified by appeal to the value commitments held by individuals and communities seems to be demanding and difficult to attain.

A different reading of the overlapping consensus suggests that it should not be taken as prescribing any underlying justification. This should be left to different internal reasons which people provide and find compelling for subscribing to the principles in question. The use and functioning of the internal reason strategy and also understanding the *dialectical* force of this strategy in finding reasons to support the liberal principles would allow us to understand the move to an overlapping consensus, without putting a strong demand on the ways justifications are offered, and without the assumption of the original position.

Chapter 5, then, will be the culmination of the discussion of public reason, and there I will elaborate, as it was stated at the beginning of this introduction, on the idea of global public reason and the application of the strategy of internal reasons and reasoning to the international arena, where the relation and the public deliberation of both liberal and nonliberal societies are considered. Thus, the conception of global public reason will be centred on toleration and the strategy of internal reasons and reasoning. What this conception considers to be of significance is the thesis that liberal and nonliberal societies, in their political relations, should practise toleration, based on the value of respect. What is equally significant is that, in the case of disagreement, conflicting parties should engage in the search for reasons which could lead to persuade unconvinced parties, through public reasoning, that the political rights and freedoms are important for every society to embrace. This is a notion that belongs to a conception of global justice and seeks to bring political and social justice to the sphere of reasoning, and also to provide reasons for embracing the political principles of justice.

1

The idea of democracy's public reason and the implications of the plurality of ethical convictions

In this chapter I examine the main arguments provided by Rawls for the idea of public reason as, characteristically, the idea of the liberal democratic politics. The main question that this chapter endeavours to answer is this: if the idea of public reason is predominantly understood and interpreted in terms of the politics of constitutional democratic societies, what are the main shortcomings of this understanding and are there possibilities for offering a different interpretation of public reason that can be formulated based on these shortcomings? I argue that the justification of political principles, relations, laws and policies depend, to a great extent, on the nature of the institutionally mediated relations that are formed between individuals. However, without the idea of public reason as a public justificatory device these political relations cannot be justified. The public justification of citizens' political relationships, which are constituted by their shared institutions, whether national or international, goes through some form of reasoning and interpretation based on certain political values. The content of public reason, then, is significantly *influenced* by these relationships, which should be regulated according to appropriate principles of justice. I shall argue that one problematic issue with regard to public reason and justification is to envisage this justification as based on shared reasons on which all would agree, and to consider this consensus as part of the democratic culture. Another problem is to consider this process of justification as a continuing activity of justification and to assume that it should be present at every stage of the individual's and societies' public deliberation. In sections (I) and (II) I start by discussing the idea of public reason from Rawls's point of view and show that it is

conceived as providing the public justification of the political principles of justice and of the coercive power exercised by citizens in a constitutional democratic society. In section (III), I consider the problematic issue of shared reasons and whether this single unified aim can be attained and I will also consider the shortcomings of alternative accounts. In section (IV), I discuss to what extent the wide view account of public reason is successful as a way to include ethical convictions in public reason. Finally, in section (V), I conclude that public reason cannot be exclusively linked to liberal constitutional democracies as the question of constraints and limitation of public deliberation can arise in other forms of societies.

I. Public Reason

Rawls's idea of public reason is based on three premises. First, it is essentially the idea that in the justification of laws and institutions, democratic citizens should be able to provide reasons that are based on common and shared political grounds, and according to which their political relationship can be justified. Public reason is characterised by those reasons that are shared by democratic citizens who, in turn, share the status of equal citizenship in society. It is important to note here that Rawls associates the idea of public reason with the liberal principle of legitimacy. This principle defines the terms of political relationships between persons within the basic structure of a democratic society "into which they are born and in which they normally lead a complete life."⁵ The liberal principle of legitimacy, more importantly, defines the terms of the exercise of political power. In a democratic society political power is supposed to be the power of the public and that this power can only be justifiably exercised, since it is always a coercive power, only when it is compatible with the constitutional essentials that all citizens have reasonably endorsed (*PL*, 217). The process

⁵ Rawls, *Political Liberalism* (New York: Columbia University Press, 2nd paperback edition, 1996), p. 216, hereafter *PL*.

through which the power of democratic citizenship can acquire legitimacy and its exercise be justified to all is the basic contractual relationship that is formed between democratic citizens, who are expected to affirm and respect. It is Rawls's intention, at this point, to argue that democratic citizens are bound, in the legitimate exercise of political power, by a moral duty; "the duty of civility." It is a duty that is closely connected to the idea of public reason. For it is the duty of citizens to explain to one another the reasons for supporting particular laws and decisions in accordance with the principle of equal and free citizenship, and a willingness on the part of each to listen to the other in public discussion. (Ibid.)⁶ A crucial point that needs to be raised here is regarding the connection between the *liberal* principle of legitimacy and democracy and, therefore, with the idea of public reason. Could we coherently associate the legitimacy of the state, which is the main locus of the exercise of political power for Rawls, with its being a liberal democratic or non-liberal? If this position cannot be held, then it is not clear whether the idea of public reason is to be associated with the liberal principle of legitimacy. In short, legitimation is connected with authority in that a nonliberal regime can still be legitimate, however the justification of the exercise of its coercive power might be in question.⁷ Maffettone argues for the conjunction of justification and legitimation and, therefore, they can be seen as complementary. He thus argues that,

justification looks for the best theoretical argument, is intrinsically substantive, goes top-down, and is rooted in the moral and metaphysical bases of a specific culture. Legitimation, on the other hand, is normally based on an institutional practice, concerns mainly the inputs of a political process, goes bottom-up, and does not directly appeal to the moral and metaphysical roots of a culture. (Maffettone 2010: 21)

⁶ See also Freeman (2003: 38).

⁷ In chapter 2, the question of the legitimacy of nonliberal societies and the grounds on which they can be legitimate will be discussed in detail.

The second premise is to specify the questions and the domain of public reason. The idea of public reason covers a limited set of questions that are fundamentally isolated from the nonpublic domain of reason, such as the reasons of universities, churches, clubs, etc. According to Rawls, only the fundamental questions pertaining to constitutional essentials and basic justice can be matters of public reason. In a nutshell, Rawls puts a large emphasis on the political justification that can be given by formal legal institutions, officials and citizens when these matters are at stake. Rawls argues that the domain of public reason can be characterised as

the reasoning of legislators, executives (presidents, for example), and judges (especially those of a supreme court, if there is one). It includes also the reasoning of candidates in political elections and of party leaders and others who work in their campaigns, as well as the reasoning of citizens when they vote on constitutional essentials and matters of basic justice. (*PL*, 382fn.)

According to Rawls, citizens' deliberations and arguments about political questions, not of the sort described above, still belong to the nonpublic reasons of different associations that form the "background culture" of the civil society. A valid question that needs to be raised here is that, why should the domain of public reason be framed along these narrow lines of reasons and reasoning that exclude a wide variety of questions that bear on the fundamental questions of justice? This has created puzzlement regarding the adequacy of the distinctions Rawls makes between the "background culture" and "public political culture," and whether the reasons of civil society can be described as nonpublic.⁸ The point is that if argumentations

⁸ See, for example, Habermas's critique, though not directly of the idea of public reason, of Rawls's original position. He argues that his universal principle of argumentation, which "constrains *all* affected to adopt the perspectives of *all others* in the balancing of interests", avoids the "monological application of the principle." (1990:65-6) He contends that "Rawls wants to ensure impartial consideration of all affected interests by putting

about political questions are conducted within, what Rawls calls, the background culture of civil society, then one can claim that these argumentations are political in nature and bear on how citizens think and vote in the domain of public reason. If, for example, citizens' ethical and religious convictions count towards public reasoning, even though they do not constitute the basis of their shared reasons for advocating public policies and making laws, the consequence then will be the breaking down of this limitation of the scope of the questions of public reason and of the justifications provided in the public forums.⁹ Rawls's point about widening the gap between the reasoning of citizens and officials in justifying the laws and the reasoning of churches, associations and universities is to emphasise that there are certain individual rights, such as abortion that cannot be a subject of public discussion or the question of slavery, which its rightness or wrongness should not be a matter of public reasoning and deliberation. And assuming that these questions are constitutional essentials or matters of basic justice, citizens' voting on them has to be in terms of the political values that constitute the content of public reason. He importantly notes that these non-public reasons are nonpublic because the power of churches, for example, to exercise its authority over their

the moral judge into a fictitious 'original position,' where differences of power are eliminated, equal freedoms for all are guaranteed, and the individual is left in a condition of ignorance with the regard to the position he might occupy in a future social order. Like Kant, Rawls operationalizes the standpoint of impartiality in such a way that every individual can undertake to justify basic norms on his own. It is only logical, therefore, that Rawls views the substantive parts of his study (e.g., the principle of average utility), not as the contribution of a participant in argumentation to a process of discursive will formation regarding the basic institutions of late capitalist society, but as the outcome of a 'theory of justice,' which he as an expert is qualified to construct." (ibid., 66) Rawls rejects Habermas's criticism that the discourse of citizens in civil society is a monologue. He insists that it is a dialogue and even an omnilogue (a term borrowed from Korsgaard). He argues that there are no experts, but all citizens participate. (PL, 383) For a helpful discussion of these issues and the debate between Habermas and Rawls, see Maffettone (2010: 177-88).

⁹ A rather slightly different criticism has been expressed by Sandel (1994), and also by Wolterstorff (1997: 162-81).

members is freely accepted and that it is constrained by the legal and constitutional protections of the liberty of conscience and freedom of thought. (*PL*, 220-3)

Third, the content of the ideal of public reason is defined by a “political conception of justice as fairness.” The first premise, as it was discussed above, was to associate the ideal of public reason to an ideal of citizenship that is centrally defined within a liberal constitutional state. It should be noted here that the content of public reason consists of a conception of justice that is essentially liberal in character and political in its application. Rawls emphasises that this conception should be political as this implies that it applies to the basic structure of society, its main political, social and economic institutions; that it is a freestanding conception from religious and ethical convictions; and that it represents the political culture of a liberal constitutional democracy. (*PL*, 223) It should be observed, however, that this political notion of the conception of justice implies, first and foremost, an exclusivity of the idea of public reason in that the context of the conception of justice is the basic structure of society as opposed to any “cosmopolitan” notion of the conception of justice and of public reason.¹⁰ The important point about the content of public reason is that it is constituted by substantive principles of justice as well as principles of reasoning or guidelines of inquiry, which apply to specific questions of constitutional essentials and matters of basic justice on the one hand; and on the other, constrain the basis of public justification in terms of the political values of public reason. For any political question that is fit to enter public reasoning it is crucial, according to Rawls, for citizens to depart from their comprehensive views and decide and vote on such questions based on the political values of public reason. These political values are “such political virtues as reasonableness and a readiness to honour the

¹⁰ Note that Thomas Nagel’s construction of Rawls’s argument against global justice also builds on this “political” notion as opposed to a cosmopolitan notion of justice. See Nagel (2005).

(moral) duty of civility, which as virtues of citizens help to make possible reasoned public discussion of political questions.” (*PL*, 224)

Thus, the political conception of justice that constitutes the content of public reason and applies to the basic structure of society requires citizens, who engage in public reasoning, to adopt a political standpoint without being based on their philosophical, moral or religious views. Although Rawls explicitly states that the conception of justice is “expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society” (*PL*, 13), it is unclear how public justifications, by citizens and officials, can be coherently offered only in terms of this conception and its political values, without appeal to other moral values that are embedded in the democratic culture. Some critics have argued that, in this justification, it might seem rather a difficult position to maintain to, for instance, tell citizens “that in politics they should not use their most fundamental beliefs about what is true,” because “that may seem both unreasonable and a serious infringement of full liberty.” (Greenawalt 1994: 670)

II. Public Reason and Democracy

As discussed in the preceding section, Rawls’s theoretical articulation of the idea of public reason rests on an assumption that this idea belongs essentially to the idea of democracy itself. For Rawls then, any talk about the justification of political relations is about justifying the exercise of coercive power by citizens in their relations, and this exercise should be subject to the requirements of public reason. (*PL*, 215) Starting from the presupposition that in democratic societies there is a fact of the plurality of reasonable doctrines, Rawls argues that public reason “is characteristic of a democratic people” (*PL*, 213). In a striking passage, in “The Idea of Public Reason Revisited,” Rawls claims that:

The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood. Those who reject constitutional democracy with its criterion of reciprocity will of course reject the very idea of public reason.¹¹

One assumption that Rawls relies on in defining the democratic idiosyncrasy of the idea of public reason is that although constitutional democracies are marked by the existence of reasonable comprehensive moral, philosophical and religious doctrines, individuals in democratic societies, nevertheless, all affirm the same political conception. The content of public reason is then constituted by a liberal political conception of justice. The political character of this conception of justice requires it to be independent from any comprehensive doctrine that may exist in democratic societies. But what holds these democratic pluralistic societies together despite existing incompatible, though reasonable comprehensive religious doctrines, according to Rawls, is the idea of an overlapping consensus.¹²

Stability and moral psychology and individuals' moral powers

Rawls argues that the stability of liberal societies, which are marked by a condition of a plurality of opposing comprehensive doctrines would be realised, once citizens all accept a liberal political conception of justice on which there will be an overlapping consensus. (*PL*, xlii-xliii) The question of stability of the political conception of justice is a matter of whether, in view of the fact of reasonable pluralism, it would be the focus of an overlapping consensus. Equally important for stability is the question whether people live under just

¹¹ Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 132, hereafter *LP*.

¹² A different reading of the idea of an overlapping consensus, and a more detailed discussion, will be offered in chapter 4, where I argue that a weaker reading of this idea would render consensus on the political principles more plausible.

institutions come to develop a sense of justice and then comply with those institutions. (*PL*, 141) Rawls's concern here is not only with stability, but with "stability for the right reasons," which, he thinks, is part of public justification in a democratic society. (*PL*, 390) This further element of stability then requires him to show not only that people governed by his principles of justice would come to acquire a sense of justice "incorporating these principles but also that this sense of justice is something they would have good reason to affirm." (Scanlon 2003: 158) This capacity for a sense of justice together with a capacity for a conception of the good are the two moral powers that can be ascribed to persons of a well-ordered society, engaged in a system of social cooperation. As Rawls puts it:

A sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation. Given the nature of the political conception as specifying a public basis of justification, a sense of justice also expresses a willingness, if not the desire, to act in relation to others on terms that they also can publicly endorse ... The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good. (*PL*, 19)

Thus, for a democratic society to be stable, according to Rawls, an overlapping consensus between different comprehensive doctrines has to be the aim of the society's exercise of power. So the question of stability is a pressing question, indeed, not only in democratic societies, but also in every society and even in the relations between societies. Rawls's concern with the question of stability, in *Political Liberalism*, however, is with well-ordered democratic societies and it is connected to the legitimacy of political power. The exercise of coercive power by citizens over one another would be legitimate, according to Rawls, if there are reasons for citizens to affirm justice as fairness (*PL*, 390). The question of stability then is not only a matter of finding an overlapping consensus on the liberal political conception of

justice, but it also depends on the establishment of a psychology of “moral learning” guided by a sense of justice. Thus, the idea of an overlapping consensus does rely on the morality of persons as reasonable and rational in order to achieve the aim of stability. However, in the idea of public reason we will notice that the political conception will be central in justifying the political and social institutions of society.¹³

The moral psychology of individuals seems to account for a great part of what justice requires, as it plays a substantial role in eliciting the necessary conditions for endorsing the political conception of justice. This is also reflected in *The Law of Peoples*, where Rawls in considering international relations, he puts emphasis on and chooses peoples, rather than states, as the main moral agents, who are capable of endorsing the principles of the law of peoples. (*LP*, 25) He argues that peoples, just like citizens in the domestic case, develop a sense of justice as they grow up in a just Society of Peoples. They honour the principles of the Law of Peoples as a condition of peace and its stability and comply with it, since they see its norms “advantageous for themselves,” and accept them “as an ideal of conduct.” (*LP*, 44) In the domestic case, then, citizens’ sense of justice and their inclination to act upon the principles of justice must be preceded by a psychology of “moral learning” that leads citizens to acquire this sense of justice and a disposition to act from those principles. Rawls argues that the stability of the society of liberal peoples depends on this psychological process of moral learning, without which the Law of Peoples will not be action guiding and loses its normative force. Hence, the society of liberal peoples will be “stable for the right reasons,” a condition that “rests in part on an allegiance to the Law of Peoples itself,” and it is

¹³ In defending the liberal notion of public reason, Macedo argues that Rawls’s public reason and his notion of reasonableness is a moral doctrine. He argues “liberal public reasonableness is itself a moral view, and not a political view that purports to be neutral toward moral views. Indeed, it is for moral reasons of fairness and civility that public reasonableness asks citizen to honor the authority of reasons they can share in public with others.” (Macedo 1997: 20).

distinguished from “a mere *modus vivendi*” (*LP*, 45). One can notice the primacy of the moral account that Rawls depends on in his account of the problem of stability and in the idea of an overlapping consensus.

However, Bernard Williams argues that Rawls has not been successful in distancing the moral from the political. He criticizes Rawls that his answer to the condition of plurality is essentially “a moral answer,” because Rawls claims that the basis of co-existence under such a condition in liberal societies does not represent “a mere *modus vivendi*,” but an overlapping consensus. The moralized view of “the political” that Rawls has maintained, Williams argues, is represented, for example, in grounding the basis of this coexistence in “the highest moral powers, above all a sense of fairness.” (Williams 2005: 2)

An equally important and relevant point that needs to be raised here is that Rawls, in *Political Liberalism*, presents a political conception of justice that does not depend on the support of any moral theory –as previously depended on the Kantian moral theory–¹⁴ in solving the problem of stability under conditions of reasonable pluralism. Consider also that resolving the problem of stability depends largely on Rawls’s assumption that individuals in democratic societies and under just institutions would develop the moral capacity of a sense of justice and thus would accept, and would have reason to accept, the political conception of justice. However, the problem is that if a just society cultivates the moral capacity of a sense of justice among its citizens that is meant to resolve the problem of stability, how then individuals can avoid relying on their moral theory in resolving the problem.¹⁵

Reasons and conflict and overlapping consensus

¹⁴ See Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 2nd revised ed. 1999), §40, hereafter *TJ*.

¹⁵ See the instructive discussion by Baldwin of Rawls’s account of moral psychology (2008: 263).

The idea of overlapping consensus is presented, by Rawls, as an essential “social device” that have a normative force to achieve the stability of well-ordered democratic societies, given the fact of reasonable pluralism as the main characteristic feature of these societies (Maffettone 2010: 22). Rawls’s answer to the problematic issue of conflicting comprehensive doctrines is largely based on his two principles of justice without appeal to citizens’ comprehensive doctrines, which each might be said to hold. But, (i) how can both the principle and doctrine be reconciled, and (ii) say if the political principle and comprehensive doctrine conflicted with each other in terms of the public justification of a law what reasons or justifications can be given in support of the law? In response to the first problem, Scanlon puts the point succinctly using Rawls’s notion of reflective equilibrium:

Suppose that each citizen has both a comprehensive view and a political conception of the standards appropriate for settling questions about the basic institutions of society... If a citizen’s views are in wide reflective equilibrium, his or her political conception will be supported by, or at least in harmony with, his or her wider comprehensive view. In a well-ordered society citizens will hold the same political conception even though their comprehensive views may differ. In such a case we can say that there is a wide and general reflective equilibrium with regard to this political conception: the equilibrium is wide in the case of each citizen and general because “the same conception is affirmed in everyone’s considered judgements.”¹⁶
(Scanlon, 2003: 160)

However, to reply to the second question we cannot simply appeal to the reflective equilibrium procedure to solve what I would call *the problem of conflict*, namely the problem that if some people’s comprehensive doctrines conflicted, not with the affirmation of the sense of justice, but with the political conception which the reasons for endorsing require

¹⁶ Rawls, *PL*, 384fn.16.

abandoning their particular, say religious, reasons.¹⁷ Rawls's response to this problem is that in a well-ordered democratic society such a conflict does not arise in its starkest forms. For this claim, he essentially relies on the conception of the *reasonable* and *reasonability*. This implies that reasonable persons would have reason to accept the political conception regardless of what reasonable comprehensive doctrines they happen to hold (*PL*, 59-60). This theoretical assumption about reasonability as an ideal condition for endorsing the political conception of justice is meant to solve the problem of conflict raised above. Whether it solves it, this is a matter of debate.¹⁸

The idea of the overlapping consensus then is tied to the idea of public reason in that the former is meant to prepare the grounds for citizens to accept the political conception of justice based on their moral views, and public reason sets the constraints in accordance with this conception, which should provide the public basis of justification. A consensus on a political conception of justice requires participants in the forums of public reason to give reasons and justifications that can be publicly accessible to all, and to essentially rest on political values. Rawls's emphasis on this point is that a public standard of justification is proper when it can be appealed to in the justification process of the basic institutions of a society. One part of the role that public justification plays in public reason is that whether citizens have sufficiently just reasons to accept and enter institutionally mediated relations or they accept them just because they are forced to do so. Rawls argues that, "Persons engaged in a just, or fair, practice can face one another openly and support their respective positions,

¹⁷ The problem of conflict is linked in different aspects to the problem of stability. It is not very certain when the problem of stability is solved and stability for the right reasons is achieved, whether this would amount to resolving the problem of conflict. One thought is that the society might be stable over time and citizens might develop a sense of justice, but they must have reasons to affirm this sense, as Scanlon argued above, and also reasons to not draw from their moral theories.

¹⁸ The question of reasonability in relation to the idea of an overlapping consensus will be discussed in chapter 4.

should they appear questionable, by reference to principles which it is reasonable to expect each to accept.” But, if some kind of mutual recognition by each is lacking, then one can conclude that their political relations “would appear to them as founded to some extent on force.”¹⁹ The other part of public justification is to provide reasons that can be considered in terms of political non-comprehensive, whether religious or secular, values that everyone would reasonably accept and consent to as reasons.

This last point is the most controversial in the debate on public reason and on the question of whether religious reasons are to be excluded from political justification. It is the problem of conflict, which I mentioned above, between on the one hand accepting non-religious reasons as the only proper public reasons and, on the other, accepting to engage in political relations without giving one’s reasonable comprehensive view its due importance. This is a chronic problem in liberal democracies that are founded on the separation of the religious establishments from their political institutions. It is also a problem for liberal theories since they are strongly committed to individual liberties and to the idea that everyone should be treated as free and equal. Rawls’s approach, as mentioned above, to this problem is based on the appeal to the idea of an overlapping consensus associated with the idea of reasonable comprehensive doctrines and a reasonable person. The public standard of justification, for Rawls, is the standard which all citizens refer to and that all has reason to accept. Citizens cannot appeal to their comprehensive views as this would not be acceptable to some, who do not hold these views. The justification, therefore, has to be through certain political values or a political conception of justice, such as Rawls’s justice as fairness, which everyone would have reason to endorse since it represents no one’s particular comprehensive view. The reasons that citizens give to one another has to be politically and publicly

¹⁹ Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), p. 59, hereafter *CP*.

acceptable or accessible to all. Each comprehensive view will have reason to justify society's basic institutions in accordance with the political conception of justice. However, this public standard of justification has to be *reasonably* accepted by all citizens and should *not contradict* their *reasonably* held comprehensive views. To put it another way, citizens should be able to give reasons based on *political values*, such as basic rights, liberties and opportunities, reasonableness and civility as values pertaining to public reasoning, and to refrain from their comprehensive views as adequate bases of public justification. However, in the meantime, this political conception of justice —or, values of political importance— should find its place reasonably in each one's reasonable comprehensive views. Thus, each comprehensive view *must*, should it wish to survive, contain in itself “good grounds” for accepting the political conception of justice. But this seems highly problematic since someone who offers conclusive reason for supporting a law might be different and not shared by others who have different conclusive reasons to support it. How this then can be possible and is it possible, if at all, to bring everyone to share the same reasons?

III. The Difficulty of Shared Reasons

Public reason requires, at its best, the public justification of laws and policies based on reasons that are understood to be shared by all or generally accessible to all. This requirement is mainly associated with Rawls's idea of an overlapping consensus. It is argued above that the idea of overlapping consensus is that a set or family of liberal political conceptions of justice will be the focus of consensus among opposing, though reasonable moral and religious views. Public officials and citizens will be able to justify to one another the enforcement of laws and policies by appeal to reasons that are fundamentally centred on these political conceptions of justice. In other words, each has to give reasons for supporting a law that can be shared by others and deemed to be conclusive from the point of view of each. This

basically addresses the problem of how a political conception or law can be justified by everyone regardless of what comprehensive doctrines they hold.

Public justification and reasons

Gaus and Vallier formulate a principle of public justification that could define the terms according to which the coercive law would be justified.

The Public Justification Principle: L is a justified coercive law only if each and every member of the public P has conclusive reason(s) R to accept L as a requirement. (2009: 53)²⁰

If the requirement of conclusiveness is so important to the justification principle, then it seems that some kind of concession and acquiescence is needed. Suppose that X and Y each has a conclusive reason to endorse, reform or reject a law. If X 's reason R_x is compatible with Y 's reason R_y for, say, endorsing L , then it is possible to say that they share the same reasons. If, they both advance different reasons to endorse the same law L , that is, R_x is different from R_y , it is said here that they share the same objective although they base their endorsement on different reasons. For Rawls, this should not pose significant problems. For, a law could be endorsed by people, who hold different or opposing convictions, for different reasons, but nevertheless, ground these reasons in the political values of their joint enterprise and not in their narrowly constructed convictions. Note that Rawls has conditions for such concessions.²¹ Suppose, further, that R_x is to endorse a law L_x that is proposed by him will also attract the acceptance of Y , who would endorse the same law L_x . However, Y holds that her true and sincere opinion leads her to endorse a different law L_y , which is preferable to L_x ,

²⁰ A question that arises from this principle is that whether the requirement demanded by the principle is a moral requirement or merely legal. This will be discussed with relation to the demanding nature of the principle in more detail in chapter 3.

²¹ The condition Rawls puts on this is exemplified by his *proviso*, which will be discussed below.

assuming that L_x and L_y are incompatible alternatives.²² In this case R_x seems to be a conclusive reason for Y to accept L_x since Y actually does acknowledge R_x and endorses L_x , even though she prefers L_y . It is reasonable to demand acquiescence from Y 's part to accept L_x if she is to value the non-sectarian reason provided by X . In cases like this when the choice is oscillating between alternatives that neither leads to unreasonable decisions, then one is to weigh which reasoning and arguments that support the law are stronger and most adequate. Gaus and Vallier, however, argue against this and claim that for X to impose L_x on Y is contradictory with the liberal principle of treating Y as a free and equal person. For, Y cannot think that L_x exemplifies her self-legislating capacities as an autonomous agent (Ibid, 54), and it goes against her sincere belief and choice. But this cannot be an adequate depiction of the public justification principle, because R_x is a conclusive reason for Y to endorse L_x , even though she prefers L_y over L_x .²³ It is not clear, at least from Gaus and Vallier's example, that R_y can be considered as a conclusive reason for X . The conclusive nature of R_x requires Y to acquiesce to it since it is a reason which everyone is expected to accept as reasonable.

The more problematic issue is that if neither of them shares one another's reason or that some reason cannot be shared by all. In cases like this Rawls and many liberals appeal to the principle of restraint or the limitation of the availability of topics and questions that can be subject to public argumentation and reasoning.²⁴ This limitation of the questions of public reason constitutes one of the premises, discussed above, of the idea of public reason. This limitation of the questions of public reason lies in Rawls's approach to the question of justification that is based on distinguishing three kinds of justification, which can be

²² Gaus and Vallier (2009: 54) present this example, which I slightly refine here.

²³ George Klosko argues that liberal neutrality does not require government policies to be sensitive to the rankings of reasons. But it requires "only that public policies be intended to realize nonsectarian values and that the relevant means be similarly defensible." Quoted in Gaus and Vallier (2009: 73).

²⁴ See Rawls, *PL*, 240-54; *LP*, 164-75; Macedo (1997: 1-29); Audi (1997, 2000).

understood in relation to the idea of an overlapping consensus. These three kinds of justification are: “first, *pro tanto* justification of the political conception; second, full justification of that conception by an individual person in society; and finally, public justification of the political conception by political society.” (PL: 386).

For Rawls it is crucial that in public reason the questions that are of concern to constitutional essentials and basic justice have to be answered and justified by reference to the political values –and not to the citizens’ comprehensive doctrines– that are determined only by the political conception of justice.²⁵ This is what Rawls terms as *pro tanto* justification. This seems to be a point about how public laws and institutions are justified, but to ask by whom the political conception of justice should be justified seems to be addressed by the other two kinds of justification. In the case of justification of the political conception by every individual person and then political society, Rawls attempts to satisfy the liberal legitimacy principle based on the claim that every individual’s belief should be considered in justifying the conception. I argued above²⁶ that how Rawls appeals to the general and wide reflective equilibrium in achieving this aim. He argues that each citizen affirms the same public conception since everyone’s considered judgements will be in full reflective equilibrium with the public conception of justice (PL, 384). This line of reasoning that everyone recognizes that they affirm the *same* public conception is disputable in that it still does not resolve the irreconcilability of one’s considered judgements and the public conception. The point of justification is not centred on any particular individual’s belief, but on competing conceptions as to which one would attract the public justification of the political principles. Norman Daniels argues that the role of justification in accepting moral

²⁵ See Maffettone (2010: 223-4).

²⁶ See section 2 above, especially Scanlon's discussion of this point.

theories is analogous to the problem of theory acceptance or justification of a scientific theory based on the relation of one theory to another in the philosophy of science. He argues that the problem of theory acceptance in ethics should not be directly concerned with what justifies holding a certain moral belief or performing a particular action by a particular individual, in the same way that the philosopher of science is not directly interested in determining whether a given individual is justified in believing a certain theory (Daniels 1996: 41n.1).

Public deliberation and competing political conceptions

Rawls clearly states that wide reflective equilibrium is about weighing alternative conceptions of justice by individuals and their careful reflection on the arguments for them (*PL*, 384). However, the generality of reflective equilibrium assumes that the same conception has to be justified to each and all citizens, and this requirement is assumed by Rawls's principle of the liberal legitimacy of the state.²⁷ Once competing political conceptions were the focus of public justification by citizens, then it is not the case that each and all will affirm the same conception. Rather, a set of conceptions or reasons will be affirmed by citizens. This also explains the significance of deliberative politics, taken up by Rawls and others, as an activity of justification that citizens rely on in giving reasons to one another, which ultimately leads citizens to refine and revise their opinions. Rawls emphasizes that when citizens deliberate with each other, they reach reasons that require the revision of their political opinions (*LP*, 138-40),²⁸ and as the result of the deliberative process citizens' views are not fixed by one political conception.

However, some have argued that associating public reason with this idea of deliberative politics is a wrong assumption about public justification. Instead, the focus

²⁷ See also Charles Larmore (2003: 383).

²⁸ Rawls largely follows Joshua Cohen's account of deliberative democracy in Cohen (1989).

should be on the requirement that laws be justified to each and all citizens. This latter claim is implied by Rawls's second idea of justification, i.e., full justification, that the political conception should be justified by an individual person. Gaus and Vallier (2009: 65-6) criticize Rawls and argue that the justification of laws by all citizens, and not the process of deliberative politics, should be the concern of justificatory liberalism. But, what they overlook in their argument is that while they argue for the difficulty of shared reasons and accessibility to all, they do not consider that that condition requires citizens to engage in reasoning and deliberation in order to reach political settlements based on certain values that are important to all. Their rejection of deliberative politics as constitutive of public justification leads to the wrong conclusion that public justification is aimed at justifying a political conception by *all* citizens without grounding this on the idea of public reasoning and deliberative processes. Contrary to their view, public justification does not make reference specifically to an individual citizen's belief, but to competing political conceptions that would be affirmed in the process of citizens' exchange of reasons and their deliberation of laws and policies.

Rawls's notion of public justification, which is expressed in his third idea of justification, makes it clear that it rests on the reasonability of citizens to endorse a shared political conception even though they hold different comprehensive views. This level of justification is connected with his three ideas of reasonable overlapping consensus, stability for the right reasons and legitimacy (*PL*, 387). Public reason requires that justification is not given in terms of comprehensive views. In other words, the moral, religious, or metaphysical contents of these views do not determine the public justification of the political conception. Citizens are not concerned about what others' doctrinal contents are; they reasonably look for what makes for their overlapping consensus. Rawls assumes that in a pluralist democratic

society even when citizens make reference to these comprehensive views, they do not want to justify laws and policies based on reasons drawn from their comprehensive views. Rather, they appeal to reasons that are essentially drawn from the political values inherent in the political culture of a democratic society (*PL*, 387). He further emphasizes that only when there is a reasonable overlapping consensus can the political conception be publicly justified (*PL*, 388).

This emphasis raises the controversy about the relevance and necessary connection between public justification and overlapping consensus, and the point that needs to be considered is that whether in the case of competing political conceptions can an overlapping consensus be achieved on, and then serve to provide public justification for, a particular political conception of justice?²⁹ One could argue that even in a pluralist democratic society it might be realistic to hope for a minimal consensus that could, in some cases, resemble a *modus vivendi*, or a convergence of interests. If public justification is based on a reasonable overlapping consensus on a political conception, then reasons based on citizens' comprehensive views will not be eligible as grounds for public justification and, therefore, their exclusion from public justification. Rawls, obviously, introduces a proviso, which we will discuss in the next section, as a permissive condition aimed at solving this contention and providing an answer to the question of the role of religious reasons in public reason.

A different reply to the above question could be offered based on the conceptual interpretation, discussed above,³⁰ of the interdependent relation between justification and legitimation that has the resources for providing subtle and different perspectives. On this interpretation, one can acknowledge that there would be different reasonable justifications in

²⁹ This controversy is exemplified in the debate between Habermas and Rawls. See *PL*, 385-94.

³⁰ See Maffettone (2010).

light of the fact of reasonable pluralism, but all affirm the legitimacy of democratic institutions and their political values for the sake of stability (Maffettone 2010: 21).³¹ It is argued above that Rawls views public reason as closely attached to liberal democratic societies, and it is on the basis of this view that he takes the idea of a reasonable overlapping consensus as a fact of pluralist democratic societies.

IV. Public Reasons and Comprehensive Reasons

The permissive view of public reason

Rawls realizes that it is not possible to fully exclude reasons, drawn from comprehensive doctrines, from the public political discussion. For this reason he introduces a qualified requirement called *the proviso*, which includes comprehensive reasons not as part of public justification, but only as part of citizens' engagement in public discussion. Rawls's concession which is characterized by the "wide view" or inclusive view of public reason is more about a wider view of how comprehensive reasons should enter public political discussion than widening up public reason to include comprehensive reasons in the process of justification. This point has been overlooked by scholars and the "wide view" is seen, confusingly, as the wide view of public reason and not, as Rawls himself asserts, of the "public political culture" (*LP*, 152). His demarcation line between public political culture and "background culture" now is blurred by allowing comprehensive doctrines to cross over from their domain of the background culture to their estranged domain of public political culture and, therefore, enter public discussion.³² However, this can only happen if the arguments

³¹ See also *PL*, 393-4.

³² According to Rawls, public political culture "comprises the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge." (*PL*, 13-4) On the other hand, civil society associations and

introduced in public political discussion are set in a language that is “expressed in terms of the political values of public reason” (*LP*, 165), and therefore satisfy the proviso. The proviso then states that,

reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. (*LP*, 152)

Reasons drawn from comprehensive doctrines are allowed to enter public discussion, however, any justification of constitutional clauses or justice-related issues cannot be based on these reasons, but only on the basis of a political conception.³³ The simple fact behind this, according to Rawls, is that because these non-public comprehensive reasons would be inconsistent with the principles of equal basic liberties and equal citizenship. The significance of this proviso does not lie in conceding that comprehensive reasons should be permitted in public reasoning, but in that its satisfaction relies on the support that comprehensive reasons can contribute to public justification.

Public justification and justificatory reasons

Since public justification is arrived at through a process of public reasoning, then comprehensive reasons can only indirectly be part of the justification. According to Rawls,

comprehensive doctrines belong to the “background culture” of civil society. “This is the culture of the social, not of the political. It is the culture of daily life, of its many associations: churches and universities, learned and scientific societies, and clubs and teams, to mention a few.” (*PL*, 14)

³³ In *The Law of Peoples* (153), Rawls talks about a *family* of reasonable political conceptions of justice, which reflects the problematic issue we raised above about citizens’ affirming competing political conceptions rather than the same political conception.

only when all (reasonable) citizens embrace the political conception as a shared reason, can we talk about the achievability of public justification. Rawls argues (*LP*, 155) that,

Public justification is not simply valid reasoning, but argument addressed to others: it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept. This meets the duty of civility, since in due course the proviso is satisfied.

Rawls's emphasis is on finding shared reasons between citizens and on the fact of reasonable overlapping consensus as an essential element of public justification. According to Rawls, public justification depends on the ability of individuals to embed and incorporate the family of political conceptions of justice that serve as their shared reasons for affirming the society's laws and institutions into their comprehensive doctrines. Rawls, therefore, makes use of both cultural conventions associated with individuals' comprehensive doctrines and institutions for the public justification. The important question that arises with respect to Rawls's account of public justification is that, are *all* reasonable members of society required to bring his political conception of justice into agreement with their value commitments in order to be qualified as *public* justification? It seems that this account demands a wide consensus that Rawls wishes to be achieved by the idea of an overlapping consensus which is crucial for the stability of the conception, as discussed earlier.³⁴

Rawls is a practice-dependent theorist. He is institutional in thinking about the applicability of the principles of justice to the basic structure of society, i.e., to its political and social institutions. However, he explicitly defines this basic structure in terms of a closed constitutional democratic society, in which the fundamental ideas of justice as fairness are

³⁴ Gaus argues that Rawls's account of public justification is populist, in that it generates arguments that are widely accepted, but not justificatory. This is because not all citizens can share the reasons as justificatory reasons. See Gaus (1996: 136).

embedded. Rawls's distinction between public political culture and the background culture of civil society is not to emphasize a separation between institutions and cultural conventional rules and practices. Rather, it is about distinguishing public reasons from non-public comprehensive reasons and to stress that the former constitute the bases of public justification. Rawls, therefore, holds a mixed view of justification that is based on giving reasons in terms of a political conception of justice; and in terms of comprehensive doctrines *provided* the proviso is met. The existence of reasonable comprehensive doctrines and of an overlapping consensus, reached between citizens, is assumed by Rawls as facts about the political institutions and cultural nature of pluralist democratic societies. (*PL*, 387n.20) The political conception on which citizens agree is justified by the very fact that these comprehensive doctrines are supposed to lend support to this conception. This culturally-based theory of justification is central to Rawls's ideas of public justification and public reasoning.

Reason giving and lack of reasons

The activity of giving reasons by citizens is sometimes exhausted by the fact that even though they have reasonable convictions, they cannot provide reasons for their actions and the beliefs they hold. For, sometimes someone's belief in a religious doctrine can be explained by the fact of the cultural background in which she has grown up. The fact that she believes in a particular religious doctrine is no evidence of the availability of reasons for why she believes in what she believes. We are not always equipped with argumentations and reasoning to support or reject a policy or law. In this regard, Wittgenstein's remarks are quite interesting and supportive of this claim. In *Zettel*, Wittgenstein raises this point and puts it thus, "He must go on like this *without a reason*. Not, however, because he cannot yet grasp the reason

but because –in *this* system– there is no reason. (The chain of reasons comes to an end).” (Z, §301)

With regard to the question as to how to obey a rule, Wittgenstein, in the *Philosophical Investigations*, argues that, “If that means ‘Have I reasons?’ the answer is: my reasons will soon give out. And then I shall act, without reasons.” (PI, §211) For Wittgenstein, this is a question about whether reasons and justifications are always available for our actions and for obeying rules. He then argues that “If I have exhausted the justifications I have reached bedrock, and my spade is turned. Then I am inclined to say: ‘This is simply what I do’.” (PI, §217)

Based on Wittgenstein’s insights and reasoning, one can argue that it would be rather questionable to presuppose that in democratic societies all citizens would agree on the same political conception, and that citizens can always give shared reasons or justifications for their actions and decisions. For, this assumption is based on the idea that a reasonable overlapping consensus on a particular political conception of justice will be achieved once we view citizens, living under just and democratic institutions, as rational and reasonable. This would also lead to the claim that all citizens would share the same reasons and justifications. This presupposition has been put under scrutiny and questioned in the previous discussion, and in the following chapters more will be said about it. In the course of discussing as to how to agree on ascribing names to descriptions or predicates to objects, Wittgenstein argues against such authorities as the majority vote or community agreement as decisive methods of providing reasons and justifications. (Z, §§427-33)³⁵ Analogously, public reason and

³⁵ On this point, see also the instructive discussion by James Tully (2003).

justification cannot be based on culturally-based³⁶ shared reasons by assuming that the whole society would agree on them.³⁷

V. Conclusion

I have argued that Rawls makes an explicit connection between the ideal of public reason and a particular form of regime, that is, a constitutional liberal democracy. I have tried to critique this by arguing that this connection is based on certain claims about liberal democratic societies. These claims were based on the idea that in democratic societies all citizens will come to share a particular political conception of justice on which an overlapping consensus will be achieved. They were also based on the presupposition that although individuals subscribe to different comprehensive doctrines, they would not base their decisions, for the legitimacy of laws and public institutions, on their held doctrines. Rather, they appeal to the shared political conception in order to present their arguments to support such laws and institutions. I have tried to examine these claims and to argue that some of them cannot be straightforwardly maintained. I have argued that Rawls's theory of public justification is based on a wide consensus and that it is not the case that there *are* reasons that *all* can share. In the next chapter, I will try to present an idea of public reason in nonliberal contexts. I will argue that in nonliberal societies the question of constraining public deliberation still arises, even though deliberation is marked by the presence of comprehensive views.

³⁶ This is not to say that Rawls offers a communitarian theory of public justification. For a discussion of Rawls and communitarians, see Mulhall and Swift (1996); also Maffettone (2010: 158-70).

³⁷ Paul Weithman (2002: 121-47) argues that citizens are allowed to present religious reasons in public political debate and vote from these reasons and that they are not obligated to offer to one another justifying reasons, provided they can give justifications as to why the government is justified in adopting such a policy.

2

Legitimacy and consensus in non-liberal societies

The important question that was posed in the previous chapter and left unanswered –which will be pursued here– is how and when can certain procedures and institutions be considered as legitimately generating consensus in society? In this chapter, the question will be approached not by considering it in liberal democratic societies, but the significance of this question will be tested in non-liberal societies. If nonliberal regimes can be characterized as legitimate based on some political and ethical grounds, then the exercise of coercive political power requires justification and the question that arises is that whether it is justified in terms of dominant comprehensive views, and if so, whether there is a wide disagreement about what these comprehensive views require. In the previous chapter, it was argued that democracy’s public reason is associated with the *liberal* principle of legitimacy, which importantly sets conditions for the justification of the use of political power. In nonliberal political contexts, there is a symmetrical need for the justification of political power. However, this process, in most cases, is done by reference to substantive value commitments and comprehensive views. A conception of public reason will be developed here that gives more weight to the value of inclusion and to reasons informed by substantive value commitments. This conception could be suitable for, and function in, not only nonliberal societies, but also in liberal societies.

In the course of discussing these points, I will do the following. First, I will consider the question of legitimacy in nonliberal polities and argue that these polities can be considered legitimate provided that they satisfy certain conditions about basic legitimation demands and they give reasons for their policies (I). Second, in order for consensus to be

generated in nonliberal societies, the state cannot appeal exclusively to a religious law, for example, without making reference to other, sometimes non-religious, sources of legislation. This requires the adoption of a multiple justificatory strategy whereby different interpretations of the law are advanced to reflect the diversity of value commitments held by individuals (II). Third, since the legitimation of nonliberal regimes hinges, in most cases, on substantive moral values, there will be a conflict as to what these values require and how they should be interpreted in the process of law making and its justification. (III). Fourth, the claim that considers that public deliberation in nonliberal societies is unconstrained because of the lack of any freestanding political conception and external reason will be examined. It will be argued that the constraint is drawn from the fact of conflicting and competing interpretations of how people's value commitments and comprehensive views should offer a justification, and I will argue that justification in terms of these ethical values does not make consensus impossible. Public legitimacy then requires public reasoning in which appeal to substantive moral and political values, in order to justify the use of coercive power is not exhausted (IV).

I. The Question of Legitimacy

There are different grounds on which legitimacy can be ascribed to practices, institutions and exercises of political power. One reason for rendering legitimacy a complex notion is that, at a descriptive level, it does not offer a full description of the nature of practices, institutions and governments that are in question; for, it could describe a variety of regimes from liberal to non-liberal ones. At the normative level, however, it speaks of the duties and obligations that should follow from legitimate institutions and laws. Some have argued that legitimacy is directly linked to the democratic procedures, which produce outcomes that are legitimate too. For Habermas, as McCarthy puts it, "the outcomes of legal procedures could claim

legitimacy only if the legal order itself was recognized as legitimate.” It is then the “justification of the legal-political system as a whole –a justification that was, for democratic systems, based on appeals to human rights and popular sovereignty– that conferred legitimacy on decisions arrived at via procedures conformable to it” (McCarthy 1995: 1085). Rawls, for instance, argues that legitimacy is specifically tied to liberal democratic systems that satisfy the principles of justice and, therefore, claim legitimacy for their laws and policies. For Rawls, the liberal principle of legitimacy is indispensable to the justification of the use of coercive power. Rawls argues that “the exercise of political power is legitimate only when it is exercised in fundamental cases in accordance with a constitution, the essentials of which all reasonable citizens as free and equal might reasonably be expected to endorse” (*PL*, 148). He then offers a Kantian understanding of the legitimacy of laws that, as he argues, “when all reasonable citizens think of themselves ideally as if they were legislators following public reason, the legal enactment expressing the opinion of the majority is legitimate law.” (*LP*, 137)

The basic legitimation demand and public deliberation

Discussing the question of legitimacy in a socio-political context that is not predominantly liberal or structurally democratic requires consideration of those principles and ideas that contribute to making the institutions in such a context legitimate. Williams argues that it is a necessary, but not a sufficient, condition of legitimacy that the state solves the “first” political Hobbesian question. In Hobbes’s terms, the state acquires legitimacy when it provides security, protection, trust, and the conditions of cooperation (Williams 2005: 3). Hobbes’s main philosophical and political justification for establishing the state is that it provides a solution to the problem of anarchy that pervades the state of nature, in which individuals lead

a “solitary, poor, nasty, brutish, and short”³⁸ life. For him, the transition from the state of nature to the State is necessitated by the need for an authority that keeps the social contract between individuals, and this authority can only be located in the sovereign and the state. The important point for Hobbes was, as Williams notes, that the state should not be part of the problem, i.e., it should not create terror but to save subjects from it. For states to become solutions and not part of the problem is that they must meet, what Williams calls, the “basic legitimation demand.” Perhaps, one of the objectionable points that Hobbes’s own solution, that is, the state, has raised is the objection that is expressed by many, for example, by Locke, that granting the state absolute powers would fail the point and purpose of the state, and it will become, instead, the heart of the problem.³⁹

When the question of legitimacy is considered in a nonliberal context, the task is to see whether nonliberal states and institutions can pass Hobbes’s test in securing the conditions of cooperation, order, safety, and trust. One could argue that nonliberal states and institutions can meet this basic legitimacy demand, and even dictatorial and theocratic rules might be said to meet this demand. This is based on the argument that these types of government would provide security and safety for their subjects –though not tolerating political dissent– in order to keep order and stability of their rules.⁴⁰ The sense of legitimacy that is conferred on these regimes –though they cannot legitimize their institutions, neither could they morally justify their coercive laws– is that subjects are still bound by laws and

³⁸ Hobbes, *Leviathan*, Ch. 13.

³⁹ For Locke’s famous objection to Hobbes, see *Second Treatise*, §93.

⁴⁰ After the American invasion of Iraq, for example, and the ensuing internal conflict many Iraqi people claimed that they felt more secure and safe under Saddam’s rule than after his removal. This security and safety under Saddam’s rule came, clearly, at the price of obliterating all forms of freedom. It must be said, in this context, that trust might exist in tyrannical rules just for the reason that trust is not, as Hobbes would have us thought, a statist virtue, but it can be seen as a cultural or societal virtue that is generated by norms and social bonds between individuals within a certain society. However, Hobbes’s point can be understood as the trust between the state and society and not merely between members of the society.

they are not dissolved of the duties and obligations. So, someone cannot claim that he will not obey the laws –even if some laws are morally justified, such as a law against rapists– because the state and its institutions under which he lives are illegitimate.⁴¹ They become completely illegitimate once they violate the basic legitimacy demand and they turn to outlawed polities. In this chapter, these types of states and societies will not be examples of the nonliberal societies that are considered here. The account of legitimacy that is suggested here is meant to define the terms of legitimacy of nonliberal societies. By legitimate nonliberal societies, throughout this thesis, it is meant to describe those societies in which toleration is exercised and that they satisfy two main important conditions: (a) they meet the basic legitimization demand discussed above, and (b) they provide an adequate space for public deliberation and argument in which citizens can participate.⁴² These are meant to be minimal conditions and not a list of comprehensive liberal rights and freedoms.

To further expound on the ideas of the basic legitimization demand and legitimate nonliberal societies, it is important to see how the political institutions of such societies could be possibly legitimate. This might be done by testing whether they can provide an answer to the first political Hobbesian question or, as Williams puts it, whether they meet the basic legitimization demand. The basic legitimization demand requires that an institution or a state should not radically discriminate or function so as to radically disadvantage an individual or a certain group. This would be morally objectionable, even if the institution in question can justify its exercise of coercive power over an individual or a group in terms of meeting the

⁴¹ See Simmons (1999: 770).

⁴² Consider that the idea of legitimate nonliberal societies is similar to Rawls's "decent nonliberal peoples." All the features that Rawls gives to decent societies are also important for legitimate nonliberal societies, such as they allow a right of dissent and that consultation hierarchy can be included in their institutions, and they respect human rights. The only point that is emphasised by the idea of legitimacy is to argue that in nonliberal polities, there should be a requirement for the justification of political power.

basic legitimation demand. The legitimation demand, however, requires that the justification is not given merely in terms of preserving the status quo and the institution's claim to authority, as this would risk the institution slipping into mere authoritarianism and tyranny. Rather, it requires that the institution's power is justifiably exercised over individuals and groups and that their relationship is grounded on agreeably mutual terms. Williams argues that when "the power of one lot of people over another is to represent a solution to the first political question," then an explanation is due to those who are disadvantaged by this power. This explanation "cannot simply be an account of successful domination. It has to be something in the mode of justifying explanation or legitimation." (2005: 5)

In the course of discussing nonliberal societies, it has to be noted that in some of the constitutions of Muslim-majority societies, there are clear references to Islam as, sometimes, *the* source, and others, as *a* source of legislation. Thus, when in nonliberal societies laws are legislated in light of a particular dominant religious doctrine, the legitimacy that their legal and political institutions can claim, should depend on the fact that these laws and their interpretations are not designed to exclude other non-dominant religions and some individuals. Political institutions cannot meet the condition of legitimation if a segment of population is disadvantaged by the use of coercive power, unless proper explanation, or justification can be provided, as to why they have been disadvantaged by the domineering doctrine. Demands for justification, then, arise when there is an objection to the policies and laws that are objectionable on political and moral grounds. The further demand that individuals can make in nonliberal polities is the condition that laws and policies should be made through a process of public deliberation. This is an important point for the argument as without this condition the legitimation demand cannot be met.

It can be argued, and it could be insisted, that liberal principles are necessary political virtues to the claim of legitimacy. However, this will not undermine the claim that there have been, and there are, legitimate nonliberal societies. There have been, historically, states that acquired legitimacy for their being in a morally or prudentially acceptable relationship with their subjects.⁴³ As an illustration, if one looks at the rise of Islam in its historical context, one can see that, apart from the divine justification that the Prophet of Islam had conferred on the erection of the state, his justification of the newly established state in the seventh century was substantively based on both a noncomparative moral argument and a comparative argument.⁴⁴ At the noncomparative level, he could present the new religion and its rules for the possible future state as representing a new form of order and organization and, therefore, divinely and morally commanded. At the comparative level, it was a response to the disorderly tribal structure and the lack of a unified legal order that dominated the social and political life of the pre-Islamic Arabian peninsula societies. This latter argument represented the prophet's pragmatic turn to give legitimacy to the future state, founded on the rules of the new religion. Thus, the two arguments for justifying the state were at work here. The noncomparative, or *ontological* argument for justifying the state played some role in that establishing a new form of organization was a divine command. However, the comparative or *moral* argument was politically significant to give legitimacy to the new religion and its institutional bases in that the new form was to be preferred to the preceding tribal structure. One could then argue that the legitimacy of the new form of organization and political institutions was drawn from meeting the basic legitimacy demand, that is to say, that it could

⁴³ See Simmons (1999: 740).

⁴⁴ Cf. Simmons (1999). He argues that there are two senses in which a state can be justified: one is to show "that every possible state is immune to any systematic noncomparative moral objections"; another is to "involve showing that *any* possible state is preferable to (or as good as) any possible condition of statelessness" (741). We have to bear in mind that Simmons makes a sharp distinction between justification and legitimacy based on a Lockean argument.

provide security, safety, trust and conditions of cooperation to its subjects. However, the space of deliberation was restricted to certain people, although the principles of deliberation and consultation among subjects were encouraged by Islamic religion.

Legitimacy in nonliberal societies

It has been argued above that states and other institutional entities should be able to provide protection and safety, for example, against organized fear and to be part of the solution to the first political question. It might be right to assume that in nonliberal societies, people have certain rights, though not all liberal rights. The violation of these limited rights that constitute citizens' sphere of protection, guaranteed by the state and its institutions, cannot be justified merely by appeal to the preservation of order. In the case of the state's being involved in rights violation, members of society will have their obligations towards the state dissolved and revolution will be a likely event. The legitimacy of the state will be in question. It has to be noted though that the violation of rights is not tantamount to the limitation of rights from an extensive system to a narrower system of rights. On this account, the institution or state will still be legitimate, but it lacks a justification for this restriction.

In the current circumstances of world politics the quest and aspirations for liberal principles and democratic governance seem to be on the rise in nonliberal societies. In these societies, people demand more rights and freedoms as well as that governments are accountable for their actions, and that the use of political power is justified not only in terms of a single approach based on a favourable religious and moral view. But, that different and multiple strategies of justification is adopted in which everyone's argument is heard and recognised as equal participants in the decision making processes. In the light of these changes, the legitimacy of political institutions in these societies takes a new twist that it should not only satisfy the first political question, but also to establish democratic rules and

deliberative procedures in constitution and law making, and to appeal to emancipated principles in justifying political power. To understand how legitimacy as a normative notion functions in nonliberal societies, we need to consider the political, moral and religious foundations that constitute legitimacy. In a Muslim-majority society –which is the context of the discussion here– the political side of legitimacy is the claim that in such non-liberal contexts the state acts as to meet the basic legitimation demand. This includes solving the first political question, i.e., the provision of protection, order and safety to individuals and communities. The moral foundation of legitimacy in non-liberal contexts is driven by the fact that religious doctrines constitute part of what is called the claim of legitimacy. This latter point is crucial in understanding the question of legitimacy in non-liberal societies. For, the social bonds and cooperation that occur among people are morally grounded in the religious doctrine, which is seen to give legitimacy to the social order. It has to be noted here that although there is a dominant religious doctrine, a variety of disagreements exist among the religious community itself and between people regarding the interpretation and implementation of the religious law. Because the nonliberal polities, we are considering here, have a space for deliberation, then it is fair to suggest that disagreements and conflicts would arise regarding how political obligations should be framed.

It was argued above, that the Islamic rule, historically, at the time of the prophet and after, for example, during the Ottoman Empire could claim legitimacy on the basis of these two foundations. In fact, religion played an important role in politically legitimizing the Ottoman rule and occupation in most of the Middle Eastern countries, just by reference to a shared Islamic identity, on the basis of which they could claim authority and thus people did not view this rule as occupation but as protection. Religion was even used as a legitimator for

colonial rule and as a factor for social control, for example, in India by the British colonial power (Ali 2007: 119; Özcan 2007: 72).

The example of the Ottoman Empire, especially in its late rules in the nineteenth century, illustrates how this empire, which played a major role as an empire in the Islamization of the identity of many countries, could give legitimacy to its rule, sometimes, based on practicing toleration and granting rights to other religious identities. As we will see later, it managed to combine with its legal system other sources of law besides the Islamic religious law, *Sharia*. The Ottomans established a system of *millet*, which was basically to grant a certain amount of right and autonomy to confessional non-Muslim communities and, under this system, they could practise their religious faith and have their own jurisdictions in family issues. However, this system was based on two unequal terms. First, it imposed on these communities a poll tax. Second, these communities, under this system, enjoyed lower status and rights than Muslims. In fact, non-Sunni Muslims did not have the same rights as Sunni Muslims. However, the *millet* system could not survive partly because of the growing pressures from Western powers, which gained more power over the Ottomans as a result of the “capitulation” treaties, and European countries could control and influence non-Muslim communities.⁴⁵ The system could not last also because of the domestic political conflicts and challenges, which created an internal debate concerning the need for a legal and cultural hybridization that could involve other than those of Sharia justifications in order to legitimise the Ottoman state. This legitimising process began in the nineteenth century with the official affirmation of the legal equality of all, including non-Muslims, and enacting laws that no one

⁴⁵ See An-Naim (2008: 192), “The privileges available to certain *dhimmi* groups under the capitulations influenced many individuals to convert; Armenian and Orthodox Christians, for example, sometimes converted to Roman Catholicism to take advantage of benefits available to Catholics under capitulations to France. This resulted in fierce competition among the various religious and church groups and led the Ottoman state to ban non-Muslims from changing their religious affiliation.

should be discriminated on the basis of religion. This became a constitutional right with the enactment of the first Ottoman constitution in 1876, and was applied to all who were subject to the Ottoman jurisdiction. (An-Naim 2008: 192-4)

II. Justification and Consensus

It is argued that non-liberal regimes could claim legitimacy if they incorporated within their political and social structure public institutions that encourage deliberation and reasoning on matters of law making and public policy. Any disagreement that results from legitimate procedures is considered to be justified. The justification of the use of coercive power, supported by the law, requires the state or institution to follow procedures that individuals see as legitimately exercised. Since legal enactments in these societies make significant references to religious doctrines, then any enforcement of laws should depend on diverse or multiple justificatory strategies, rather than on one single source or strategy. The validity of this point becomes more evident particularly in pluralistic societies, where different religions other than the majority's religious doctrine make claims to participation in making decisions.⁴⁶

The strategy of justification: multiple or singular?

Thus, in non-liberal societies the justification of the exercise of coercive power and laws and policies is still needed. However, this justification is offered, in most cases, in terms of, predominantly, religiously-oriented legal codes, for example, by the Islamic law, *Sharia*. The relevant point that I want to make, in this context, is the claim that consensus cannot be

⁴⁶ This will be clearer later on in the discussion, but as a preliminary note consider Malaysia. The plurality underpins Malaysian cultural and political life attests to the fact that although Islam is the official state religion and the country is seen as an Islamic country, its diverse ethnic and religious bases cannot be unified in terms of one legal source. Even if this can be done, this legal code has to be so inclusive as to accommodate a diversity of views and doctrines that in the end results in the reinterpretation of the Islamic religious law, *sharia*. See, e.g., Osman Bakar, 2003; Joseph Chinyong Liow, 2007.

generated within members of society, merely on the basis of the Islamic legal codes without reference to or hybridization with other legal sources and moral and political value systems. One sound argument for this claim is that enforcing the Islamic law as the only source of legislation, and thus the ultimate moral and political system of values, will have to take seriously the diversity of cultural and religious views inherent in Muslim-majority societies, which are pluralistic in their societal formation. For, the plurality of cultural and religious groups within some of these societies will, in turn, produce disagreements between the state and society and among individuals, when it comes to supporting or rejecting a law. These disagreements will be, mainly, on what these specific legal codes require and whether the state and its public institutions, justifiably and legitimately, interpret such religious legal codes. It is the question of equality, as a moral and political value, that the whole society and individuals will be concerned with, that is, to be protected and treated equally under such codes. The concern is about whether these religious legal codes and its system of values allow the inclusion of all in the decision making processes, and preserve the dignity and respect of every individual and, therefore, make occurring disagreements a right to be practised by individuals and by the society as a whole.⁴⁷

These political and moral tasks have to be understood as important, and that they should be incorporated in any account of consensus that is concerned with these types of society. Consensus cannot be generated if the state and its institutions use the coercive power to disadvantage or displace other religious and cultural groups. Institutions then will lose their legitimacy, as they will not have the capacity to justify their laws and policies on the basis of rational deliberation and wide public reasoning. Any indoctrinated law, i.e., laws that are

⁴⁷ This is not to say that plural legal systems should be adopted in nonliberal societies. As a matter of fact, legal pluralism occurred mostly in postcolonial countries. The reason that the argument here does not suggest legal pluralism is that Islamic law in these societies should not dictate matter of public law and policy.

fused with religious doctrines and guided by a system of moral values, which are dependent on the tenets of the religion, requires multiple interpretations and reference to sources, other than the doctrinal source, in order to generate consensus. However, the process of generating consensus through legitimate procedures in a political context that is not characteristically defined by democratic procedures of legitimacy, demands a strategy of justification that appeals to multiple value systems, which could be incorporated into the system of law. In such non-liberal regimes, it was presupposed that their claims to legitimacy is based on the moral and religious value commitments that constitute the beliefs and perceptions of many individuals, who take these commitments as substantive enough to lend support to proposed laws. The enforcement of laws, in most cases, is justified by reference to these value commitments, and religious arguments are presented to support or reject a law or policy. However, this justificatory strategy in terms of religious and moral doctrines represents the substantive value commitments of a segment of society that claims to be morally true or valid. It is in this sense that consensus among members of the society turns out to be problematic, if it is not founded on a diversity of justificatory strategies. This diversity of justifications functions on the assumption that different justifications need to be provided, with respect to laws and policies on which consensus is required by the society.

In the strategy of multiple justifications, there will be reference to value commitments in order to prove the truth or falsity of an argument. What is distinctive about it is that this justificatory strategy does not assume that there is an independent or external reason to which everyone would agree. The reasons that are given come from within substantive value commitments themselves. Thus, a variety of reasons can enter the process of justification, insofar as coercion is not used to impose one reason over others. This can be true not only in non-liberal contexts, but also in liberal political contexts where religious reasons are said to

be included in the public discussion and may be in justifying a law.⁴⁸ The idea of the diversity of justificatory strategy functions so as to substantiate the many disagreements that emerge over a law or policy, among individuals and between society and the state. It offers the space for interpreting and providing reasons why disagreements occur, and what kind of legitimate procedures can be used to arrive at an outcome that everyone can accept as reasonable. The cogency of a justificatory strategy that tries to provide justification, for example, for a liberal value and principle, in nonliberal societies, seems to depend on whether people in these societies would accept the principle, not on the basis of its superior cognitive validity or truth content, but whether it can be endorsed by them from within their substantive value commitments.⁴⁹ A justification given in support of a law cannot attract the endorsement of all, no matter how legitimate the procedures are in reaching a certain outcome, if the justification itself is not based on diverse reasons. It is for this reason that one can argue that a legitimate system cannot claim that it is capable of offering justifications to all affected parties, without acknowledging the existence of conflicts and disagreements and the need to employ different sources and diverse justificatory strategies.

Wide disagreements and multiple justificatory strategies

⁴⁸ Rawls allows that comprehensive arguments, religious or nonreligious, can enter public discussion on the basis of his *proviso*, this will be discussed in chapter 4. Habermas too argues that religious reasons can enter the public sphere. He proposes a change of an “epistemic mindset” that both secular and religious citizens embrace and, therefore, engage in a “learning process,” that is, if the fragmentation of a political society is the result of “learning deficits.” He argues that “A change of epistemic attitudes must occur for the religious consciousness to become reflective and the secularist consciousness to transcend its limitation. But it is only from the viewpoint of a specific, normatively charged self-understanding of Modernity that we can qualify these mentality changes as complementary ‘learning processes.’” (Habermas 2006: 18)

⁴⁹ This is a discussion about external and internal reasons, which is that whether liberal principles and values should be adopted based on external or internal reasons, something which I will be pursuing throughout and will go into depth in the following chapters. For this point I am much indebted to Akeel Bilgrami’s discussion of this issue (1992; 2004). I have greatly benefited from his insights in formulating a conception of public reason based on the strategy of internal reason and reasoning, which I discuss in detail in the next chapter.

To put this point into context, let us consider the nineteenth century Islamic thought, specifically the reformist movement led by Muslim intellectuals in the effort to rethink and reinterpret both tradition and the divine text (*nass*).⁵⁰ Their aim was to reinterpret the Quranic text to respond to the challenges posed by modernity and to bring the Islamic personal and public law (*Sharia*) into terms with the modern age. The main question of the age that the reformists tried to answer was, if one could put it this way, How can the sharia be justified in the eyes of individuals and the society if the demands of society and human development so contradict what the principles of sharia enact? The reformists, based on this challenging question, opened up the space for rational evaluation and legal deliberation of, what is known in the Islamic tradition as the *ijtihad*, namely to decide how the law should be interpreted and implemented. They multiplied the sources of legislation in the sense that other codes of law can be employed in order to give a rational account of the word of God. Although the dominant justificatory strategy was given in terms of a religious law, these reformists saw the need for importing other non-religious legal sources to be incorporated into the body of the system of law that could provide a reasonable justification to the wider society. This was a necessary step to generate political consensus and to legitimize the state. Tahtawi, among other reformists of that age, tried to provide a variety of legal sources in resolving modern questions that he grappled with. He proposed to combine the Islamic law with other systems of law and claimed, as Abu Zayd puts it, that

there was little difference between the principles of sharia and [that] of the ‘natural law’ on which they were founded, i.e., the codes of modern Europe. This implied that Islamic law could be interpreted in the direction of conformity with modern needs. It offered a principle of

⁵⁰ The reformists in the 19th century were Riffa Rafi al-Tahtawi, Jamal al-Din al-Afghani and Muhammad Abduh in Egypt, and Sayyed Ahmed Khan in India. Also in India, in the 18th century, Shah Wali Allah emerged as a reformist who tried to revive Islam not by strict adherence to sharia, but by encouraging the reinterpretation of the religious law, i.e., *ijtihad*. See Abu Zayd (2006: 16-8).

justification, namely that in certain circumstances it is legitimate for a believer to accept an interpretation of the law drawn from a legal code other than his own. (Abu Zayd 2006: 25)

The important point that needs to be registered here is that there were wide disagreements, not only between religious legal scholars but also within the society, regarding what these comprehensive religious codes require. What this argument tries to address is that even within systems, that are dominated by some religious law and doctrine, there are still disagreements as to how these can be interpreted. These hermeneutic attempts and the constant process of interpretation and reinterpretation were vital for the state in order to give legitimacy to its power. This also provided a forum of reasoning and deliberation that sought to justify the use of coercive power in terms of some law that could not have passed through on the basis of pure indoctrination. Hence, some limitation was necessary. This limitation is represented in the form of existing objections to the dominant interpretation of the law that, at different levels of legislation, makes appeal to religious views. In other words, what makes this constraint on the use of religious legal codes, say of Islamic law, possible is the fact of the existence of different justifications and reasons provided by different views on the law. Although these views form the moral and political arguments of some or many people in the process of deciding on a law, these views cannot be seen as constituting the sole source of authority or ultimate reference point. These religious doctrines, in the so-called nonliberal societies, have to make reference to other sources of legislation and different justificatory strategies have to be deployed in the course of public political debate.

It is worth noting that the objection, mainly in the form of the political, comes not only from anti-religious and secular perspectives, but also from within the religious doctrine itself, which represents different sects and traditions of thought and interpretation. This feature of internal conflict is a very important point in the turn of the legitimacy of nonliberal

states, and in the conception of public reason we are trying to lay the foundation for it and make sense of it.⁵¹ The legitimacy of these states depends, to a large extent, on their capacity to respond to the political and moral objections that different segments of society direct at the institutions of the state and their public policies. The preservation of social cohesion of such societies requires that states adopt laws that can be justified in the eyes of different factions. The wide disagreement among members of the society regarding what counts as the legitimate interpretation of the religious law is seen to be an important part of the recognition of state legitimacy. It is true that in most cases one interpretation will dominate and become the more reliable interpretation. However, in order to generate political obligation and consensus among all members of society, the state needs to justify its laws and policies in light of multiple justificatory strategies.

The rule of the Ottoman Empire can be used as an example to illustrate how these rulers tried to find a bridge between Islamic law, as their official authoritative body of jurisdiction, and other systems of law to create consensus among populations, who were influenced by the empire's jurisdictional authority. In this regard, An-Naim (2008: 16) argues that

the Ottoman sultans represent the best examples of how worldly rulers negotiated a balance between pragmatic politics and administration, on the one hand, and invocation of religious authority to legitimise their rule, on the other. The Ottoman sultans never attempted to implement the totality of Sharia and preferred to apply the Hanafi school in specific and limited jurisdictions... That innovation, which became the norm in the postcolonial Muslim world, at least on family-law matters, legitimised and institutionalised state selectivity among the competing views of Sharia without genuinely opening the basis of family-law legislation to

⁵¹ In the discussion below and especially in the next chapter, I will make it clear why this point about internal conflict is important to the acceptance of liberal principles.

debate as a matter of public policy. Similar displacement of Sharia and local customary systems by colonial codes, while isolating a so-called family-law field to be governed by Sharia principles, occurred in Islamic parts of Asia and Africa.

A further important point that arises beside different interpretations of the religious law is that the value claims and opinions expressed by members of society and legislators represent truth claims, since these opinions are formed in terms of religious views. However, the possibility of reaching a resolution about these different opinions, expressed as truth claims, and which claim should give way to which remains a disputable matter. Resolving this conflict requires certain procedures that could justifiably be used in order to reach a decision without the illegitimate exercise of coercive power.

Democratic theory and the problem of consensus

It is clear that in democratic societies conflicting opinions regarding law, regardless of their claim to moral truth, will be resolved according to the principle of the majority rule. Different opinions emerge in the process of democratic rule and each is supposed to have a space in which these can be expressed and deliberated. However, some of these opinions, as a result of democratic voting, will end up to be the opinions of the minority regardless of their correctness and validity. What happens in the case of being in the minority is that when A is selected by the majority and B by the minority, those who opted for B will not regard A as having superior truth values over B. They still regard B as their favourite and correct option, but they regard A as the *will* of the majority and, for this reason, they will affirm the will of the majority and renounce their own will until they can prove the validity and truth value of their opinions.⁵² Another problem which can be detected in democratic theory is the problem of consensus formulated, not in terms of the majority and minority views, but in terms of the

⁵² See McCarthy (1995: 1092).

tension between multiple value commitments and political principles that are meant to unify disagreements. In this regard, Rawls's idea of an overlapping consensus is meant to offer a solution to this conflict. This idea does not aim to eliminate disagreements, but to offer political principles, which everyone would reasonably endorse regardless of their different reasonable comprehensive doctrines. The philosophical depth of this idea lies in its potentiality to affirm that there are different reasons and multiple justificatory strategies that can be provided by different value commitments in order to generate consensus.⁵³ This idea is important for our purposes in order to make sense of a conception of public reason that function in nonliberal societies and also one that has a global reach.⁵⁴

Habermas, argues that to solve the tension between conflicting value commitments and rational consensus is to “seek agreement at a higher level of abstraction”. McCarthy argues that Habermas's point about the need for an abstraction is similar to Rawls's idea of a political conception of justice that floats over comprehensive views (McCarthy 1995: 1093). McCarthy then argues that although a level of abstraction is required across the diversity of interpretations and values, it will not be that degree of abstraction that obligates *all human beings*. He contends, “Quite the contrary: political discussion will have to take particulars of time, place, circumstances, identities, values, and so on into account in seeking to arrive at decisions that are *just*, that is, *equally good for all of us affected by them*” (Ibid, 1096-7).⁵⁵

⁵³ Look at Gaus & Vallier (2009: 56-62) for arguing against the supposition that there is one single reason according to which everyone would justify the law. They label this as *the error of consensus*.

⁵⁴ In fact, the idea of an overlapping consensus is similar to the idea of internal reason, advanced in the next chapter and will be used throughout. It depends on finding reasons from within people's values to support the political principles in question. However, I will offer a weaker version of overlapping consensus, in chapter 4, than the one offered by Rawls.

⁵⁵ Georgia Warnke extends McCarthy's pragmatic approach to ethical-political debates, such as abortion, and argues that in cases of conflicting interpretations that flow from multiple convictions, majority rule cannot be taken as leading to a rational consensus. It can, rather, be understood as a temporary closure to an ongoing

One could argue that the above problem that is inherent in multicultural democratic societies can also be found in legitimate nonliberal societies⁵⁶ –when different interpretations and value perspectives expressed as truth claims by the state and society– that is to say, consensus cannot be grounded on the basis of one single interpretation or value perspective. Thus, because in nonliberal societies a freestanding political conception of justice cannot be grounded in the political life, the justification of political power and laws is, to some extent, grounded in value commitments that shape the views of different members of these societies. Based on this interpretation, the political systems in these societies have to adopt, politically and pragmatically, a multiple justificatory strategy in the justification of their public laws and institutions. According to this strategy, different and multiple justifications are used that are coherent and consistent with peoples’ reasons and reasoning. This can be true even of societies where the Islamic religious law is said to be dominant; in this case, the law has to make space for alternative interpretations and to allow these interpretations to enter the space of legislation in order to generate consensus in society. It is also right to say that in reaching consensus, reasonable disagreement cannot be ruled out among citizens. These political entities cannot give rise to political obligation if the laws cannot be justified on the basis of a publicly deliberated process without resort to violence and coercive consensus. The possibility of such consequences can always be on the horizon when a religious law is deemed to be dominant in society, that is, when this law does not allow for alternative interpretations to be part of the legitimacy of its policies and institutions.

III. Disagreements and Conflicts within Values

process of debate in which citizens learn from each other’s interpretations, and in which no single right answer can be given and “no ultimate consensus may be forthcoming.” (Warnke 2001: 301).

⁵⁶ Remember the definition given of legitimate nonliberal societies in the previous section, that they meet the basic legitimation demand and provide a space for public deliberation and reasoning in which citizens can participate.

I have already discussed in the previous sections that reasonable disagreements arise from within the society concerning different interpretations as to how the religious law should be implemented. I will limit myself here to discussing the inherent disagreements and conflicts in both Islamic law and doctrine to illustrate how the Muslim community in different societies, whether they are formed by majority Muslims or minority, will differ on the fundamental requirements of the religious doctrine and how legislators try to put constraints on public debates. Although these constraints are given in terms of comprehensive religious views, the legitimacy of these nonliberal states and the justification of their power, morally and politically on their capability to offer a plurality of reasons and justifications in order to generate political obligation and consensus. One important point that needs to be raised here is whether the citizens and members of these societies are coerced to give their reasons for supporting and rejecting a law in terms of a religious perspective. Once it is established that disagreement over a correct interpretation is a feature of nonliberal societies, it will then be instructive to argue that certain constraints in public deliberation and reasoning will be required.

Disagreements about the Interpretation of the Text and Doctrine

In Islamic doctrine there are two main sources of knowledge from which Muslims derive their authoritative understanding and perceptions of the moral life, world and afterworld, and the word of God, and of His messengers.⁵⁷ These sources are the Quran, which is the word of God and revealed by the Prophet Muhammad and later came to be the textual evidence of the spoken word of God; and the *Sunna*, which is the sayings and practices of the prophet as

⁵⁷ Beside these sources there are two other sources that are considered by legal scholar as sources of Islamic knowledge. They are the “consensus of the community of scholars, *ulama*,” and finally the “application of rational syllogisms, inferring a rule for a given case not mentioned in the sources above, via an analogy with a similar established rule.” (Abu Zayd 2006: 15-6)

spread out orally by his followers and recorded in writing at the end of the eighth century.⁵⁸ and this record is known as the *Hadith* which is meant to be the carrier of these sayings and practices. Not all believers in the religion would universally agree on a monolithic view that these sources are inseparable. Some religious scholars have argued that the Sunna and Hadith are not to be read in conjunction with the Quran, as it is the only authoritative divine text that believers could rely on without being left in doubt. However, others have argued that the Sunna and Hadith should not be disjoined from the Quran as they expound on and clarify the content and meaning of Quran. This dispute and disagreement has been remarkably present throughout the history of Islam. Commentaries on the Quran emerged early on just after the prophet Muhammad died and classical major commentaries started to appear as early as the tenth century.⁵⁹ Exegetes applied different methodologies to interpret the divine text – however, these were all within the bounds of theological fields of knowledge that constituted the main articles of the doctrine.⁶⁰ Traditionalists, those who strictly adhered to the literal divine text and the Prophet’s Sunna and Hadith, were cautious about interpreting the divine text such that not to bring it into contradiction. Their aim was to explain any logical contradiction by different methods of exegesis.

1. *Disagreement among theologians*

However, some theological schools of thought, such as Mutazilites have contested the eternity of Quran based on the method of rational thinking and the philosophical

⁵⁸ See Abu Zayd (2006: 27).

⁵⁹ Notable classical commentators were, among others, al-Tabari, ibn Kathir, al-Zamakhshari and al-Jalaladins.

⁶⁰ Some of the main theological fields of knowledge are the science of rhetoric, morphology and syntax, philology, semantics, etymology, *Usul al-Fiqh* (the principles of Islamic jurisprudence), *Asbab al-Nuzul* (the reasons of revelation). The latter connotes to the interpretation of the Quran –and this has been conducted by al-Wahidi– along the lines of its historical circumstances, political and socio-cultural context, which although controversial among Islamic scholars, one could argue that it serves the purpose of de-deifying the sacred text.

interpretations of the existence of God. The Mutazilites in the eighth and ninth century, controversially and boldly, appealed to reasoning and rationality, without repudiating altogether the authority of the Scripture, as their preferred methodology to prove the unicity and justice of God. They denied any anthropomorphic characters that can be ascribed to Him according to some Quranic verses (for example, 7: 54; 20: 5; 55: 27; 75: 22).⁶¹ They have argued that the Quran is created and because God is One and infinite and the Quran passed through human beings, it is therefore finite.⁶² Five main principles constitute the basic tenets of the Mutazilites: the unicity and justice of God, God's promissory and threatening nature, the intermediary status of sinners, the injunction of right, and the prohibition of wrong. Some have argued that the latter three "follow logically from the Mutazilite doctrine of the all-pervasive justice of God" (Fakhry 1983: 46). One of the central questions that engaged theologians at that time was the question of free will. The Mutazilites attacked, vigorously, determinists and those who believed that every action and phenomenon is predestined by God. This discussion among theologians about free will is believed to have been the influence of Christianity and Greek philosophy (Ibid., 42-3, 48-56). Although all Muslim theologians were in agreement about the justice of God and denied that God could be unjust, the Mutazilites, particularly, grappled with "the problem of reconciling the justice of God and the glaring reality of evil in the world" (Ibid., 47). They logically deduced that the justice of God allows that human beings are free in their actions and that personal responsibility falls on them and, for this reason, some Quranic verses could be cited to support this claim (for example, 6: 164; 17: 15; 35: 18; 39: 7; 52: 21; 74: 38).⁶³

⁶¹ See Fakhry (1983: 56).

⁶² See *Ibid.*, 62.

⁶³ See An-Na'im (2008: 10).

The Mutazilite's use of reasoning and rational methods of investigation of the Quran, and questions of being and afterlife, led them to consider a "revolutionary vindication" of the rationality of "God's ways" and this raised much controversy and hostility among other theological schools, mainly the Ash'arite school. The Mutazilites contended that "good and evil are not conventional or arbitrary concepts whose validity is rooted in the dictates of God, as the Traditionists and later the Ash'arites held, but are rational categories which can be established through unaided reason" (Fakhry, 1983: 47). From this premise they argued that "God cannot enjoin what is contrary to reason or act with total disregard for the welfare of His creatures, in so far as this would compromise His justice and His wisdom." Thus, they could not adopt "the concept of an omnipotent Deity who could act in total violation of all the precepts of justice and righteousness, torture the innocent, and demand the impossible, simply because He was God" (Ibid).

2. *Disagreement among philosophers*

The influence this controversial and radical theological movement and the debate with its rival Islamic scholastics had on later philosophical thought was immense. This had to be seen in the philosophical treatments, which made a great use of philosophical methods and ideas of the Greek philosophy to reflect on the Quran and the doctrine's views of existence, the moral and political life. The first systematic philosophical writings to engage closely with, and produced commentaries on, Greek philosophy emerged in the ninth century with al-Kindi, who was influenced by Neo-Platonism, and this philosophical tradition culminated in Averroes in the twelfth century.⁶⁴ The disagreement and controversy regarding how to interpret the divine text and revelation led, in some cases, to dissent from Islamic dogma,

⁶⁴ I will not discuss the whole philosophical tradition that produced disagreement about the Islamic text and doctrine. I will only select a few philosophers.

which was a recurring feature of that period, a period ruled by Islamic caliphs who attempted to promote Islam as the all-encompassing identity for their subjects.

The challenge to orthodox theological interpretations of the Quran, being and different aspects of life came into being regardless of the brutality that some Muslim caliphates showed against those who were labelled as heretics.⁶⁵ Towards the end of the ninth century, a radical thinker like Ibn al-Rawandi came to challenge Islamic orthodoxy with his naturalistic and rationalistic views and to embark “on the hazardous path of religious scepticism” (Fakhry 1983: 96). He is said to “have repudiated the grand supernatural themes of revelation and miracle ... [and] of a satisfactory rational answer to the question of God’s existence and the rationality of His ways” (Ibid). He even went further to argue that “human reason was sufficient to determine the knowledge of God and the distinction between good and evil ... revelation therefore was altogether unnecessary, and miracles, upon which the claims of prophecy are alleged to rest, were altogether absurd” (Ibid).

Averroes, however, took a different position in that he did not try to challenge the existence of God or revelation. Rather, he, famously, defended Aristotelianism and appealed to rational methods in reading and interpreting the Quran. He reserved a philosophical mind in his approach to the questions of being, metaphysics, the relationship between religion and philosophy, and politics. He, in particular, argued against the theological foundations of the Ash‘arites and al-Ghazali’s treatise,⁶⁶ in which he attacked philosophers as heretics and described their ideas as full of incoherencies. In his polemic rejoinder (*Incoherence of the Incoherence*) to al-Ghazali, Averroes argues for reasoning and deliberations even within

⁶⁵ For an instructive study about the violence and cruelty of some of the caliphs in the Umayyad and Abbasid period, see Hadi al-‘Alawi, *Min tarikh’l-taathib fi al- Islam* (From the History of Torture in Islam), (Dar al-Mada li-al-thaqafa wa-al-Nashr, Damascus, 2001).

⁶⁶ Ghazali’s treatise: *Incoherence of the Philosophers*.

Islamic doctrine, and for free philosophical investigation and thought concerning questions of religion and other related matters. He believed that religion and the dogma should be subject to philosophical inquiry. His most important point about the interpretation of Quran is that he grants the right and competency to philosophers as the only class who are capable of interpreting the divine text. The significance of this point lies in the fact that, for Averroes, neither theologians, nor *fuqaha* (jurists), nor traditionists, nor *ulama* (Islamic legal scholars) are “those confirmed in knowledge,” as the Quran states (3: 5), to interpret its verses.⁶⁷ The only people that are “confirmed in knowledge,” according to Averroes, are the philosophers.

If one interprets Averroes in this strong sense, then one can conclude that every religious doctrine should be subject to philosophical inquiry, and that the conflicts that are inherent in these doctrines can be resolved by the application of certain rational methods and reasoning. Averroes could be named as advocating toleration and attempting to harmonise philosophy with religion. He also argued against those who labelled philosophical inquiry into religion as heresy and as a blasphemous act. Averroes recognises that there are other interpretations of the Quran and Sunna besides that of the philosophers, namely those of the jurists and theologians and he contends that this diversity of interpretations makes consensus a difficult matter. For this reason, a community of Muslim jurists cannot propagate that consensus can be reached based on their interpretation, since their interpretation will not be based on rational methods of philosophical inquiry and also they do not appeal to natural reasoning.⁶⁸ Obviously, there is a wide variety of legal and doctrinal schools within Islam,

⁶⁷ See Fakhry (1983: 278-9).

⁶⁸ Consider that earlier, in footnote 53 above, it was stated that legal scholars argue that another source of Islamic knowledge is the “consensus” of the community of religious *ulama*, which it seems that Averroes rejects.

and, indeed in other religions, that grant the right of interpreting the text to different authorities.⁶⁹

The relevant point to our argument here is that consensus can be reached on a matter of law or policy in a society in which its individuals represent different conceptions of the good, only if a diversity of interpretations was advanced, including non-religious naturalistic arguments in order to legitimise any form of consensus that can be generated. Averroes's significance for the present day is his emphasis on the fact that only philosophers –as a disinterested class of people who are only interested in applying rational methods– should have the authority to interpret the Scriptures and not any other theologians or statesmen and this would be a major point in establishing a polity that is not dominated by a religious class, even though religion constitute some or most peoples' conceptions of the good. The implication of what Averroes suggests is that religious dogma should not dominate public reasoning, since this reasoning should not aim at a consensus that is guided by individuals and officials' own religious interpretations of the law. It should rather aim at a rational interpretation of the law that relies on different methods. Here he argues that,

it has been certified to us that the learned men existing at that time agreed that there is not an apparent and an inner sense to the Law that it is obligatory that knowledge of every question be concealed from no one and that there is only one method for people to know the law (al-Sharia).⁷⁰

3. *Disagreement among moderns*

⁶⁹ For example, in the Shiite doctrine the Imam is the highest infallible religious authority who could resolve conflicts in matters of interpretations.

⁷⁰ Quoted in An-Naim (2008: 47).

These disagreements over what a religious doctrine and law requires are long standing ones, and they did not only occur in medieval times. They are permanent features of Islamic doctrine and they persisted in the nineteenth century and are continuing to appear up to our present day. The rise of European modernity posed certain challenges for non-European societies and contributed in their political, cultural and sociological transformations with a huge impact on rethinking the role of religion in the public life and on the reconstruction of the relationship between religion and politics or the state. In the nineteenth century India, some Muslim scholars, like Sayyid Ahmad Khan, have argued that Quran can be reconciled with the modern life and contended that Quran should be taken as the primary source of Islamic knowledge without relying on the Hadith, which the classical commentators relied on in interpreting the Quran. His aim was to view the divine text in the light of reason and find answers in the Quran for the questions that are posed by the modern world. Khan argued that the Hadith is full of unreliable stories and commentaries that could not be verified and their authenticity were at stake. He emphasised the significance of an exegesis of the Quran that should rely on its universal, and not historical, value. Understanding the Quran requires a reasonable and enlightened mind that can interpret its text and find in it the meaning for the challenges of the modern life (Zayd 2006: 28). The significance of Khan's critical position of the Sunna and his rejection of the Hadith as inauthentic is the doubt that was cast upon the second source of Islamic knowledge. In both India and Egypt two groups emerged following this dispute over the authenticity of the Hadith and whether the principles of interpretation should rely on the Hadith. These were the Quran followers and the Hadith followers. The latter never criticised, nor doubted the authenticity of the Hadith and its legal authority on Muslims as the second divine source. In response to this position, the Quran followers "emphasised that the Quran is the exclusive authentic divine source while Hadith is an auxiliary source subject to historical criticism" (Ibid, 29).

IV. Public Deliberation and Constraints

I will talk in this section about the claim that in socio-political contexts, where religious convictions inform the main legislative decisions public deliberation cannot be constrained, simply because of the lack of a freestanding political conception or a level of abstraction on which agreement can be reached. Along the lines of this view, public deliberation and reasoning then in nonliberal societies does not seem to be constrained by noncomprehensive views. If a polity is based on Islamic doctrine for its legislation and the process of law making, then the most problematic issue would be the existence of a diversity of interpretations of the scripture. This is problematic because citizens have to be satisfied that the justification of power and institutions is not given in terms of one single perspective. If the state wishes to unify these interpretations into a single interpretation then it risks sliding into a theocratic tyranny. The main body of Islamic law –i.e., Sharia is constituted by the Quran and Sunna, and if one of these sources can be subject to different interpretations then can the Sharia. It is here that some have argued forcefully that the Sharia should be rethought and reinterpreted and may be separated from public law and the public life of individuals.⁷¹

It has been argued above that the legitimacy of nonliberal polities hinges upon the fact that they answer the first political Hobbesian question, namely that whether they provide protection, safety, trust and the conditions of cooperation for their citizens. In addition to this requirement, we noted that even if such polities justify law and institutions in terms of a religious doctrine, they have to appeal to a multiple justificatory strategy in order to generate consensus in society. This latter point becomes particularly crucial when it is considered in the context of the above argument about the disagreements over different interpretations of Islamic doctrine and law. Thus, from the diversity of interpretations of Islamic scripture and

⁷¹ See, e.g., An-Naim (2008).

the Sharia, it follows that the polity has to use Sharia not as the only and ultimate source of legislation, as this would go against the plurality of value commitments held by members of the society. Sharia could be a source of legislation for a community of Muslims provided that it is accompanied by civic law and that it is under the safeguards of certain principles of law that guarantees citizenship and freedom. I should make it clear here that this is a weaker demand in nonliberal societies compared to the demand for a secular polity that displaces religious law from the sphere of public legislation.⁷² This weaker demand is taken at the level of the localised reform levelled on the part of citizens, who seek to achieve a degree of freedom of thought besides their commitment to a certain religious identity. However, this identity for some is not monolithic and they consider other values as deserving respect and recognition alongside their fundamental value commitments. In cases like this, commitment to such religious identity will be negotiable in the face of other values that are reasonable and do not lead to the destruction of the former.

The disagreements among citizens in Muslim-populated societies over the requirements of the doctrine and its application to the public and personal laws, and how these should be interpreted in citizens' life as well as the reform demands by citizens, raise a challenging point about the necessity for a free and equal space in which citizens can debate and deliberate the laws and policies. Although these nonliberal polities tend to justify the use of political power in terms of religious arguments, these arguments have to be supplemented by other reasons and justifications that could be acceptable to those, who might not be convinced by those arguments. It would be both philosophically and politically implausible to imagine that in Muslim societies and polities there is a sweeping consensus regarding the main demands of the religious doctrine based on people's faith and that citizens would agree

⁷² As a side point, I must say that I side myself with the stronger demand.

on what the government enacts.⁷³ It would also be unreasonable to ascribe the adjective “Muslim” as a generalized description of all individuals, in these societies, who are committed to Islamic religious conviction. For this reason, the diversity of citizens’ value commitments and the existing disagreements in these societies over the correct interpretation of the doctrine and its law cannot be overlooked.

The most significant dispute in this regard is whether the state and its institutions appeal to multiple justifications and reasons to reflect this diversity of value perspectives and to justify the use of coercive power. If that is the case in legitimate nonliberal societies, then there is a case for a space of reasoning where citizens debate the requirements of law and struggle over their favourable interpretations with their fellow citizens and the government. This debate and reasoning is not marked by the lack of truth claims, and society will engage in matters of moral truth and falsity in such a debate. This, some might reasonably argue, requires constraints for the purposes of making decisions on political and moral matters. As I have argued above, the debate over such matters might not ever reach a point where all parties would consent to. The constraints on public debate and reasoning in such societies is based on appeal to different reasons and justifications, including religious ones which reflect the value commitments of most, or some, members of society. The appeal differs according to different contexts and existing institutions and the fact of balance of power between political and intellectual forces.

⁷³ The recent wave of mass protests and people’s uprisings in the Middle East and North Africa against their governments and institutions vindicates that when a state and its institutions impose one single interpretation through the means of coercive power and restrict freedom, they lose legitimacy and slide into dictatorial or theocratic despotism. In these countries, whether they are ruled by an Islamic law like Iran and Saudi Arabia, or ruled by “secular” regimes but not secular liberals, there is no homogeneity of beliefs and reasons about the law and institutional designs.

This limitation of what the law requires and how it should be interpreted in societies dominated by a comprehensive doctrine, demands a conception of public reason that could provide justification to social and political institutions and generate consensus. In nonliberal societies then this conception functions in a different way from democracy's public reason. It does allow multiple arguments, including religious arguments, to offer reasons and justifications for the law. The limitation or constraint on this notion of public reason is represented by adopting a multiple justificatory strategy that does not allow for the religious doctrine to be the only justification. The peculiarity of public reason in nonliberal societies is that it is not informed by a freestanding political conception, but by different political and moral conceptions. However, what it might be promising in the working ideas of this notion, in these societies, is that the disagreements about the requirements of the religious law and different interpretations of this law could lead to the emergence of a space of legal deliberation and reasoning not dominated by the implementation of the religious law. The appeal to multiple justificatory strategies has the advantage to displace the religious law from the public sphere and, then, to be seen as only one reason among others. In the next chapter, I will elaborate on this conception of public reason that builds itself on appeal to internal reasons in adopting the liberal political principles.

3

Public reason: Internal reasons and problems with external reasons and relativism

We have been trying to establish the case that the idea of public reason advanced by Rawls faces certain problematic issues, which can be summarised in these two points. The first point is that Rawls believes that the idea of public reason is exclusively linked to liberal politics and constitutional democracies.⁷⁴ The second point is that his idea of public reason is based on the assumption that there is a shared reason according to which everyone, as reasonable and rational persons, would accept the laws and policies. It excludes any appeal to (internal) reasons drawn from value commitments in the justification of public policies and institutions.⁷⁵ In the course of my previous discussion, I touched mainly upon the first point and endeavoured to build my counter argument on two premises. First, I argued that public reason is best understood not as an idea of democracy, but as a global ideal linked to the conception of politics. By this I mean, public debate and reasoning and the justification of the use of power require a conception of public reason without assuming that there *are* reasons that all rational and reasonable agents would necessarily endorse certain liberal political principles. This premise contends that there are no external reasons for accepting such principles. Rather, everyone can come to accept some public political principles, only when everyone has internal reasons to accept such principles. Second, I tried to construct that there are disagreements and internal conflicts within every value commitment and this was

⁷⁴ See *PL*, 213; *LP*, 131-2. This was discussed above in chapter 1, section 2.

⁷⁵ See *TJ*, 120; *PL*, 384; *LP*, 153-5; also Scanlon (2003: 160). The issue of shared reasons was discussed in chapter 1, section 3 and 4. It will further be discussed in the next chapter.

illustrated by the example of Islamic doctrine, which informs some of the nonliberal polities. I argued that in the course of legitimising their political power, these nonliberal polities – excluding dictatorial and theocratic tyrannies- require that citizens and officials present *internal* reasons, in public debate and reasoning, that may depend on their value perspectives in order to justify a proposed law.

In this chapter, I will first argue against the assumption of having external reasons as a condition for the idea of public reason. I question the validity of this assumption and contend that this might never be achieved (I). Second, I propose a justificatory strategy, namely the strategy of internal reasons that depends on the presence of internal conflicts within and between value commitments. I argue that in this justificatory strategy we should not exclude that subjects will appeal to their internal reasons to justify laws and policies, and individuals might not appeal to some external reasons that are not enhanced by subjects' value commitments (II). Third, I discuss the challenge coming from relativism regarding the absence of external reasons. I will argue that by deploying internal reasons and excluding external reasons from our considerations of public reason, relativism is not implied (III).

I. Liberalism and the Problem of External Reasons

While there is a wide disagreement about how to treat reasons that are the product of religious arguments, there is a kind of agreement among secular liberals that secular or, preferably, political reasons are those that should ground public reason and used in the justification of laws and public policies.⁷⁶ I have argued, in the last chapter, that substantive value commitments are not free of internal conflicts and wide disagreements exist within a

⁷⁶ It should be noted that the only plausible interpretation of secularism I am trying to articulate here in its association with liberalism is to understand secularism as the condition in which no religious doctrines or laws should inform the basis of the constitution and the state's policies and public laws. This definition draws on Taylor (2007, 2011) and Bilgrami (2011).

value system concerning the interpretation of what should be proposed as a law. This conflict is the key point for any value commitment or cultural identity to engage in an internal reasoning concerning the moral validity and truth claims of those values which are taken as important by a certain identity politics. These values should go through a selection procedure whereby they can be publicly defended –alongside other values which they might be in disagreement with one another– and that they can be subject to public criticism. It should be noted that this is not to presuppose some ideal conceptions or principles, based on their philosophical rigour and cognitive validity, which all value commitments should reasonably accept. Conceptual formulations must be flexible to the effect that in the course of their instantiations across different contexts, their premises could be transformed beyond the constructed formulations. The significance of any ideal conceptual construct, one could argue, lies in their normativity, in being prescriptive and in their capacity to guide and regulate. Although this normative side is crucial to theory, a further important point would be the realisation that these conceptual constructs serve as grounds of critique when values conflict. This is not to say that there are assumed, presupposed and prescribed reasons that one could appeal to when making a judgement. Rather, the point I am trying to make is twofold. First, it is to emphasise that there is a need for any identity politics to engage in an internal discourse and find from within itself those reasons that have dialogical values with respect to other values in public political debates. Second, there must be some theoretical grounds on which one stands to criticise, support or reject certain values and give justifications for their positions. The process of criticism is intended to challenge and question those reasons that are provided to articulate the main premises of the argument. The point about commitments that should have dialogical values is particularly important to the construction of the argument for a notion of public reason that depends, not on the reasonability of doctrines, but on the rational capacity of persons for internal reasoning. This

capacity for rational dialogue is crucial for any person to vindicate that her fundamental commitments and values are based on valid premises and that they can be publicly debated and subject to criticism.

External and internal reasons explained

It will be helpful to explain, from the beginning, what is meant by external and internal reasons in this context. External reasons “are reasons that someone is supposed to have quite independent of his or her substantive values and commitments, that is, independent of elements in the psychologies that motivate people.” Internal reasons, by contrast, are those which “rely on specific motives and values and commitments in the moral psychologies of individuals (or groups, if one takes the view that groups have moral-psychological economies).”⁷⁷ The claim that will be made here is that there are no external reasons, but only internal reasons, according to which people would accept and embrace the political and secular liberal principles.

Let us now talk about the problematic issue of basing liberal principles on the presupposition that people would rationally and reasonably choose and affirm such principles regardless of what fundamental commitments they hold. Liberalism or what is called justificatory liberalism builds its argument for the political foundation of liberal systems on the moral foundation of the liberal conception of persons, as free and equal citizens, and on the liberal principle of legitimacy. This liberal conception was presented by all liberal theorists as a presupposed premise or as a reason, in the argument for justifying the liberal state and its institutional structure. However, the more controversial point, which I would like to discuss here, is that almost all classical liberals, from Mill to early Rawls, have assumed

⁷⁷ Bilgrami (2011: 4). I draw on Bilgrami in defining the distinction between external and internal reasons.

that there are reasons according to which all rational people and reasonable doctrines would accept liberal principles. Waldron thus describes the foundation and project of liberalism, which captures the idea conveyed here. He argues that the “aspiration of modern liberalism is Kantian in inspiration: Act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law.” (Waldron 2003: 14)

The liberty principle, which comes as the first premise and as an independent reason in the argument for justifying the law, can be stated in different formulas, but they all address the core value of individual liberty. It states that, “Liberty should be the norm, [respect for persons as free and equal requires that] coercion always needs some special justification.”⁷⁸ The liberty principle can be overcome only if the further public justification principle is satisfied. It was observed, in chapter 1,⁷⁹ that the public justification principle, proposed by Gaus and Vallier, states that “ L is a justified coercive law only if each and every member of the public P has conclusive reason(s) R to accept L as a requirement” (2009: 53).

First of all, the liberty principle constitutes the moral foundation of liberalism that individual liberties should not be interfered with except in certain circumstances, where such restrictions would be justified as in the case of imposing a law of taxation to prevent people from the accumulation of money without paying taxes. Every member of the public would possibly provide reasons to accept this law and they would view it as justified even though it interferes with their liberty. However, it is not only that they should have reasons to accept this law. The public justification principle, moreover, requires a very strong demand on them, that is, to accept this law not only as a legal, but also as a *moral requirement*. Some libertarians like Nozick, for example, would object to such a law of taxation by providing

⁷⁸ For this formula, see Gaus and Vallier (2009: 53).

⁷⁹ See chapter 1, section 3.

internal reasons from within his libertarian doctrine that this law violates individuals' right to property. However, the moral requirement of this law demands that they accept it.⁸⁰ The point is not that whether this law is right or wrong –my aim is not to structure the argument for or against this point. The main point is, rather, to show the strong nature that the justification principle demands, which lies not in appeal to a diversity of justificatory strategies, but to a single basis of justification.

The nature of this strong demand to accept the law as a requirement is explained more by this point. Leaving the taxation law aside as it seems less controversial to accept it, let's consider such individual liberties as freedom of speech, thought and expression that are revered by liberalism and expressed in the liberty principle mentioned above. Liberalism presumes that liberty should be the norm and on the basis of this presumption, freedom of speech, among others, is considered to be justified not only in liberal societies, but also across different contexts, and any reasonable doctrine and rational person should be willing to accept it.⁸¹ Most (classical) liberals view people's endorsement of liberal principles as a matter of reasonability and not something that should be reinforced by appeal to their substantive value commitments. It is argued that an alternative strategy is to look for reasons that are coming from within these value commitments to support freedom of speech. One cannot take it for granted that just because liberty should be considered as the norm, then it is a moral requirement that every reasonable doctrine accepts this principle.

Now, the question that faces the public justification principle is as follows. What if some people lack an internal reason –provided they do not lack the mental capacity for public

⁸⁰ Nozick claims that taxation “is on a par with forced labour.” I will not discuss the validity and cogency of Nozick's claim here, and for the purposes of our argument this need not concern us, as it is not the essential point here.

⁸¹ I will talk about the internal reasoning mechanism in respect to the freedom of speech in the next chapter.

reasoning and debate— that is coming from within their comprehensive doctrines, say, a moral reason to accept *L* as a requirement? Would that make the law unjustifiable in respect to them? If the answer is negative, namely that they still have the obligation to obey the law, then it seems that Gaus and Vallier want to say that there is a shared basis of justification to which they should appeal, even if they do not have an internal reason. From this perspective, there is an *external* reason, required by *morality* that everyone should appeal to. This reason or a shared basis of justification seems to be based not on internal reasons or value commitments that some people might hold but some others might not. According to the answer given to the above question, censorship of blasphemy, for example, as a law which specifically overcomes the liberty principle can be justified even if some will have no reasons to justify this law. Secular liberals, for instance, cannot provide reasons from within their liberal doctrine to justify this law, since it goes against free speech as a liberal principle. To accept the law as a moral requirement, it is then necessary that secular liberals and, say, Muslims have to appeal to a shared basis of justification that is not reinforced by their internal reasons. There is, then, an external reason, such as, we should tolerate others no matter how wrong they are. Some liberals would then argue that free speech is valuable, first, as a human right and, second, as a value which every reasonable person would embrace. The strong demand that classical liberals put on the political and moral value of free speech is that all *reasonable* human beings should accept this value. It is, therefore, exemplified in ruling out any justificatory method that could be based on appeal to substantive value commitments to support such a value.⁸²

Putting forward arguments in support of the value of free speech should not hinge on the presupposition that all reasonable doctrines and people would adopt such a value

⁸² For this argument, I draw on the discussion in Bilgrami (2004: 176-8).

regardless of the diversity of their convictions. It would be the task of a global notion of public reason to engage in finding internal reasons, in the local and global context, that justify free speech. An alternative justificatory approach, therefore, would be that whether censorship of blasphemy can be justified based on substantive value commitments and to look for arguments, through public reasoning, that appeal to Islamic doctrine to prove that censorship of blasphemy is wrong. What the other justificatory approach, which is based on an external reason, suggests is that Muslims and secular liberals do not have to overlap on the premises, but only on the conclusions, and the conclusion is that liberals should tolerate religious reasons in favour of the censorship of blasphemy. One should emphasise that it is easier to overlap on premises rather than on conclusions. By tolerating other reasons, we should not be going astray and accept false premises and concede the claim that they might have valid reasons. We should retain the right to reason these premises and offer arguments to prove that they are wrong.

However, if Gaus answers the above question in the positive,⁸³ namely that the law would be unjustifiable in respect to those who lack an internal reason to accept the law as a requirement, then his public justification principle seems to be no less demanding. This is because while Gaus tries to criticise some liberals' strong demand for the shareability of reasons, he offers intelligibility as another condition –no less demanding for public reason– if reasons have to be accessible to all. This latter condition has no real effect on the ways rational subjects justify a certain value or principle, a process in which subjects may appeal to their value commitments. Although Gaus argues for a more permissive and inclusivist position than other liberals, he still maintains the position to grounding the idea of public reason and justification in external reasons. It is precisely with this grounding that we take

⁸³ This seems to be what Gaus suggests. See Gaus and Vallier (2009: 54).

issue and argue that an account of public reason should not be based on a prior assumption that there are some secular liberal reasons which *all* rational persons, if they are reasonable, would accept.

Public reason and internal reasons

The main theoretical problem that faces such an account is the conviction, not among all liberals, that secular liberal ideals have a superior political and cultural value regardless of the recognition of the fact of a wide plurality of values within liberal democracies. This makes it difficult for having an extended notion of public reason that is not based exclusively on such superior values. The real task in constructing a global or an extended notion of public reason is to realise, a) that in nonliberal societies –those that satisfy the legitimacy demand and have a space for public deliberation and debate– secular liberal ideals are not necessarily taken to be of superior values; and b) that at the level of international relations between different societies the distinction between public and nonpublic reasons cannot be maintained.⁸⁴ This distinction will hinder different societies to engage in constructive public deliberation as well as to appeal to reasons, in the justification of international institutions and policies, drawn from their substantive value commitments. One crucial reason is that this distinction is blurred by the fact that issues that were considered to be of no public concern, require to be publicly discussed and justified. Religious claims have always been, and will be, the challenge that secular and liberal theories need to face and confront, and these religious claims cannot easily be ruled out from public justification and space.⁸⁵

⁸⁴ A more detailed discussion of the notion of global public reason and of these points will appear in chapter 5.

⁸⁵ There has been an extensive scholarly research in recent years on the topic of the return of religion to the public life and space of liberal societies. It is of course doubtful if religion has ever disappeared from the public life of such societies. The term “a postsecular age” was coined by Habermas to indicate the new challenges faced by theorists of how to deal with religion in the public sphere. See Habermas (2006).

Thus, it would be a theoretically difficult position to “declare the opponents of secular liberalism irrational by standards of rationality which all rational people [is expected to] accept. Finding them wrong requires finding them wrong by the light of some of *their own* values” (Bilgrami 2004: 175). This view, which is about finding *internal* reasons, is in contrast to the approach that assumes there are *external* reasons “which all rational people are supposed to accept, not because of any substantive values they hold but because these external reasons precisely make no appeal to other substantive values of theirs, make appeal only to their capacities to think rationally” (Ibid). Bilgrami, following the footsteps of Bernard Williams,⁸⁶ argues that such external reasons are simply unavailable, and a more productive methodology is to exploit existing internal reasons drawn from within doctrines and substantive value commitments to show that there might be internal resources within any value to support secular liberal principles.

The advantage of this internal reason and reasoning methodology is that people in their public deliberation would not be burdened with a strong demand such as adopting principles that they may not happen to endorse by reference to their value commitments. However, any reference to such values should be based on the capacity to provide reasons that are publicly debated and subject to mutual criticism. This capacity is particularly important to show whether those who appeal to values that they have strong commitments to, can offer reasons to their fellow citizens in the public sphere that are politically valid. By political validity, it is meant that people can offer political arguments based on valid premises, at both the local and international level. These arguments can count as reasons, in the public debate to support laws and institutions. It is also important to note that this is not

⁸⁶ Williams (1981: 101-13).

meant to rule out the truth claims of certain values, and in this way the argument for internal reason will avoid to be on the slippery slope towards relativism.⁸⁷

II. Internal Conflict and Internal Reasons

How does the strategy of internal reasons function?

It has been argued, in Chapter 2, that in nonliberal polities, in which religious doctrines dominate the spheres of legislation, public policy and decision-making procedure, a wide disagreement persists on how to interpret and implement the law and also what these doctrines require. This form of disagreement exists not only between religious and nonreligious reasons, but also within the religious doctrine itself which leads eventually to an internal conflict. It is a conflict that emanates from within people's commitments to certain substantive values. It has been previously argued that Islamic doctrine has been, throughout its history, subject to disagreement and conflict over the requirements of Islam and the many interpretations offered by theologians, jurists, philosophers and others. Although the majority of devout Muslims see their attachment to their religious belief as a fundamental commitment, they still can be classified into those who hold a more moderate view compared to those who have absolutist or fundamentalist views with some who view the religion as a spiritual comfort for a state of existential uncertainty. The most deep-rooted disagreement is on the implementation of the religious law, Sharia, and its relation to positive law and also the responses that Sharia offers to the challenges of modernity faced by Muslim-populated societies.

In Muslim-minority societies, however, the problem can be seen as the implementation of Sharia in the area of family law, such as marriage and divorce, inheritance

⁸⁷ I will come back to this point later on in this chapter.

and gender equality which, in most cases, have been subject to criticism and protest in liberal societies. Take for example the case of marriage in an Islamic environment and tradition, in which women's consultation can be seen as an issue. This problem can be encountered within and outside Islamic societies not by the example of liberated women in the Western liberal societies which is seen as unrepresentative of their women. Rather, an effective way is to appeal to the basic tenets of Islam and Quran itself in which human beings are given the right to choose freely. Even some of the women's liberationist movements in Muslim populated societies appeal to internal reasons that are most relevant to the religion and culture in order to promote the right to choose freely among women and institutionalise this right in the legislative debate.⁸⁸ So engaging in this internal discourse provides avenues for disagreement and conflict within Islamic identity and gives way for criticising orthodox and absolutist views that block the way of any rational debate and discussion.

The internal reason strategy is then a strategy that aims to justify certain political values by reference not to reasons that are independent of people's commitment to a system of values. Rather, it specifically makes reference to further values that might be helpful in lending support to the justification of the political value in question. This strategy is particularly useful in overcoming those persistent disagreements between different values that cannot find external reasons as satisfactorily convincing. The lack of some external reason or shared basis does not mean an impasse in the rational discourse between two persons or groups in their disagreement. Disagreement within and between value commitments is inevitable and this should not constitute a worry. What the strategy of internal reasons offers

⁸⁸ This is not always the case, but it can be true when there is a strong resentment within a society towards the outside imposition of certain values. In this regard, Sen and Nussbaum argue that "in criticizing the position of women in, say, today's Iran, reference to freedom enjoyed by women elsewhere is no more external than reference to the position of women in Iran's own past if the challenge to the present arrangements comes through criticisms from within, based on responding to conditions at another time or at another place" (2010: p. 452). They obviously recognise that this external feature must come from an internal critic.

is those resources that can be invested in making substantive claims about the justification of political principles and the use of coercive power. This strategy allows us to search for reasons that might not be otherwise available to the externalist theorist, who would presuppose that reasons offered in public should be grounded in a shared basis, which all would accept and that make no appeal to their value commitments in the process of public justification. In order to find internal reasons that appeal to another is to find within their system of values a set of values that might support these reasons. This might involve a change of mind on the part of another and a process of confrontation and debate to see if one can provide alternative reasons that are not alien to another's value commitments and also stand a better chance of survival in public reasoning. A Muslim, for instance, believes that freedom of religion, thought and expression are not in the advantage of Islamic faith and identity, since they could encourage apostasy within Muslims, particularly in Muslim-populated societies, and put the authority of the religious law and doctrine under question.

To counter the Muslim's argument against freedom of religion, the liberal and secularist need to appeal to some of her other values that are *in tension or conflict* with her commitment to oppose the freedom of religion. One could go all the way down, in the case of Islam, to find reasons, say, from within Quran to vindicate that there are verses and teachings which may support the right to the freedom of religion. In fact, the Quran states that "there is no compulsion in religion" (2: 256). This could very well be read in the direction of the right that God has bestowed on us as human beings and we should have the free will, as His creatures, to choose religion or no religion without being forced into it. This verse is clear enough to any Muslim that God and His prophet did not want Islam to be imposed on people without their clear faith in it. The secular and liberal then can argue that the freedom of religion and thought, according to the Quran, constitute a pivotal tenet in Islam. Based on this

argument, coercion should not be used in religion and that the beliefs and opinions of others, if they are different, should not be considered as blasphemous. Even those Muslims who believe that they have the duty to spread the word of God through the dissemination of their religion, should have a grasp of this Islamic teaching that this can only be done through reasoning, debate and persuasion and not by appeal to coercion.

In a similar vein, if a Muslim, for example, has a commitment to the censorship of blasphemy, then, as Bilgrami argues (2004: 185),

one will have to find that such Muslims are committed a) to censorship of blasphemy and yet that they are also committed b) to various other values which may lend support to the value of free speech. And for the liberal, to use internal reasons against such Muslims, is to stress b) to them in an effort to bring them around to discarding a). This is of course a strategy very alien to classical liberalism [and to the externalist theorist] because b) is not the sort of thing that all rational agents necessarily embrace.

Conflicts as producers of reasons

This strategy, in fact, is not a unique and uncommon strategy in the realm of public reason and reasoning. In religious majority societies –in this context Muslim populated societies– this strategy of internal reasons is used to convince individuals and officials that the Islamic faith and doctrine require different attitudes of Muslims with regard to valuing certain political virtues. This can be illustrated by the example of the reinterpretation of the religious law, Sharia. Many liberal and secular people, in such societies, have argued either for reinterpreting and refining the Sharia with respect to different aspects of law; or for the complete removal of Sharia from the realm of positive law and therefore, calling for the

secularization of Muslim-populated polities.⁸⁹ All this done by reliance on the strategy of internal reasons, namely by giving reasons that are relevant to Islamic culture and doctrine to persuade Muslims that Islamic religion does not require that, Sharia should be imposed on people by the state apparatus and the coercive means of political power. The act of coercing religion against the will of people goes against the value commitments that Islamic religion prescribes. As it was argued above that freedom of religion and thought, for example, demand that the religious law should not be generalised on the whole of population. For, this generalization, in real terms, means coercing everyone into the religious code regardless of their diverse opinions.

Conceptualizing public reason as offering internal reasons is particularly significant for perceiving a global conception of public reason that might consequently lead to the loss of external reasons. However, it is important to note that by appealing to internal reasons from within fundamental value commitments, we are not claiming that there are external reasons for nonliberal societies to accept secular and liberal values. These values have to be made reasonable to such societies by appeal to their own value commitments. It is certainly possible to provide reasons that have nonreligious roots and provide justifications for certain principles of equality and justice, based on the claim that it is far better to live in a society that have equal respect for all and this in turn requires the provision of different varieties of freedom. It might well be the case that these reasons are drawn from values associated with their social and cultural practices. This latter claim does make appeal to other fundamental value commitments that could be valuable for individual citizens in a certain context. It does

⁸⁹ The effort of Abdullahi Ahmed An-Naim (2009), as he describes it in his book, is exactly an attempt to use the strategy of internal reasons to convince Muslims that the best solution for their states is to adopt secularism. He argues for the separation of religion from the state which he distinguishes it from the separation of religion from politics, which he does not advocate.

not, however, make appeal to the claim that these values are liberal values and every rational and reasonable person should be able to accept them.

The strategy of internal reasons depends then on the fact that there is an internal conflict within a value that in itself reproduces disagreement and conflict of values. Internal conflict –which is a necessary condition for internal reasons to work– is that a certain conviction (whether Islamic, Christian, Jewish, Buddhist or any other moral conviction) has it within itself values and commitments that have the possibility to conflict with each other. This can be the case, i.e., conflict arises if these religious and moral convictions cannot produce “wholly” and “maximally” coherent and consistent values that rule out completely the possibility of internal conflict within them (Bilgrami, *Ibid*). However, as Bilgrami argues and insists, this condition of no conflict and complete agreement is not possible. It is, therefore, “hard to think that ordinary human subjects are so completely without internal conflict in this broad sense. The idea of such a total lack of inner conflict is an extraordinary condition to find in any value-economy” (*Ibid*, 186). On this interpretation, no religious or moral conviction can be considered as producing unconflicted values, and this alone can make for the case of providing internal reasons in a justificatory strategy that depends on individuals’ value commitments.

The idea of values being in a state of internal conflict helps clarify the point that some reasons that are considered internally persuasive and true from the point of view of specific value commitments could support particular liberal principles. It also addresses the problematic issue of external reasons as assumed to be those reasons that every rational and reasonable agent would accept. When, for example, Muslims are internally conflicted about the acceptance of some liberal values, one cannot appeal to a method of justification of these values based on the presupposition that reasonable Muslims should accept them. Instead, the

alternative method would be that these values can be justified if there are available resources within Islam, to which Muslims have fundamental commitments, that could lend support to such values. These conflicts are akin to moral conflicts that any moral agent experiences in her life, and they represent the agent's oscillation between two sets of conflicting values that one of them should give way to the other. These conflicts within values, as Bilgrami argues, "need not always take the form of there being blatant inconsistencies among them. In fact it may seldom be that. Much more likely and much more pervasive are conflicts of a more subtle kind, tensions or dissonances between values" (Ibid).

Detecting internal reasons within a value is a strategy that allows moral agents to provide justifications based on value commitments and provide reasons that have the capability to survive public reasoning. This capability depends on the extent that these reasons can be persuasive to others based on equal terms of respect. Internal conflict then provides resources within a value commitment for internal reasons to emerge and to rely on these reasons in an argument for supporting, say, liberal and secular values. This is a strategy that avoids such universal formulations such as the assumption that, if a doctrine is reasonable enough, then there are reasons to believe that the doctrine would accept such values. In this justificatory strategy, people would appeal to their value commitments to reach consensus on values and principles that are important for their political relations. It has to be noted, however, that the justificatory strategy that depends on internal reasons does not exhaust possibilities about finding a position from where one can criticize a fundamental value's commitment to an identity politics.

III. The Challenge from Relativism

A possible objection that the externalist theorist might raise against our argument for the strategy of internal reasons is that relativism will follow by the denial of external reasons.

This is because, the externalist theorist will argue that, in the case of disagreement between value commitments and moral judgements, there will be no scope for appealing to reasons that stand outside of these internal reasons and, consequently, every value commitment will claim the truth of their values. Now, how can this objection be answered in a way that the internal reasons strategy would not lead to any sort of relativism?

Internal reasons and the rejection of relativism

It has been argued that for internal reasons to function, a value system should have it within itself an internal conflict that gives rise to conflicting reasons over a value. Relativists maintain that in the case of a disagreement between two people or two value commitments over a moral and political issue, there is no way to tell whose claim is right and whose is wrong. They also maintain that each one's moral claim would be justified, for example, "if it accords with the relevant facts and with principles to which one would freely subscribe on due reflection under ideal conditions" (Lyons 2010: 287). Thus, they argue, there is no inconsistency between the two when, for instance, one endorses that abortion is wrong, and the other endorses that abortion is not wrong: they both are coherent in their value judgements.⁹⁰ In the context of our discussion of internal reasons, relativism implies only if the internal conflict within and between values does not exist. For, internal conflict within a value system, by definition, implies that some moral values and judgements can be wrong in the course of ethical reasoning. These values are in conflict with some other values in a disagreement the resolution of which requires, in most cases, that a commitment to a value is inconsistent with holding other values. It was argued above that it is inconceivable that any moral and religious conviction would be without conflict in their value commitments. For relativism to maintain its theoretical consistency, it has to deny such conflicts within value

⁹⁰ See Lyons, Ibid.

systems, and a relativist has to endorse that two conflicting values or moral judgements over a moral or political issue are not actually in conflict, but each has a *relativistic* justification.

Relativism holds true if two parties in a disagreement cannot give internal reasons to one another, that is to say, if none of them can find conflict within the value commitments of the other that allows one to introduce reasons internal to another's value commitments. So, if Christian value commitments lead one to believe that abortion is wrong and a secular believes that it is not wrong, and the secular cannot offer reasons internal to the Christian to persuade her that abortion is not wrong, then it seems that there is an impasse and relativism would hold in this case.⁹¹ To ward off relativism, one can argue, as discussed above, that there is no value commitment that is completely unconflicted and that it is hardly the case that any value commitment holds perfectly and wholly coherent value systems. It has been argued, in the last chapter, that Muslims are conflicted and disagreeing over such values as the interpretation and implementation of the Islamic law and over their differing adherences to values such as freedom and equality. Since it is hardly the case that we could find value commitments without internal conflicts over moral and political matters, the secular could be in a position to offer internal reasons to the Christian when considering sensitive moral issues. The secular might hope for introducing or injecting conflicts into the Christian value system that enables her to persuade the Christian, for instance, not to consider abortion as a wrong course of action.

The hope for injecting conflict into value commitments, as Bilgrami believes, could be determined by those historical contingencies that affect our belief and moral systems. He argues that because moral subjects are located in history, their value commitments evolve as a result of various historical factors. He gives the example of the rise of pro-choice attitudes

⁹¹ See Bilgrami, *Ibid.*

among relatively conservative women in America in the third quarter of the last century, which came as a result of a historical change in the economic structure, namely “the rise of service industries and the decline of heavy manufacturing goods industries,” that brought more jobs for women. This change introduced conflict into these women’s commitments to the value of pro-life, and this conflict helped create an internal discourse among them and, consequently, brought about new grounds on the basis of which they could revise their views on the issue of abortion. Thus, Bilgrami believes that even if “a value-economy seems relatively unreachable by internal reasons because it is relatively coherent and unconflicted,” this will no longer be the case if “we think of moral-psychological economies as necessarily being *in history*, conflicts may be injected by historical developments into moral-psychological economies” (Ibid, 187). I think there is a nuanced distinction between two sorts of internal conflict that needs to be made here –which Bilgrami has not touched upon. It is the distinction between, on the one hand, internal conflicts that could be found within value commitments and religious convictions regarding certain issues as, for example, in the case of Muslims’ support for the censorship of blasphemy that could go against their other commitments. On the other, internal conflicts which emerge as a result of historical changes and consequently these conflicts produce disagreements within those who are committed to, for example, a conservative moral conviction over the issue of abortion. It should be noted that in both cases the secular person will be able to offer reasons internal to the person’s religious commitments to convince them they have reasons to support certain values.

What it needs to be emphasised regarding relativistic claims about values is that it is not only that relativism gives an incoherent description of our moral claims regarding certain moral and political issues. Rather, the danger that relativism poses for value commitments lies precisely in leaving human societies with their distinct and various “conceptual

schemes,”⁹² that we can make no effort –and it is a futile effort after all– to understand these variations. Human societies, according to relativism, therefore are left with nonnegotiable and uncomprehending politics of identity. In this specific sense of relativism, identities and commitments to fundamental values become so valorized that the diversity of values and opinions will be considered by the relativist as an argument for cultural diversity and the unreachability, and the poverty, of communication between value commitments. Relativism would claim that its thesis about reasons is correct, if there is no overarching reason that all can subscribe to. This implies, in this context, that Muslims have to consider their commitments to Islamic identity as fundamentally nonnegotiable and not subject to criticism and public reasoning. The reason for this implication is that if one cannot argue against a commitment to certain values, based on the relativistic claim that every value commitment has its own truth and then no one can reject it, it would appear that we cannot find a ground from where we can criticize certain value commitments and consider them to be wrong. To argue against the relativist is to argue that a certain value, such as gender equality, is not based on cultural interpretations and that its truth and justification do not depend on the practices of a culture. One would subscribe to a false belief if one considers that gender discrimination is unjust in one culture but not in another.⁹³

The argument that has been put forward about internal conflict serves the purpose of repudiating relativism about reasons. For, this is an argument for establishing a strategy of internal reasons based on the claim that commitments to moral and religious values are, to

⁹² See Donald Davidson (2010: 140-154), in which he argues forcefully against conceptual relativism and rejects the idea that the truth of beliefs and propositions is relative to a conceptual scheme. Conceptual schemes are defined as “ways of organizing experience; they are systems of categories that give form to the data of sensation; they are points of view from which individuals, cultures, or periods survey the passing scene” (p. 140). See also Simon Blackburn (2010: 164-169).

⁹³ See Dworkin (2011: 170-1). Dworkin rejects the claim that conceptual interpretation leads to relativism.

some degree, fraught with internal conflicts that one can exploit in public deliberation and reasoning to advance one's own values and perspectives. The idea of the existence of disagreement and conflict within and between values on certain matters is not unusual and it is inherent in most value systems. To repudiate relativism about reasons is not to deny the plurality and diversity of reasons offered across different contexts and at different levels. What is repudiated here is the relativists' denial that reasons can interact and that some reasons can be wrong when they are subject to critical inquiry and public deliberation. The sort of relativism then that we are concerned with in this context is characterized in these two points. 1) If external reasons, in the sense described above, are unavailable in public political debate and in the justification of political power, but only substantive value commitments. Then relativism would emerge as the claim that only specific cultural practices and existing moralities make sense in any interpretation of the political order. 2) Relativism would follow if we take these cultural practices and value commitments not only as constitutive of our identities, but also as a form of identity politics that has no space for negotiation, criticism and revision.

Does the diversity of cultural values imply relativism?

First, on cultural reasons. This is about the diversity of cultural values and practices that characterize our life and world. This diversity is sometimes interpreted as the sign of diverse values and deep commitments by individuals and communities to these values. If different peoples and communities hold such diverse values and that they have such deep moral commitments to them, then one cannot claim the truth of some of these values and the wrongness of others, since each has their own reasons –be it cultural, moral or religious– to take their values as important. In other words, relativism entails, as Davidson has argued and

discussed above, that their points of view or “conceptual schemes” determine the truth of their beliefs and values. Relativism in this sense, therefore, claims that,

There may be no translating from one scheme to another, in which case the beliefs, desires, hopes and bits of knowledge that characterize one person have no true counterparts for the subscriber to another scheme. Reality itself is relative to a scheme: what counts as real in one system may not in another. (Davidson 2010: 140)

In the context of discussing the absence of external reasons as those reasons that transcend cultural and individuals’ moral values, relativism would claim that in the case of conflicts between disagreeing parties there may not be any optimism about appealing to reasons that could be justifiably validated in the perspective of both parties. Thus, none of them will be able to find reasons that are internal to the other’s cultural and moral values. Relativism also requires, as argued above, that there is no conflict within and between values and that no internal reasons can be given by any of the disagreeing parties. For, internal reasons are those reasons that have the backing and support of, and dependent on, our substantive values, and they are not derived from the fact that we are reasonable or rational persons.⁹⁴ The crucial point about relativistic worries that lie behind the strategy of internal reasons and its emphasis on internal conflict is that relativism presupposes that the diversity of values and cultural practices entails endorsing a theory of relativistic truth. In other words, value commitments and cultural practices would be true relative to the system of beliefs that comprise these values and practices. Thus, it follows from cultural relativism that X is true for A and Y is true for B, and we have no resources to tell that A is wrong and B is right. For we cannot determine, whether through epistemic or political argument, that A’s arguments are wrong as

⁹⁴ See Bilgrami (2004: 185). Note that we have argued above that such a condition of no internal conflict within and between values is not possible in human psychology and in the system of values.

well as we cannot know if A's system of beliefs is internally conflicted and that B is able to find internal reasons to persuade A of the opposing argument.

Contrary to what relativists claim about political argumentation between diverse values and cultures, we do change our minds by others' arguments about some evaluative matters, even if we do not share our fundamental evaluative judgements and cultural values.⁹⁵ Cultural relativism does not try to offer a coherent response to the fact of ethical diversity by interpreting this diversity as multiple manifestations and representations of moral systems and beliefs. It does not either put this diversity into context, nor does it claim that there are moral values that should be considered as wrong or bad.⁹⁶ In short, once an independent and external reason is lost, relativists would jump to the conclusion that since there is no objective moral stand on which we can criticise others' moral views, then there is no way we could change others' views on evaluative matters. One plausible way to interpret the diversity of cultural reasons without entailing relativism is to admit the claim that these reasons even inside the culture can be wrong and thus challenged. The crucial point in this construal is the claim that conflicts are inherent in these values and practices from which support for, say, certain liberal principles or human rights doctrines or some distributive justice principles can be elicited. From this perspective, internal reasons can be offered in political arguments in order to persuade a disagreeing party regarding a moral or political issue, without falling into relativism about reasons.

Relativism and identity politics

⁹⁵ See Kwame Anthony Appiah (2010: 498), who argues against relativism and says that while we might change our minds, we cannot persuade others, in cross-cultural conversations, who do not share our fundamental evaluative judgements. A point that I do not find valid, because once we believe in intercultural dialogue a change of mindsets is possible even if we do not share our evaluative judgements.

⁹⁶ See David Wiggins (2010: 281).

The second point concerns identity politics. Relativism here claims that moral beliefs and cultural practices are fundamental commitments for individuals and represent their nonnegotiable identities. What this sort of relativism removes from the sphere of ethical reasoning is precisely the critique that these fundamental commitments and identities should be subject to. To overemphasise the import of cultural values as constitutive of our identities leads to the problem of viewing such values in a way that are decisive for one's whole system of beliefs in their public reasoning and argument. Walzer argues against an external account of what our moral system and beliefs require. He argues that (Walzer 1987: 21),

What we do when we argue is to give an account of the actually existing morality. That morality is authoritative for us because it is only by virtue of its existence that we exist as the moral beings we are. Our categories, relationships, commitments, and aspirations are all shaped by, expressed in terms of, the existing morality. Discovery and invention are efforts at escape, in the hope of finding some external and universal standards with which to judge moral existence.

Although Walzer realizes that our moral beliefs and commitments cannot be explained by appeal to external reasons and standards in political arguments, he is led by –if not by a relativistic view– a view that our political and moral life is completely determined by our identity as defined by our belonging to a community and the commitments and duties it gives rise to. The problem with this kind of argument is that these identitarian commitments will turn to some sort of identity politics. It leads to the affirmation of what is already an individual's identity, conceived not as their fundamental commitments but as their belongings to a certain religion, race or geographical entity. To make sense of this point, a distinction is needed between objective and subjective identity.⁹⁷ The *objective* sense of identity turns on

⁹⁷ For this distinction, I am indebted to Bilgrami (2004: 183).

individuals' factual belongings to religion, race, country or their colour of skin simply in virtue of their being born into them. The *subjective* sense of identity, by contrast, is that when an individual or a group turns these factual identities into fundamental value commitments and makes efforts to affirm these facts as inseparable features of their moral life. Sometimes this subjectivization process of one's factual identities takes a form of an identity process by someone or a group or a class for whom this identity might have been denied and, consequently, they would commit themselves to these identities and their features in a stronger fashion.⁹⁸ In political terms, this subjective sense of identities makes the case for what is called identity politics. This is conceived not only in terms of one's attachment to their cultural identities, but of viewing identity in a monolithic way that one should always try to protect its values and practices. This rather conservative perspective of identity is centred on avoiding critique and revision. For critique to be exercised, one requires to step outside their attachments and identitarian commitments, to see the ways in which some of these commitments or their interpretations might have gone wrong and, therefore, could be revised.

Identity politics frames the question of identity in a single dimensional understanding; it defines identity as a unified and singular, rather than a diversified, conception. This singular conception renders identity an inescapable form of fundamental commitments to values and convictions that cannot be negotiated or subject to critical inquiry. From the point of view of relativism, we are not equipped with the epistemological apparatus and cultural insight to know and argue that some of these value commitments are wrong or have the

⁹⁸ Note that this subjectivization process is different from what Jacques Rancière means by it. For him, this process is that when someone rejects an identity that is given by an "other" and s/he remains between being identified and not identified with something. Rancière gives the example of "the proletarian" as the name given to workers. Proletarian as a social group could not sociologically be identified. He then describes the process of subjectivization as "a process of disidentification or declassification." (1995: 66-7)

wrong interpretation. Based on the argument of the existence of internal conflicts within Islamic doctrine in chapter 2, we can argue –contrary to what relativism suggests– that Islamic identity cannot be based on a nonnegotiable conception of identity. The disagreement over what the doctrine requires of Muslims and how its laws should be interpreted makes the very idea of commitment to Islamic identity subject to debate and reasoning. This particularly becomes evident when Muslims diverge over the claims of absolutists who oppose secular reasoning and moderates who would not engage in communication with such reasoning. It is only in the absolutists’ claims to Islamic identity that we find a politics of identity, which are centred on a nonnegotiable conception and resist criticism and revision. Interpreting the diversity of value commitments in relativistic terms would amount to imagining a wide variety of distinct and irreconcilable commitments that each could claim to have truth values, and no claim would be wrong from the standpoint of another. This surely is problematic, for it would not be possible for anyone to argue that a particular commitment, for example, to censorship of blasphemy or to antiabortion attitudes is wrong. We should be able to argue, against relativists’ interpretation, that such commitments do not constitute the whole of Islamic or Christian identities. These identities contain negotiable terms and we can argue that they have internal resources to affirm other values.

Special care needs to be taken when dealing with the argument presented above regarding internal reasons as an important component of any account of public reason. So the question that comes to mind is that, would fundamental value commitments that lend support to internal reasons imply that these commitments will lead to nonnegotiable identities or identity politics? The answer should, by now, be clear that such an implication is not warranted. This implication would particularly create a real problem for the idea of global public reason, as it prevents meaningful deliberation and mutual relation between liberal and

nonliberal societies in any consensus on the rules, framework and function of international institutions. It is true that some who are committed to a religious doctrine or system of values would in a way view their commitment as fundamental. However, the nature of this commitment changes from one person to another even within a single religious doctrine. Thus, those who have a sense of identity to Islam, for instance, are not unified in giving the same reasons –assuming that these reasons come from their faith– for a particular moral and political issue. If a person's or community's sense of identity is constituted by a commitment to a religious doctrine or a nation, then these identity-constituting commitments would not necessarily determine the way in which a person or community gives reasons in public debates. The need for self-identity should not be understood as something that transcends all historical and social circumstances. It is a need that a person or community will view as essential for their sense of autonomy and of self respect in the face of others' attempts to deny such self-identities. If it is argued that one's fundamental commitment to a value system defines what a person is, then this seems to be a strong definition of the conception of identity and it leads to viewing identity as a uniform and closed notion. It is surely true that for some their commitments to a value system define their identity. However, one can subscribe to different senses of identity and, in this sense, identity-based commitments would contain multiple forms to which a person is attached.

In order to avoid value commitments to transform to identity politics is to formulate the conception of identity on negotiable terms. It might be possible to construe identity as having functional roles in particular historical circumstances. This functional role is that the meaning and function of identities depend on those circumstances that generate a need for such a sense of identity. It might be possible that a particular sense of identity will cease its functional role once the historical circumstance ceases to exist. For instance, a strong sense of

nationalism and commitment to the right of self-determination should no longer play that role once denial of this right is ceased to exist.⁹⁹ The point that this argument tries to make is that relativism leads to a politics of identity. This is because every person or community will value their commitments and practices in a way that could not be subject to criticism by others, since these local values are authoritative for a community and no one can question the validity of such value commitments. This politics of identity is particularly troubling when it is interpreted in a relativistic manner, as it makes identity a unified and nonnegotiable conception.

In short, once we have established that identity is a negotiable conception, then it can be argued that a) identities are conflicted and relativism will no longer be that attractive theoretical position on which we can base our moral judgements. It follows that b) individuals can give one another internal reasons, which depend on our value commitments, in public reason to induce consensus on a political issue. These points are important in the argument for a global notion of public reason that we are trying to formulate based on the strategy of internal reasons, which can be understood in terms of the idea of an overlapping consensus. However, people overlap on some principles not because they all endorse these principles based on their reasonability, but because they have internal reasons to accept them. The justificatory strategy used in public reason is based on appeal to internal, and not external, reasons according to which every reasonable person will accept the principles in

⁹⁹ For this functional role of identity, see Bilgrami (1992: 829-35). He presents this functional role of identity in reply to the view that there is a constant need by a subject for identity. He also realizes that this functional explanation has its own problems, as this role does not necessarily disappear once the need for that particular sense of identity is not as pressing as before. As Bilgrami puts it, "A central problem with a functional treatment of identity... is the tendency of some social and cultural phenomena ... to *exceed* what is required by their functions, and thereby to attain an independent phenomenological status in the common psyche." (Ibid., 832). See also Joan W. Scott (1995: 6), where she argues that difference and the salience of different identities are the result of discrimination rather than the other way around.

question. In the next chapter, I will discuss this idea and its role in a wider notion of public reason and will give examples about certain principles that depend on internal reasons.

4

A redefinition of the conception of the overlapping consensus and reasoning from within

In this chapter, I will expound on the discussion of the idea of internal reasons and reasoning which, it can be argued, is well captured by Rawls's idea of an overlapping consensus. In chapter 2, an argument for multiple justificatory strategies was presented as an essential idea for generating consensus. Although the main argument presented there was in the context of nonliberal societies, I will argue that this idea of multiple justificatory strategies is important for both liberal and nonliberal societies, when interpreted in conjunction with the internal reason strategy. The important point is that consensus is not based on the assumption that all subjects and citizens would agree on a single external reason, which is deemed to have no connection with their diverse value commitments. It is, rather, argued that consensus can be modelled on the way that individuals, in their public deliberation and reasoning, provide a diversity of internal reasons which can also serve as justifying reasons for laws and policies that are essential for the stability of society. The argument, advanced in the previous chapter, for internal reasons is based on the premise that certain liberal principles or conception can be the subject of consensus among a majority of individuals provided that they can offer reasons that are supported by their held substantive values. It is then argued that there are no external reasons according to which everyone would accept particular liberal principles, that is, in virtue of their rationality and reasonability. The external reasons argument presupposes that the only justifications people can give of laws, policies and the use of power have to be in terms of some liberal principles –and not of their substantive values– that all rational and reasonable people would accept. The argument from internal reasons suggests that these

reasons *could* be presented as justificatory reasons that are derived from people's substantive value perspectives, and that reasons could be found from within these values to uphold liberal principles.

I will first argue, in this chapter, that the strategy of internal reason –advocated here for the purpose of generating consensus- can be described in terms of the idea of an overlapping consensus (I). Second, this idea, however, should be viewed as a space or process in which individuals can offer justificatory reasons to support or reject a law. The political and philosophical significance of this idea lies in providing a foundation for consensus by appeal to individuals' value commitments (II). Third, the internal reason and multiple justificatory strategies will offer insights into the understanding of the idea of public reason in both liberal and nonliberal societies by focusing on the ways in which political principles are justified (III).

I. Internal Reasons and the Question of Consensus

Most liberal scholars agree on the claim that in order to reach rational consensus in pluralistic societies which are marked by their diverse views and values, we require a shared reason according to which disagreements can be settled. Shared reasons, they argue, are essential for any rationally motivated consensus, and reasonable consensus has to be constructed in terms of a “free standing” political conception, which abstracts from the diversity of individuals' value commitments and “comprehensive doctrines.” Consensus thus is grounded in shared reasons that can only be characterised as external reasons, which are reasons that individuals are supposed to have without making appeal to their values that motivate them.¹⁰⁰ However,

¹⁰⁰ Rawls is the prime example in making this first claim, which is represented in his idea of an overlapping consensus, and the majority of Rawlsians would accept this claim. See Rawls, *PL*, 133-72; Freeman (2007); Scanlon (2003: 139-67). In his Rawlsian account, Quong (2011: 261-73) argues that Rawls and most Rawlsians

other liberal scholars would argue that the above condition of a shared reason for consensus is a very strong demand and would lead to an exclusionary conception of consensus. For this reason, they propose a convergence conception of justification that is more plausible to generate reasonable agreement and it does not require all to share a single reason. Rather, individuals can offer different reasons, whether they are public or faith-based reasons to justify the same policy or law.¹⁰¹

It should be noted here that the strategy of internal reason and reasoning does not amount to the claim made by the second cohort of liberals. This is because it relies on the internal conflict, discussed in the last chapter, in order to find internal reasons that could support basic political rights and liberties that are considered to be important, as grounds for public reason and for upholding the laws and institutions. This strategy does not depend on convergence or compromise or a mere *modus vivendi*, or some reasons in order to arrive at an outcome that participants might not sincerely and wholeheartedly support. It is argued here that when individuals, officials and peoples engage in public political deliberation and in giving reasons and justifications, these reasons should undergo a process of public validity, viz., subjects must be able to show that their reasons can be subject to a process of critique and revision, if they have to be convincing to others. What the strategy of internal reason, *as an account of public reason*, suggests is that citizens give reasons, considering that they are derived from and supported by their value commitments, which they sincerely hold and believe in.

would concede the claim that there is a plurality of reasons, but they have to be *public* reasons. He argues that there must be a more *demanding* structure of public reason that is defined by *shared* reasons (258).

¹⁰¹ For the convergence conception of justification, see for example, Gaus (1996, ch.9; 2009); Gaus and Vallier (2009: 58-61); Jeffrey Stout (2004: 72-3), who argues that religious reasons can also be part of the public justification. Fred D'Agostino (1996) also advocates the convergence conception of justification.

Consensus, convergence, shareability, and sincerity

Liberals who are committed to public justification in terms of external and shared reasons will argue that the practice of public reason must be sincere. The sincerity condition is that, everyone must sincerely believe that their reasons are acceptable to others. Some have argued that the sincerity requirement will lead to the rejection of the convergence view of public reason and, therefore, we have to accept the shareability condition.¹⁰² It is true that the sincerity requirement is important for public reason and reasoning, however, whether shareability should follow is another question. Consider the following example of the convergence view, given by Quong (2011: 266-7), which is meant to show the significance of the sincerity condition and to refute the convergence view, and then to conclude that public reason has to be exercised in terms of shared reasons.

A believes that X is justified based on reason *Ra*. B believes that X is justified based on reason *Rb*. Assume that A denies that *Rb* is a sound reason for justifying X, and similarly, B denies that *Ra* is a sound reason for X. Therefore, A does not believe that *Rb* is a justificatory reason for X, and B does not believe that *Ra* is a justificatory reason for X. Quong then concludes that since there are no shared reasons for justifying X, but only that each one believes that X is justified based on their own reasons, “then the fundamental problem is that in such scenarios A and B cannot endorse X without falling foul” of the sincerity requirement (Quong, *Ibid*).

The internal reasons and reasoning strategy does hold that reasons have to be sincere and it does not subscribe to the convergence view. The main difference between them is that while it suffices for the convergence view that each one provides their own reason for

¹⁰² See Quong (2011:265-73); Schwartzman (2011).

justifying X, and that everyone should recognise others' reasons as justifiable *relevant* to their belief system,¹⁰³ for the strategy of internal reason, however, this does not hold. The strategy of internal reasoning does not invite a relativist claim about reasons, precisely for the reason that, this strategy becomes functional when there is an internal conflict within values, in which reasons can be found to support political principles. Relativism will not be implied by this strategy, because the aim of the internal reason strategy is to detect internal conflicts within and between values and to convince others, through public reasoning, to change their mind. It aims to subject reasons to scrutiny, evaluation, critique and revision, because we do not know which reasons are worthy of consideration, unless we engage in public deliberation, and not to succumb to the relativist claim.¹⁰⁴ Shared or external reason is not the only viable justificatory option when the convergence view succumbs to relativism, because it cannot be admitted that there are similar reasons that everyone is expected to have and offer for a law or policy. The strategy of internal reason suggests, and contends precisely, that liberal principles would gain acceptance once reasons can be found, by appeal to people's value commitments, to support these principles.

When there is an intractable value disagreement between two parties, on an evaluative moral issue, say, on the right of abortion which we invoked earlier, the strategy of internal reason would rely on the internal conflict that may exist within, for example, Orthodox Christians to find internal reasons that would convince them that abortion is not wrong. Some, who defend the sincerity principle on the basis of shared and external reasons, have argued that a permissible view of public reason would allow the Orthodox Christian to supplement her reasons –that must be public and sincere– with her religious arguments

¹⁰³ See Quong (2011: 269-70).

¹⁰⁴ I have argued in detail for this point in chapter 3; section 3, which is drawn on Bilgrami (2004).

insofar as her *public* reasons can be *shared* by others.¹⁰⁵ On this interpretation, she may appeal to a scientific and genetic reason, which is considered to be public, to argue against abortion as long as she believes that her reason, which she presents in public are her sincere reasons and, therefore, acts on it.¹⁰⁶

However, to settle this moral issue by enforcing a law without having a public discussion about it is to ignore the significance of public reasoning and of internal reasons as a possible strategy of justification. If disagreements between conflicting values can be resolved on the model proposed by the internal reason strategy, then, the consensus generated for particular liberal principles would be based on everyone's value commitments and their sincere reasons. This can be characterized as an overlapping consensus that does not depend on an external reason, or on the claim that all should ultimately provide reasons that are similar to each other. To assume that there should be shared reasons that everyone will accept in the course of public deliberation is particularly demanding and makes public reason impracticable. One motivation behind this demanding claim is that many consider that rational consensus requires some sort of consensus on an agreed set of principles that do not depend on individuals' value perspectives. These principles could be the result of an agreement in a specific circumstance, in which no one has the authority to set its terms – Rawls' original position is the exemplary idea that reflects this point. According to Gaus and Vallier (2009: 58), there is a puzzle about the shareability of reasons:

If we embrace shareability we must follow Rawls in redescribing the justificatory problem so that everyone reasons in the same way: because “everyone is equally rational and similarly

¹⁰⁵ For this sincerity and publicity condition, see Schwartzman (2011: 394-5).

¹⁰⁶ Schwartzman (2011: 388).

situated, each is convinced by the same arguments”.¹⁰⁷ Consequently although the original position begins by posing a problem of choice among people who disagree, the problem is reduced to a choice by one person. This is inevitable if shareability is endorsed. But this raises a puzzle: why would justificatory liberals, starting out with a strong commitment to reasonable pluralism as the outcome of the free use of human reason, embrace a conception of public justification that assumes we reason identically?

It is undoubtedly important to acknowledge that in the case of value disagreements and the existence of multiple reasons in the course of political justification, there is a need for public deliberation and reasoning in which these conflicts and disagreements can be resolved. The possibility of consensus between individuals and citizens is not about *sharing the same reasons, arguments and justifications* for a particular moral and political issue. Rather, it is about a diversity of internal reasons that each individual offers as her recognisably valuable and truthful reasons. Each, therefore, has different reasons that emanate from their fundamental value commitments to accept and support the political decision in question. This could be interpreted as an overlapping consensus on different principles and ideas that is not based on a single argument and justification, but on a less demanding requirement which rely on individuals’ value perspectives. This should not be understood as *modus vivendi*, which is centred on some form of convergence between people on reasons as a matter of compromise, that could be due to power balances.

Overlapping consensus and reasonability

A weaker notion of overlapping consensus, that is proposed here, is the idea that, in public discussion, people do not have the same reasons to justify a principle. It will be argued, instead, that they come to agree on the principle only when it is supported by their internal

¹⁰⁷ Rawls, *TJ*, 120.

reasons. This would allow individuals to present their internal reasons as justifications for what is in question, and to see these reasons not as deriving from some values that are external to their values, but as reasons that are supported and reinforced by their substantive value commitments. This notion of overlapping consensus can function not only in liberal societies, but also in nonliberal societies, as the idea of consensus in such societies was discussed in chapter 2. In nonliberal societies –ones which satisfy the basic legitimacy demand and provide a space for public deliberation– consensus is not based on a single justificatory strategy that is offered by both citizens and governments. For, officials cannot justify law and the coercive use of political power by appeal to exclusively religious-based reasons or even some other principles that do not attract the consensus of the majority of citizens. Rather, they need to appeal to a strategy that makes use of different reasons, but these reasons have to be publicly subject to criticism, scrutiny and revision. Consensus cannot be based on the claim that citizens will agree on some proposed principles, without leaving some scope for reasonable disagreements that represent the plurality of moral convictions within societies. This is also a feature of secular and liberal societies in which any account of rational consensus should consider the reasonable disagreements and conflicts that exist in these societies. On this interpretation, overlapping consensus is not hinged on the possibility that individuals would agree on the same reasons, whether they are political or ethical. It is, rather, argued that consensus is generated when individuals overlap on accepting particular principles for different internal reasons.

The internal conflicts and disagreements that exist within the value commitments of individuals and communities can be part of a wide public discussion, in which political arguments can be presented to convince conflicting parties of the rationality and validity of a certain political decision. In overlapping consensus, whether in liberal or nonliberal societies,

people cannot share the same political or moral reasons to support or reject the law all the time. They, instead, appeal to their capacity for internal reasoning in order to give justifications for what they believe to be important for their political relations with others. In nonliberal societies, where liberal and secular principles might be said to stand in contest with traditional ones, the consensus is not reached by appeal to a single religious and ethical doctrine. Rather, it will be characterised by the existence of multiple justifications that both citizens and governments will be required to deploy, and which should be supported by the diversity of internal reasons. In the process of internal reason and reasoning people will overlap on those principles that have the appeal of a variety of values embraced by individuals and communities.

The role of the weaker notion of overlapping consensus in the strategy of internal reasons does not require that a free standing conception to be designed as a starting point, and then put before reasonable persons to agree upon. For people to reach consensus on certain political principles is to engage in public reasoning and argumentation about these principles. They need to have the rational capacity for internal reasoning and to be able to give political justifications of the principles in question. This notion does not assume that there are certain liberal principles on which an overlapping consensus will be achieved, based on the supposition that reasonable people and doctrines would reasonably endorse such principles. This can be achieved only when the strategy of internal reasons and reasoning is operationalized. Instead, overlapping consensus depends on the internal reason strategy in which the justification of laws and policies will be based on an appeal to reasons that are drawn from people's fundamental value commitments. In nonliberal societies, if we take Muslim-populated societies as an example,¹⁰⁸ we see that the religious law, Sharia, functions

¹⁰⁸ The point about disagreement and consensus in Muslim-populated societies has been discussed in chapter 2.

not only as a private law regulating the private affairs of people and societies, but also as a public law that is concerned with the political affairs of states. However, in such societies consensus cannot be generated by appeal only to a single source of legislation. If this happens, the state will inevitably fall into authoritarian and tyrannical trends. Thus, what is required is to appeal to multiple sources in order to justify political decisions. The religious law cannot generate overlapping consensus among the diversity of values held by people. For this reason, appeal should be made to a multiple justificatory strategy, and variety of reasons should be made available in the public to reflect the diversity of value perspectives. The justification of the coercive use of power, therefore, cannot be given only in terms of ethical reasons: nonreligious and, sometimes, secular reasons may need to be given in this process. To propose that a wide consensus of citizens can be based on the constitution is to pose the problem of interpretation of its essentials and the strategies deployed by officials to justify the laws. The important point about consensus in nonliberal societies is that these societies should fulfil the conditions of the basic legitimacy demand and the provision of a space for public deliberation and reasoning. The normative basis of consensus, even in the presence of these conditions, in these societies, will be seriously undermined if the state tries to enforce a single interpretation of law –that is an exclusive religious law– or to enforce, for example, Sharia as the ultimate law of the state.¹⁰⁹ Consensus among citizens and communities depends on their rational capacity to provide different internal reasons in the public to justify political power. It does not, however, depend on reasons that are external to their value commitments, nor does it depend on the reasonability of these commitments and doctrines.

¹⁰⁹ Obviously states such as Iran and Saudi Arabia and some others which enforce sharia as the official law of the state have failed to satisfy the basic legitimacy demand and public deliberation conditions mentioned above. For this reason political consensus within these kinds of states is based on force and it loses its normative ground characterised in the mutual and reciprocal relation between citizens and the state and, therefore, there is no case for overlapping consensus in such states.

This notion of consensus does not presuppose that everyone will agree, provided that they are reasonable, on a single overarching conception or reason. It supposes, on the contrary, that if internal reasons can be provided to support a proposed conception or principle, then an overlapping consensus can be achieved on the principle. The starting point here is, then, the strategy of internal reasons in which a diversity of reasons, and not an external reason, can be given as justifications for the principles in question. The extended or global notion of public reason –that is proposed throughout– takes the reasonability of persons and doctrines not as a condition of their entry into the practice of public reason. It, instead, engages all in public discussion and tries to pin down reasonable and rational persons through a process of public reasoning. The starting point then should not be a set of principles agreed on *apriori* in an original position that can only be characterised as an *external position* to people’s value commitments.¹¹⁰ Consensus on a certain set of principles, in any political context, will emerge if the principles were publicly debated and people could find internal reasons to support them. These reasons, whether they are derived from citizens’ political or moral convictions, would overlap on the proposed principles when each person believes that the principle or the law is justified based on their valid public arguments. The diversity of reasons offered by each one represents their sincere conviction and their reasoning for a better reciprocal relationship between citizens themselves, and between citizens and the state.

On this interpretation, both citizens and states require that they exercise a strategy of multiple justifications in order for consensus to emerge. It is undoubtedly a feature of democratic societies, and also of nonliberal societies that are considered here, that

¹¹⁰ One could refer here to Habermas’s criticism of Rawls on the overlapping consensus that it is not clear whether this idea “contributes to the further justification of the theory or whether it serves, in light of the prior justification of the theory, to explicate a necessary condition of social stability.” Habermas (1995: 119). For Rawls’s reply to this critique, see *PL*, 385-95. For an explanation and assessment of this Habermasian critique, see Maffettone (2010: 182-5). See also chapter 1 above, where the connection between the question of stability and the overlapping consensus was discussed.

disagreement will persist and not everyone would agree on the principles, even though they are not, necessarily, unreasonable. They do not have to share the same reasons and justifications for endorsing the principles and their rankings, as this would put a strong demand on a consensus conception of justification. The point is that consensus can be reached on certain principles or the law, even if citizens do not share the same reasons and justifications. The weaker notion of overlapping consensus requires a strategy of internal reasons and reasoning, in which a variety of different reasons and justifications can be publicly offered in support of the principles. This strategy is not aimed only at certain members of the public, who can be described as reasonable. It rather tries to find internal reasons, via conflicts that are internal to moral values, to support such principles. The point of this different view of overlapping consensus, therefore, is to serve the global notion of public reason that can work as a practicable notion for the justification of principles and laws in both liberal and nonliberal contexts and in the relation between them.¹¹¹

II. The Weak Notion of the Overlapping Consensus

The crucial point about the strategy of internal reasons that is integral to the weak notion of the overlapping consensus, which is suggested here, is that this notion does not assume that there must be a complete abstraction from the diversity of values held by individuals. Externalist theorists have constantly, and in many cases consistently, argued that in the process of public reasoning and justification, participants must not appeal to reasons that are dependent on their moral and religious values, but to reasons that transcend these values and, therefore, dependent on value-neutral conceptions. Their position aimed at creating general agreement among the diversity of values and interpretative perspectives inherent in pluralistic societies. The most effective way, they have argued, to bring rational consensus across

¹¹¹ This will be discussed in the next chapter.

multiple value commitments in public deliberation was to overcome this multiplicity by exercising restraint on the part of citizens from expressing their ethical convictions when they publicly debate.¹¹² The externalists would argue that we cannot justify a proposed law or policy by relying on this diversity of opinions and values and, for this reason, we must appeal to principles and values which everyone can accept, provided that they are reasonable. It is true that principles are needed in order to reach consensus, and a degree of abstraction might be a necessary step towards general agreement. However, what the liberal idea of overlapping consensus, which puts strong demands on rational consensus, tries to emphasise is the claim that these principles are completely detached from citizens' reasons and reasoning and their value commitments. Their value commitments do not reflect in these principles and cannot be part of their justification. The public justification of these principles and of political power should not be by reference to citizens' held values.

What the strategy of internal reason suggests, instead, is that in order to generate consensus among citizens in pluralistic societies, reasons have to be found that could depend on their substantive value commitments in order to support the principles in question. This is an important distinction that needs to be noted here. Consider that in nonliberal societies, where liberal principles cannot be said to enjoy sufficient support, the approach to resolving conflict –and finding support for progressive and liberal values and nonreligious principles– should be based on finding those internal reasons that appeal to individuals' and communities' values and which do not presuppose liberal and secular values as politically or morally superior. The political and moral significance of liberal and secular values has to be

¹¹² Rawls and most Rawlsians agree that overlapping consensus requires a freestanding conception that is external to individuals' ethical convictions and a principle of restraint should be exercised by individuals in public reason. See Rawls, *PL* (247-54); Macedo (1997: 1-29); Audi (1997: 25-33). See also Habermas, *Justification and Application* (1993: 88-91), where he argues for the same abstraction in order to reach agreement. For more on Habermas's position on this point, see McCarthy (1996: 1093-97).

argued for and justified in the public forum, rather than assumed or presupposed as more important. This difficulty appears also on the international scale, that is to say, in order to resolve conflicts between different societies and peoples and reach consensus across a diversity of political and moral values, we require a different strategy and methodology of reasoning and justification. This different strategy can be represented in what we have described as the strategy of internal reasons and reasoning. At the international level, this strategy can constitute an element of a global idea of public reason, an idea which focuses on finding reasons and engaging in reasoning between different societies and value commitments, based on finding support for the proposed laws and principles.¹¹³

Overlapping consensus and nonideal theory

Some have argued that to reach an overlapping consensus requires assuming a set of political conceptions or principles as part of an ideal theory, in which it is also assumed that the ideal constituency of these principles are reasonable and rational persons, who would agree on such principles under ideal conditions. It seems the position posed by this view is that certain general liberal principles, such as rights and freedoms, are assumed to have universal acceptance because they characterise the autonomy and moral worth of individuals. It is certainly possible to put forward certain principles to be the focal point of consensus, as they are the values and principles that constitute the fundamentals of legitimate and stable polities and they are for the good of societies, notwithstanding that they are the essential goals of the struggle of many individuals and groups. However, consensus can be achieved when the principles are the subjects of public deliberation between participants who have the capacity for reasoning. It should not be assumed that they must be reasonable in order to generate consensus on these principles, although this is the core assumption of Rawls's thesis of

¹¹³ I will discuss the implications of the strategy of internal reasons at the international level in the next chapter.

political liberalism and other liberals who follow this path. In political liberalism, Rawls assumes that the condition of *reasonable* “comprehensive doctrines” is essential to the acceptance of a political conception of justice and to the whole project of political liberalism, and this is particularly important in his liberal idea of public reason. The overlapping consensus, he argues, is also achieved between “reasonable” comprehensive doctrines on the political conception of justice, but these doctrines have no role in the justification of the conception.¹¹⁴ It seems that reasonability is the first and foremost condition upon which individuals are allowed to enter the public forum and practice public reason and is the condition which specifies how an overlapping consensus will actually occur. There is, obviously, no objection regarding the selection of reasonable persons and doctrines as the main participants in public reasoning. The point is rather a delicate one: the strategy of internal reason does not try to make the reasonability of persons or doctrines a theoretical tool, on the basis of which we exclude some from the public debate and argument.¹¹⁵

What is clear from Rawls’s account of the overlapping consensus is the claim that people will converge on the most fundamental liberal principles for the right reasons, and not as a matter of compromise or circumstance. The strong demand that this account of the overlapping consensus suggests is that it requires shared reasons to affirm the freestanding political conception of justice. The only way to do this, as the argument for the liberal overlapping consensus has it, is to accept not only the principles of the freestanding conception, but also the justification, or the public justification of it.¹¹⁶ Thus, in order to

¹¹⁴ See, e.g., *PL*, xli; 144; also *LP*, 153.

¹¹⁵ See also Bilgrami (2004: 190), where he argues that reasonableness “is an *outcome* of the effectiveness of internal reasons in any particular case where such reasons are effective, rather than a starting point.”

¹¹⁶ See *PL*, 387. Rawls’s idea of public justification is discussed above in chapter 1. See also Joshua Cohen (1994: 589-618) for an extensive discussion of the role of the freestanding conception in Rawls’s political liberalism.

generate consensus between people who hold different doctrines, it requires that they are reasonable or they hold reasonable doctrines and that their reasonability will lead them to accept liberal principles, such as freedom of speech, religion and other rights and liberties. Their reasonability is a reason for them to subscribe to and accept these principles, without recourse to different internal reasons to justify such principles. However, it is not clear in what way unreasonability can be identified, whether, for example, utilitarians or some religious people, can be considered as unreasonable and therefore should be excluded from the practice of public reason, and they cannot be part of the liberal overlapping consensus. The point, and the reservation lodged here against such an account, is about the condition of reasonability as the first entry into public reason. What should be considered first, instead, is the fact that whether individuals are capable of practical reasoning and of engaging in public reasoning. Once this has been fulfilled, then the reasonability condition comes into effect to be used against those reasons and arguments that are not willing to subject their premises to evaluation, criticism and revision. In this way, they cannot survive public deliberation and reasoning.¹¹⁷ Those views become unreasonable if they do not show willingness to engage with others in public discussion, and if they do not offer arguments, which they consider as sincere and valuable to support their views and which influence the justification of laws and public policies.

The alternative view which includes a weaker notion of overlapping consensus requires that the proposed liberal principles will be supported by different internal reasons and not by appeal to a single external reason. In the context of our discussion of nonliberal societies, it has been argued, earlier, that consensus can be legitimately generated if multiple justificatory strategies was appealed to in respect to the laws and policies enacted that seek to

¹¹⁷ Consider that there might be some moral and religious views that resist the attempt to subject the premises of their reasoning to critical scrutiny and, finally, to be revised.

be publicly justified. The claim to bring everyone to accept a political conception, that is not justified by appeal to the value commitments held by individuals and communities seems to be demanding and difficult to attain.

One might object to our argument for overlapping consensus in nonliberal societies, that in nonliberal societies such an overlapping consensus cannot be achieved because there is a diversity of ethical convictions, but no freestanding conception that can be independent of and external to these convictions. One possible reply to this objection is that the weak notion of overlapping consensus, suggested here, does not depend on the assumption that there is a freestanding conception and only by appeal to this conception can we offer political justifications. Notice that it is not argued here that the possibility for a political conception or framework, within which all can coexist, say, for example, secularism, should be given up. According to the weak notion, to be precise, there are multiple justificatory strategies which can be deployed by both citizens and officials to justify laws and institutions, as opposed to the strong demand of overlapping consensus that depends on a single justificatory approach. The weak notion does not exclude appeal to reasons in political justification that are supported by our value commitments. These internal reasons can be considered as justificatory reasons if they have the support of valid arguments and, most importantly, that these arguments can be publicly presented by individuals and groups who are willing to subject their arguments to public inquiry and criticism.

The point that should be made here is that consensus on certain liberal principles requires that people have reasons to accept and, ultimately, justify such principles. Once they have those reasons, then a kind of consensus will emerge that is not entirely dependent on a shared reason or justification, but more broadly on principles that they can support by appeal to their political and moral values. The internal reason strategy then provides a kind of

strategy in which consensus can be generated out of disagreement and conflict that exist within and between value commitments.¹¹⁸ However, the consensus cannot make disagreements between conflicting views disappear; it will rather make some disagreements invalid when they are discussed in the public forum. The consensus will become an overlapping consensus when the principles in question are endorsed, not as a matter of compromise or out of convenience, but as politically the most stable and morally the right principles. Thus, the consensus that is the result of an internal reason strategy can be considered an overlapping consensus on principles that are supported by individuals' value commitments.

What can be the subject of such a consensus should not necessarily be thought of as liberal principles. Rather, it can be a framework which includes certain liberal principles, human rights principles or constitutional principles.¹¹⁹ It is clear that in liberal and secular polities, constitutional principles are mainly based on guaranteeing and protecting fundamental political rights and liberties. However, this can also apply to nonliberal polities, except for the fact that not all political rights and liberties are considered as fundamental or basic, and in some cases, where illiberal trends are strong some rights can be curtailed because of dominant religious doctrines. One of the main challenges of secular and liberal people in nonliberal societies is the struggle to entrench political rights and liberties –such as the democratic procedures of legislation and voting and the freedom of speech– as the basic constitutional precepts. In countries where the constitution allows a religious doctrine to dictate part of the legislation, religious groups support, in some cases, the move to include,

¹¹⁸ The details of how the strategy of internal reason can function as to dissolve disagreements on certain political and moral issues and, as a result, generate consensus were discussed in chapter 3.

¹¹⁹ Quong (2011: 180-87), for example, argues that the subject of overlapping consensus should be the idea of society as a fair system of cooperation between free and equal citizens, rather than any specific principles or conception of justice.

for example, the Islamic Sharia as the main source of legislation, depending on the resistance of other factions. One important factor of this political disagreement can be characterised in the constitutional debate that has taken place in the recent changes of some countries that pressed for new or reformulated constitutions.¹²⁰ Once the constitution is formulated according to democratic principles and founded on individuals' rights and liberties, people will accept these principles because they do not stand in tension with their values. What it has to be noted here is that when citizens offer reasons to justify the inclusion of, say, the right to vote and freedom of speech, thought and religion in the constitution, they do that based on different reasons. It cannot be assumed that they share the same reasons, and that these reasons are given only in terms of certain political conceptions and not in terms of moral values to justify these rights and liberties. Citizens will provide in the process of deliberation and reasoning secular, religious and moral and political reasons to support these principles. They could converge on them for different, public and non-public, reasons, but the prospect of disagreement is real and likely.

Overlapping consensus and the original position

The philosophical and political significance of the idea of an overlapping consensus lies in the idea that it allows individuals and peoples to embed certain political principles within their convictions and values. Their support and justification for the principles depend on their internal reasons that are drawn from their value commitments. The strong model of an overlapping consensus, however, requires that the public justification of the principles not to depend on these commitments. The justification will, instead, depend on the free standing

¹²⁰ Consider the new and reformulated constitutions of countries such as Iraq, Libya, Egypt, Tunisia, Southern Sudan, Syria and Yemen (on the way), and possibly other countries where people demand change of regimes. In the process of political deliberation regarding the formulation of new constitutions citizens engage in reasoning about what should be the main principles of the constitution and what can be considered as the basic political rights and liberties, and what constitutes the fair terms of their citizenship.

political conception that has been agreed upon in the original position. The original position is an external position from where contractors offer external reasons for the political conception. There are two stages to be considered with respect to the strong model of the overlapping consensus. i) In the original position, A, B, C and D contract to one another to select a (set of) political conception(s) of justice for the society; ii) The political conception will be stable when an overlapping consensus between comprehensive doctrines on the conception is achieved.¹²¹ From this, one can infer the following. 1) In the overlapping consensus, people provide internal reasons in support of the political conception and its principles, and 2) should the conception be publicly justified this has to be done by people's internal reasons, even though indirectly. 3) Thus, the idea of the original position is no longer necessary to have a say on the conception, provided that people's internal reasons and reasoning are not seen as inert and reactionary. In sum, for the overlapping consensus to become functional, the idea that a political conception is agreed on in the original position becomes superfluous.

This can be explained more by what Taylor called the acceptance of secularism on the basis of an overlapping consensus. It has to be noted from the outset that Rawls never committed himself to advocating secularism, as secular reasons like religious reasons are considered by him to be comprehensive reasons.¹²² Having said this, this is not the main

¹²¹ See Rawls (1989: 234), for a clear statement of these two stages, in which the idea of an overlapping consensus belongs only to the second stage. "In the first stage justice as fairness should be presented as a free-standing political conception that articulates the very great values applicable to the special domain of the political, as marked out by the basic structure of society. In the second stage the idea of overlapping consensus is introduced to explain how, given the plurality of conflicting comprehensive religious, philosophical, and moral doctrines always found in a democratic society—the kind of society that justice as fairness itself enjoins—free institutions may gain the allegiance needed to endure over time."

¹²² Although Rawls argues that non-religious, i.e., secular doctrines alongside religious doctrines are equally comprehensive doctrines, the liberal democratic context in which he considers his project of political liberalism is predominantly a secular context, which implies that the state is neutral with regard to promoting a particular conception of the good.

point of our argument here. The point is twofold. First, is to provide a weaker version of the idea of an overlapping consensus without presupposing the notion of the original position. Second, is to understand the function of the overlapping consensus based on the latter point. The idea is that if secularism is proposed as a political and moral framework by which members of a society or societies can coexist without compromising their beliefs, then the support for this political framework should come from citizens' internal reasons. It only has legitimacy and justification when it attracts the consensus of all members and it cannot be enforced through the means of political power. Taylor proposes a redefinition of secularism and argues that the political principles of secularism should include the three most sought after goods. i) *Freedom* of religion and conscience, as represented, for example, in the US First Amendment. ii) *Equality* of different religions and no religion is to be adopted as the official view of the state. iii) Every faith is to be given a voice in determining how they realise these goals, and this is represented in the idea of *fraternity*, (Taylor 2011: 34-5) and, I would add, this can also be represented in the idea of reciprocity.¹²³ A redefinition of secularism suggests that, it should not be considered as a doctrine against religious beliefs. It should, instead, be conceived as a political framework within which citizens can coexist. On this interpretation, the principles of secularism are not the result of an external position in which only some contractors will arrive at. Rather, an overlapping consensus needs to be achieved on these principles if they are proven to be worthy for the stability of society.

The value of the overlapping consensus lies in bringing different views to converge on certain political principles, such as human rights, equality, the rule of law, and democracy, which are supposed to be embedded in genuinely secular polities that embrace the goods

¹²³ The idea of reciprocity here can be understood in Kant's terms, *Metaphysics of Morals*, 6: 473.

mentioned above.¹²⁴ Taylor argues that the overlapping consensus on this political ethic can be achieved as they can be shared by different conceptions of the good. Thus, Taylor argues (Ibid., 37),

A Kantian will justify the rights to life and freedom by pointing to the dignity of rational agency; a utilitarian will speak of the necessity to treat beings who can experience joy and suffering in such a way as to maximize the first and minimize the second. A Christian will speak of humans as made in the image of God. They concur on the principles, but differ on the deeper reasons for holding to this ethic.

When the role of the overlapping consensus is considered in this light, it will become apparent that the justification of the political conception and its principles hinges on a variety of different reasons, that can be supported by different conceptions of the good held by individuals. Taylor also calls for modifications of Rawls's conception of the overlapping consensus as grounded in the demanding nature of his theoretical rationale for the principles of justice. (Taylor 1998: 51-2) A different reading of the overlapping consensus suggests that it should not be taken as prescribing any underlying justification. This should be left to different internal reasons which people provide and find compelling for subscribing to the principles in question. On this reading, the conclusion (3) of the above argument, which states that the idea of the original position becomes superfluous as a result of the overlapping consensus becoming effective, can now be understood with more clarity. The use and functioning of the internal reason strategy and also understanding the *dialectical* force of this strategy in finding reasons to support the liberal principles would allow us to understand the

¹²⁴ It is for this reason that the regime founded by Ataturk cannot be recognised as genuinely secular. See Taylor (2011: 37).

move to an overlapping consensus, without putting a strong demand on the ways justifications are offered, and without the assumption of the original position.¹²⁵

III. Political Principles and the Overlapping Consensus

Rawls argues that in constitutional consensus the liberal principles are accepted as a *modus vivendi*, for most citizens see no connection between the liberal principles incorporated into the constitution and their comprehensive doctrines (PL, 160). He then argues that this consensus can be considered as the first step towards an overlapping consensus. The fundamental point about the transition from constitutional consensus to overlapping consensus is to recognise that even when political rights and liberties are constituted, these cannot be the subject of an overlapping consensus unless internal reasons can be found to support them. As an example, take the principle of freedom of speech, which even when it is entered in the constitution as a basic political right, its implementation and justification in different contexts would still face many objections and tend to create different disagreements. The question with respect to the discussion about generating consensus on political principles that are the focus of disagreement would be to ask, can we treat political principles, such as freedom of speech and thought more generally, as those that people would endorse because they are naturally desirable by every rational and reasonable person and, therefore, they should be considered as their natural rights? Or, would people endorse these principles only when they can find reasons, most likely internal ones, to support them?

The externalist theorist would think that people, in virtue of their rationality, would embrace freedom of speech and we do not need to look for internal reasons to find support

¹²⁵ Cf., Bilgrami (2011: 5-6). Some might object that the original position belongs to the ideal theory while overlapping consensus to nonideal theory and, for this reason, they represent two different arguments. I am not sure how successful this claim can be made, since the acceptance of the political conception depends on the overlapping consensus.

for this principle.¹²⁶ They would argue that to rely on internal reasons means to rely on people's diverse moral values and this would not guarantee consensus on such important principles. The internalist theorist, however, would argue that for freedom of speech to be supported by all, internal reasons should be presented that depend on other values held by people as convincing. This could include the fact that, politically, free speech is associated with the justification of political authority and, morally, it gives value to everyone's opinion and promotes diversity. Notice that these are political and moral values used to justify the value of free speech without reference to external reasons, according to which people would endorse these values. This is a strategy of justification that the appeal to fundamental values in order to provide reasons for freedom of speech is not exhausted. The reasons that are given in this justificatory strategy are considered as public and justificatory reasons, insofar as they are argued and debated in the public forum and are subject to others' scrutiny and criticism.

How can the principle of freedom of speech be possibly justified?

This strategy of justification is particularly instructive in nonliberal societies, where a number of issues are subject to censorship, such as talks about the sacredness of religion, and presentations of sexuality and pornography. I will not try to argue for or against any of these controversial issues, except that I will try to present an argument for how support, based on internal reasons –drawn from value commitments– for the freedom of speech in opposition to the censorship of blasphemy can be possible. This is without committing oneself to the claim that there are external reasons, namely the assumption that people, as rational moral agents, would embrace the freedom of speech.

¹²⁶ It has to be noted here that not all externalist theorists who argue that there are external reasons to embrace freedom of speech as a liberal value would, in fact, endorse the claim that it has to be applied and justified globally. Rawls and Nagel, for example, deny that the scope of justice can be extended, as its application is limited to well-ordered liberal constitutional democracies, and therefore deny global justice. In the next chapter, I will discuss how the scope, site and constituency of public reason can be thought to have a global character.

Different societies and constitutions assign different priorities to certain rights and liberties, and consider some of them as fundamental or basic while others are subject to dispute. Although freedom of speech is a basic right in liberal constitutional democracies, censorship of blasphemy has found its place within some of their legal systems.¹²⁷ Notice that when it comes to the practice of public reason, people reason about and support a law to the extent that the law is not in stark contradiction with their beliefs and reasons. Religious citizens do not unconditionally support the principle of freedom of speech, if it allows for blasphemy to be exercised in society. They might require some legal protections against blasphemous speech as they cannot find reasons and arguments within their value perspectives to support this type of speech. This lack of consensus on the part of citizens on a political principle, such as free speech, could be considered as an instance, in both liberal and nonliberal constitutional regimes, where there is constitutional consensus on the right to free speech, however, an overlapping consensus is lacking with regard to the same principle. This is a serious problem for the idea of an overlapping consensus, as based on the strong demand discussed above. An overlapping consensus on the principle cannot be achieved, unless many different qualifications were attached to the application and implementation of the principle that should respond to citizens' different objections. This would not undermine the practice of public reason, as some tend to argue, just because we require appeal to *nonpublic* reasons to justify a law or a decision (Quong 2011: 261-5). What we require to do, they argue, is to appeal to political values, and free speech is one of those political values which are set to frame our decisions. We should not, they would argue, provide reasons or justifications of a

¹²⁷ The law of blasphemy still exists, though not regularly applied, among some of the European countries, including the United Kingdom, Spain, Italy, The Netherlands, Austria, Germany, Iceland, Greece, Denmark, Finland, and Switzerland. This is beside other sorts of restrictions on speech such as "hate speech".

law in terms of other than the liberal conception of justice which includes the principle of free speech.

The reasons that are given in support of the censorship of blasphemy can only be religious, or non-public, reasons and this would limit free speech in public reason. The wide view of public reason, articulated later by Rawls as the *proviso*, allows “comprehensive” reasons to be presented in the public forum, provided that political reasons are forthcoming (*LP*, 152).¹²⁸ One implication of this is that it might not be able to solve the conflict between censorship of blasphemy and free speech by appeal to substantive values that could be convincing to those who have religious reasons. It could either respond to such reasons by excluding them from the public sphere of reasoning,¹²⁹ or, as Rawls would argue, by demanding that they present their reasons in a way that is public and not in a religious manner. If Rawlsians argue that what is important for citizens and officials when presenting their reasons in the public forum to justify a law or decision is to frame them in a public manner, that is, to appeal only to political values. It will appear then that the difference between what they call non-public reasons and public reasons is reduced to a *mere* semantic difference. Why? Consider that Rawls, in the ‘The Idea of Public Reason Revisited,’ argues that, if the arguments and reasons for introducing prayer in public schools by religious people presented in a way that appeal to the political virtues of liberalism, these reasons can then be part of public reason. If the reasons for school prayer were not based on the premise that Christian knowledge is good in itself, but that it effectively “achieves basic political values, namely, the good and peaceable conduct of citizens,” (*LP*, 164-5) then they can be public or justificatory reasons. It seems that the difference between these two reasons is a semantic

¹²⁸ Notice that it is not said here that the Rawlsian idea of public reason restricts free speech, as Sandel’s objection is to this idea. See Sandel (1994: 1765-94).

¹²⁹ See, e.g., Macedo (1997: 1-29).

one, since the practice itself, ultimately, serves religious purposes. In fact, on this reading, Rawls appears to be quite permissive in allowing religious reasons expressed and shaped as public reasons. Notice that it is not argued that the wide view of public reason, in any sense, encourages dishonesty or insincerity.

Likewise, those who support censorship of blasphemy can present their arguments and reasons based on the premise that it assures that everyone's religion is respected, and that the stability of society and peace between different communities is preserved. But the question of whether this form of speech should be restricted still remains unresolved. To resolve this it requires that reasons be treated on a substantial, and not a semantic, basis and to acknowledge the fact that religious and moral reasons should be able to offer their reasons and justifications, provided that they are subject to critical inquiry. For example, most members of the religious communities who stand against blasphemous speech would also argue on the moral ground that it leads to moral insult and injury.¹³⁰ These reasons – essentially moral and religious reasons that intended to limit free speech, which is of public concern– cannot be considered as falling outside the public political domain. Thus, when the law of blasphemy is introduced in pluralist democratic societies, citizens should deliberate and vote in terms of the political values of a liberal democratic society, i.e., in terms of the liberal principle of free speech which is part of a just conception of persons and society. However, the difficulty is that religious citizens, considering that they are reasonable, will be less inclined to reason and vote in terms of this liberal principle. The arguments they present will be, essentially, religiously and morally grounded, but they could be expressed in terms that address the cohesion and stability of society. The justification, it is argued, cannot be

¹³⁰ For an instructive discussion, debate and different points of view on free speech and blasphemy, see Asad, Brown, Butler and Mahmood (2009).

brought about, say, of the principle of free speech, if some sort of a global notion of public reason and a weaker notion of overlapping consensus were not in place.

Public and non-public reasons

The strong demand attached to the Rawlsian idea of an overlapping consensus, as argued above, is represented in the requirement that there must be shared reasons and justifications in order for public justification to be possible. The reasons drawn from individuals' value perspectives "have no normative role in public justification" (*PL*, 387). On this account, there is a single strategy of justification which is based on appeal only to shared reasons, which are recognised not by appeal to citizens' internal reasons, but by appeal to reasons that are completely external to citizens' own convictions and commitments. These particularly strong demands make it rather difficult for the ideas of public reason and the overlapping consensus to be practiced and achieved. The other point that needs to be noted in this regard is that to burden these ideas with these demands is to make them incomprehensible in nonliberal societies, in which the search for reasons could include non-public reasons. This argument applies also to liberal pluralist societies in which it cannot be argued that people will come to share the same reasons and all will reason in the same way. This is to imply that there is a thick veil on people's way of reasoning, behind which people are led to reason and offer reasons for action in a specific way. If we do not accept the outcome of this argument, we are then led to rethink the dichotomy between public and non-public reasons.

The rigidity of this dichotomy imposes a definition of reasonability that if citizens are reasonable, they would only endorse those reasons that can be shared by others, that is, those which are public. It assumes that citizens will all affirm the liberal principles of justice since they are reasonable members of a well-ordered democratic society and they share a political

identity on the basis of which they can reason and offer public justifications.¹³¹ This assumption is grounded in the idea that citizens who hold reasonable values and commitments would agree to reason with each other and with officials in terms of the freestanding political conception and, therefore, justify decisions only by appeal to this conception. The form of reasoning suggested by this assumption is clearly constrained by conditions of reasonability that an overlapping consensus on the political conception will be achieved if participants in the public reasoning are reasonable.

Rawls argues that this condition of reasonability together with the moral psychology of citizens is important to understand how they come to an overlapping consensus on the liberal political conception. He argues that “the reasonable is public in a way the rational is not,” and this means that

it is by the reasonable that we enter as equals the public world of others and stand ready to propose, or to accept, as the case may be, fair terms of cooperation with them. These terms, set out as principles, specify the reasons we are to share and publicly recognize before one another as grounding our social relations. (*PL*, 53)

It is certainly true that reasonability is an important condition in public reason.¹³² It is important because it provides the conditions for identifying the terms of the debate, and also to bring all parties to offer their reasons in the public forum. If it turned out that their reasons are sincerely put as their only available reasons, then the test of public reasoning would be to see which of these reasons can survive public scrutiny, criticism and revision. However, it has to be noted, as argued above, that without appeal to public deliberation and reasoning,

¹³¹ See O’Neill (1997: 411-28).

¹³² See Nussbaum (2011: 1-24), for a discussion of the reasonable and unreasonable doctrines in Rawls’s political liberalism. Also see Nussbaum, ‘Perfectionist Liberalism and Political Liberalism’ (2011: 6 fn.9), where she argues for the significance of making a distinction between the political and comprehensive.

there will not be a chance to discover whose reasons are reasonable and whose are not. As it has been argued above, an overlapping consensus between citizens can be achieved on certain principles, say, on the liberal principle of free speech, without the assumption that they have to share the same justifications. The weak notion of overlapping consensus depends for its plausibility on the strategy of internal reasons, according to which individuals reason and offer their different justifications, drawn from their value perspectives, for the principles.

As argued in chapter 2, it is the multiple, and not single, justificatory strategy that can normatively function in nonliberal societies, in which government officials and citizens have to appeal to diverse internal reasons in order to generate consensus. The form of nonliberal societies that was considered previously was not secular, but one in which religion is part of the state's legislation. It has been argued that a weak reading of the notion of an overlapping consensus yields up the claim that justification of the political principles should be in terms of external shared reasons. The objection I tried to raise here was that these reasons are thought of as external reasons, that is, reasons that are not dependent on the moral psychology of individuals and respectively on their values and commitments. The weak notion of the overlapping consensus thus embraces the idea of internal reasons and reasoning, that is to say, individuals' values and commitments are considered part of the justification of the proposed principles or the policies in question. This notion alongside with the internal reasons strategy makes more sense in the relation between liberal and nonliberal societies. It does not demand that there must be a shared reason and justification in order for consensus to be achieved between them. To accept the liberal principles, such as free speech and other important political values, we have to convince those, who oppose them by appeal to a dialectical process of internal reason and conflict. Conflict between ideas and ideals is the natural consequence of the human reason and relationship, and the way to reach consensus is

through a global notion of public reason. What it might be required in the relationship between societies is the capacity for reasoning and the willingness to accept arguments, and reasons that advance and stabilise the terms of the relationship. Once they engage in public deliberation and reasoning and they search for internal reasons to support liberal principles – such as free speech, and not censorship of blasphemy and other censorships– consensus then could emerge on these principles. I will now turn to the idea of global public reason and its significance in the international realm.

5

Global public reason: International relations and deliberation

I have argued throughout that public reason is best understood not as an idea that is confined to liberal democratic societies, but as an idea of politics, in general terms, and of political deliberation and the justification of political decisions and institutions in a wider context and across different contexts. This is what can be called the idea of *global public reason*.¹³³ It is, undoubtedly, true that in a democratic context, the idea of public reason takes particular characteristics and contents –as discussed in chapter 1– that are not the same in other political contexts. I have also argued, in chapter 2, that we can identify those nonliberal polities in which the use of political power requires justification. It was argued that if these polities can satisfy the basic legitimacy demand and provide a space of deliberation for their citizens in their public encounter to discuss political and moral issues, then they can be considered as legitimate. Although in nonliberal societies there are ethical and religious convictions that could be said to offer the dominating justifications of political power, there are, nonetheless, wide disagreements and conflicts of interpretations about what these convictions require in the public political sphere. It is also argued that in order to resolve these disagreements, a multiple justificatory approach is required, which government officials and citizens are obliged to offer. What this justificatory approach tries to imply is that appeal to a dominating religious or ethical doctrine in the public forum is highly problematic and controversial. This leads us to consider that some sort of limitation is required in terms of the justificatory resources used in political and international law debates. Hence, an extended or a global

¹³³ Cf., Joshua Cohen ‘Politics, Power, Public reason’ (Tanner Lectures, unpublished). He argues for global public reason based on the claim that “the ideal of public reason is more fundamental and capacious. More capacious and fundamental, it has wider scope, with purchase and importance in a range of distinct political contexts.”

notion of public reason is required to understand the complexity of political and moral issues that pertain to liberal and nonliberal societies. This notion can be said to be about the bases on which the political relations between different societies should be arranged, and the forms of reasoning and deliberation that these different publics engage in and, finally, the normative claims or principles that will result from the reasoning.

In this chapter, I argue that there is a global characteristic about the scope, site and constituency of public reason and I should be making the following arguments. First, in *The Law of Peoples*, Rawls sketches over a notion of public reason for the society of peoples that depends on the principles of the law of peoples. I will argue that his notion is shallow for the purposes of global public reason (I). Second, the relation between liberal and nonliberal societies does not depend only on toleration of illiberal practices, but on toleration coupled with internal reasoning. I argue that global public reason suggests an inclusive and a global notion and I give the example of environmental concerns to support this claim (II). Third, it can also be argued that this global notion of public reason requires institutional arrangements for the political relations and for deliberation to be possible between these societies (III).

I. Toleration as a Basis of Global Public Reason?

Does Rawls offer a theoretical framework for global public reason, in the sense of admitting the claim that in nonliberal societies public reason can function and that it belongs to an international conception of political justice and that it is necessitated by a number of political issues and decisions that are of global concern? The brief answer to this question is “no”. I offer the following claims in the way of expounding the question and the answer that is offered.

1. The idea of public reason, defined by Rawls, is only applicable to an idealised well-ordered constitutional liberal democratic society. (*PL*, 213; *LP*, 132, 136)
2. The public reason of the society of liberal peoples is guided by the political conception of justice as characterised in the law of peoples. Liberal peoples do not have comprehensive doctrines.¹³⁴ (*LP*, 40, 55)
3. Nonliberal peoples have comprehensive doctrines (*LP*, 66), and based on this, public reason has no function in nonliberal societies.
4. Decent but nonliberal peoples can be good members in the Society of Peoples when they accept the law of peoples. Liberal peoples should exercise toleration towards decent peoples. (*LP*, 59)
5. Therefore, the public reason of the Society of liberal and decent Peoples, suggested by Rawls, is minimal or shallow which is centred on the toleration of nonliberal societies.¹³⁵

Many have argued that the conception of international public reason, if that is what can be called of Rawls's public reason in the international arena, is minimal and does not provide the grounds for criticism of the practices of nonliberal societies. Beitz have argued that "the difficulty with the appeal to considerations of toleration is that it produces a circular argument." (2000: 681) This circularity, according to Beitz, is based on Rawls's pre-theoretical response to the question "whether or to what extent international institutions and the foreign policies of liberal states should tolerate nonliberal cultures." (ibid) But, on the other, "this deprives the international original position of the capacity to lend any

¹³⁴ Rawls emphasises that "A people of a constitutional democracy has, as a *liberal people*, no *comprehensive* doctrine of the good, whereas individual citizens within a liberal domestic society do have such conceptions." *LP*, 40.

¹³⁵ For this point, see Digeser (2009).

independent weight to the argument for toleration of nonliberal cultures.” (Ibid) He believes that Rawls just presupposes the reasons for toleration rather than offering a theoretical framework.

Pogge, however, concerned with the egalitarian consequences of the law of peoples and the ways in which liberal egalitarianism should be internationally embraced, argues that Rawls’s principle of toleration with regard to nonliberal societies is not accurate. He argues that Rawls commits himself to this claim. “Liberalism involves a commitment to tolerance and diversity that extends beyond the family of liberal conceptions: It would thus be illiberal to impose a liberal global order on a world that contains many peoples who do not share our liberal values.” (Pogge 1994: 216) By committing oneself to this claim, which does not express liberal aspirations, “we would be compromising our liberal convictions”, and we should reject this claim. (Ibid, 217) However, we would *not* be compromising our liberal convictions if we go along this different claim. “Liberalism involves a commitment to tolerance and diversity that extends beyond the family of liberal conceptions: A liberal world order will therefore leave room for certain kinds of nonliberal national regimes.” (Ibid) Caney also criticises Rawls for presenting a list of human rights in the law of peoples that is “unduly minimal and acquiesces in injustice.” (2005: 84)¹³⁶

Tan, contrary to the cosmopolitan criticisms of Rawls, argues that Rawls’s idea of toleration requires not only to refrain from military intervention in decent nonliberal societies, but also to respect the different ways that decent but nonliberal peoples arrange their life and affairs. It is for this reason that his conception of toleration is not only about “nonintervention,” but also, more importantly, about “noncriticism.” (Tan 2006: 81)

¹³⁶ For a defence of Rawls, see, for example, Cohen (2004, 2006) who argues for minimalism about human rights and for a Rawlsian account against a human right to democracy. He distinguishes rights based on justice and rights based on human rights. See also Reidy (2004); Bernstein (2006).

McCarthy, in agreement with Pogge, also believes that Rawls's considerations of toleration lack an important element of what should be the concern of liberals, namely that they should enjoin a liberal law of peoples. He thus argues that "political theory should unabashedly support liberal-democratic-egalitarian principles of international justice and the sorts of global arrangements they favor. And political practice should seek to promote such arrangements in ways consistent with those principles, in the hope that with their establishment nonliberal, nondemocratic, and nonegalitarian beliefs and practices would gradually change to accommodate them." (McCarthy 1997: 215)

Although these authors all have a point to make about the international conception of public reason, suggested by Rawls, that it is based on a minimal notion of toleration, rather than on a more ambitious liberal egalitarian imperative that could work at the international level. However, they miss the fundamental point that Rawls never intended his public reason to be implicated in a global theoretical approach that would ultimately lead to the expansion of its scope, site and constituency beyond closed societies. It is for this reason that the idea of public reason, for him, is bounded to ideally well-ordered constitutional liberal democracies. This is for the reason that, for Rawls, the idea of public reason "arises from a conception of democratic citizenship in a constitutional democracy," (*LP*, 136) and therefore its role is that citizens, within the basic structure of society, can give justifications to one another of the principles of justice and of the use of coercive power. This justification, as O'Neill argues, "does not address others who are not fellow citizens, who are excluded from or marginalised within a polity, or who do not accept democracy and its constraints. In many ways its resonance is Rousseauian than Kantian, more civic than cosmopolitan." (2003: 353)¹³⁷

¹³⁷ For a criticism of O'Neill's criticism of Rawls's statist views of international relations and laws, see for example, Bernstein (2007).

The scope, site and constituency of global public reason

A word on what the scope, site and constituency of public reason are. The *scope* of Rawls's idea of public reason specifies certain political questions to which the idea is intended to apply, which are the constitutional essentials and matters of basic justice. (*PL*, 227-30)¹³⁸ The *site* of public reason identifies the domain in which these questions apply, that is, what Rawls calls the public political forum. The site of public reason then has three parts: "the discourse of judges in their decisions, and especially of the judges of a supreme court; the discourse of government officials, especially chief executives and legislators; and finally, the discourse of candidates for public office and their campaign managers, especially in their public oratory, party platforms, and political statements." (*LP*, 133)¹³⁹ Finally, the *constituency* of public reason is the set of reasonable citizens to whom political justification is owed and who are expected to endorse the political values of liberalism.

However, when constructing the idea of global public reason its *scope* tends to be more expansive to cover a broader range of questions than only constitutional essentials and matters of basic justice. There are many political issues and decisions that affect the relations between different societies and, therefore, they cannot be neglected as irrelevant to the sphere of politics and public reason. Take, as a general matter, the increasing interdependence on trade, markets and natural resources which have a huge impact on the economic relations between states. There are a substantial number of justice-related issues when it comes to the

¹³⁸ I follow Quong in outlining these three features of public reason. He argues for a broader scope of public reason to the effect that "it should regulate all the political decisions in a liberal democratic society." (2011: 258)

¹³⁹ It is striking that Rawls does not consider the discourse of citizens within the site of public reason. Quong claims that this should be added as it is consistent with what Rawls says elsewhere. To the site of public reason he adds "the discourse of citizens when deliberating and voting on political issues within the scope of public reason." (Quong 2011: 259)

debate at the inter-trans-national level that are of global concern, such as global poverty, environmental concerns, health and pandemics, immigration and border control and human rights, as well as global governance. These are all political issues and decisions that are pertinent to any deliberation and reasoning that occur between societies, whether liberal or nonliberal, and their relations tend to be immensely influenced by these decisions. For instance, the causes and impacts of poverty and its related issues in one country are matters of not only a local concern, but of a global concern (Pogge 2002). Thus, any notion of international or global public reason requires a consideration of these extensive issues, which necessarily specify the scope of such a notion.

It is also argued that there are political forums in which international and global issues are debated and deliberated which specify the *site* of global public reason, such as the discourse of judges in the International Criminal Court, or in the European Court of Human rights at a regional level. On the other hand, the site of global public reason is meant to include the discourse of citizens –coming from different nations– expressing their protests and discontents with the ways international governing bodies handle various issues that directly or indirectly affect them, as well as with the abuses of transnational power that affect people in developing countries (Miller 2010).¹⁴⁰ In other words, the site or domain of global public reason can be identified as global politics. Cohen argues for a conception of global public reason that is centred on global politics. He thus argues that “global public reason comprises norms, values, and forms of argument suited to justification in global politics.”¹⁴¹

¹⁴⁰ It is also worth mentioning that the global financial crisis has united many to share discontent and to discourse about international financial organizations and banks that have made the lives of people harder and contributed to the rise of poverty and the slow of economic growth. The mass international demonstrations and protests against G-summits and the Occupy Movements of Wall Street, London and other European financial centres can also be considered as the discourse of a global public.

¹⁴¹ Joshua Cohen (Tanner Lectures, unpublished).

It is also important to notice that in considering the *constituency* of global public reason the restriction to only reasonable peoples seems to be problematic and poses questions of who will decide, and how to decide? It is not clear how to answer the latter question. As for the former question, it might be answered that those peoples decide who are considered reasonable and who endorse Rawls's eight principles of the law of peoples (*LP*, 37). However, this cannot be the case. Can we exclude Brazil, China and India, for example, and overlook the rise of their economic and military power and, consequently, their impact on the political debate we are having on various global justice issues, considering that they have a record of serious human rights violations?¹⁴² The constituency of global public reason then requires a more inclusive basis than is suggested by Rawls, to voice and address the global injustices that inflict different societies and affect their relations and the political debate they are engaged in. The *public* of the global public reason, in its wider sense, demands that the policies and decisions of transnational power to be justified to them.

The problem of toleration in global public reason

The global public reason, that is advanced here, differs substantially from Rawls's notion of public reason for the society of peoples, which is based on the notion of toleration. I argue that toleration is a necessary condition, but not sufficient for global public reason. It is clear from *The Law of Peoples*, that Rawls's public reason for the society of peoples provides no basis on which its scope, site and constituency can be extended to cover the issues raised above. In the relation between liberal and decent nonliberal peoples, his notion is intended

¹⁴² China's contribution to the reduction of its poverty rate will undoubtedly have consequences on world poverty and other political and economic issues. See the important paper by Shaohua Chen and Martin Ravallion, who argue that "looking back to 1981, China's incidence of poverty (measured by the percentage below \$1.25 per day) was roughly twice that of the rest of the developing world; by the mid-1990s, the Chinese poverty rate had fallen well below average. There were over 600 million fewer people living under \$1.25 per day in China in 2005 than 25 years earlier." (2010: 1602)

only to see how decent societies can subscribe to the law of peoples, and to formulate minimal requirements that liberal peoples are meant to set for nonliberal peoples who could agree to them. In other words, his notion of an international public reason is limited to the principle of toleration. Rawls makes a valid and an important point about involving decent nonliberal societies in the debate with liberal societies on political issues by way of tolerating differences. He makes it clear that he does not intend his law of peoples to be interpreted in terms, and wants to avoid the charges, of cultural imperialism or Western and ethnocentric impositions of liberal principles (*LP*, 121-4).¹⁴³ The idea of toleration that is employed by Rawls as a basis of a mutual relation between liberal and decent nonliberal societies lies in his supposition, that this relation requires accepting and respecting the practices of decent societies. Rawls argues that “to tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples,” (*LP*, 59) and to build “relations of *mutual respect*” (*LP*, 122) between liberal and nonliberal societies.

Now, toleration as an idea has a certain paradox as well as it invites the charge of relativism. I will consider them in turn. The paradox of toleration lies in the claim that, we tolerate beliefs and practices that we think to be (morally) wrong or unacceptable. It is then morally right to tolerate and respect these beliefs and practices that are seen to be morally objectionable or unacceptable (Forst 2003; Scanlon 1998).¹⁴⁴ As Bernard Williams puts it, “the difficulty with toleration is that it seems to be at once necessary and impossible.” (1996: 18) On this understanding, toleration seems to be a paradoxical virtue. The idea of toleration sometimes understood to be a virtue particularly in an institutional context, in the sense that it

¹⁴³ See Audard (2006: 59-73) for considering the charge of cultural imperialism with regard to the law of peoples and dismissing it on Rawlsian grounds.

¹⁴⁴ On the idea of toleration and its various formulations and understandings, see, for example, the collections of essays in McKinnon and Castiglione (2003); Williams and Waldron (2008).

is a necessary virtue of societies, if individuals and groups are to live together with their differing and opposing beliefs and practices. In other words, it preserves the peace and stability, in Rawls's language, of the basic structure of society. Rawls's notion of toleration is crucial to his project of political liberalism, which is manifested in his idea of public reason and this will be reflected in the working idea of the law of peoples. His idea of public reason, as argued earlier, requires restraint on the part of citizens and officials in their public political reasoning. They have to tolerate in the public forum whatever conceptions of the good they hold and to offer only those reasons that are shared by all. However, at the personal and individual level, no restraint is needed and public reason need not apply.¹⁴⁵ While individuals can discuss with one another and reason from their opposing comprehensive doctrines in their private realm –and tolerate these differences within institutional arrangements that protect their existence– they should not offer public reasons and justifications of laws and policies, based on these comprehensive doctrines. (Tan 2006: 81-2)

Toleration with respect to the Law of Peoples which requires that liberal peoples tolerate decent nonliberal peoples is understood, by Rawls, to offer the grounds for mutual respect. Liberal peoples tolerate nonliberal peoples' ways of life, practices and beliefs and respect them and, therefore, admit them in the society of peoples –provided that nonliberal peoples endorse the principles of the law of peoples. Thus, toleration here means not only that liberal peoples take upon themselves not to intervene in the affairs of nonliberal societies, but, more importantly for Rawls, that “there is simply no principled basis for liberal peoples to criticize decent peoples.” (Tan, 2006: 81) In the first instance, this seems to suggest that Rawls's notion of toleration invites a relativistic claim. This claim is that since we cannot provide any arguments or grounds on which we can evaluate the truth or rightness

¹⁴⁵ See Rawls (*LP*, 152) where he talks about two ideas of toleration, political and non-political.

of different practices and institutions, then all will have the same degree of rightness and wrongness. However, Rawls avoids this charge when he claims that, “With confidence in the ideals of constitutional liberal democratic thought, [the Law of Peoples] respects decent peoples by allowing them to find their own way to honour those ideals.” (*LP*, 122) Although this is not as strongly put as to avoid the charge of relativism, he, on the other hand, tries to avoid the charge of cultural imperialism by not emphasising the imposition of liberal ideals.

If his notion of toleration can be cleared from all sorts of relativist claims, then can the conception of toleration, offered by Rawls, be understood as a requirement of a *modus vivendi*? Rawls can dismiss any relativist implication that could follow from his notion of toleration; for, toleration is meant to treat others as equal members of the same community and to build relations between them on mutual respect. However, as argued above, toleration, most fundamentally, is based on Rawls’s notion of reasonability which requires refraining from making truth claims regarding one’s conceptions of the good, what it has been called “epistemic abstinence.”¹⁴⁶ According to Rawls, there is no principled basis on which to criticise nonliberal peoples and it would seem unjust to impose liberal ideals on them as this means the denial of “a due measure of respect by liberal peoples.” (*LP*, 61) On this interpretation, Matravers and Mendus argue that Rawls’s argument for the injustice of imposition cannot be based on his epistemic restraint. This is mainly because, this restraint can only say why this imposition is irrational or unreasonable, but cannot morally object to it. They argue that the

Rawlsian project of attempting to defend impartial theories of justice via epistemological abstinence ... cannot sustain a defence of toleration as a requirement of justice ... Epistemology

¹⁴⁶ See Joseph Raz (1990: 3-46). Rawls makes a clear statement of this in his political constructivism, see *PL*, 94. For a discussion of Rawls’s public reason in relation to the question of truth, see, for example, Cohen (2009: 2-42).

shows us only, and at most, why a particular policy of persecution might be ineffective or irrational; it cannot show us why it might be morally wrong ... [thus] we have no more than a *modus vivendi* defence of toleration. (Matravers and Mendus 2003: 51)

Not all would agree with Matravers's and Mendus's criticism, though their point is based on what can logically be drawn from Rawls's notion of toleration, as grounded in the principle of restraint in public reason. According to their line of argument, to have a principled defence of toleration, one has to make a value judgement of what one believes to be valuable. Tan, for example, argues that the notion of toleration Rawls uses, which is focused on respect makes it important to understand that liberal peoples do not tolerate decent peoples for the sake of global stability, that is, a *modus vivendi* (2006: 83).¹⁴⁷ Having registered these disagreements, global public reason requires more than toleration –as it is too shallow a conception, on its own, in the international arena– for establishing a mutual relation and debate between different societies that could have a wider scope, site and constituency.

II. Internal Reasons and Reasoning in the Global Context

It has been argued, in the preceding chapters, that in order to generate support for any political principle or conception, we might need to appeal to an internal reason strategy. This strategy of internal reason and reasoning, it is argued, depends for its functionality on internal conflict within and between values, and this would help us find reasons from within our value commitments to support the law or policy in question. When it comes to the political relations between different societies, in the global context, various kinds of conflict arise with regard to political principles, ideals and moral values. Toleration can work towards this disagreement and conflict by accommodating them on the basis of mutual respect, but avoid

¹⁴⁷ See also Maffettone (2010: 301-7) who makes an assessment of the claim that Rawls favours a restricted list of human rights, in order to achieve international stability.

making any relativist claims about the diversity of beliefs and practices. Thus, it should forestall any kind of relativism that might be implied by interpreting toleration in a certain way. However, toleration, as argued above, would provide a shallow basis for global public reason, if it is not accompanied by the strategy of internal reason and reasoning. Thus, toleration is a necessary, but not sufficient, element of global public reason. Global public reason and reasoning requires a broader space in which different societies can participate and discuss their fundamental issues and, in the process, reasons can be advanced to convince different parties of the legitimacy and justifiability of a set of political rights and liberties, and of democracy as a way in which the debate can proceed. This is not tantamount to imposition or offering a pretext for intervention. Rather, it is about different ways of reasoning that societies can engage in, and in which they can offer reasons from within their value commitments, provided that these reasons are subject to scrutiny, criticism and revision –and in the course of which consensus can emerge on reasonable principles. Sen offers an explanation of how to understand a value such as democracy and its troubling politics of imposition exercised by some Western countries. He argues that democracy can be viewed in terms of public reasoning and, considering that respect should be due to other non-Western countries, we should not embark on the hasty assumption that the West has the monopoly of democracy (Sen 2009: xii, 322).

Toleration and internal reasons

To give an example as a way to explain the above point, consider the example of the freedom of speech given in the previous chapter. It has been argued that in liberal and nonliberal societies to bring about support for and consensus on a principle such as freedom of speech, we require to engage in an internal reasoning, one which depends on conflicts within and between values. The task of individuals and communities who debate on such certain matters

is to find reasons to persuade others that a certain principle is valuable. Thus, liberal and secular people should find reasons from within, say Muslims, to persuade them that they have resources and reasons to support freedom of speech. By the same token, if we extend this argument to the international arena, societies in their reasoning on political and moral issues require appeal to reasons that are drawn from their held values, to bring about an overlapping consensus on free speech and other political rights and liberties. Reasons, then, are global in reach. The global character of public reasons is not that reasons for supporting the freedom of speech or religion, for example, are the *same* everywhere, and therefore, all are convinced by the same reasons. Rather, the claim is that reasons and reasoning for such principles differ according to the context in which the debate and reasoning occur. There is a diversity of reasons to support liberal principles that can be reinforced by peoples' and societies' value perspectives. Global public reason then could be seen as providing "a terrain of deliberation and argument about appropriate norms ... [and] not a determinate and settled doctrine awaiting acceptance or rejection." (Cohen 2004: 195) A debate on political or economic or social issues in one society, whether liberal or nonliberal, that is of concern to other societies, will have an impact at the international or global level, in terms of the diverse reasons and justifications given for supporting a certain course of action. The eradication of world poverty and global injustice may require global institutional coordination, but the debate on these issues is not reduced to mere institutional problems.¹⁴⁸ Global public reason does not need to assume a well-defined content with determinate rules and guidelines. It only needs to specify the space of reasoning and argument that should exist between different societies, and that their political relation is based on toleration and internal reasoning and not on any politics of

¹⁴⁸ On the institutional problem of global justice, see Nagel (2005), and for a critique of this approach, see Sen (2009). See also Singh (2011:175-84) for distinguishing the institutional from the conceptual problem of global justice.

interventionism. I will come back to the question of the content of global public reason later on.

It has to be noted here that when we say that the support for freedom of speech or religion or for a democratic way of life can be extended to the international arena, based on the strategy of internal reason and reasoning, this is not to be taken as equivalent to the claim that the freedom of speech or democracy should be considered as a human right. This latter claim has had opponents, who argue that the right to free speech should be understood in relation to the context in which this right can be interpreted, and what role this right is meant to play in actual political conflicts. (See, e.g., Sangiovanni 2008: 159) An institutional understanding of this right renders it inconceivable as a human right and, therefore, it cannot be assumed that there is a fundamental interest in the right to free speech everywhere. (Ibid) This view argues that this cannot be a right everywhere, because different principles apply to different institutional settings. Based on this interpretation, it can be said that “the different role the concept of a right is meant to play within different institutional structures conditions the content and scope of the right.” (Ibid) The same can be said of democracy and the right of equal political participation. Some have argued that democracy cannot be extended to the international arena and, therefore, it cannot be considered as a human right. Democracy is a basic right that is guaranteed in a just political society, a right that is founded on justice; it is then not a human right. While human rights “are a proper subset of the rights founded on justice ... [and] are entitlements that serve to ensure the bases of membership,” the “democracy that justice requires is associated with a demanding conception of equality, more demanding than the idea of membership associated with human rights.” (Cohen 2006: 226)¹⁴⁹ What these authors are concerned about, and try to not include these rights within human

¹⁴⁹ See also Bernstein (2006: 278-98).

rights list is that (a) these rights require to be justified to different peoples and societies, in light of the diversity of different ethical values that they hold, (b) including these political rights within human rights list would lead to the legitimization of international intervention, particularly by strong nations, under the pretext of protecting such rights,¹⁵⁰ and (c) there is no international institutional arrangements to protect these rights and assign obligations to states to secure the rights.¹⁵¹

The conception of global public reason that is centred on toleration and the strategy of internal reason and reasoning, which is advanced here, is in agreement with the above view in that, it does not argue for freedom of speech or a democratic way of life on the grounds of human rights. What this conception considers to be of significance is the thesis that liberal and nonliberal societies, in their political relations, should practise toleration, based on the value of respect. What is equally significant is that, in the case of disagreement, conflicting parties engage in the search for reasons which could lead to persuade unconvinced parties, through public reasoning, that such political rights and freedoms are important for every society to embrace. This conception avoids falling in the politics of intervention by concentrating on the internal conflicts that exist within societies regarding political and moral values, which enable conflicting parties to offer each other reasons that are not in contradiction with their value commitments. Instead of appealing to human rights doctrines in order to buttress such political rights, global public reason appeals to human reason and its capability to arrive at conclusions that can be argued for and defended in the public fora. This

¹⁵⁰ It is interesting to note that freedoms from slavery and genocide are included within the minimal list of human rights as basic bodily security rights, and while liberal egalitarians express their wariness about intervention, some cases of genocide have not provoked intervention by strong nations such as in the case of Darfur. Interventions to stop genocides have been very eclectic, even though these kinds of interventions are considered to be an international obligation.

¹⁵¹ See Bernstein (Ibid); Cohen (2004: 193); Sangiovanni (Ibid, 160); O'Neill (2000).

conception of global public reason with its concomitant strategy of internal reasoning would provide a space for deliberation and discourse between societies, in which they can discuss, scrutinize and criticise the reasons they offer to one another regarding political, social and justice-related issues.

The inclusive view of global public reason

It was argued in the previous section that the public reason for the society of peoples, that Rawls envisages, requires liberal peoples to tolerate, that is, to respect nonliberal peoples provided that they endorse the law of peoples. As it was discussed above, Rawls finds no basis on which liberals can criticise nonliberals. However, he also argues that “critical objection, based either on political liberalism, or on comprehensive doctrines, both religious and nonreligious, will continue concerning this and all other matters. Raising these objections is the right of liberal peoples and is fully consistent with the liberties and integrity of decent hierarchical societies.” (*LP*, 84) Tan explains this confusion by stating that Rawls’s idea of toleration allows liberals to criticise decent nonliberals *only* in their personal and individual capacities. However, he withholds this criticism from liberal peoples in their official institutional capacities. (Tan 2006: 83) This dualism of the idea of toleration cannot be maintained, especially when it is taken at the international level, by restraining individuals, officials and societies to engage in a process of criticism and to express moral judgements in their public debate and reasoning.¹⁵² It is here that the conception of global public reason that is advanced throughout, tries to offer a strategy of internal reason and reasoning on which the deliberation and reasoning between different societies need to be based. This strategy tries to search for reasons and arguments, that are internal to societies’ own value commitments to criticise competing ideas and values, and to persuade them of alternative principles.

¹⁵² See Matravers’s and Mendus’s (2003: 38-53) criticism of Rawls on this point, which was discussed earlier.

Cosmopolitans have argued that criticism of nonliberal societies and illiberal practices should be exercised also at the level of global institutions, and not only on the personal level, since the concern of global justice is the establishment of global institutions that address such concerns.¹⁵³ Global public reason then shares the cosmopolitan's concern and its objection to Rawls's principle of toleration, but it does not presuppose that the international deliberation and reasoning cannot continue without prior global institutions. If this dualism of toleration, that is, the ability to criticise on the personal level, but not on the public institutional level, cannot be maintained in the deliberation and debate between different societies, then the argument for internal reasoning in the international arena would be an appealing one. This argument maintains that toleration is an essential element of any international debate, but it requires to be supplemented by peoples' capability for reasoning, in which they can offer reasons and justifications of the political rights and freedoms, that are significantly valuable for the lives of all individuals and the order of societies.

With this in mind, it seems that global public reason cannot also maintain the strict dichotomy of public and non-public reasons at the international level. It is possible that in the course of public reasoning that non-public reasons offered by nonliberal societies to support certain matters that are of international concern, such as environmental concerns. Some can find different reasons from within their different religious doctrines to offer arguments for the preservation of nature as a duty that all human beings must perform. The environmental concerns about climate degradation and deforestation, some might argue, can be addressed not only from the point of view of liberal conceptions, but also from a diversity of different reasons that can be reinforced by the plurality of convictions and values held by different peoples and societies. Some religions have an animistic line of reasoning running through

¹⁵³ See, for example, Beitz (2000); Pogge (1994, 2001); Caney (2005).

their doctrines. Others, such as Judaism, Christianity and Islam, though they state that the world was created for the benefit of human beings, they do stress that humans have a duty to respect nature and improve its condition. Buddhism, for instance, has a strong view about nature and its ancient teachings claim that

the earth is a great enlightened being, a great Bodhisattva, who gives us a place to live on her body, to grow and to walk the path to enlightenment. The being, the earth, is our mother. She gives birth to us, nourishes us, and it is to her that we return at death. We owe her the same kind of love and respect that we should have for our human mothers. (Epstein 1999: 36)

When considering global public reason with respect to the nonideal theory, it is not the case that only nonliberal societies need to be persuaded to adhere to climate change policies. Rather, a liberal regime, such as the United States, also needs to be persuaded to adhere to such policies. It is obviously quite difficult to do that, since there are economic costs that affect the big corporations. However, this is not our point here. The point is that when the international debate is on environmental issues and on the cooperation of states to reduce greenhouse gas emissions, the American administrations continually, and selectively, refuse to accept scientific reasons –which are considered to be public reasons– to adhere to the global climate protocols.¹⁵⁴ Other target countries such as China and India have, likewise, refused to bind themselves to those protocols for different reasons. Thus, it can be argued that public and non-public reasons, whether they are religious or moral or philosophical, may need to be offered by leaders, international organizations and individuals to persuade such regimes to be bound by climate change policies.¹⁵⁵ In this case, in which some societies

¹⁵⁴ The latest resistance to such treaties by America was the climate talks in Durban, South Africa in December 2011.

¹⁵⁵ See Brown (2010: 45-9), who also argues for the use of an inclusive view of public reason in the international arena and for the use of non-public reasons in certain cases.

disagree with others, when the enhancement of their relations and cooperation on different environmental and other matters is important, one party to the disagreement would unlikely state that they would tolerate the other party, who is not willing to comply because that would respect their views and practices. It is more likely, and that is what is happening in reality, is to find reasons and arguments that could strike the other party as convincing, and that might have more resonance with their held values and beliefs.

It has to be noted here that the scope, site and constituency of public reason expand to cover global issues that affect the just relations between societies. The questions that are discussed in the public forum are not confined to the discourse of officials and politicians, as Rawls supposed. In the case of environmental questions, it is not only state leaders and politicians do the deliberation on behalf of peoples. There is a substantial number of non-state actors like international non-governmental organizations (INGOs), concerned with environment which include, for instance, Biodiversity International, Conservation International, Friends of the Earth, Rainforest Alliance, International Whaling Commission, International Network for Sustainable Energy, and many more. Alongside these organizations, there are environmental activists and ethicists, scientists and scientific organizations, who play a substantial role in raising awareness about environmental issues, and also in putting pressure on states to sign environmental treaties. These organizations and people reach a wide and globally-based constituency when they discuss and address environmental issues, since they are issues that affect almost everyone. The reasons and justifications used by them do not necessarily fall within the boundaries of public political reasons. For, they are led by their ethical, philosophical as well as political conceptions in giving reasons as to why we should care for the environment.

Now, would it be plausible to ask these organizations and people to abide by Rawls's restrictions of public reason, that is, the duty of civility and to give only those reasons that can be shared by others?¹⁵⁶ It seems that they would have to fulfil a burdensome demand not to appeal to their, for example, ethical reasoning for making a case about the effects and extent of human contribution in climate degradation. The political and ethical reasoning of these organizations and people are intertwined and they may not be able to present reasons that are not based on their conceptions of the subject. An important point that needs to be considered here is that not only states and their officials and representatives can be agents of justice and participate in public reasoning. Nonstate actors like individuals and INGOs, in general –not only environmental ones– can also be agents of justice. O'Neill argues (2001: 191) that sometimes

INGOs seek to contribute to justice in weak states by helping or badgering them into instituting aspects of justice... INGOs may do this by mobilising external powers (other states, international bodies, public opinions, GSMs¹⁵⁷), by doing advocacy work that assists weak states in negotiations with others, by mobilising First World consumer power, or by campaigning for and funding specific reforms that contribute to justice in a weak or unjust state.

These nonstate actors can form, as discussed above, part of the constituency of global public reason and they can exercise their limited power in making decisions, or influence the decision making process in the domain of global governance. They can, therefore, expand the scope of public reason to a global scope encompassing global questions and issues that they raise and that concern a wide range of publics. These questions vary, but they do address

¹⁵⁶ C.f., Brown (ibid, 50-1).

¹⁵⁷ Global social movements.

questions of justice, which could include the injustices of laws, policies and regulations that affect different societies and the lack of adequate institutions that could contribute to unjust realities, and the players and actors, in many of these cases, are international institutions, transnational corporations and states that fail to act as agents of justice. Sen argues that the points anti-globalization protests, for instance, make “are not invariably sensible (sometimes not at all), but many of them do ask very relevant questions and thus contribute constructively to public reasoning.” (2009: 409)

III. Reasoning without Frontiers

If the claim that the public and non-public distinction in global public reason should be relaxed or discarded is granted, it is then important to see that the debate that occurs between liberal and nonliberal societies is one of mutual reason-giving and reasoning, that is not based on the same shared reasons, but on a shared space of debate and argument (Cohen 2004). It has been argued above, that there are definite cases in which appeal to peoples’ value commitments or to the ethical reasoning of organizations can make up public reasons in an international debate, for example, on environmental issues. The point that this argument tries to address is that in the process of deliberation, societies can produce arguments and reasons to support those principles and conceptions, by which they can coexist and form mutual relations not founded on force or domination. The public reasoning that is invoked by different societies is not parochial, but coheres with their value commitments and, most importantly, it has to be subject to public scrutiny and can be justified in the public forum.

The methodology of internal reasoning used in the conception of global public reason helps build relations between societies on the basis of freedom from domination. The support and consensus generated between them do not come from imposing certain presupposed principles and conceptions as more superior than others. Rather, the debate and argument are

on the rights and freedoms and the legitimacy of institutions, and how consensus is brought about on them. One of the contentious issues that could be the subject of reasoning between liberal and nonliberal societies is the question of legitimacy that in liberal societies is essentially associated with liberal and democratic values. Although nonliberal societies can be legitimate based on some conditions, which were discussed in chapter 2, a more functioning and legitimate system can be argued for based on democratic values.¹⁵⁸ While this methodology respects existing differences, it, at the same time, gives weight to reasons and justifications that can be drawn from people's value perspectives, to support the political rights and freedoms in question. As it was discussed above, it does not appeal to an argument for grounding these rights in human rights, but in the capability of peoples to reason and offer justifications for the principles in question.

Reasons for global public reason

One can wonder why we should talk about global public reason in a world where the debate is circumscribed by power relations. It is exactly for this reason that this notion of global public reason is needed. This notion aspires to achieve two goals in the relations between different societies. First, it tries to build a sphere of deliberation and reasoning in which most contentious issues and disagreements can be debated through a reasonable way of dialogue. Thus, the dialogical nature of the relations between different societies and peoples is emphasised and given weight (Bernstein 2007). In this common sphere, peoples, individuals and organizations offer their reasons for the policies and institutions that govern them, and critically reflect on the principles and the ways these institutions operate (Smith 2011: 124). While this notion adheres to tolerating differences and to a mutual relation between societies based on respect (Rawls, *LP*, 122), it takes the practice of critical reflection of the reasons,

¹⁵⁸ Williams argues for legitimacy in conjunction with liberalism. (2005: 7-9).

offered by participants and the scrutiny of policies and institutions as significant to the integrity of public reason and reasoning. One plausible way to achieve a kind of agreement among liberal and nonliberal societies on certain political principles and democratic values, is to appeal to the strategy of internal reasoning, in which a diversity of reasons that are reinforced by peoples' value commitments can be offered in support of the principles. This strategy or methodology allows participants of these societies to search for reasons whenever there is a disagreement on the principles and institutions. Although it depends on the conflicts and disagreements within values to find internal reasons, this strategy does not aim to leave these conflicts unresolved. The conflict within the values of one society will help another, to offer reasons that could be appealing to them, to endorse principles and values that are supposed to give legitimacy to the exercise of political power, and bring more stability to the society.¹⁵⁹

Second, the notion of global public reason tries to contribute to the creation of a public, that is global in its scope and site or domain, and which engages with the rules and policies of international institutions, and tries to set the proper standards of argument about the legitimacy of global governance and politics.¹⁶⁰ It tries to bridge the gap between local questions of social justice and the impact that this would have at the global level. Because the decisions and rules that are made in global governance affect a wide variety of peoples, ranging from their basic rights and liberties to their life prospects, people through global public reason can participate in and challenge these decision makings. However, the main problem is that those who live in poverty in one part of the world are deprived of the basic capabilities to participate in an international debate and, therefore, global public reason

¹⁵⁹ For a fuller discussion of this strategy and its functioning, see chapter 3 above.

¹⁶⁰ See Cohen (Tanner Lectures, unpub. 47).

should address this lack of capability for reasoning (Sen 1992; 2009). The site or domain of global public reason is then characterised by the participation of all those peoples and organizations, that demand justification of the norms, values and principles that regulate a variety of relations between different societies. They demand that their capabilities for reasoning, deliberation and public scrutiny are not hindered by the rules and decisions made by governments and their representatives. The capability to reason, according to Sen, is a valuable functioning which reflects the opportunity of a person or community or public to freely pursue what they think is valuable. A person's or public's advantages and disadvantages are assessed in terms of their having such capabilities and, consequently, their ability to achieve a variety of combinations of functionings (Sen 2009: 231-8). When considering the unequal capabilities to reason that exist between different societies –as some enjoy a more powerful position, economically and militarily– it will then become apparent that the task of global public reason is to address these inequalities. It should also try to expand the domain of global politics to the inclusion of different possible agents of discourse, such as the discourse of individuals and nonstate actors, who demand to be part of the exercise of public reason and reasoning.

The content of global public reason

Does global public reason have a fixed content? In the light of the above discussion, the answer to this question should be clear, that such a fixed content cannot be ascribed to global public reason. In specifying the features of global public reason, we considered its scope, site and constituency, but not its content. It is argued here that the content of global public reason is not fixed once and for all. However, in specifying the content of public reason in the domestic case, i.e., democracy's public reason, which is the only possible form of public

reason for Rawls, he argues for a diversity of different conceptions of justice that could constitute the content of public reason. As Rawls puts it,

the content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one. (*LP*, 140-1)¹⁶¹

If this claim is taken to the level of international debate between liberal and nonliberal societies, it can be claimed that the content of global public reason cannot be fixed on the basis of the principles of the law of peoples. Rather, what it follows is that there are different interpretations of what constitutes to be a political conception of justice. The content of global public reason, most importantly, needs to be flexible as to include questions and issues that are not supposed to be perennial and, as a result of this, new questions and issues come to the fore to occupy the public debate and discussion (Brown 2010: 58; Smith 2011: 124). As discussed above, the principles, norms and values will be the product of the exercise of public reasoning itself, in which individuals and peoples will engage to deliberate about the appropriate ways of forming their political relations. When they engage in public reasoning, they reason about those questions, that were considered as a sample of many possible questions, which constitute the scope of global public reason. The strategy of internal reason and reasoning will provide an avenue for agreeing on norms and values, which will be arrived at as the result of deliberation and argument that occur between different societies and peoples.

¹⁶¹ For a critical reflection on Rawls's changing position of allowing different conceptions of justice in the public forum, and the relation of this view to his strong emphasis on taking the subject of justice as the basic structure of society, see Sen (2009: 10-12).

Thus, instead of proposing and constructing ideal principles and conceptions as the content of global public reason, it is more to the point to concentrate on disagreements and conflicts and try to draw norms and principles from resolving them, through debate and discussion in which multiple publics can take part. To the extent that the content of global public reason is constituted by global norms that rule and regulate inter-trans-national institutions and their member states, these norms require to be justified to the peoples and societies that are subject to the rulings. Global public reasons are said to be diverse reasons offered by societies, individuals and organisations to justify international institutional orders and decision-making procedures. The word “procedures” is doing some work here, in the sense that no society can claim to have legitimate exercise of coercive power without engaging in procedures that are seen, by the light of global public reason, to be fair and legitimate.¹⁶² The procedures therefore cannot be justified without this condition.

In his unpublished Tanner Lectures, Cohen argues that the content of global public reason is constituted by three components. Governance norms, norms focused on outcomes or on access to resources, and human rights norms. The norms of governance are “understood as standards for rule-making processes,” which are mainly about “norms of accountability, representation, transparency, and reason-giving, as applied to procedures of rule-making in the global administrative space.” (51) If, for example, the International Labour Organization makes rules and establishes labour standards and procedures that affect the welfare of working people and others, it cannot dissolve itself from giving reasons for its actions.¹⁶³ “As a political body, [ILO] owes some justification, at a minimum to those governed and directly affected by its decisions.” This is because the procedures used to make rules and the reasons

¹⁶² This coheres with the maxim that justice should not only be done, but also be seen to be done.

¹⁶³ The example is given by Cohen.

given cannot be accepted by those for whom they are meant to apply, unless they represent their welfare. Thus, “in the normal course of things, that will mean that some standard of fair interest representation is a component of global public reason.” (52)

This argument also applies to the norms focused on outcomes or access to resources. Although Cohen does not make this point very clear, I take it to be about those billions of people who live in poverty and that their capability to reason, as discussed above in light of Sen’s views of the capability approach, is severely hindered by their condition. Hence, there a substantial need for global public reason to address this issue. Cohen gives the example of the WTO and the rules it makes, which have to respond to the demands for justification. The WTO “anticipates that trade rules will frequently conflict with, and need to be modified to accommodate, a wide range of normative concerns embodied in the domestic laws and regulations of those trading in world markets.” (55) When member states join the WTO, they expect to benefit from the global economy and, therefore, do not agree “to replace domestic rules with the universal laws of efficient commerce. Rather, they can be understood as agreeing to reconsider their rules ... to reconcile distinctive domestic regulations with general standards that are also attentive to the interests of others elsewhere.” (56) Although these two sets of norms are focused on the demand for justification that global governance and institutions are bound by, it is also correct to claim that they address the significance of the value of accountability in the functioning of global governance and politics (Grant and Keohane 2005; Wenar 2006; Weale 2011).¹⁶⁴ As regarding human rights norms, they “represent a partial statement of the content of an ideal of global public reason, a broadly shared set of values and norms for assessing political societies both separately and in their relations” (Cohen 2004: 195).

¹⁶⁴ See also Nanz and Steffek (2004), who argue for certain measures that the WTO should adopt which help the emergence of a global public sphere.

Thus, it can be argued that the content of global public reason cannot be understood in terms of a fixed or specific set of principles, which the international debate can follow, and on which the relations between societies can be based. The contents given by Cohen –which can be seen as flexible enough to include a wide variety of norms and values– reveals that global public reason should be seen as the space of deliberation and reasoning of a great many questions that could lead to the endorsement of certain political principles. The most significant and pressing principles, one can argue, are understood to be the political rights and freedoms and the value of public reasoning, which help generate just institutions and regulate existing ones. If it is true that global public reason does not provide “a determinate and settled doctrine awaiting acceptance or rejection” (Cohen 2004: 195), then specifying the principles of the law of peoples as the content of the idea of global public reason might seem to be too restrictive for such an idea. What is more important to be specified about global public reason is its scope, site and constituency which proved, as discussed above, to be essential in understanding the bases of the debate and relation between different societies.

Conclusion

The appeal to reason can be achieved when people exercise their power of reasoning, argumentation and deliberation in political or social matters or even in their ethical convictions. These different forms of reasoning require fully capable moral agents, who base their argumentations on certain premises and employ methods of inquiry and they reach conclusions that have the force of persuasion. According to this line of argument, it would not be accurate to confine public reason to a certain political context. It is the reasoning of individuals and peoples that occurs in the political space regardless of what kind of political system is in question.

I argued that Rawls offers an account of public reason which he associates with a specific context, namely liberal democratic states. There is one major reason for this move by Rawls. He assumes that in constitutional democracies a freestanding political conception of justice can be constructed on which an overlapping consensus can be achieved despite the comprehensive doctrines held by individuals. He then thought of public reason as a matter of putting constraints on certain political questions that could be publicly discussed in democratic states, namely on “constitutional essentials” and questions of basic justice. (*PL*, 214) This could trap the idea of public reason in legalistic and institutional matters, and not freeing its rich potentiality for a broader notion of public reason (see Maffettone 2010: 280). He thus assumed that there will be a shared reason, in democracy, that all would reasonably appeal to in justifying political power. I referred to the problem of conflict that arises as a result of the plurality of comprehensive views and an overarching political conception, which all is expected to endorse if they are rational and reasonable moral agents. Rawls, in fact, has the resources to deal with this problem by using the idea of an overlapping consensus, which is meant to resolve this tension. However, I argued that the thesis of the shareability of

reasons that should be accessible to everyone in public reasoning is particularly a demanding requirement.

I then argued for an alternative idea of public reason that could be understood as an idea of politics and political practice. This could be described as the reasoning of individuals, in their different capacities, societies and nonstate actors, such as organizations and other political agents, who have an interest in the processes of law and decision making and political participation, and who demand that these processes should be justified to them as they are the main constituencies of political justification. Based on this revision, I broadened the scope, site and constituency of public reason, and argued that the content of public reason should cover other political questions that require public dialogue and scrutiny, and also argued that public reason should not be confined to a specific context, because it has the capacity to be considered in different contexts. All this constituted, what I called, *global public reason*. I also argued that because the practice of public reason requires a wide participation by individuals and other agents, it is then important to view public reason and reasoning as promoting a strategy of justification that is not in essence singular, but multiple. The multiplicity of justifications deployed by public reason does not, however, require that every reason can have the same status. For reasons to be publicly justified and appeal to others as convincing and, in fact, reasonable on relational terms, they have to be subject to public scrutiny, criticism and revision. Without these discursive requirements, reasons provided in the public sphere cannot be considered as convincing by others and will lose their interactive mode and dialogical characters.

Thus, once we try to go beyond liberal democratic contexts for considering public reason, we find the idea of public reason in nonliberal contexts to have different characteristics and functions. Although in such contexts, there are dominating doctrines in the

process of law making and in public discussion, there is a wide disagreement about what these doctrines require and how they should be interpreted in the public life of individuals. These disagreements and conflicts within the value systems regarding political and moral issues would require that public deliberation in these societies to be constrained. This constraint, however, some would argue that cannot be in terms of a freestanding political conception. In this thesis, nevertheless, it has been argued that the constraint will be in terms of a multiple justificatory strategy that depends on the idea of internal reasons and reasoning.

It has been argued that the multiple justificatory strategies can normatively function in nonliberal societies, in which government officials and citizens have to appeal to diverse internal reasons in order to generate consensus. The form of nonliberal societies that was considered previously was not secular, but one in which religion is considered to be part of the state's legislation. I presented arguments to the effect that, in these societies, the religious doctrine and law cannot satisfy the demands of individuals for justification. The justification of laws and policies has to be in terms of not only the religious doctrine, but also in terms of other sources and methods that give legitimacy to the institutions. The conflicts within any value system and conflicts between values would help bring about reasons to support the political rights and freedoms.

By non-liberal societies, we only meant those polities that can meet, firstly, the basic legitimation demand, namely those that can answer the "first" political Hobbesian question, that is to say, provide protection, security, trust, and the conditions of cooperation. Secondly, that these non-liberal polities should provide a space for public deliberation and argumentation in which citizens can participate. I argued that the justification of political power requires appeal to a strategy of multiple justifications which makes use of different principles and values, and not only of the religious law and doctrine. I presented

contextualization for this approach by giving the example of the historical and modern Islamic societies, that is, these polities cannot legitimately appeal to the sole source of Islamic law and doctrine. The justification of their exercise of power requires that a multiple justificatory strategy is adopted, as the wide disagreements and conflicts within the doctrine would make space for this kind of strategy.

This strategy works in tandem with the strategy of internal reasons and reasoning. This strategy is particularly important in the conception of global public reason. It contends that the acceptance of and support for liberal political principles would be more a matter of individuals having (internal) reasons than assuming an external reason, according to which they accept the principles. I then argued that this can be read as a weak version of the notion of an overlapping consensus. The strategy of internal reasons and reasoning, then, takes the weak notion of the overlapping consensus, advanced here, seriously. In other words, it takes individuals' values and commitments as part of the justification of the proposed principles or decisions. This notion alongside with the internal reasons strategy has a normative appeal in considering the relation between liberal and nonliberal societies. For, it does not demand that there must be a shared reason and justification in order for consensus to be achieved between them. To accept the liberal principles, such as free speech and other important political values, we have to convince those, who oppose them by appeal to a dialectical process of internal reasons and conflict. Conflict between ideas and ideals is the natural consequence of the human reason and relationship, and the way to reach consensus is through a global notion of public reason. What it might be required in the relationship between societies is the capacity for reasoning and the willingness to accept those arguments that have sound premises and bring about consensus.

Global public reason at the international level, it has been argued, employs this strategy of internal reasons together with the idea of toleration as a way to maintain the political relation and public deliberation between liberal and nonliberal societies. Global public reason then defines the terms of the debate and the issues that could be subject to reasoning. It concerns a wider scope of questions than Rawls's account of public reason could cover. Within global public reason there is the capacity to appeal to Reason, as a human faculty, in winning support for those principles that are crucial for the good of societies. It is the use of our reason that tells us which principles and values are the ones that create the appropriate relationships between individuals and societies. The *public use of reason*, as Kant argues, is the capacity to use one's own reason and address the world at large.¹⁶⁵ Thus, there is an inherent relation between reasons and Reason in global public reason, that is to say, individuals, publics, and other agents should have the capability to reason and provide reasons –most likely, internal ones– for the political and moral principles that are the subject of debate and require consensus.¹⁶⁶

Because of the wider scope that this notion of global public reason has, it has the capacity to take matters of social justice at the local level to the international concern and to engage different publics in public discussion and argument about justice related questions. It also brings global concern about a variety of injustices to have a closer engagement with what is happening at domestic levels, and finds the ways in which these injustices can be internationally and globally addressed. Global public reason is thus associated with a notion of global justice that functions in a diversified world, and engages different societies in public reasoning about justice issues and the existing injustices.

¹⁶⁵ Kant, *What is Enlightenment?* 8: 37- 8: 41. See also O'Neill (1989: 28- 50).

¹⁶⁶ See Raz (2010), who argues that there is an inherent relation between Reason, as a human faculty and reasons for action.

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