PhD Program in Political Theory

Cycle XXVII

The Power of Majorities and Church-State Separation

PhD Thesis by

Sebastián Rudas Neyra

Thesis Advisor

Sebastiano Maffettone

Rome, November 2014

Acknowledgments

the Common Good," at London Metropolitan University (UK), and three Graduate Seminars at LUISS University. I am grateful to the audiences of each of these venues.

I also want to thank Laura Iozzelli, who carefully and patiently read the full manuscript and corrected its grammar, style, and content. I would not have been able to finish this PhD without her. Editorial tasks were also carried out by Ali Emre Benli, who has been a full-time interlocutor of the ideas here developed. I also want to thank my flatmate Alessio Calvano, who created an excellent atmosphere at home, just what every PhD student needs in the last steps of writing a dissertation.

Finally, I want to thank my mother, my father, and my brother. Their support and love during all these years have been fundamental for me. This thesis is dedicated to them.

Contents

Introduction

This dissertation addresses the debate about the proper role of religion in the public sphere. However, this is not 'yet another thesis' on the subject, because it is approached from a point of view that is usually overlooked by contemporary political philosophers. Namely, the relationship between majoritarian social norms, usually reinforced by religious institutions and the law, and oppressed social groups.

The current diagnosis of the debate about "public religions" is that the western notion of the secular state and the liberal conception of toleration need to be reshaped. The steady, or even increasing, presence of religion in the public sphere has led many scholars to think that the secular state is in crisis.[1] The traditional separation between the state and the churches, or between politics and religion, is not perceived anymore as promoting the bases for respectful coexistence. Recent controversies in Europe, such as the headscarves affair in France or the Swiss ban on constructions of minarets, are interpreted as signs of

---

[1] Rajeev Bhargava, "Rehabilitating Secularism," in *Rethinking Secularism*, ed. Craig Calhoun, Mark Juergensmeyer, and Jonathan VanAntwerpen (92-113: Oxford University Press, USA, 2011); Lorenzo Zucca, "The Crisis of the Secular State—A Reply to Professor Sajó," *International Journal of Constitutional Law* 7, no. 3 (July 1, 2009): 494–514, doi:10.1093/icon/mop010; András Sajó, "Preliminaries to a Concept of Constitutional Secularism," *International Journal of Constitutional Law* 6, no. 3–4 (July 1, 2008): 605–29, doi:10.1093/icon/mon018; Jürgen Habermas, "Religion in the Public Sphere," *European Journal of Philosophy* 14, no. 1 (April 1, 2006): 1–25, doi:10.1111/j.1468-0378.2006.00241.x; Jean Baubérot, "The Two Thresholds of Laicization," in *Secularism and Its Critics*, ed. Rajeev Bhargava (New Delhi: Oxford University Press, 1998), 94–136.

the incapacity of the secular state to deal with the challenges of contemporary pluralism.

Consequently, the dominant position among political philosophers addressing the question of the proper role of religion in the public sphere is that the secular state cannot insist on its traditional requirements given the diversification of immigration and the transformation of religious beliefs in contemporary democracies. It is concluded that, in its traditional conception, the secular state is unable to deal with diversity. As a response to this diagnosis, philosophers have developed more flexible interpretations of the requirements of secularism and therefore have made the separation between politics and religion more permeable. This position receives several names and all suggest some degree of openness towards diversity: liberal pluralism, value pluralism, ethics of diversity, post-secular ethics, open secularism, multicultural secularism, post secular liberalism and so on.[2]

In the dissertation I argue that such developments do indeed address some of the challenges deep religious and cultural pluralism raise to democracies. However, I argue that they leave some important issues unaddressed, particularly in societies where there is a politically and socially influent religious institution

---

[2] Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience*, trans. Jane Marie Todd (Harvard University Press, 2011); William A. Galston, *The Practice of Liberal Pluralism* (Cambridge University Press, 2004); William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge University Press, 2002); Lorenzo Zucca, *A Secular Europe: Law and Religion in the European Constitutional Landscape* (Oxford University Press, 2012); Habermas, "Religion in the Public Sphere"; Alessandro Ferrara, "The Separation of Religion and Politics in a Post-Secular Society," *Philosophy & Social Criticism* 35, no. 1–2 (January 1, 2009): 77–91, doi:10.1177/0191453708098755; Gérard Bouchard and Charles Taylor, *Building the Future. A Time for Reconciliation* (Quebec: Government of Quebec, 2008); Jean Baubérot, *Une laïcité interculturelle : Le Québec, avenir de la France ?* (La Tour d'Aigues: Editions de l'Aube, 2008); Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (New York: Routledge, 2014).

that claims to be representative of the religious and cultural identities of the majority of the population. I analyze cases in which new expressions of moral pluralism challenge consolidated social norms and their respective crystallizations into legislation. Hence, the fundamental question the dissertation addresses is:

> What is required by the commitment to protect pluralism in cases where social groups are oppressed by social norms that are reinforced by the majority, the law, or powerful religious institutions?

1. Pluralism, liberal toleration, and the crisis of secularism

Protection of pluralism is at the core of liberalism as a political theory. States must seek order, security, peace, economic growth, and so on, but they cannot carry out such tasks disregarding citizens' life plans and meaningful choices for life. They cannot, however, coercively determine the content of what is best for citizens, because matters of conscience, such as defining what is worth in life and what the ultimate meaning of life is, are matters of personal conviction and choice.[3] Thus, according to the liberal tradition, states must respect citizens' diverse choices, preferences, lifestyles, and beliefs. Historically, the birth of liberalism is associated with the commitment by states to protect diversity, which during the sixteenth and seventeenth centuries was identified with religious diversity.[4] From its origins, the liberal commitment to protect diversity has signified a commitment to toleration.

---

[3] This is a close description of Martha Nussbaum's definition of religion, see Martha Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*, Paperback Edition (Basic Books, 2009), 167–174.

[4] The birth of liberalism, and its conception of toleration, is nowadays conventionally associated with the European Wars of Religion. Political philosophers have standardized Rawls' story of this origin as described in *Political Liberalism: Expanded Edition*, 2nd ed. (Columbia University

The liberal practice of toleration, understood also as the separation of the functions of civil and religious institutions, was interpreted as a measure that protected religions from the interference of the state (e.g., the civic authorities cannot determine what the right interpretation of religion is) and the state from religious interference (e.g. religious institutions cannot use the institutions of the state to impose their worldview upon all citizens).

Contemporary philosophers argue, however, that in this process intellectual and historical biases against religion played a fundamental role. One of these this biases is the so called "secularization thesis."[5]

Nineteenth century philosophers and the fathers of sociology shared the idea that religion was on the path of constant and unavoidable decline. For a long time, this assumption was neither tested nor intellectually challenged.[6] The legacy of the Enlightenment, the process of industrialization and capitalism, and the advancements of science created an intellectual environment in which Feuerbach's opinion was widely shared:

> Christianity has in fact long vanished, not only from the reason but from the like of mankind, that it is nothing more than a *fixed idea*, in flagrant contradiction with our fire and life assurance companies, our railroads and steam carriages our picture and sculpture galleries, our military and industrial schools, our theaters and scientific museums.[7]

Press, 2005), Introduction. See also Vallier, *Liberal Politics and Public Faith*, chap. 1. For an account of the birth of liberalism from the field of intellectual history, see Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton, N.J.; Woodstock: Princeton University Press, 2005).

[5] Jose Casanova, *Public Religions in the Modern World*, 1st ed. (University Of Chicago Press, 1994); Jose Casanova, "Secularization, Religion, and Multicultural Citizenship," in *Religio ns and Dialogue International Approaches*, ed. Wolfram Weiße, Katajun Amirpur, and Anna Körs, Religionen Im Dialog (Münster, Westf: Waxmann Verlag GmbH, 2014), 21–32.

[6] Casanova, *Public Religions in the Modern World*, 17.

[7] Feuerbach, quoted in Ibid., 35.

The privatization of religious belief was interpreted as a sign of the process of religions' decline. Religions were moved toward less relevant roles in the determination of societies' definition of their common interests and in the individuals' definition of their life plans. According to the secularization thesis, the search for meaning was confined to be a matter of private, individual choice.[8] Being private, religion ceased to be an obstacle in the way individuals within societies made cooperative decisions. Civil and religious interests were more or less neatly distinguished and therefore the function of the state—the civil authority—and the function of the churches—religious authorities—ceased to be in conflict. The functional distinction between the authority of civil and religious institutions settled the grounding basis of European secular states. For some time, this distinction performed fairly well in guaranteeing peaceful coexistence among religions.[9] Locke's treaties on toleration represent an illustrative example of the association between the conditions of possibility of peaceful coexistence among diverse religions and the understanding of religion as a private matter.[10]

The secular state, however, started to face difficulties once its grounds were made explicit and challenged. One of the first weaknesses that emerged was that privatization of religion was identified as a process intrinsic to Christianity.

---

[8] Thomas Luckmann, *The Invisible Religion: The Problem of Religion in Modern Society.*, First edition (MacMillan Publishing Company, 1967).

[9] This affirmation, however, is partially true. Intolerance was pervasive against atheists and Catholics. Locke's famous arguments against tolerating Catholics and atheists are famous examples of the shortcomings of early liberal toleration. Jeremy Waldron, however, claims that Locke does not argue against tolerating Catholics, but only against atheists. For Waldron's analysis of Locke's arguments, see Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (Cambridge University Press, 2002), chap. 8.

[10] John Locke, "A Letter Concerning Toleration," in *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Heaven and London: Yale University Press, 2003), 211–54.

The "Protestantization of religious belief,"[11] as the process of privatization is usually called, is the transformation of the religious experience into something that concerns mainly the individual and her private life. Hence, the autonomy of the religious and the political spheres was fueled by the transformations that Christianity in particular—and not religion in general—had undertaken.

The secular state faced a second sort of challenge once its real scope was made apparent. As it is usually presented, religious toleration is a product of the fragmentation of the Christian Church into diverse denominations. The new churches were then forced, painfully, to learn to coexist in the same territory. Religious toleration and the mutual autonomy of civic and religious institutions, it turned out, was restricted to a relationship the state undertook with Christian Churches. The mutual commitment to non-interference made by the churches and the state was grounded on the assumption of a common moral ground. Charles Taylor refers to this mode of secularism as the "common ground strategy" model. Christianity had provided an ethic for peaceful coexistence and political order because it was grounded on the common features all Christian sects shared.[12] Accordingly, the function of the state was to remain equidistant from all religious communities, without "backing one confession rather than the other."[13]

The contemporary crisis of secularism and toleration, it is sometimes pointed out, is due to the insistence to maintain the Christian common ethic as the guarantor of peaceful and respectful coexistence. It is argued that contemporary

---

[11] Maclure and Taylor, *Secularism and Freedom of Conscience*.
[12] Charles Taylor, "Modes of Secularism," in *Secularism and Its Critics*, ed. Rajeev Bhargava (New Delhi: Oxford University Press, 1998), 33.
[13] Ibid., 35.

controversies regarding the public role of religion are due to the fact that the common morality is fragmented and that such fragmentation leads to a lack of social cohesion. In order to remedy this problem, some European scholars have argued that the European Union needs to emulate the United States' tradition of having a non-denominational Christian civil religion. In doing so, the European Union would rehabilitate its threatened identitarian roots. Consequently, it has been argued that the legal documents defining the constitutional identity of the European Union (e.g. a future written political constitution) need to invoke Christian values.[14]

These two challenges revealed the weaknesses of the secular state and its associated conception of religious toleration. Not surprisingly, this became noticeable when societies faced the intensification of diversity, which assembled in the same soil a wide diversity of religions and cultures. The way religion is experienced in western societies cannot anymore be explained with reference to historical and cultural processes that took place within western states. Neither the Protestantization of religious belief nor the 'common ground ethic' are plausible descriptions of contemporary religiosity in contemporary western democracies.[15] In addition to Christian communities, western states contain substantial numbers of Muslims, Hindus, or Buddhists from whom it is unreasonable to expect to share features that are most likely to be dependent from western historical processes.[16]

---

[14] Zucca, *A Secular Europe*, chap. 4; Joseph H.H Weiler, *Un'Europa cristiana: un saggio esplorativo* (Milan: Rizzoli University, 2003).
[15] Bhargava, "Rehabilitating Secularism," 101.
[16] Taylor, "Modes of Secularism," 36.

The diversification of immigration challenges the conception of the secular state because some of these religions and cultures do not draw a clear boundary between the private and the public spheres in the way Christianity does.[17] Faced with this situation, secular states have two options: either they foster privatization of religious beliefs and practices among the new religions and cultures, or they modify their requirements of privatization. Some official secularists in France, for instance, have adopted the former option and thereby have justified restrictions to Muslim girls to wear headscarves when they attend public schools. As they claim, these are requirements that are in concordance with the principle of church-state separation and with the conception of the French state as being secular.[18] Furthermore, they add, requiring Muslims to privatize their religion is coherent with the requirements raised to the Catholic Church at the beginning of the twentieth century. As critics point out, this attitude overemphasizes principles of church-state separation and promotes a *secularist* philosophy that does not respect freedom of conscience of citizens that are already marginalized.[19]

---

[17] Tariq Modood, "Is There a Crisis of Secularism in Western Europe?," *Sociology of Religion*, May 4, 2012, 130–49, doi:10.1093/socrel/srs028.

[18] Church-state separation in France is troublesome due to its history of hostility against religion. The 1905 Law of Separation, however, is almost unanimously interpreted as a measure respectful of pluralism and freedom of conscience. For an influential historical account of French development of secularism, see Jean Baubérot, *Histoire de la laïcité en France* (Paris: Presses Univ. de France, 2007). For the particularities of French secularism with regards to its Anglo-Saxon counterpart, see Cécile Laborde, "Toleration and Laïcité," in *The Culture of Toleration in Diverse Societies. Reasonable Tolerance* (Manchester; New York: Manchester University Press, 2003), 161–78.

[19] Maclure and Taylor, *Secularism and Freedom of Conscience*, 29. For a brief historical account of the confrontation between *laïcité* and Islam, see Baubérot, "The Two Thresholds of Laicization," 130–136. For a comprehensive philosophical study about the headscarves controversies in France, see Cécile Laborde, *Critical Republicanism. The Hijab Controversy and Political Philosophy* (Oxford: Oxford University Press, 2008).

A second social process leading to diversification of contemporary societies can be explained in Rawlsian terms.[20] Reasonable pluralism, which is the diversity of reasonable comprehensive doctrines, is the inevitable outcome of free human reason within the framework of free institutions. Free institutions are those that do not impose their power upon their citizens without a valid (e.g. public) justification. In particular, they do not seek unity of the political community by affirming one moral doctrine, even if it is a reasonable one. Regardless of processes of immigration, in a democratic regime there will always be pluralism of reasonable doctrines and the institutions of the state are required to avoid interference with such pluralism. Rawls' influential solution to the challenge that reasonable pluralism poses to the liberal state is what he calls an "overlapping consensus." Broadly stated, it is the convergence of all reasonable moral doctrines on a set of shared political values whose validity does not necessitate any of the reasonable moral doctrines.[21]

Critics of the Rawlsian approach argue that the characteristics of an "overlapping consensus" do not take religious beliefs seriously. In particular, it is commonly argued that it is biased in favor of citizens that endorse secular moral worldviews, for their moral reasons supporting their political decisions are more likely linked to the political values that constitute the overlapping consensus.

---

[20] Here I follow Rawls, *Political Liberalism*, 36–37. For a definition of what a "reasonable comprehensive doctrine" is, see Ibid., 58–65.

[21] Rawls, *Political Liberalism*, 133–172; Taylor, "Modes of Secularism." I do not intend to take a position on the 'consensus-convergence' debate here. What I want to emphasize is Rawls' proposal not to support his theory on a sectarian moral worldview. For the mentioned debate, see Vallier, *Liberal Politics and Public Faith*; Kevin Vallier, "Against Public Reason Liberalism's Accessibility Requirement," *Journal of Moral Philosophy* 8, no. 3 (October 1, 2011): 366–89, doi:10.1163/174552411X588991; Jonathan Quong, *Liberalism without Perfection* (OUP Oxford, 2011), chap. 6.

Thus, secular citizens are less likely faced to the tragic decision choosing between their most cherished values and the values of the political system they belong to. On the other side, religious citizens are required to accept that their religious reasons supporting their political views have a less justificatory power and therefore that they need to find non-religious reasons (e.g. public reasons) in order to support them.[22] Critics reject this requirement for a number of reasons. Some argue that it impinges religious citizens to live according to their most fundamental religious values and therefore to live their lives with integrity.[23] Others argue that such requirement is biased against religion, for it raises requirements to religious citizens only.[24]

Hence, pluralism emerges as a consequence of at least two social phenomena. On the one side, diversification of immigration physically assemblies religions and cultures from all over the world; and, on the other side, the free development of new moral worldviews, accompanied by the—slow—social acceptance of such views. Both of them seem to challenge the grounding basis of the liberal idea of toleration, for they depart from the assumptions of a common Christian root and the acceptance of the public-private divide.

When it is focused on the first social phenomenon mentioned, the debate about the role of religion in the public sphere has been addressed as a question about whether and how to extend rights to equal freedom of conscience to the new

---

[22] John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64, no. 3 (July 1, 1997): 765–807, doi:10.2307/1600311.

[23] Christopher J. Eberle, *Religious Conviction in Liberal Politics*, 1st ed. (Cambridge University Press, 2002); Christopher J Eberle, "Basic Human Worth and Religious Restraint," *Philosophy & Social Criticism* 35, no. 1–2 (January 1, 2009): 151–81, doi:10.1177/0191453708098759.

[24] Habermas, "Religion in the Public Sphere." This argument, however, can be contested by arguing that all—and not only religious ones—*sectarian* worldviews have lower justificatory power.

religious and cultural expressions of pluralism. Thus, the so-called crisis of secularism refers mainly to the failed attempt of western states to properly respond to claims from immigrants of non-Christian origins.

In contrast, when it is focused on the second social phenomenon, the debate has been addressed in terms of the nature of the reasons individuals can legitimately bring into political deliberations. This branch of the debate has focused on the epistemic aspects of reason-giving processes in a context of reasonable pluralism. From this point of view, the crisis of (liberal) secularism consists in the inability to give religious citizens due respect.

2. Pluralism and the claims of (non-religious) minorities

It is comprehensible that contemporary debates on secularism and the role of religion in the public sphere focus primarily on the controversies related to the new religions that today populate western democracies. After all, the liberal notions of secularism and toleration are in dealing with religious diversity. However, these debates cannot leave aside expressions of pluralism that are not related to religion. A challenge that the developments on the understanding of secularism bear is that it tends to assign religion a special status and therefore attributes a higher value to religious-based claims over claims of conscience that are not grounded on religious convictions.

It is sometimes argued that religion serves to protect a distinct and unique human good from state interference. Accordingly, it is argued that freedom of religion and freedom of conscience are separate freedoms and that religious claims for exemptions and accommodation are to be treated separately. In order to

17

tackle the immediate objection this view receives, the notion of 'religion' is extended to cover a broad set of commitments of conscience searching for ultimate meaning. Thus, not only institutionalized religions, but also individual, non-theistic, naturalistic, polytheistic, and secular commitments of conscience are considered to provide with special claims against state's interference.[25]

Egalitarian criticisms to these accounts argue that by singling out religion as a phenomenon that requires special treatment and protection, the state is creating a division between first and second class citizens.[26] First, since it is grounded on the recognition of special status to religion, it faces the difficult task to define what religion is. The risk this task carries is to dismiss as non-religion what other definitions would have considered as such. Or to consider as 'religion' commitments that do not have any appeal for being treated as such. And second, it draws a distinction between citizens with deep commitments of conscience and citizens without them, deeming the latter to a second-class category.[27]

---

[25] For instance, during the Vietnam War, The U.S Supreme Court had to decide numerous cases of conscience objection. Equal treatment to religious and non-religious conscience-commitments required a criterion to grant the exceptions. The Supreme Court came up with this standard: [an exception is granted whenever…] "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exception," Nussbaum, *Liberty of Conscience*, 171.

[26] For a recent account of the main thesis of egalitarian theories of religious freedom, see Cécile Laborde, "Equal Liberty, Non-Establishment and Religious Freedom," *Legal Theory*, 2013.

[27] This is a rather paradoxical claim. One of the most common criticisms liberalism receives is that it is hostile towards religious citizens, for it unfairly requires them to subsume their religious beliefs to the norms of the state. Accordingly, a good deal of the defenses of liberal politics deals with demonstrating why there is no hostility against religion. For this debate, see Vallier, *Liberal Politics and Public Faith*; Eberle, *Religious Conviction in Liberal Politics*; Robert Audi, *Democratic Authority and the Separation of Church and State* (New York: Oxford University Press, 2011); Robert Audi, "The Separation of Church and State and the Obligations of Citizenship," *Philosophy & Public Affairs* 18, no. 3 (July 1, 1989): 259–96; Nicholas Wolterstorff and Robert Audi, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham, Md: Rowman & Littlefield Publishers, 1996); Cristina Lafont, "Religion in the Public Sphere: Remarks on Habermas's Conception of Public Deliberation in Postsecular Societies," *Constellations* 14, no. 2 (June 1, 2007): 239–59, doi:10.1111/j.1467-8675.2007.00436.x.

In their search for a 'meaning in life,' individuals can appeal to a wide array of options, some of which are religious, while some others are not.[28] However, pluralism is not reduced to different ways individuals to find answers to their existential questions. Pluralism also refers to the transformation in the social norms that define social relations within a particular community. Societies are more open, or more permeable, to new definitions of what is considered to be "normal." The long-lasting marriage between liberalism and pluralism made democracies a favorable environment for transformations in the social norms regulating relations among individuals. Consequently, democratic institutions need to be flexible enough as to adapt in such a way that new social norms find a place. The obvious question here is whether democratic institutions are flexible enough.

One clear example of these transformations—and how difficult is for societies' institutions to adapt to new dynamics—is the way gender roles have changed during the last decades. The idea that men and women have fixed roles in contemporary societies is not plausible anymore. Yet societies are still struggling to adapt their institutions as to avoid interfering with new social dynamics that challenge the historical gender division. Contemporary debates about abortion, paid maternity leave (in the U.S), discrimination laws, or marriage laws, portray the difficulties contemporary democracies face in adjusting themselves to new expressions of pluralism that challenge the gender divide.

---

[28] Charles Taylor, *A Secular Age*, First Edition (Belknap Press of Harvard University Press, 2007), Introduction.

Similar circumstances are found in debates about homosexuality. Although laws prohibiting sodomy have been removed in liberal regimes and homosexuals are granted free and equal citizenship, they still experience several civil disabilities. Particularly noticeable is the case of same-sex marriage. On the one hand, levels of social acceptance of homosexuality are increasing and activists for the rights of sexual minorities have instituted organized movements that can form real political forces. On the other hand, political communities have been very reluctant in accepting reforms in the institutions that discriminate against gay people. In most liberal and democratic states, the state does not recognize on equal grounds non-heterosexual families.

Although none of these cases is a clear-cut case of the role of religion in the public sphere, religion certainly gets involved in the way these issues are addressed—particularly in the latter one. Religions, more specifically institutionalized ones, have strong stands about gender roles and homosexuality. These opinions, however, are not homogeneous across religions: some defend strict gender roles and discriminate women, while others proclaim gender equality. Some religions condemn homosexuality and fiercely oppose to state recognition of same sex couples as families; others ordinate homosexuals and welcome them in their community. Still, religious institutions and organizations have a public say in debates concerning their fundamental beliefs. When dealing with issues related to sexual conduct, such as female liberation from the traditional institution of family and acceptance of homosexuality, these public voices become more stringent.

3. Plan of the thesis

In this dissertation I focus on the public and political opposition the Catholic Church displays against advancements seeking transformations of social and legal norms. In particular, the focus is on cases in which social and legal norms are supported by powerful and majoritarian institutions (e.g. the Roman Catholic Church in southern Europe) and on how they interact with 'new' expressions of pluralism.[29] The dissertation is divided in two parts. The first one, "Toleration and Majorities," deals with problems in which majoritarian social and legal norms hinder the free development of new forms of pluralism. The three chapters contained in this part address questions such as: Is deliberative democracy biased in favor of majoritarian or well entrenched social norms? What is the proper relation a democratic state, which is committed to toleration and non-domination of powerless social groups, should establish with majorities that support illiberal social and legal norms? And, can a democratic state promote the reduction of domination of powerless social groups in contexts where oppressive social and legal norms seem to be widely shared by the whole society?

Accordingly, in Chapter One, "Deliberative Democracy and the Power of Majorities", I explore the advantages and disadvantages of the deliberative conception of democracy to deal with a particular expression of pluralism, namely, reasonable moral disagreement. I argue that the 'politics of compromise,'

---

[29] In recent decades, the Catholic Church has adopted the principal role in political opposition to reforms favoring same sex marriage. For an account of this activity in the U.S.—where it has replaced Christian Evangelical Churches—,Mexico, and Colombia, see Julieta Lemaitre, "By Reason Alone: Catholicism, Constitutions, and Sex in the Americas," *International Journal of Constitutional Law* 10, no. 2 (March 30, 2012): 493–511, doi:10.1093/icon/mor060.

which is one of the most salient features of deliberative democracy for dealing with reasonable disagreements, does not account for the misbalances of power in which the parties to a disagreement might find themselves. By neglecting power inequalities, the politics of compromise fails to advance political moderation, which is one of the virtues to which it is usually associated. As a consequence, the politics of compromise has problems of legitimacy because it is prone to legitimize policies that otherwise would have been considered as unreasonable and, in some cases, oppressive. Solving moral disagreements by appealing to the politics of compromise, I conclude, risks leaving social groups defending unpopular moral claims systematically and unfairly overheard.

In chapter two, "On Tolerating Majorities," I challenge the idea that a morally sound conception of toleration entails a relationship between a liberal majority and illiberal minorities, who seek exceptions and permissions to lead a life according to their illiberal traditions and practices. I argue that a morally sound conception of toleration can also be between a liberal state and an illiberal majority. State's commitment to values of free and equal citizenship requires it to provide the means to all citizens to enjoy such status. This might entail that the state expresses its disapproval towards certain beliefs the majority holds, including religious institutions representing the religious feeling of the majority, while at the same time restraining from using its coercive power to eliminate them. The legitimacy of such a practice is particularly evident when it comes to the acceptance of full equal rights to citizens demanding that their non-traditional, but liberal, conceptions of the family be respected and recognized.

Chapter three, "Majoritarian Beliefs and Neo-republicanism," expands on the previous argument and provides an interpretation of such relation of toleration in neo-republican terminology. This chapter keeps the attention on the relation powerful majorities hold with powerless social groups (whether or not minorities). In this chapter, I address the challenge that majoritarian and oppressive beliefs pose to democratic states. On the one side, the state must be committed to reducing domination and oppression. On the other, it has to act in a way that is acceptable to the community, in order to preserve its legitimacy. In particular, I address recent criticisms raised to neo-republican political theory pointing out that the conception of freedom as non-domination falls short in reducing domination of social groups whose—legitimate—interests might not be considered as part of the common good of the political community. I argue that the neo-republican account of freedom as non-domination provides promising normative tools for pursuing citizens' independence from dominating agents, including religious institutions and traditionally entrenched social norms. This potential, I believe, is greater than some feminist criticisms to neo-republicanism are willing to acknowledge.

The two remaining chapters of the dissertation form part two, titled "Church-State Separation and Minorities." They focus on the duties the state is supposed to meet in contexts where powerless social groups do not find channels of participation that make it possible to advance their claims. In particular, I focus on cases where this situation is determined by the presence of a politically active and institutionally powerful religious institution. The question that part two addresses is: what is the best institutional arrangement for protecting pluralism in

contexts where there is a politically active and institutionally powerful religious institution?

Accordingly, in chapter four, "On Separation and Anticlericalism," I explore the possibility of interpreting 'anticlericalism' within the framework of the values of a democracy respectful of freedom and equality of all. I argue that not all historical and conceptual understandings of anticlericalism are antireligious and therefore that, as a normative concept, it should not be discarded. The characteristic feature I associate with the notion of anticlericalism is that while it confronts the excessive power of a religious institution, it does not display a negative attitude against religion and its public expressions. It is a political concept that is meant to guide the design of political institutions in their relation to religious institutions. I proceed to identify cases in which this notion of anticlericalism has been implemented and explain in which conditions it serves to advance moral claims of traditionally marginalized social groups. I argue that if a democratic state is committed to guaranteeing non-interference against meaningful choices of its citizens by private associations, it has to implement an anticlerical principle of separation that undermines such power of interference.

In the fifth chapter, "Italy and the Principle of (Strict) Church-State Separation," I analyze the Italian 'crucifixes controversy' and the official Italian conception of secularism. I also analyze the alternative proposals (e.g. post-secular ethics and liberal pluralism) that have been made in recent years and assess whether they properly protect diversity in the Italian context. I conclude that while liberal pluralism is well equipped to address some problems related to immigration and integration, it does not properly address the political problem of

associating the state with a powerful and hegemonic Catholic Church (or Christian tradition). I propose a principle of strict separation that offers possibilities for advancing claims of excluded minorities in contexts like the Italian one. I argue that this principle enables excluded minorities to advance their claims in a context where social and legal norms are designed as to impinge on them.

PART I

Toleration and Majorities

CHAPTER 1

Deliberative Democracy and the Power of Majorities

A version of democracy that promotes moderation is usually considered to be preferable with respect to other versions. In this chapter I show, first, that recent defenses of deliberative democracy emphasize on its moderation-enhancement properties in order to show its desirability over aggregative conceptions of democracy. According to deliberative democrats, moral disagreements in politics can find moderate resolutions if they go through a reason-giving process. Such resolutions are preferable because, whilst preserving criteria of liberal legitimacy, they can enhance moral progress in society by breaking down status-quo injustices. Second, I show a weakness in the argument that presents deliberative democracy as a moderation-enhancing system. I show that in one of the most recurrent examples illustrating how successfully deliberative democracy promotes moderation (i.e., abortion), background circumstances are playing a determining role in the way the issue is resolved. Thus, I show that deliberative democracy is also vulnerable to be ridden by status quo power relations and therefore its superiority over aggregative democracy becomes less clear.

Historically, political philosophers have developed accounts of legitimacy in order to justify the coercive power of the state. According to Rousseau, the civil state can exercise its coercive power in such a way that it makes everyone a slave. In such a case the state's coercive power lacks legitimacy and is mere display of force. Democratic justification turns the mere exercise of coercive

power into a *legitimate* one.[1] John Rawls' worries about the legitimacy of state power are on a similar line. According to him, the display of state power without consideration of citizens' views is a mere imposition of force and not the display of the power of the public, or of "free and equal citizens as a collective body."[2]

What these theories have in common is their endorsement of citizens' consent as a benchmark for legitimacy. This requirement, though diverse among political theorists, means that citizens must accept—hypothetically or actually—that the state is not imposing on them a view they do not, or would not, endorse. By showing that citizens can consent to political power, political theorists have tried to show that political authority is neither authoritarian nor oppressive.[3] Accounting for political legitimacy is challenging for political philosophy because of the so called "fact of reasonable pluralism."[4] It was introduced as a key problem by Rawls' later work when he recognized its moral relevance. This fact is constituted by different and contradictory "reasonable comprehensive doctrines," which cover the "major religious, philosophical, and moral aspects of human life," provide an organized set of values that expresses an intelligible view of the world, and are the result of a tradition of thought developed throughout history.[5] According to Rawls, lack of consideration of the fact of reasonable pluralism leads to the imposition of one comprehensive doctrine, religious or non-

---

[1] Jean-Jacques Rousseau, *The Social Contract and The First and Second Discourses* (New Haven: Yale University Press, 2002), Book I, Chapters I & VI.

[2] Rawls, *Political Liberalism*, 136.

[3] See: Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*, 1st ed. (Cambridge University Press, 2010), xv–xi, Chapters 1 – 2; Rawls, *Political Liberalism*, 37.

[4] Rawls, *Political Liberalism*, 36.

[5] Ibid., 59. Examples of comprehensive doctrines are Kant's and Mill's ethics, and—crucially for Rawls' purposes—the religions derived from the fragmentation of the Christian Church.

religious, by force only. He refers to this latter circumstance as "the fact of oppression."[6]

1. Aggregative Democracy and the status-quo objection

According to aggregative conceptions of democracy, moral conflicts in politics must be decided by majority rule.[7] The radical version of this approach is exemplified by Rousseau's way of dealing with disagreements and majoritarianism. When a law is proposed to the assembly of the people, he says, each one expresses his opinion about whether or not such law conforms to the general will, which is discovered by the counting of votes. In cases in which "an opinion opposed to my own prevails, that simply shows that I was mistaken, and that what I considered to be the general will was not so."[8] Even if the general will is the will of the unified people and aims to the common good, Rousseau recognizes that in the assembly individuals might disagree in judging what the general will is. Such disagreements are, however, discerned by the majority, which is always right. Once the majority has settled the right view, those in the minority have to recognize their mistake and abandon their initial belief. According to Rousseau, they realize that had their private opinion prevailed and the corresponding legislation approved, their freedom would have been jeopardized.[9]

Although Rousseau's view is too radical, it captures the soundness of adopting a procedural approach to contemporary problems in politics. Democratic

---

[6] Ibid., 37.
[7] The most prominent defense of aggregative democracy today is Jeremy Waldron, see Jeremy Waldron, *Law and Disagreement* (Oxford; New York: Oxford University Press, 1999).
[8] Rousseau, *The Social Contract*, Book 4; Chapter 2.
[9] Ibid.

political thought is grounded on the idea that citizens are the authors of the legislation to which they are subjected and therefore there must be a way for them to identify themselves as authors even in cases in which they do not agree with particular legislations. Rousseau's view is clear, for the general will constitutes citizens' political autonomy. However, it is not clear at all what motivations individuals would have to recognize their error and thereby to change their minds, particularly in cases in which disagreements are originated by the incompatibility of moral values.[10] Given that contemporary politics is invaded by what seem to be unresolvable disagreements, and given also that, contrary to what happens in everyday life or academic discussions, political decisions must be made in a relatively short time, appealing to majority rule procedures appears to be the fairest procedure to advance politics without compromising justice.

One advantage of solving irreducible moral conflicts in politics by appealing to majority rule is that a determinate outcome will always be obtained. This is crucial given the role value pluralism plays in nurturing moral conflicts in politics. In the case of abortion, which is the paradigmatic debate in which the views in conflict hold irreducible and conflicting values, appealing to majority rule would settle the problem in such a way that honors the principle of political equality by giving each citizen the same power (i.e., one person, one vote).[11]

---

[10] According to value pluralism, the moral world is constituted by a plurality of mutually irreducible moral values, see Isaiah Berlin, "Two Concepts of Liberty," in *Liberty*, ed. Henry Hardy (Oxford University Press, 2002); William A. Galston, "Two Concepts of Liberalism," *Ethics* 105, no. 3 (April 1, 1995): 516–34, doi:10.2307/2382140. Similar views are found in Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004); Thomas Nagel, "The Fragmentation of Value," in *Mortal Questions*, Canto Classics (Cambridge University Press, 2012), http://dx.doi.org/10.1017/CBO9781107341050.011.

[11] As a matter of fact, Pro-Life advocates have opted for promoting referendums in order to contest legislations that allow abortion. A referendum in Italy (1981) ratified the law that allows women to

Majoritarianism's strength is that it is grounded on an extremely appealing principle of political equality. Since equal persons disagree on political issues, the fairest way to solve them is to give each of them equal power and align with the side that receives the greatest numbers of votes. Every citizen is equally qualified and therefore equally entitled to settle the issue.[12]

Amy Gutmann and Dennis Thompson find aggregative conceptions of democracy flawed because in their way of approaching moral conflicts in politics they are silent about requirements of moral reasoning. Such silence, they say, suggests an endorsement of a conception of politics as a bargaining process, in which the relative power of the parties plays a determining role of what is approved to rule the whole society.[13]

The problem with aggregative democracy is that it "accepts and may even reinforce existing distributions of power in society."[14] Majority rule mechanisms are grounded on the presupposition that voters will express their preferences or opinions 'as they are' and decisions are to be made upon such expressions. No justificatory process is required and citizens do not have the opportunity, or the motivation, to undertake a process of deliberation that might lead to a better understanding of the issue at stake and therefore to an epistemically superior

---

access to abortion during the first trimester. More recently (2013), a popular consultation promoting a referendum did not reached the threshold to count as valid in Uruguay.

[12] Waldron, *Law and Disagreement*; Jeremy Waldron, "The Core of the Case against Judicial Review," *The Yale Law Journal* 115, no. 6 (April 1, 2006): 1346, doi:10.2307/20455656.

[13] Waldron, for instance, suggests that the right way to approach the controversy over abortion is by appealing to majority vote rather than by a Supreme Court decision, see Waldron, "The Core of the Case against Judicial Review," 1383–1385.

[14] Gutmann and Thompson, *Why Deliberative Democracy?*, 16.

alternative.[15] By avoiding mutual justifications and joint deliberation, aggregative democracy is bound to reaffirm unqualified status quo majoritarian preferences. In aggregative democracy there is no requirement of deliberation among the legislators, nor of submitting the issue at stake to experts' scrutiny. Instead, current preferences of the relevant political body determine the case. This proposal, they say, is vulnerable to be influenced by distributions of bargain power and therefore to be determined by them.

2. Deliberative Democracy and Moderation

The alternative to aggregative democracy is the so called deliberative democracy.[16] The main difference between these two conceptions of democracy is that the latter requires citizens to undertake a process of reasons-giving in which their views are publicly assessed and mutually justified. Citizens are required to engage in critical revision of their views and, if it is the case, to be ready to abandon or modify them. Deliberative democrats consider deliberation to be healthy for democracy as it contributes to find the best policy to be adopted— whether in terms of being the best means to advance the common good or in terms of being better justified to all citizens. Decisions over specific policies are made after deliberation processes. For this reason, decisions are independent from the relative power of the deliberative parties. In other words, support by the majority or a powerful economic group does not determine the outcome in decision

---

[15] Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Belknap Press of Harvard University Press, 1996), 30–31.

[16] Gutmann and Thompson, *Democracy and Disagreement*; Gutmann and Thompson, *Why Deliberative Democracy?*; Rawls, "The Idea of Public Reason Revisited"; Stephen Macedo, "In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases," *American Journal of Jurisprudence* 42 (1997): 1–29; Stephen Macedo, *Deliberative Politics: Essays on Democracy and Disagreement* (New York: Oxford University Press, 1999).

processes. In cases of persistent disagreement on a given issue, furthermore, deliberation permits mutual understanding and trust and therefore brings the opposing parties closer. Therefore, deliberation contributes to moderation.

According to Gutmann and Thompson, deliberative democracy offers an appealing way to deal with "deliberative disagreements" in politics.[17] A disagreement is 'deliberative' when two parties holding different beliefs on a given subject matter recognize each other's view as bearing moral worth and thus as deserving respect.[18] The paradigmatic example of a deliberative disagreement is the debate over liberalization of abortion. Gutmann and Thompson refer to it as a case in which both parties argue from "different plausible premises to fundamentally conflicting public policies." Such disagreements are not due to the parties' epistemic flaws, but rather to a diversity of circumstances leading them to reach opposing conclusions.[19] Gutmann and Thompson identify the existence of incompatible moral values (i.e., the value of liberty and the value of life) as the sources of disagreement in the abortion controversy.[20]

Pro-life advocates, they point out, base their opposition to legalization of abortion on a defense of the right to life that all innocent humans enjoy. They claim that fetuses are human beings and appeal to "established scientific facts"

---

[17] Gutmann and Thompson, *Why Deliberative Democracy?*; Gutmann and Thompson, *Democracy and Disagreement*.

[18] Fabienne Peter, "Epistemic Foundations of Political Liberalism," *Journal of Moral Philosophy*, 2013; Charles Larmore, *The Morals of Modernity*, 1st ed. (Cambridge University Press, 1996), 163–174; Christopher McMahon, *Reasonable Disagreement: A Theory of Political Morality*, 1 edition (Cambridge, UK ; New York: Cambridge University Press, 2009).

[19] The *sources* of disagreement are diverse. Ralws called them the "burdens of judgment," Rawls, *Political Liberalism*, 54–58. For others, however, reasonable disagreements are consequences of the metaphysical structure of the moral world, in which is plural rather than monist. See Berlin, "Two Concepts of Liberty"; John Gray, *Two Faces of Liberalism* (The New Press, 2002); Galston, *Liberal Pluralism*.

[20] Gutmann and Thompson, *Why Deliberative Democracy?*, 11.

about the gradual development of a fertilized egg into a viable fetus with the biological characteristics of a human being. On the other hand, Pro-choice groups base their support to legalization of abortion on a defense of women's freedom of choice over their own bodies.[21] They claim that fetuses are only potential human beings and therefore the state has no duty to protect them. So stated, Gutmann and Thompson continue, neither position can be considered as unreasonable or blamed to be appealing to arguments that radically disregard the requirements of legitimacy applying within liberal democracies.[22]

Instead of appealing to majority rule, Gutmann and Thompson propose that deliberative disagreements must be solved through deliberation and, if disagreements persist, through compromises. In cases of ineludible conflict the best alternative is to find a middle ground that could be recognized by the parties to the disagreement. The parties must find an alternative view that requires neither of them to abandon the fundamental principles illuminating their initial views. After compromise, the parties still consider their own position as the 'right' one and the opposing one as the 'wrong' one, but they agree to disagree. Faced with such situations, the parties have a moral duty "to try to accommodate the moral convictions of their opponents to the greatest extent possible, without compromising their own moral convictions." Since it reduces the number of

---

[21] On the pro-abortion side there are a multiplicity of views, which are mainly defined either by defending a rights-based account over one's own body, or by specifying the moral status of the foetus. For the former see Thompson's famous argument: Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (October 1, 1971): 47–66. For the latter, see: Michael Tooley, "Abortion and Infanticide," *Philosophy & Public Affairs* 2, no. 1 (October 1, 1972): 37–65.

[22] Gutmann and Thompson, *Why Deliberative Democracy?*, 74.

disagreements in politics, this strategy to solve deliberative disagreements is called the "economy of moral disagreement."[23]

The strength of the requirement of deliberation lies in the acknowledgment of a moral duty of mutual respect among individuals of a society. If one party to a disagreement decided to impose her view, she would be failing in recognizing the views of her fellow citizens and therefore in showing them respect. A truly democratic rule requires citizens' participation in society's policy making, and respecting each other's views appears to be a minimal criterion for respectful and democratic rule. The reason-giving requirement is, according to Gutmann and Thompson, the best way to guarantee that citizens are treated as "autonomous agents who take part in the governance of their own society."[24] Therefore, by appealing to a moral requirement of public justification and further moral compromises, deliberative democrats intend to guarantee that the ideal of democratic rule is achieved by means of assuring that political power is an expression of the people's power rather than the power of a faction or a sect. This is an important characteristic of deliberative democracy, for it also intends to guarantee that fundamentalist conceptions of the world—particularly in morally charged topics—end up by moderating themselves as their holders find themselves engaged in a mutually binding process of deliberation.

Alongside Gutmann and Thompson, Stephen Macedo emphasizes the moderation enhancing properties of deliberative democracy. Macedo recognizes

---

[23] Gutmann and Thompson, *Democracy and Disagreement*, 3. See also Simon Căbulea May, "Principled Compromise and the Abortion Controversy," *Philosophy & Public Affairs* 33, no. 4 (September 2005): 317–48, doi:10.1111/j.1088-4963.2005.00035.x; Daniel Weinstock, "On the Possibility of Principled Moral Compromise," *Critical Review of International Social and Political Philosophy* 16, no. 4 (2013): 537–56, doi:10.1080/13698230.2013.810392.
[24] Gutmann and Thompson, *Why Deliberative Democracy?*, 3.

that the debate over abortion leads to a case of deliberative disagreement—following Ralws, he calls it "reasonable disagreement"—and argues that compromises must be made. Against Ronald Dworkin, he claims that there are cases where "the best argument" cannot be achieved and thus that the parties should seek a compromise.[25] Once the parties recognize mutual reasonableness, Macedo says, they must display the virtues of magnanimity and moderation and find out an alternative view that recognizes some aspects of both positions. In such cases, the parties must adopt a self-critical attitude and recognize that not all "reasoned considerations" are on their side.[26]

One objection this version of deliberative democracy has faced is that it overlooks the fact that politics is ultimately a display of power, which implies that political decision making processes are determined by power relations.[27] If deliberation plays any relevant role in decision making processes, the objection says, it is only to mask prejudices, pre-established opinions, and subjective preferences about a certain subject matter.[28] In other words, by misrepresenting the nature of politics, deliberative democracy is vulnerable to the same critics it has raised to aggregative conceptions of democracy.[29]

---

[25]Dworkin defends this view in: Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), chap. 3.

[26] Macedo, "In Defense of Liberal Public Reason," 17.

[27] Ian Shapiro, "Enough of Deliberation: Politics Is about Interests and Power," in *Deliberative Politics: Essays on Democracy and Disagreement*, ed. Stephen Macedo (New York: Oxford University Press, 1999), 28–38; Roger Wertheimer, "Internal Disagreements: Deliberation and Abortion," in *Deliberative Politics: Essays on Democracy and Disagreement*, ed. Stephen Macedo (New York: Oxford University Press, 1999), 170–83.

[28] There can even be empirical support for this thesis: Jonathan Haidt argues that our moral judgments are rationalization of our feelings on the matter. Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion*, 1 edition (New York: Pantheon, 2012).

[29] Gutmann and Thompson, *Why Deliberative Democracy?*, 46.

A good example illustrating the close connection between politics and power and the way the latter excludes any possibility for meaningful moral deliberation is the health care debate in the United States. Gutmann and Thompson are aware of this and consequently devote great attention to address it.[30] They recognize the importance power inequalities play in the way the issue is discussed and in the outcomes that it has produced so far. In this context, power misbalances are evidenced by the decisive influence rich citizens and insurance companies exercise in framing decisions that are blatantly unjust as they neglect basic health care attention to the poor. A characteristic in the health-care debate as it is carried out today is that the expectations of the least-advantaged are constrained by their relative power faced to actual injustices. Gutmann and Thompson call this situation the "burdens of injustice." Poor citizens, and their representatives, can have only a low expectation given their lack of bargaining power.

In this debate, current conditions for deliberation do not satisfy the basic requirements to undertake a fair and informative debate. Neither do they produce health-care regulations that seek social justice promotion rather than the interests of profit based insurance companies. Background conditions for deliberation, thus, play a fundamental role in defining whether deliberation leads to outcomes for the right reasons or not. The parties' level of competence and information, their distribution of resources, and their open mindedness constitute key

---

[30] Gutmann and Thompson, *Democracy and Disagreement*, chap. 6; Gutmann and Thompson, *Why Deliberative Democracy?*, chap. 5.

determining elements of the quality of the deliberation and therefore of the quality

of a democracy.[31]

Given that the abortion debate constitutes a case of deliberative

disagreement, compromises leading to a decision should not be considered as

outcomes of bargain strategies or power relations. The powerful side, if there is

one, should not force the disadvantaged one to accept its view. The decision

should not be determined by the power or number of adherents a view initially

holds, but should be an outcome of moral deliberation and further mutually

respectful compromise

3. A comparative analysis of deliberative democracy and moderation

The case of abortion, however, shows that deliberative disagreements are not

immune to power biases and thereby to benefit the powerful side. To illustrate this

point, compare the United States' and Colombian processes of decriminalization

of abortion.

As of 1973, abortion was outlawed in most states of the U.S. except for

cases in which the mother's life was threatened. *Roe v. Wade* challenged the

constitutionality of Texas' criminal law, which abridged women's right to

privacy.[32] The Supreme Court decided on Roe's behalf and with its decision it

obliged modifications in criminal codes nationwide.

Gutmann and Thompson consider that *Roe* is an example of successful

compromise. The Court, they say, decided the issue on the grounds that it

intended to acknowledge to the farthest extend possible both views in conflict.

---

[31] Gutmann and Thompson, *Why Deliberative Democracy?*, 149.
[32] Roe v. Wade 410 U.S. 113 (1973).

Although the Court did not endorse the view that fetuses are persons, it recognized that protection of potential human life was a fundamental state interest. Pro-Life advocates are usually against any sort of practice of abortion. One of their most recurrent arguments appeals to their concerns about killing potential human beings. For this reason, Gutmann and Thompson consider that the Court's acknowledgment of such protection as a state interest constitutes recognition of the Pro-Life view. Prohibition of abortion in the third trimester is grounded under this rationale, and therefore allows for future restrictions if medical technology provides evidence about an extension on the viability of human life to earlier stages of pregnancy.[33] The decision to allow abortions is constrained by our knowledge about viability of human life.

The rationale offered to justify the right to ban abortion during the second trimester is different and, as Gutmann and Thompson show, problematic. It appeals to a paternalistic principle according to which the state has a duty to protect the mother's life even against her will, which is a rationale neither Pro-Life nor Pro-Choice advocates claim. The Court considered second-trimester abortions riskier than normal childbirth, hence the ban. This rationale is problematic because it does not offer a proper justification as to why the mother's health should be protected instead of potential life. Furthermore, it is not clear what the requirement would be if in the future viability of human life extends to the second trimester; should states be permitted to regulate abortions, as in third trimester cases? By adopting a paternalistic principle, the Court encouraged states to develop "dubious medical rationales to justify their restrictions on abortion"

---

[33] Gutmann and Thompson, *Why Deliberative Democracy?*, 87.

and to try to show how such rationales "would protect maternal health even when their actual purpose was to protect prenatal life."[34] Instead of keeping the initial rationale of protecting potential human life for settling the issue in second trimester abortions, and thereby respecting both views in conflict, the Court has opened the floor to more divisiveness and less possibilities for future changes trough rational deliberation.

On the other hand, until 2006, Colombian legislation outlawed abortion under all circumstances. In 2005, *Women's Link International*, an international human rights non-profit organization, challenged the constitutionality of such legislation. Although it was not the first time such challenge was raised, it was the first time that it was grounded on international human rights arguments.[35] The core of the argument appealed to the fact that Colombian Constitution explicitly states that international human rights treaties ratified by the congress prevail over national laws and serve as a guide in interpreting rights established by the Constitution.[36] Outlawing abortion, it was argued, was incompatible with several international treaties signed by Colombia and disregarded several recommendations made to Colombia by international human rights organizations. In May 2006, the Constitutional Court accepted the claim of unconstitutionality and decriminalized abortion in three exceptional circumstances. Furthermore, it

---

[34] Gutmann and Thompson, *Democracy and Disagreement*, 87; Gutmann and Thompson, *Why Deliberative Democracy?*, 88.

[35] There were four auctions of unconstitutionality before the decisive one (1994, 1997, 2001, and 2005) and five legislation bills that were not approved by the legislature (1975, 1979, 1989, 1993, 2002).

[36] See: "High Impact Litigation in Colombia to Liberalize Abortion Laws," *Women's Link Worldwide*, accessed October 8, 2013, http://www.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&tp=proyectos&dc=10&lang=en.

ruled that women and girls have the right to receive opportune and accurate information about their alternatives were they in a condition for opting to have an abortion.[37]

The way in which the abortion issue has been resolved in Colombia requires a different perspective than the one presented for the U.S.'s case, for it is not clear which view has been accommodated and where compromises and accommodations lie. On the one side, Pro-Life advocates might have been led to compromise and to accept that banning abortion in all cases was oppressive; on the other side, Pro-Choice advocates had to lower down their expectations and aimed to liberalize abortion only for therapeutic reasons. Since the status quo was utterly on the Pro-Life side, any modification to the law can be taken as an accommodation of Pro-Choice concerns and as a compromise of the Pro-Life initial view.

Pro-Choice advocates' main arguments for partial liberalization of abortion appealed to the cruelness of the complete ban on abortion, for it entailed a great deal of sufferance—if not death—on the mother's side. This basic rationale, which evokes some sort of Milliam harm principle, was meant to override Pro-Life arguments in favor of a conception of human life as starting at conception. The strength of the argument relied on an attempt to reduce unnecessary pain on the mothers' side. Since all three cases that were demanded for decriminalization represent very extreme situations for the mother, it was

---

[37] The three exceptional circumstances are the well-known *therapeutic reasons*, namely, when the life or health (physical and mental) is at risk, when pregnancy is a result of rape or incest, and when fetal malformations make life outside the uterus unviable. Sentencia C-355/06. (Constitutional Court of Colombia 2006).

repeatedly argued that obliging women to carry on their pregnancies was cruel. When in 2006 the Supreme Court decided to decriminalize abortion in the mentioned three cases, Pro-Choice supporters were more than satisfied. In contrast, Pro-Life supporters, led by the Catholic Church, protested. In Colombia abortion is still penalized and most pregnancies are illegible for abortions. However, according to the deliberative democracy model, current legislation constitutes an example of successful compromise between the parties that were initially positioned in a deliberative disagreement.

This comparison leaves us in a situation in which we have to accept two *radically* different policies on abortion as successful outcomes of moral compromises and therefore as legitimate. They are radically different policies because that very legislation which is taken as a liberalization of abortion in Colombia, is considered to be an uncompromising legislation failing to concede enough reason to Pro-Choice advocates in the U.S (and indeed in most western European democracies). In other words, what in Colombia might be interpreted as a successful example of deliberative democracy promoting moderation, in the U.S. represents the uncompromised and non-moderate Pro-Life position.

4. On Fundamentalism and Reasonableness

As a response, someone might argue that Colombian legislation reflects an unreasonable approach towards abortion and therefore it cannot be taken as a case of principled moral compromise in which both views are fairly accommodated. The underlying idea is that Pro-Life supporters must, at least, concede that during

the first stage of pregnancy abortion can hardly constitute a murder of an innocent life and therefore that it should not rise such high degree of outcry.

According to deliberative democrats, deliberation has to take place under specific circumstances. The parties must be competent enough to deliberate about the issue at stake, which means that they must, at least, have adequate information. Additionally, they must show some degree of open mindedness, which means that deliberators must be open to take a minimal range of arguments seriously.[38] Therefore, if these background conditions are adequate, fundamentalist Pro-Lifers are expected to moderate and reformulate their view after sincere deliberation, so as to turn their unreasonable beliefs about abortion into reasonable (Pro-Life) ones.[39]

Furthermore, someone assessing political values such as due respect for human life, ordered reproduction of the political society over time, and equality of women, will eventually come up with the conclusion that abortion should be liberalized at least during the first trimester of pregnancy.[40] A liberalization of this kind might embrace compromises. For instance, it might include an acceptance of legislative regulations discouraging women's intention to abort, such as the controversial Texas legislation (2013) which requires abortion clinics to meet the

---

[38] See, again Gutmann and Thompson, *Why Deliberative Democracy?*, 146.

[39] Ronald Dworkin holds that Pro-Life supporters are more likely to accept therapeutic abortions without compromising their view. His explanation is that, Pro-Life supporters do not support their opposition to abortion on the belief that fetuses are all fletched human beings, but on an attribution to highest value to life. Thus, such exceptions Pro-Lifers made do not constitute compromises to their initial beliefs, see Ronald Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*, 1st Vintage Bks Ed, July 1994 (Vintage, 1994).

[40] Rawls, *Political Liberalism*, 243. Footnote.

same standards of ambulatory surgery centers.[41] The important conclusion to be drawn is that a reasoned stand on the issue would lead to accept some degree of liberalization. A reasonable Pro-Life supporter must accept that in some cases abortion is permissible, or at least not a terrible act of murder.

However, according to the epistemic approach to reasonable disagreements and political liberalism, Pro-Life fundamentalist beliefs are not necessarily unreasonable. Fabienne Peter has explained political divisiveness in terms of reasonable disagreements. According to her, if there is a reason to take pluralism seriously, it is because of the existence of reasonable disagreements.[42] The latter must be understood as conflicts "between beliefs that the parties to the disagreement are each justified to hold."[43] According to Peter, the parties to a public controversy usually cannot account for the first-order evidence they are assuming as grounds for the beliefs they hold.[44] Thus, Pro-Life supporters might not be able to account for the evidence grounding their conviction against the moral permissibility of abortion. Such evidence might have been transmitted in form of a religious experience that the parties cannot account for. Since 'ought implies can,' deliberative democracy should not expect individuals to be able to account for their beliefs and to publicly scrutinize them.

---

[41] For an account of the debate Texas' legislation, see "Texas Abortion Clinic to Reopen After Ruling," accessed November 5, 2014, http://www.nytimes.com/2014/09/04/us/texas-abortion-clinic-to-reopen-after-court-ruling.html?_r=0.
[42] Peter, "Epistemic Foundations of Political Liberalism." Waldron's political philosophy also emphasizes on disagreement, see Waldron, *Law and Disagreement*. Charles Larmore argues that the real challenge liberal political theory has to face is *disagreement* and not *pluralism*. The difference being that the former is the product of epistemic conditions affecting individuals' judgment and the latter is the irreducibility of the moral world—i.e., Berlin's value pluralism, see Larmore, *The Morals of Modernity*.
[43] Peter, "Epistemic Foundations of Political Liberalism," 8.
[44] First order evidence is the evidence available to a person to justify her beliefs. Epistemic norms are the rules indicating whether it is epistemic permissible to hold some belief.

Religious beliefs depend on first-order evidence, which is directly related to the beliefs-holder. Such experience is so subtle and complex that the individual might not be able to account for it. Furthermore, attempts to share that experience trough appeals to religious doctrines cannot fully honor the personal and immediate experience leading to religious beliefs. As Peter says, "something is lost in translation."[45] Non-religious moral beliefs enjoy an analogous nature. Peter describes moral doctrines as relying to some extent on intuitions, the origin of which we usually cannot explain. Such intuitions are fallible and dependent upon a diversity of social factors that shape our moral character in a way we are not aware of.

It is important to highlight that Peter is not analyzing sophisticated metaphysical scenarios of reasonable disagreements that can hardly be found in contemporary politics. On the contrary, she explicitly mentions that her focus is on disagreements about fundamental moral and religious truths, such as issues "related to salvation or perfection."[46] Her focus is on the widely discussed conflict between secular and religious doctrines in the public sphere. Being the paradigmatic case of deliberative disagreement confronting religious-friendly and secular-friendly moralities, the abortion controversy with no doubts can be included in Peter's account of reasonable disagreements in politics.[47]

---

[45] Peter, "Epistemic Foundations of Political Liberalism," 24.

[46] Ibid., 21.

[47] There are, of course, secular Pro-Life and religious Pro-Choice views, but to omit the fact that Pro-Life advocates represent a religious inspired sector of society would be a flagrant blindness to the facts. Historically, in the United States Christian Churches have backed Pro-Life movements. In the last decades, however, this role has been assumed by Catholic organizations. Julieta Lemaitre, "By Reason Alone: Catholicism, Constitutions, and Sex in the Americas," *International Journal of Constitutional Law* 10, no. 2 (March 30, 2012): 493–511, doi:10.1093/icon/mor060.

Peter's view about the inaccessibility to one's own beliefs is shared by political philosophers that have criticized the version of deliberative democracy abovementioned, on the grounds of having a secularistic bias. These criticisms to the dominant version of contemporary liberalism claim that it imposes unfair burdens to religious citizens, for it requires them to refrain from relying on their most cherished values because of their intrinsically sectarian nature. The requirement is unfair because it assumes that religious reasons are sectarian in a way secular ones are not.[48] The former are paradigmatically considered as sectarian given their mystic and revealed nature. However, it is argued, moral secular reasons are as obscure and inaccessible as religious ones.

Kevin Vallier argues that there is an epistemic symmetry between reasons deriving from religious testimony and reasons deriving from (secular) moral testimony. Thus, an argument that sets its grounding premise on the authority of the Bible, for instance, does not have less epistemic value than an argument setting its grounding premise on the authority of a secular agent (the family, communities, teachers, respected authorities, books).[49] The reason explaining this symmetry is similar to the one provided by Peter. Moral reasoning, Vallier argues, usually relies on the testimony of others. In the case of *religious* moral reasoning, it may appeal to the testimony of religious authorities, religious texts, and the tradition of their interpretation. Religious-grounded opposition to abortion, for instance, can be based on a long lasting theological and philosophical tradition determining the existence of God, of the soul, and of the intrinsic worth of human

---

[48] Eberle, *Religious Conviction in Liberal Politics*, chap. 8; Vallier, *Liberal Politics and Public Faith*.
[49] Vallier, *Liberal Politics and Public Faith*, 118.

life since the moment of conception. A Catholic citizen may base her *fundamentalistic* beliefs on abortion relying upon the testimony of her local priest, who might have attended a seminar where he studied "serious Catholic philosophers, including St. Augustine, St. Anselm and St. Thomas Aquinas." The testimony of the local priest is, therefore, reliable because of his knowledge of the intellectual and theological tradition of Catholic thought—or because of his acquaintance with someone who does. The opinion of the Catholic (Pro-Life) citizen is epistemically justified because of the reliability of her sources, including her local priest and his knowledge of "some of the greatest moral philosophers in human history." Similarly, *secular* moral reasoning appeals to the norms that the people "around us already accept."[50]

From the point of view of the conception of deliberative democracy, these are controversial claims.[51] According to the dominant view of deliberative democracy, to which Gutmann and Thompson belong, one has to be able to account for her own beliefs. A biblical justification of a coercive law, deliberative democrats usually hold, cannot be considered as authoritative because it is not publicly accessible and therefore it "close[s] off any possibility of publicly assessing or interpreting" their content.[52] The ideal of political deliberation requires that the parties give reasons that are mutually accessible, that is, that can be understood by all citizens to whom they are addressed. It is usually asserted that if the content of a reason cannot be understood by the parties to whom they

---

[50] Ibid.

[51] As a matter of fact, both Vallier's and Eberle's, who has also argued in these lines, present these claims as criticisms to the dominant conception of contemporary liberalism.

[52] Gutmann and Thompson, *Why Deliberative Democracy?*, 72.

are addressed, then deliberative justification can hardly take place. In essence, this is what providing *sectarian* reasons means. To appeal to the authority of revelation, therefore, cannot be acceptable because such authorities are not recognized by all evaluative standards. By requiring citizens to scrutinize their beliefs and public opinions, public deliberation intends to reduce levels of dogmatism in the conflicting views and thereby to increase the likeness of rapprochement of the parties. By not being able to account for their own beliefs, the parties might not be suitable to carry out deliberations in which mutual understanding is achieved.

Peter's and Vallier's approaches suggest that even if the parties to a disagreement cannot account for their own beliefs, they can be epistemically justified in holding to them. Therefore they are entitled to provide religious-based reasons for both advancing their political claims and defeating state's interference.[53] Yet Peter and Vallier are not favorable to fundamentalist views in public deliberations. Once the parties realize that they are on a reasonable disagreement they have an epistemic duty to compromise their view. On Peter's account, compromises acquire normative force by the parties' commitment to rationality. Therefore the acknowledgment of reasonableness to fundamentalist religious beliefs does not put at risk core liberal principles endorsed by the state. Acknowledging reasonableness to fundamentalist beliefs in the debate over liberalization of abortion does not entail that moderation will not come up after deliberation.

---

[53] Peter assumes that "there is no problem in how they have each responded to the evidence that they have not been able to access and share" Peter, "Epistemic Foundations of Political Liberalism," 18.

One consequence of Peter's approach is that fundamentalist Pro-Life and Pro-Choice views are equally reasonable. Furthermore, they can be presented as sophisticated arguments that respect criteria of reciprocity and public reason.[54] Individuals to a disagreement can be justified in holding their beliefs even if these are extreme. This does not imply, however, that individuals are justified to remain attached to their views when they face a disagreement that they cannot overcome.[55] Nor are they required to discard their initial view. According to Peter, they are required to restrain from imposing their respective positions and thus to tolerate each other. Awareness about the persistence of disagreements despite thoughtful deliberation leaves the parties in a position in which they can only know that at least one of the views to the disagreement is wrong, yet they do not know which one. The parties must adopt a reasonable attitude, that is, they have to behave in such a way as to be ready to make a decision that can partially satisfy the expectations of all the parties. In other words, they must accept that the best thing to do is to compromise and to agree on a moderate alternative to their initial thoughts.

A move from an unreasonable attitude against any form of abortion—Pro-Life fundamentalism—to a reasonable one does not constitute a case of principled compromise, however. In other words, the transition from a position that opposes

---

[54] Radical Pro-Life views protect human life since the moment of conception, see Robert George's review of *Democracy and Disagreement*, Robert P. George, "Law, Democracy, and Moral Disagreement," *Harvard Law Review* 110, no. 7 (May 1997): 1388, doi:10.2307/1342176. Also see Robert P. George, "Public Reason and Political Conflict: Abortion and Homosexuality," *The Yale Law Journal* 106, no. 8 (June 1997): 2475; Patrick Lee and Robert P. George, *Body-Self Dualism in Contemporary Ethics and Politics*, 1 edition (Cambridge; New York: Cambridge University Press, 2007). Radical Pro-Choice views defend the permission of very late abortions and even of infanticide, see Tooley, "Abortion and Infanticide."

[55] Macedo rightly criticizes George's attitude by considering the abortion debate "not even a close call," see Macedo, "In Defense of Liberal Public Reason," 17.

to abortion in all cases towards its moderate version, which accepts therapeutic abortions only, cannot be considered as a successful case of compromise.

Arguably, Colombian Pro-Life fundamentalists undertook a deliberative process. They listened to new arguments and evidence, and, afterwards, accepted to modify their stand as to recognize therapeutic abortions.[56] However, they did not compromise their view since all they did was to accept the disproportionality of the harm they were permitting by utterly banning abortion. A fundamentalist Pro-Life supporter does not have to change any core belief once a decision must be made between accepting the death of the unborn or of the mother. Similar reasoning can be followed in the other two cases of therapeutic abortion.[57] After all, it is about cases in which what is at stake is reducing or avoiding extreme harm to the mother—in cases of rape and serious health problems—or to the future child—in cases of malformations or serious diseases that will make the child's life too harmful and brief.[58]

It could be said, then, that when the debate is about decriminalizing full bans on abortion, deliberative disagreements hardly appear. A fundamentalist Pro-

---

[56] This, of course, assuming they have accepted the Court's mandate. More than 95% of abortions that are eligible to be legally performed are actually done in clandestine clinics. The low impact of the Court's mandate depends on lack of information by the community due to, partly, Pro-Life boycott initiatives. See Elena Prada et al., *Unintended Pregnancy and Induced Abortion in Colombia: Causes and Consequences* (New York: Guttmacher Institutte, 2011), 24–26.

[57] Someone might make a sophisticated theological argument in favor of non-interfering with God's plan. Thus, the decision as to who is to survive and who is to die is up to God's will and not to humans. In this case the Pro-Life supporter might have to go against her religious beliefs. In this case, the Pro-Life rationale would not be protection of innocent humans lives, for in some cases God might decide that the mother dies and in some others that it is the unborn who dies, but respect of God's will. As an argument, it depends on very robust metaphysical assumptions (i.e., the existence of God and the duty not to interfere with his plan) and therefore its plausibility for counting as public justification would decrease considerably.

[58] Of the three cases, radical Pro-Life supporters struggle the more in accepting abortion in cases in which the mother was raped. Colombian criminal law explicitly outlawed abortions in cases of rape to girls younger that thirteen.

Life supporter might have a principled opposition to abortion in whatever case it is performed. However, the values she appeals to at the moment of justification of her view (i.e., protection of human life) are jeopardized in cases of therapeutic abortions. The reasons why the life of an unborn must prevail over the life of a dying mother are not clear at all. In this case, Pro-Life fundamentalists have to accept the tragedy of losing a human life, and opting to protect mothers' lives does not seem morally arbitrary. For instance, mothers might have other children to take care of and letting them die for the sake of the unborn would only increase the tragedy.[59] If a Pro-Life fundamentalist agrees to accept abortion for therapeutic reasons only, then her change of mind would not be a case of compromise. She would be accepting cases for abortion that are not incompatible with her initial views. Pro-Life fundamentalists are not accepting an alternative to their initial position in the debate; instead, they are recognizing that what they initially considered to be completely objectionable from their point of view was not.

According to deliberative democracy, the Colombian process of partial decriminalization of abortion and its outcome are legitimate because moderation was achieved. Moderation in this case is relative. The legislation to be transformed (e.g. criminalization of all sorts of abortion) can be described as being more radical than the current legislation (e.g. permission of therapeutic abortion). Furthermore, the parties displayed some sort of reasonableness and

---

[59] Sure, convincing a *fundamentalist* about possible mistakes they are incurring could be otiose. Pro-Life fundamentalists, as they are conceived here, hold unreasonable beliefs about abortion but are ready to undertake deliberative processes and modify their views on the issue. As it is usually pointed out, reasonable people can hold unreasonable beliefs, see Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (New York: Oxford University Press, 2009), 236.

mutual respect—perhaps there was no symmetry in this respect—because they were open to modify their views and to agree on an alternative best. Furthermore, according to the views supported by Peter and Vallier, an objective evaluation of current Colombian legislation on abortion would conclude that it is reasonable, for it is possible to achieve it appealing to a reliable, and therefore plausible, justification of it.

5. Concluding Remarks

According to deliberative democracy, the parties to a deliberative disagreement will eventually find a middle ground to overcome their impasse. In other words, there is an expectation that, even if the disagreeing parties are too radical, they will be motivated—whether morally or epistemically—to agree upon a moderate version of their initial view. In an ideally liberal democracy, policies will not crystalize neither of the fundamentalist versions to a disagreement.

Aggregative conceptions of democracy suggest solving deliberative disagreements by majority rule. In the case of abortion, for instance, they would prefer to imitate Italy's and Uruguay's referendums evaluating legislation on abortion.[60] According to deliberative democrats, such decision allows status quo structures of power to mobilize and influence the people's choice and therefore to preserve and reinforce such forces. This is one of the reasons why conservative religious associations usually propose referendums in order to ratify abortion policies. They expect to be able to mobilize religious sensibilities against liberalization of abortion.

---

[60] See footnote 12 above.

For deliberative democrats, deliberation plays a crucial role in guiding policy making within a society. In cases in which reasonable disagreements are likely to appear, deliberation encourages rapprochement among the parties and fosters moderate alternatives. However, I have argued that it is vulnerable to the same criticism it raises to aggregative conceptions of democracy. The cases of Colombia and the U.S. show that dominant opinions guide the debates and therefore status quo distributions of power, rather than moderation, influence the final outcome. The explanation to the question why in the U.S. and Colombia took different paths has to be found in external factors other than the process of deliberation in itself. Arguably, the power of social movements and private institutions played a decisive role. If this is the case, the future of abortion might be decided according to powerful private associations. This conclusion is of no little importance. Pro-Life fundamentalism is gaining terrain in the Americas, which is an alert about the possibility of a future in which status quo social relationships support regressive policies on abortion, which are already taking place.[61]

---

[61] That Pro-Life fundamentalism is gaining terrain in the Americas is no exaggeration: as a reaction to Mexico City's liberalization of abortion, seventeen states in Mexico attempted to reform their Constitutions as to protect live since conception; waiting times in the United States is becoming an excellent tool to discourage abortions; physicians' conscience objection is a successful strategy to boycott demands of abortion, even when they are only required to refer women to a non-objector physician. On the criticality of the latter, see Carolyn McLeod, "Referral in the Wake of Conscientious Objection to Abortion," *Hypatia* 23, no. 4 (October 12, 2008): 30–47, doi:10.1111/j.1527-2001.2008.tb01432.x. See also, Elisabeth Malkin, "Mexican States Crack Down on Abortion," *The New York Times*, September 22, 2010, sec. World / Americas, http://www.nytimes.com/2010/09/23/world/americas/23mexico.html.

CHAPTER 2

On Tolerating Majorities

In the previous chapter, I developed an argument against deliberative democracy and its proposal to address 'reasonable disagreements' through the politics of compromise. I argued that such conception is not sensitive enough of power inequalities of the parties to a deliberation and therefore that legitimate outcomes of deliberative processes might be determined by the parties' relative powers. Consequently, powerless social groups are vulnerable to be trapped by what Amy Gutmman and Dennis Thompson call the "burdens of injustice."[1] What are the duties of a liberal and democratic state with respect such vulnerable groups? In this chapter I develop an understanding of toleration that aims at reducing the burdens of injustice by inverting the traditional direction in which relationships of liberal toleration are understood. According to this understanding, powerless and dominated social groups are supported by the state at the same time that illiberal beliefs and practices displayed by the majority are tolerated.

In contemporary debates about toleration there is a salient worry about the proper attitude a liberal and democratic state must adopt in relation to an illiberal minority. One of the most important questions to be addressed in these debates is whether it is legitimate to impose or promote liberal values into "cultural

---

[1] Gutmann and Thompson, *Why Deliberative Democracy?*, 143.

communities," "illiberal minorities," or "traditional communities," in order to avoid injustices within such social groups.[2] This approach to toleration led Kymlicka to distinguish between "internal restrictions" and "external protections." This famous distinction intends to protect individuals within cultural minorities from oppression by their own culture and to protect minorities from detrimental decisions made by the larger community.[3] Questions about cultural accommodations or deterrents to illiberal minorities are prominent in nowadays debates on toleration. Liberal toleration is, then, characterized by three features: an institutional framework that grants toleration; a liberal majoritarian society that acknowledges toleration; and an illiberal minority group that is tolerated.

In this chapter I will address a different question, for I will not accept features two and three abovementioned. I will argue that the second assumption does not always—indeed, usually doesn't—correspond to reality and that so-called liberal societies are usually intolerant towards minority social groups that are not necessarily illiberal. Hence, I am interested in investigating the proper stand a liberal state should take towards illiberal beliefs and practices when these are exercised by a majority that displays an intolerant attitude towards liberal minoritarian social groups. Instead of discussing about the legitimacy of the right that allows the Amish community to withdraw their children from high school because, as they claim, higher education is incompatible with their religious and

---

[2] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford University Press, USA, 1996), chap. 8; Chandran Kukathas, *The Liberal Archipelago* (Oxford University Press, 2003), chap. 4; Deborah Fitzmaurice, "Autonomy as a Good: Liberalism, Autonomy and Toleration," *Journal of Political Philosophy* 1, no. 1 (March 1, 1993): 14–15, doi:10.1111/j.1467-9760.1993.tb00001.x; Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Harvard University Press, 2002).
[3] Kymlicka, *Multicultural Citizenship*, 152.

cultural beliefs and practices,[4] I investigate whether the predominant beliefs against homosexuality held by the majority or by powerful institutions can be object of toleration.

This is a different approach to the tolerance question, for it challenges the standard understanding of toleration and the way the issue about same-sex marriage is addressed. To begin with, it raises the possibility of changing the traditional understanding of the power relationships involved in toleration, according to which it is a powerful majority who tolerates a powerless minority. Secondly, it challenges the suggestion that same-sex marriage constitutes a case in which the virtue of toleration must be displayed. I argue that liberal states must; first, tolerate illiberal beliefs and practices; second, publicly express that the majority's illiberal beliefs and practices are object of toleration; and third, discourage them.

1. Concept and conceptions of toleration

In order to develop a clear approach to the debate over toleration it is useful to follow Rainer Forst's understanding. He follows Rawls' proposal of identifying a concept of justice and different conceptions of justice.[5] Hence, Forst recognizes the elements that constitute the central semantic contents of the *concept* of

---

[4] This is the famous U.S. Constitutional Court's decision *Winsconsin v. Yoder (1972)*. For a philosophical debate about the decision see Galston, "Two Concepts of Liberalism"; Stephen Macedo, "Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?," *Ethics* 105, no. 3 (abril 1995): 468–96.

[5] Conceptions of justice are "characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distributions of benefit and burdens of social cooperation." The "concept of justice" is "specified by the role […] these set of principles, these different conceptions of justice, have in common." John Rawls, *A Theory of Justice* (Belknap Press of Harvard University Press, 1999), 5.

toleration and different specific interpretations of such elements that constitute the four main *conceptions* of toleration.

The first element that a concept of toleration specifies is 'the context of toleration,' which identifies the agents involved in the relationship of toleration; who are they? What is tolerated? And what are the actions that the act of toleration entails? Forst's focus is mainly on political relations involving governments and citizens that belong to a society in which cultural and religious pluralism is pervasive.

The second element common to all conceptions of toleration is the 'objection component.' An act of toleration is an act that involves the rejection of some practices or beliefs because they are considered as "bad in a substantive normative sense."[6] This component determines the difference between toleration and relationships of indifference and acceptance. The former is a relationship in which there is no judgment in favor or against the other, the latter involves a positive judgment. The objection component is not an objection out of prejudice or hatred, but rather an objection grounded on inter-subjectively defensible reasons derived from specific ethical beliefs systems. Therefore, it has to place itself above a minimal moral threshold.

The objection component is accompanied by an 'acceptance component.' Tolerated convictions and practices are not considered to be as deeply false or wrong as to deny them the status of being tolerated. The reasons supporting the acceptance of such convictions and practices must not override the reasons

---

[6] Rainer Forst, *Toleration in Conflict: Past and Present* (Cambridge: Cambridge University Press, 2013), 19.

leading to object such beliefs and practices. Otherwise there will not be a case for toleration.

The concept of toleration necessitates the specification of the limits of toleration. Neglecting these limits might lead to the self-destruction of toleration itself, for it may imply attitudes in which everything is tolerated and therefore may be extended to the "enemies of toleration."[7] Setting the limits of toleration introduces a third component of the concept of toleration, namely, the 'rejection component.' It is constituted by reasons to reject practices or beliefs that override the reasons for acceptance.

Toleration must be also exercised *"of one's own free will,"* which means that the tolerating party must be free to act accordingly to its objection to some beliefs and practices. However, Forst claims that this does not mean that a constitutive element of toleration is that the tolerating agent "must be in a position of power from which it could effectively prevent the practices in question."[8] Powerless minorities can adopt a tolerant attitude and consider that they would not use their power were they in a position to exercise their objection.

Finally, the concept of toleration can signify both a 'practice' and an 'individual attitude.' The former refers to the "political-structural" level related to the government while the latter refers to the individual attitudes citizens might adopt in a given society.

As mentioned above, the conceptions of toleration are different interpretations of the core elements of the concept of toleration. Forst identifies

---

[7] Popper, quoted by Forst in Ibid., 23.
[8] Ibid., 25.

four distinctive conceptions, namely, the 'permission conception,' the 'coexistence conception,' the 'respect conception,' and the 'esteem conception.' The permission conception establishes a relation between a powerful majority and dissenting minorities. This is a relation of domination of the former over the latter, for the dominant majority establishes the terms under which it is in disposition to concede permission to the minorities to live according to their traditions and beliefs. Usually, such conditions refer to limitations to certain liberties. For instance, minorities might be granted some autonomy within a territory but might be excluded from political decision making processes. Usually, minorities are not allowed to seek equal political status, which implies that a 'vertical' relationship of hierarchy is clearly in place. The majority tolerates the minority and the minority accepts, or is compelled to accept, its status of inferiority. Forst points out that this is the notion of toleration that Goethe had in mind when he famously opposed to toleration in the following terms: "Tolerance should be a temporary attitude only: it must lead to recognition. To tolerate means to insult."[9]

According to the coexistence conception of toleration, the agents in the relationship of toleration are not in majority-minority or powerful-powerless relationships. They are roughly equally powerful and therefore they understand that the best way to guarantee peaceful coexistence is to tolerate each other. The relationship of toleration in this case is not vertical—as in the case of the permission conception—but horizontal, for both agents are at the same time tolerated and tolerating. This is the version of toleration Rawls describes in his narration about the historical origins of the liberal notion of toleration, which he

---

[9] Ibid., 3, 28.

59

identifies in the end of the European Wars of Religion that led to a *modus vivendi* among the diverse Christian religious denominations.[10] One characteristic of this conception of toleration is that the stability reached is weak because it depends upon the relative strength of the parties. If one of them suddenly finds itself in a more powerful position, it will certainly alter the terms of toleration in its favor.

The third conception of toleration, the respect conception, introduces a moral component to the relation of toleration. The former two conceptions were defined in terms of the capacity to dominate the other. According to the respect conception, the parties recognize each other "as moral-political equals." This means that both acknowledge a duty to be guided by norms they can mutually accept on equal grounds. The agents are not required to regard each other's worldviews as equally good or valuable, but as the outcome of autonomous choices (or at least as not being absolutely immoral.) Accordingly, each person is respected and each person's choices are tolerated.[11] Forst identifies two models of this conception: the 'formal equality conception' and the 'qualitative equality conception.'

The 'formal equality model' of the respect conception of toleration establishes a strict distinction between the political and the private realms. Conflicts in the political realm are avoided given the requirement to keep cultural and religious differences—what Forst calls "ethical differences"— within the private realm. French contemporary model of *laïcité* is associated with this model of the respect conception of tolerance, for it holds that 'conspicuous religious

---

[10] Rawls, *Political Liberalism*.
[11] Forst, *Toleration in Conflict*, 30.

symbols' (e.g. Muslim headscarves) must remain in the private realm in order to guarantee a conflict-free public sphere. Keeping differences within the private sphere guarantees avoiding conflicts in the public sphere.[12]

The 'qualitative equality model' of the respect conception of toleration recognizes the pitfalls of the formal equality model and advances a more accommodating attitude toward cultural and religious differences. It recognizes that the formal equality model favors some religious and cultural groups for whom it is natural to live according to the requirements of privatization of sectarian aspects of their cultural or religious memberships. The qualitative equality model weakens the requirement of privatization for those individuals that can provide good reasons for accommodation. Contemporary liberals usually adopt this version of the respect conception of toleration in light of its flexibility to accommodate minoritarian, both liberal and illiberal, worldviews.

The fourth conception of toleration, the esteem conception, is the most demanding of all and it emerges in debates about the relations between multiculturalism and toleration. It does not require respect of cultural or religious differences only. It requires for such differences to be appreciated as valuable conceptions that can be held by valid and good reasons. It is a conception of toleration because it establishes a relation in which one party finds the other party attractive but not attractive enough as to fully embrace it. Forst describes the esteem relation in this conception as esteem "with reservations." Contemporary

---

[12] Anna Elisabetta Galeotti develops a criticism to this understanding of –liberal– toleration, see her *Toleration as Recognition* (Cambridge, UK; New York: Cambridge University Press, 2005). I address it in the next section. For a critical analysis of different constitutional interpretations of the public-private distinction and its relation with liberal toleration of abortion and homosexuality, see Michael J. Sandel, "Moral Argument and Liberal Toleration: Abortion and Homosexuality," *California Law Review* 77, no. 3 (May 1989): 521–38.

versions of "value pluralism" can be associated with this conception of toleration, for they hold "the existence of intrinsically worthwhile yet incompatible forms of life."[13] Some versions of communitarian political theories are also using this conception of toleration when they claim that there are shared notions of the good life with variations that can be tolerated.[14]

2. Liberal toleration and recognition

Liberalism is a political doctrine that endorses toleration as a fundamental practice. It is commonly said that the Protestant Reformation and the subsequent European Wars of Religion are foundational in the birth of liberalism. These early developments of the liberal conception of toleration are characterized by the acceptance of church and state separation as a mean to guarantee coexistence of several religions in a single political community.

This idea, as pointed out above, is suggested by the distinction between the public and private spheres. The underlying idea is that religion is beyond the coercive power of the state because it is a matter of conscience, which cannot be transformed by coercive means but only by persuasion. Religious beliefs, and in general issues of conscience, are relegated to the private sphere and individuals are granted the freedom to determine those issues according to their own lights.

Granted the separation of spheres, the principle of state neutrality becomes necessary.[15] The commitment to equality that is at the base of liberalism and the

---

[13] Forst, *Toleration in Conflict*, 32. Forst refers to Raz's "Autonomy, Toleration, and the Harm Principle," in *Justifying Toleration* (Cambridge University Press, 1988), http://dx.doi.org/10.1017/CBO9780511735295.009. Galston's liberal pluralism can also be added, see his *The Practice of Liberal Pluralism*.

[14] Sandel, "Moral Argument and Liberal Toleration."

[15] Galeotti, *Toleration as Recognition*, 26.

acknowledgment of the possibility for religious freedom leads to the conformation of a principle that requires that all religions should be treated on equal grounds. Granting privileges to one religion over the others would create an inconsistent practice of the separation of spheres, for it would constitute an intervention in matters that are of no concern of the state. The principle of neutrality requires that the state refrains from embracing any religion in detriment of the others. In its most common form, it requires that state power be justified by appealing to reasons that are not derived or necessitated by a specific religious doctrine. In other words, the state sets "aside or 'bracket' controversial moral and religious conceptions for purposes of justice."[16]

This traditional view of liberal toleration, however, faces challenges when it has to deal with the growing pluralism that characterizes contemporary societies. The diversification of immigration, the emergence of moral non-religious worldviews, and the vindication of cultural-based claims have highlighted the difficulties liberal conceptions of tolerance face.

The difficulties of toleration are particularly stringent when the distinction between the public and the private spheres are at stake. As Galeotti argues, toleration meets its limits as soon as the normalized public-private divide is challenged. In these cases, *status quo* power relationships are shaken by the minorities' reluctance to respect requirements of privatization of their identities. Toleration, Galeotti says, is a devise that addresses conflicts between the majority and minority groups within a given society. Such conflicts are generated by the majority's negative perception of minorities' "traits, habits, and practices."

---

[16] Sandel, "Moral Argument and Liberal Toleration," 521.

Accordingly, minorities are invisibilized, marginalized, or oppressed as a result of such negative perception.[17]

Politically relevant cases of toleration, Galeotti argues, appear when powerless groups stand up and press forward claims of recognition by the larger society. These claims obligate the majority to tolerate what they *prima facie* dislike, that is, the majority has to publicly recognize as "normal" the traits, habits, and practices of the invisibilized, marginalized, and oppressed minorities. Since it is the majority who orchestrates what the state does, toleration is an act by the majority motivated by the minorities' refusal to "keep their differences quietly within the private sphere" and instead displaying them in the public sphere. Toleration is required when minorities decide to disrupt the normality and to break "institutional practices and customary habits." An act of toleration consists in public recognition of non-normal traits, habits, and practices; and seeks their full recognition by the larger society.[18]

For Galetotti, an act of tolerance must satisfy two conditions. First, it has to be performed by a majority and, second, such majority has to be more powerful than the minority. In a more just world, Galeotti seems to claim, the question of tolerance of Muslim immigrants or same-sex marriage would not arise, for they would be fully recognized. Toleration is a first step in a process of recognition of differences. Nussbaum's defense of the United States' tradition of freedom of religion points to a similar direction. In her view, societies usually reject what is

---

[17] Galeotti, *Toleration as Recognition*, 5,10.

[18] For a similar criticism to conceptualizing liberal toleration by reference to the public-private distinction, see Corey Brettschneider, *When the State Speaks, What Should It Say?: How Democracies Can Protect Expression and Promote Equality* (Princeton, N.J.: Princeton University Press, 2012), 25–30. Brettschneider argues against any interpretation of the "private" as a space where there can be no state interference.

alien to them and, furthermore, express their rejection by 'hipersexualizing' social groups. Examples of such behavior are nineteenth century anti-Catholic and anti-Mormon sentiments, which were expressed through overemphasizing their deviant sexual practices, usually on the grounds of mere prejudice. The story is similar with contemporary anti-gay movements.[19] Nussbaum argues that the U.S's tradition of freedom of conscience and its openness to accommodate diversity helps out in transforming the initial negative perception of what is new into a positive (or indifferent) one. This account is similar to Galeotti's because both hope that the receptive society, or what Galeotti refers to as 'the majority,' transforms its initial negative attitude towards the alien or the minority.

Galeotti's own conception of toleration is closer to the esteem conception than to the respect one. She keeps the public-private distinction, but attributes to it a more liberating characteristic. Toleration is not conceived as an act of non-interference of private issues as long as they remain private, but as an act of state's public recognition of identity traces that have thus far been kept in the private sphere. The power of toleration, and perhaps this is where the strength of Galeotti's proposal lies, consists in the fact that by admitting different behaviors in the public sphere—same sex marriage or headscarves in public schools—the state "affirms the legitimacy of that behavior and of the corresponding identity in the public domain."[20] By publicly recognizing difference, the state moves forward

---

[19] Nussbaum, *Liberty of Conscience*, 334–346; Galeotti, *Toleration as Recognition*, 116.
[20] Galeotti, *Toleration as Recognition*, 101.

in removing social norms and their related legal expressions that constitute forms of injustice.[21]

Galeotti insists on the importance of state's responsibility to recognize the claims raised by minorities.[22] Liberal notions of toleration, Galeotti argues, raise weak requirements to the state in the enterprise of addressing systematic injustice perpetuated by the majority's culture, prejudices, or fears. Controversies about the Islamic veil or about same-sex marriage illustrate the terms and conditions upon which liberal toleration operates. Toleration is granted as long as what is tolerated remains in the private sphere.[23] Muslim women can wear headscarves in their private lives, but conflicts arise once they enter into the public sphere (e.g. public schools). The situation is similar for homosexuals, for they will stand as equals in society as long as they keep their sexual identity in the private sphere. Legal and social restrictions emerge as soon as they reveal their sexual identity.

For Galeotti, toleration requires recognition of full equality of oppressed minorities and it represents a mark of state's virtue. Toleration reflects state's commitment to fight against consequences of long-term historical intolerance. This is the importance of Galeotti's approach, for it locates the force of toleration in a place liberal theorists do not usually consider of major relevance. What is compelling in toleration as recognition is that there is a duty to recognize the fact of public intolerance against oppressed minorities. This sort of toleration reveals a degree of immoral character that should not be endorsed by the state, for it is

---

[21] Ibid., 104.
[22] For the differences between Galeoti's notion of toleration and the liberal one, see particularly Ibid., chap. 2.
[23] Ibid., 173–174.

recognizing a reproachable attitude by the majority that needs to be corrected.[24] However, acknowledging public intolerance on the side of the majority of a society constitutes a morally relevant act in so far as it rules out debates that risk perpetuating marginalization and oppression of minorities. As a political project against injustice, this is an appealing idea, for contemporary liberal theory seems to be more concerned about problems that do not openly address issues of oppression and marginalization.

In Galeotti's account of toleration, as it is common in most practices of toleration, there is a temporary acceptance of injustice, for transformations of the majority's perception of the minority's traits, habits, and practices will not be immediate. During the period in which same-sex marriage is tolerated, there is at place a component of injustice, for the state would be reluctantly permitting such extension in the attribution of marriage rights. Although this approach constitutes an advantage over the deliberative democracy's notion of toleration, it still falls short in capturing the power of toleration for contemporary societies.

Consider for a moment the Catholic Church's stand toward homosexuality. The Catholic Church holds a negative view regarding homosexuals, yet explicitly calls for attitudes of respect and non-discrimination. There is neither persecution nor marginalization. On the contrary, motivated by Catholic values such as charity and love for humanity, the attitude towards homosexuals is of benevolence and compassion. As Pope Francis I recently manifested, homosexuals are in need of assistance, benevolence, and palliative

---

[24] A similar argument has recently been advanced in Wendy Brown et al., *The Power of Tolerance: A Debate* (Columbia University Press, 2014).

care.[25] The attitude adopted is not of indifference since the Church is worried about homosexuals; neither is it of tolerance, for despite its rejection of homosexual caring and sexual practices, lifestyles, and attitudes, the Church has not embraced an "acceptance attitude."[26] According to the Catholic Church, the world would be a better place if nobody were homosexual. Furthermore, it considers that there are means to encourage a pacific and gentle path towards such ideal. In a display of benevolence and assistance values, the Catholic Church welcomes homosexuals and helps them to find the path towards virtue.[27]

According to Galeotti, the aim of toleration is to promote equal citizenship to excluded members of society and, in the long term, to normalize their status as equal citizens. Symbolic forms of inclusion are manifestations of such pursuit of equality. They are important because they publicly communicate the state's active commitment to protection of all members of society on equal grounds. Galeotti considers this active commitment on the side of the state to be an act of virtuous toleration because it represents a step forward in full social and legal recognition. She is right in considering that state's public commitment in favor of discriminated groups contributes to the promotion of social respect towards them. This is particularly important in cases in which discrimination has led to invisibility and stereotyping of these social groups.

It is commonly argued that liberal and democratic states must provide the institutional means for pluralism to thrive. In some cases, such requirement

---

[25] "Il Papa: 'La Chiesa? Un Ospedale Da Campo' E Chiede Misericordia per Gay E Chi Ha Abortito - Repubblica.it," *La Repubblica*, September 19, 2013, http://www.repubblica.it/esteri/2013/09/19/news/papa-66887013/.

[26] The 'acceptance component' is a feature constituting a tolerant act.

[27] "Catechism of the Catholic Church - The Sixth Commandment," accessed May 26, 2014, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a6.htm#2357.

consists of accepting beliefs, practices, and public expressions that contradict the foundational values of a liberal and democratic state. In other words, sometimes the state has to tolerate illiberal and undemocratic attitudes. Perhaps the clearest example of commitment to pluralism is found in the case of toleration of neo-Nazi organizations. The question in this case is whether the state should ban or tolerate them. Different considerations might influence such a debate; for instance, considerations of respect to the victims of the holocaust might suggest opting for the ban, while pragmatic considerations about the potential danger of clandestine neo-Nazi groups might suggest opting for toleration. In either case, what is at stake is whether or not an *undesirable* organization must be tolerated.

Galeotti's conception of toleration does not parallel this traditional conception of toleration. As I have showed, she argues that the state must tolerate homosexuals and Muslim minorities. She does not claim that what is tolerated in these cases is something objectively undesirable. Instead, she argues that the larger society must tolerate what it considers to be undesirable. The act of toleration would end the moment the larger society recognizes what initially was merely tolerated. Toleration, she argues, is a first step toward recognition.

This conception of toleration poses an important problem, however. Galeotti seems to assume a direct relation between the larger society (e.g., the majority) and the control over the institutions of the state. Thus, when she argues that the larger society must tolerate homosexuals and Muslim minorities, she seems to assume that it is the state controlled by such majorities that has to perform such toleration. This assumption brings a moral difficulty to Galeotti's conception of toleration. State action is usually the exercise of coercive power.

Depending of the justification provided for the latter, it can be either oppressive/authoritarian or legitimate. One necessary condition for state power to be legitimate is that it is exercised in such a way that it treats all citizens with equal respect.

Toleration, as described by Galeotti, is a case in which the state does not treat all citizens with equal respect, for homosexuals and Muslim minorities are accepted as equal citizens only reluctantly. They are, in other words, second-class citizens, for state's reluctance shows its disapproval of these groups. The question to be addressed in this context is whether there is any valid moral justification for such treatment. It seems there are none. Galeotti herself considers that the act of toleration is an act according to which the larger society is required to carry out a process of moral learning which leads to recognition of what has hitherto considered as alien. It seems that what underlies Galeotti's justification for toleration in these terms are not moral reasons but a mere relinquishment to established social norms. Therefore, homosexuals and the Muslim minority must accept their condition of being tolerated only because the larger society is not accustomed to their public appearance. In Galeotti's approach, social norms leading to marginalization and discrimination of some social groups justify their treatment by the state as second-class citizens.

Although Galeotti's conception of toleration rightly requires recognition on equal grounds of social groups that are marginalized and oppressed, she appeals to the wrong normative concept. According to her, the tolerant agent embarks on a process of moral learning that will lead her to full recognition of what was initially tolerated. Performed by individuals, this might be a virtuous

practice by which someone embarks herself into the process of changing her mind about someone else and afterwards recognizing and accepting her with no reluctance. The problem appears when the agent is not an individual but the state, for it legitimizes—temporarily—the categorization of powerless social groups as "second class citizens."

3. Toleration and majority-minority relationships

According to Galeotti, liberal toleration is an act performed by the powerful majority over the powerless minority. Coherently, she argues that the majority must tolerate public expressions of new and minoritarian forms of life. In the previous section, I argued against the idea that the minority is tolerated while the majority undertakes its process of moral learning. In this section I challenge the assumption that liberal toleration is, and should be, an act performed by the majority.

I have already described Galeotti's assumption of a direct and exclusive relation between the majority and the institutions of the state. This relation allows the majority to define what is socially and legally accepted. For instance, it allows it to define the institution of the family. Since the majority believes that families must be constituted by heterosexual loving couples, the state tends to recognize those relations as the basis of the family. Acts of toleration in this respect include a wide range of compromises granted to different forms of families. For instance, toleration might grant homosexuals access to the same social protections to which married couples are entitled, but might deny them the right to actually get married and adopt children. Toleration can also be exercised by recognizing to *de facto*

couples exactly the same rights married couples enjoy, including the right to adopt children, but denying homosexuals the symbolic recognition of being a 'married' couple. The majority, which only recognizes heteronormativity,[28] decides what is to be officially accepted as a family and tolerates deviations from such norms.

However, toleration can also be performed by excluded minorities. Arguably, these acts of toleration can be performed only within liberal democratic regimes in which the traditional liberal individual freedoms are recognized by the constitution or by other official institutions. This institutional characteristic of liberal democracies intends to guarantee that recognized rights are not decided by the majority for the majority. Thus, against Galeotti's assumption regarding the direct relationship between the institutions of the state and the majority, political constitutions in liberal democratic states explicitly intend to protect pluralism and minorities. Expressed in other terms, it can be said that political constitutions are not necessarily hegemonic in Gramsci's sense, for they are not necessarily expressions of the institutional normalization of dominant ideologies.[29]

Political constitutions empower minorities from within the institutions of the state. This means that oppressed and marginalized social groups—who, as a matter of fact are not necessarily minorities—advance claims for recognition appealing to principles that are already entrenched in the conception of justice upon which the institutions of the state are grounded. This is why same-sex

---

[28] Elizabeth Brake, *Minimizing Marriage: Morality, Marriage, and the Law* (Oxford; New York: Oxford University Press, 2012).
[29] For a reconstruction of Gramsci's notion of hegemony, see Dilan John Riley, "Hegemony and Democracy in Gramsci's Prison Notebooks," *California Italian Studies* 2, no. 2 (2011): 1–22; David I. Kertzer, "Gramsci's Concept of Hegemony: The Italian Church-Communist Struggle," *Dialectical Anthropology* 4, no. 4 (December 1, 1979): 321–28, doi:10.1007/BF00247875; Thomas R. Bates, "Gramsci and the Theory of Hegemony," *Journal of the History of Ideas* 36, no. 2 (April 1, 1975): 351–66, doi:10.2307/2708933.

marriage activists in liberal democracies usually do not pursue constitutional reforms or constituent processes, but denounce the unconstitutionality of a specific law or regulation. They do not seek recognition properly speaking, for political communities grounded on liberal and democratic principles have already recognized them. What they seek is real compliance by the state to an already implemented conception of justice and its existing institutions.

I the previous section I argued that toleration of oppressed and marginalized social groups categorizes them as second-class citizens. Now I am making a further step, for I am arguing against the claim that a society is virtuously tolerant if the majority tolerates an oppressed minority. Such political community might be tolerant but not virtuous. Virtue, as I am conceiving it here, consists to a great extent in the character of the political institutions: if they are broadly liberal and democratic, then the political community is institutionally virtuous. If toleration of a minority derives from the illiberal or undemocratic character of the institutions, then it is not possible to consider them as virtuous because they do not guarantee the equality and freedom of all citizens. An example of this latter case is the *millet* system implemented during the Ottoman Empire as described by Kymlicka.[30] By guaranteeing liberal and democratic values, a virtuous tolerant political community cannot consistently claim to be tolerating oppressed minorities. At most, it can only recognize its failure to guarantee equal citizenship and to proceed in guaranteeing it.

---

[30] Will Kymlicka, "Two Models of Pluralism and Tolerance," in *Toleration. An Elusive Virtue*, ed. David Heyd (Princeton University Press, 1996), 81–105.

Contemporary liberal democracies recognize a system of basic liberties that is meant to guarantee to all citizens that they will be able to lead their lives according to their lifelong preferences. Such preferences, it is widely argued, must fit within certain minimal criteria of respect for the preferences of, at least, their fellow citizens. Hence it is not possible for committed neo-Nazis to exterminate Jews, but they might be allowed to lead their lives believing in the truth of white supremacism. Within liberal and democratic states, neo-Nazis might be tolerated, provided that they restrict their behavior in such a way that the basic freedoms of the others are respected. The reason why it makes sense to claim that neo-Nazis are candidates to be tolerated and Muslim immigrants or homosexuals are not, is because the former hold beliefs that are in tension with the fundamental values of a liberal democracy while the latter do not. The only scenario the latter might be candidates for toleration would be if they declared themselves against the institutions of the liberal state.

4. Toleration and the Expressive State

So far, I have argued that it is possible and indeed required that liberal democracies tolerate the illiberal beliefs and practices of the majority. In this section I claim that the tools disposed by the state for exercising such toleration are its expressive powers. Accordingly, toleration of the majority's illiberalism is manifested by the state's public support of measures promoting free and equal citizenship to all members of the population.

Affirmative action is the state's commitment to reverse the negative effects of injustices perpetuated in the past. It is implemented as a mechanism to

74

correct gender and racial inequalities. The underlying assumption in these cases is that inequalities among certain social groups in western societies are related to the implementation of systems of unequal citizenship that discriminated genders and race in the past. Such systems are known for their exclusion of some social groups from the public sphere. The recognition of equal and free citizenship for women and black people in most western countries is taken as a step forward in advancing justice for all. However, it is usually argued that such recognition is not enough for providing *real* access to free and equal citizenship to all. It is well known that the burdens of centuries of exclusion are not easy to overcome. Consequently, states implement policies targeted to facilitate women's or blacks' access to the public sphere on equal grounds. States encourage their access to the public life of society as a measure correcting the unequal starting points that have privileged white males.[31]

The extension of equal and free citizenship to new social groups is the recognition of such groups as morally equals. By adopting affirmative action, the state recognizes that formal equality is not enough for real equal and free citizenship. Therefore, it is a duty of the state to provide the institutional means for achieving such ideal. When the state justifies the implementation of these initiatives, it is arguing about its duty to procure free and equal access to citizenship to all. It recognizes that the system of unequal citizenship adopted in

[31] Elizabeth Anderson, *The Imperative of Integration* (Princeton, N.J.: Princeton University Press, 2010); Elizabeth Anderson, "Integration, Affirmative Action, and Strict Scrutiny," *New York University Law Review* 77 (November 2002): 1195–1271; Kwame Anthony Appiah, *Color Conscious* (Princeton University Press, 1998); Laura M. Purdy, "In Defense of Hiring Apparently Less Qualified Women," *Journal of Social Philosophy* 15, no. 2 (May 1, 1984): 26–33, doi:10.1111/j.1467-9833.1984.tb00573.x; Judith Jarvis Thomson, "Preferential Hiring," *Philosophy and Public Affairs* 2, no. 4 (1973): 364–84.

the past was a consequence of an ideology that privileged one social group over the other and therefore expresses its commitment against such ideology. Although the freedom of a citizen is not to be restricted because of her beliefs in the superiority of the social group to which she belongs, the state undertakes the initiative to discourage such beliefs through all its expressive powers.

The case of same-sex marriage is of similar nature. Homosexuality was considered a crime until recently in most western states. Moreover, prejudice constitutes a real threat to homosexuals in most contemporary societies.[32] As in the case of women, formal recognition of equal citizenship is not enough for guaranteeing its enjoyment. Violence, prejudice, bias, and discrimination are still common in contemporary western societies.[33] Thus, it is important that the state provides with an adequate institutional environment in which such harms are reduced. It is the duty of the state to communicate its commitment to the protection of the equal moral worth of homosexuals even if such initiatives generate controversy. The majority of citizens might endorse religious views that openly oppose to recognition of homosexual couples and behaviors, yet the state

---

[32] Some have claimed that state responsibility towards gays ended with the abolition of anti-sodomy laws. The claim is extremely weak, for legal inequalities were not reduced to sexual practices, see Galeotti, *Toleration as Recognition*, 171.

[33] As to spring 2014, only 17 countries worldwide recognized by law same-sex marriage, while other 23 recognized some rights to same-sex partnerships. In 20 countries same-sex couples are by law entitled to apply for adoption, while in 7 there are some rights. Only five states (e.g., Uruguay, Canada, Belgium, France, and New Zealand) guarantee full equality to LGBTII members, and seven states (e.g., Denmark, Iceland, Malta, Norway, Spain, Sweden, and the United Kingdom—all are EU members) guarantee 'almost full equality' to LGBTII members. Only two EU members recognize full equality (France and Belgium). Equality levels are defined by reference to the quantity of rights recognized to LGBTII among the following: legal status of same-sex consensual sex, protection against workplace discrimination, same-sex marriage rights, LGBTII members' right to adopt, and protection against hate crimes. States that recognize five out of five on these items classify as 'fully guaranteeing equality,' while states recognizing four out of five classify as 'almost guaranteeing equality.' Source: Feilding Cage, Tara Herman, and Nathan Good, "Lesbian, Gay, Bisexual and Transgender Rights around the World," *The Guardian*, accessed July 14, 2014, http://www.theguardian.com/world/ng-interactive/2014/may/-sp-gay-rights-world-lesbian-bisexual-transgender.

does not owe them a justification in their own terms as to why commitment to equal citizenship requires expressively promoting an ethics of respect toward all citizens. On the contrary, citizens that oppose to such initiatives are expected to modify their beliefs so as to conform to the ethics of respect to all.

Therefore, to the question about whether the state must remain inactive and *silent* with regards to discriminatory conceptions of the good, I respond negatively. Furthermore, I argue that in cases in which such conceptions of the good are held by the powerful majority that intends to deny homosexuals full citizenship, the state has an urgent duty to raise its voice against them. One of the forms this expressive agency of the state can be manifested is by making explicit that the relationship between the state and such majority or powerful social group is a relationship of toleration. This notion of toleration resembles Forst's permission conception of toleration. However, as it will be clear shortly, it has both liberal and *liberating* features.

When the state tolerates x, it is reluctantly accepting x. This means that it would rather prefer that x did not exist but at the same time acknowledges that it is not authorized to directly intervene in its disappearance. I argue, however, that the state can indirectly discourage x by encouraging or protecting $\neg x$. If a neo-Nazi organization is tolerated and grows in number, then the state can legitimately express concern about the risks such phenomenon represents. If necessary, it can express itself against the ideals and political projects such organization is planning to undertake. If these measures prove to be useless, then some initiatives directed to affect such growth are morally authorized. Conversely, if a neo-Nazi

organization fails to attract new members and therefore risks to disappear, the state has no duty nor interest in promoting campaigns for its rescue.[34]

In contemporary debates about the neutrality of the state it is assumed that the state should not interfere with religious beliefs. Corey Brettschneider refers to this attitude as the "static" conception of religion.[35] The underlying assumption of such approach is that respect for religion requires respect for religion as it is now. This suggests that any external influence—and this is especially relevant if such influence is the state—that might have an effect on religion would alter its intrinsic nature and therefore would jeopardize it. The static conception of religion can be generalized to citizens' worldviews. Freedom of conscience intends to protect individuals' beliefs from state interference. This *prima facie* duty of non interference against citizens' beliefs is a natural consequence of the distinction between the public and the private spheres. Being issues of conscience, religious beliefs belong to the private sphere and therefore under no circumstances is the state authorized to interfere with them. From the point of view of liberal political theory, this approach has a notorious advantage, namely, it sets the basis for respect of freedom of religion and, more broadly, freedom of conscience. The traditional institutional arrangements of separation between the state and the church are usually interpreted as a mechanism to protect both religion from religious interference and the state from religious interference. The static

---

[34] Brettschneider, *When the State Speaks, What Should It Say?*, 80.
[35] Corey Brettschneider, "A Transformative Theory of Religious Freedom: Promoting the Reasons for Rights," *Political Theory* 38, no. 2 (April 1, 2010): 187–213, doi:10.1177/0090591709354868; Brettschneider, *When the State Speaks, What Should It Say?*.

conception of religion seems to respect this ideal and therefore does not seem to report experience much 'religious' conflict.

However, Brettschneider argues, the static conception of religion poses a delicate problem. Within liberal and democratic states, there are religions and secular moral worldviews that are openly illiberal, that is, that explicitly oppose to recognizing the constitutive political values of a democratic state. Members of the Ku Klux Klan, for instance, are openly against recognizing citizenship status to Afro-Americans and therefore are against core values of the underlying principles of a liberal democratic political system.

Illiberalism, however, does not need to be expressed in terms of radical beliefs against the values of freedom and equality. As I described above, the Roman Catholic Church's official views about homosexuality—even under Pope Francis I—are also an example of illiberalism. According to the static conception of religion, interferences with the way religions are constituted are generally considered as illegitimate uses of state power and therefore the state is required to remain silent with regards to the Church's opposition to free and equal citizenship for homosexuals.

The private-public distinction has been the subject of many criticisms, however. The most salient one is that it should not be understood as showing the limits for legitimate state power. In other words, the distinction must not entail any consequence of the sort that within the private sphere state power is illegitimate.[36] Brettschneider proposes the "principle of public relevance" as a

---

[36] Susan Moller Okin famously criticizes Rawls' political liberalism on these grounds. According to her, Rawls' use of the public-private spheres leaves inequalities and oppression within families

devise to identify where to draw the scope of the legitimate use of coercive state power. According to this principle, "beliefs and practices that conflict with the ideal of free and equal citizenship can be of public concern, and should be changed to make them compatible with democratic values."[37] The principle applies to institutions that are traditionally conceived as belonging to the private sphere, such as civil society organizations and the family. According to this principle, private issues of the kind of internal dynamics of a family become public issues as soon as such dynamics hinder the status of free and equal citizenship of its members.[38] Hence, if there is widespread opposition to recognize equal rights to all citizens, the state is authorized—and in some cases required—to use its power to seek a modification of such beliefs in order to guarantee a safe environment for the excluded social group.[39]

The state can pursue the transformation of illiberal beliefs in several ways. Brettschneider argues that the family and civil organizations are potentially subject to public evaluation and criticism by the state. The state might be required to use its expressive power, and not its coercive one, to publicly criticize beliefs and practices that are against the ideal of equal and free citizenship. The objective of the state in undertaking such a task is to persuade citizens to embrace the values of free and equal citizenship and subsequently to encourage them to revise their beliefs in order to transform them into liberal ones. Thus, civil associations

untouched, see her *Justice, Gender, And The Family*, Reprint edition (New York: Basic Books, 1991); "Political Liberalism, Justice, and Gender," *Ethics* 105, no. 1 (October 1, 1994): 23–43.
[37] Brettschneider, *When the State Speaks, What Should It Say?*, 24.
[38] This is particularly clear in the cases of children. For instance, if the householder decides to send to school only to his or her male children, there is no doubt that the state is authorized to intervene and to make sure all children are sent to school.
[39] In the next chapter I provide a republican framework to illustrate what authorizes the state to act in this way.

acting upon their racist, misogynist, or homophobic beliefs will be confronted by the expressive power of the state.

The expressive power of the state can be displayed in different ways. For instance, it can be exercised trough public discourses by state officials, by the way school curricula are designed, or in the decision about national holidays and public monuments. Furthermore, recognition of free and equal citizenship to all can be required as a condition for organizations seeking the 'non-profit organization' status and thereby applying for tax-exceptions.[40] These displays of power have to be accompanied by reasons that led it to undertake such actions. While neo-Nazism can be tolerated, the state is not required to adopt a neutral stand in the way school curricula are designed. At schools, ethnic supremacism is condemned.

Brettschneider considers that the Catholic Church discriminates against homosexuals. However, he finds that within such institution there is a clear distinction between its theological arguments and its political ones. There is a theological distinction between gay and non-gay people, and the Church is free to discriminate on such grounds within its community. As a matter of fact, homosexuals are not officially excluded from the Catholic Church. At the political level, Brettschneider considers that the Church is not opposed to the recognition of homosexuals as citizens with political and social rights. Catholic activism against gay-marriage, however, constitutes an element of illiberalism that might need to be addressed by democratic persuasion. As things are in the United States, Brettschneider says, this activism does not really threaten free and equal

---

[40] Brettschneider, *When the State Speaks, What Should It Say?*, chap. 4.

citizenship to homosexuals. If the Catholic Church participates more energetically in this issue, he suggests, then the Church might lose its tax-exemptions.

Arguably, in other states the Church adopts a more confrontational attitude to advancements in favor of full recognition of equal rights to homosexuals. This is particularly evident in democracies where it represents the historical majoritarian religion (e.g., Latin America, Catholic Europe).

My account of toleration points to a direction similar to Brettschneider's expressive state. However, I do not claim that the state must enroll in democratic persuasion. I claim that it has to adopt an attitude of *explicit toleration*. It does not exercise coercive force against illiberal groups, but it declares that it is tolerating them. In doing so, the state actively supports the views of excluded social groups. If a religious school discriminates children on the grounds of their sexual identity, the state has to actively declare its commitment to the promotion of an environment that is not hostile toward diversity of sexual identities. In the same-sex marriage debate, for instance, the state should display its commitment to equality and to support reforms seeking full recognition of rights.[41]

This "taking sides" strategy differs from the common description of deliberative democracy in the following way. Deliberative democracy maintains that disagreements in politics should be solved by an exchange of public reasons. However, in cases in which disagreements are reasonable, the exchange of public reasons would lead to no consensus. In such cases, alternative mechanisms should be adopted. The most common among them is what has been called the "politics

---

[41] In Chapter Four I analyze whether the state can promote the interests of excluded minorities even if such interests do not seem to constitute the 'common good' of the community.

of compromise."[42] It requires that the disagreeing parties modify their respective views up to a point in which they can find a middle way that does not sacrifice their initial views.

To identify cases of reasonable disagreements in political debates is already a controversial task, for the debate might get politicized. The debate about same-sex marriage might be considered as a case that could lead to a reasonable disagreement and therefore compromises might be the solution to it. Deliberative democracy is more akin to recognizing the reasonableness of the debate rather than dismissing one of the parties as unreasonable. The "taking sides" approach I am presenting here requires the state to take the side of the view that supports free and equal citizenship.[43]

5. Concluding Remarks

In this chapter, I have advanced an argument for toleration that differs from the prevailing approaches in its regard. I have departed from the conceptualization of toleration as a relationship in which the question about toleration of illiberal minorities is at stake. Tolerance has been understood in current debates as the question about the proper relationship the state must establish with regards to minorities that deviate from established norms.

It is important to stress that I have not argued against such characterization, for it is necessary in the context of deep pluralism of contemporary societies. Non-liberal minorities do raise challenges to liberal states and therefore addressing the question of toleration in these terms is an important

---

[42] Gutmann and Thompson, *Why Deliberative Democracy?*.
[43] I had developed this argument in Chapter One.

task. I have argued that liberal states do not always correspond to liberal societies and therefore I have addressed the question about the proper relationship a liberal state should establish with its illiberal majority. Against some conceptualizations of toleration, I have argued that this kind of situation is possible from a conceptual point of view. Furthermore, I have showed that the state has a duty to protect vulnerable social groups even by taking sides between opposing positions in political debates. This 'taking sides,' I claim, does not violate the principle of state neutrality because it is guided exclusively by the defense and promotion of free and equal citizenship.

CHAPTER 3

Majoritarian Beliefs and Neo-Republicanism

In the previous chapter I developed an interpretation of toleration that seeks to diminish the social conditions leading to the consolidation of social norms that exclude and marginalizes certain social groups. This chapter provides a theoretical framework within which the state is entitled to reduce injustice while at the same time preserving the values of freedom of conscience and equality.

According to Philip Pettit, there are two kinds of political power in the social world: *imperium*, which is the power of the state over its citizens; and *dominium*, which is the power citizens can exercise over each other.[1] According to neo-republicanism, freedom is the non-arbitrary use of each of these two powers. A free citizen is a citizen that lives within an environment that guarantees that nobody will arbitrarily interfere with the (meaningful) choices she decides to make throughout her life. Freedom entails non-domination neither by the state nor by fellow citizens.[2]

The alleged superiority of neo-republicanism over liberalism lies in the fact that it identifies and addresses more cases of un-freedom than liberalism does. Two well-known cases of this are the relationships between benevolent masters with their slaves and benevolent husbands with their wives under the law of

---

[1] Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Oxford ; New York: Oxford University Press, 2001), 152.

[2] According to republicanism, free citizens also enjoy of non-domination from external agents (e.g. states other than their own)

85

coverture. Interpersonal relationships of domination that are of particular concern for neo-republicanism are relationships of domination in the family and at the workplace. And yet, republicanism and feminism still do not achieve a "plausible alliance."[3]

In this chapter I address one criticism recently raised against neo-republicanism, namely, that it "does not always justify intuitively acceptable policies that would effectively reduce the domination of women (or others)".[4] I will argue that neo-republicanism provides with tools for democratic criticism against arbitrary *imperium*. In particular, I respond to Victoria Costa's and Alan Coffee's claims that neo-republicanism might be bad for women and that it cannot address oppressive and exclusionary social norms.[5]

1. Common avowable interests

Imagine a community, let's call it Peru*, in which there is a widely shared religious belief that promotes arrangements under which women are subject to domination by their husbands. People in this community do not declare any interest in modifying such arrangements and thereby in reducing their related domination. Instead, they seem to support the collective reinforcement of those beliefs and customs and therefore they also seem to support the deepening of the disadvantaged condition of women. To the eyes of the state and of the larger society, such arrangements provoke clear cases of relations of private domination.

---

[3] Anne Phillips, "Feminism and Republicanism: Is This a Plausible Alliance?," *Journal of Political Philosophy* 8, no. 2 (2000): 279–93.

[4] Victoria M. Costa, "Is Neo-Republicanism Bad for Women?," *Hypatia* 28, no. 4 (November 1, 2013): 930, doi:10.1111/hypa.12002.

[5] Costa, "Is Neo-Republicanism Bad for Women?"; Alan M. S. J. Coffee, "Two Spheres of Domination: Republican Theory, Social Norms and the Insufficiency of Negative Freedom," *Contemporary Political Theory*, Forthcoming 2014, doi:10.1057/cpt.2014.5.

However, since in this case the state cannot "claim to track common avowable interests" in seeking to reduce such blatant cases of private domination, its action in such direction is not authorized. The state cannot act because it cannot identify interests, within Peru*, in favor of reducing domination. Pettit calls this the "problem of the unauthorized state."[6]

In Peru*, there is a system of norms that reinforces private domination whilst at the same time is widely supported by the community. According to Pettit, preservation and reinforcement of these customs can be regarded as the common interest of the community. A 'good' represents the common interest of a population "so far as cooperatively avowable considerations support its collective provision."[7] These are the considerations that should not be dismissed as irrelevant when the community entertains discussions about what should be collectively provided. These are not considerations that favor sections or private interests that the parties to a deliberation cannot find a particular reason to heed. They are 'common interest considerations.' As Peru* illustrates, these considerations are not immune from promoting and reinforcing private domination. In this case, the state cannot track common avowable interests in reducing domination *because* the common interest of the community is in maintaining the system of domination.

The republican conception of freedom as non-domination anticipates some sort of context-sensitivity in the identification of the common interests. Non-

---

[6] Philip Pettit, "The Determinacy of Republican Policy: A Reply to McMahon," *Philosophy & Public Affairs* 34, no. 3 (June 2006): 282–283, doi:10.1111/j.1088-4963.2006.00068.x.
[7] Philip Pettit, "Democracy, Electoral and Contestatory," in *Designing Democratic Institutions*, ed. Ian Shapiro and Stephen Macedo, NOMOS, XLII (NYU Press, 2000), 108.

domination is defined in terms of not finding oneself in a situation of vulnerability such that someone else has the power to arbitrarily interfere with one's life choices. In cases in which there is private domination and it is possible to track common avowable interests in reducing such domination, republicanism holds that state's action to reduce it is authorized. However, in cases in which state action is at odds with the common interests of the community, the state's *imperium* can only be perceived as an arbitrary exercise of power. A state's act seeking to reduce private domination is itself an act of domination if the state cannot track common avowable interests within the community.

What a community collectively identifies as state's arbitrary interference is, indeed, "an issue of fact." It depends on the local culture and context and its identification is essentially political. It does not depend on higher moral principles "derived from some privileged evaluative standpoints."[8]

2. Social norms and private domination

In her "Is Multiculturalism Bad for Women?"[9] Susan Moller Okin expressed skepticism about multiculturalism. Her worry was straightforward: while there are strong arguments to preserve cultures and grant cultural rights, such preservation risks perpetuating women's domination. One of Okin's most shocking examples is a law in Peru that exonerated rapists if they proposed to marry their victim and, what is worse, it exonerated co-defendants in a gang rape if one of them offered to marry the victim. As the *New York Times* reported at the time, the legislation

---

[8] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford; New York: Oxford University Press, 1999), 57.
[9] Susan Moller Okin and Martha C. Nussbaum, *Is Multiculturalism Bad for Women?*, 1st Edition (Princeton, N.J.: Princeton University Press, 1999).

enjoyed popular support: "a [*most certainly male*] Peruvian taxi driver explained: 'Marriage is the right and proper thing to do after a rape. A raped woman is a used item. No one wants her. At least with this law the woman will get a husband.'"[10] The law was revoked in 1997, but Peru is still far from overcoming women's domination and to direct itself into the path of gender equality. Okin's conclusion is that "special care must be taken to look at within-group inequalities" considering that inequalities between the sexes "are likely to be less public, and less easily discernible."

Echoing Okin, Victoria Costa has recently published "Is Neo-republicanism Bad for Women?"[11] and her worries about neo-republicanism mirror Okin's. Historically, republicanism has been hostile to women[12] and therefore Costa's worries might not be surprising in principle. Neo-republicanism, however, has sought to change such relationship and tries to present itself as a plausible political doctrine advancing claims for overcoming gender domination. Arguably, feminists would find republican commitment to elimination or reduction of domination appealing. In this respect, neo-republicanism's focus on domination exercised both by the state and by citizens seems a promising agenda for feminism. Republicanism is explicitly committed to reduce the sort of domination that affects women and that liberalism has found so difficult to

---

[10] Ibid., 15. Parenthesis mine. This sort of legislation is by no means uncommon or a matter of the past. Rajeev Bhargava describes the situation of Pakistani women. According to the Hudood ordinance, women who are unable to demonstrate that they have been victims of rape are punished. The evidence women have to provide includes the support of four male witness. A failure in such demonstration can led to the punishment of woman on the basis of fornication. See Bhargava, "Rehabilitating Secularism," 102, 112.

[11] Costa, "Is Neo-Republicanism Bad for Women?"

[12] Phillips, "Feminism and Republicanism."

address.[13] In particular, it is committed to reduce domination produced by the social norms citizens impose to each other. It might be perplexing, therefore, that such intellectual and political agenda could be bad for women.

Costa's claim is that Pettit's account of freedom is not well enough specified and therefore might be unable to identify and address women's domination. She acknowledges that incorporating the notion of basic liberties as a standard for measuring the freedom of citizens is an improvement for the efficient identification of cases of domination that should be addressed by the state. However, Costa argues, Pettit's list of basic liberties is too "minimal" and "it might still leave a significant amount of interpersonal domination in place, and might still discriminate against some groups."[14]

On several occasions, Pettit has suggested that the specific and detailed list of basic liberties has to be determined by each society and therefore a general list of universal liberties is not necessary. However, he offers a list that includes the common freedoms protected by democratic states; namely, freedom of expression, freedom of association, freedom of religion, political rights, "and so on."[15] According to Costa, this minimal list can be viewed as offering thin interpretations that allow for significant interpersonal domination. For instance,

---

[13] Namely, private domination. Perhaps the most famous exemplar of the limits of liberalism in dealing with gender domination is the debate feminists held with Rawls' inclusion of the family as an institution of the basic structure of society. See Okin, "Political Liberalism, Justice, and Gender"; Okin, *Justice, Gender, And The Family*; Martha Nussbaum, "Rawls and Feminism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (New York: Cambridge University Press, 2002), 488–520.

[14] Costa, "Is Neo-Republicanism Bad for Women?," 933.

[15] Pettit's list of basic liberties is fundamentally Rawlsian: "there is the liberty to judging as one thinks best; speaking one's mind; associating with others; casting a vote; and putting oneself forward for office." Philip Pettit, "The Basic Liberties," in *The Legacy of H.L.A. Hart: Legal, Political and Moral Philosophy*, ed. Matthew Kramer et al. (Oxford; New York: Oxford University Press, 2008), 203.

she claims, the fact that in the United States there is no right to paid maternity leave can be interpreted as a sign that in that society such lack of social protection suggests that "at present, cooperatively admissible considerations do not support the idea that these benefits are essential for protecting and empowering significant choices in the lives of citizens."[16] Costa argues that, under current circumstances, provisions for paid maternity leave are not constitutive for free citizenship.

It is not clear what conclusion Costa intends to draw from such criticism, however. She might be suggesting that social protection provided by maternity leave is not supported by admissible cooperative considerations because they are not part of the society's common interest. Cooperative considerations are those that cannot be dismissed as irrelevant in discussions about what should be collectively provided. Thus, neo-republicanism's normative stand in this case would be that progress toward granting social protection to women would only be achieved when society transforms its common interests and decides to address severe social and economic disadvantages women suffer due to the lack of provisions for maternity leave. Considering this picture, all that is left is to wait until "the majority of citizens are persuaded that state action is required."[17]

However, this is not a plausible interpretation of Pettit's republicanism. As described by Costa, the denial of granting paid maternity leave is a matter of the way society's common interests are defined and not of the state's neglect to address domination. If the neglect to legally enforce such social protection is described in terms of what the common interests of the community are, then the

---

[16] Costa, "Is Neo-Republicanism Bad for Women?," 933.
[17] Ibid., 935. Endnote 14.

state is not authorized to address its related forms of domination. As it was stated in the previous section, state action that does not track the common interests of the community is an act of arbitrary exercise of power.

Costa claims that the state's denial to grant paid maternity leave has "an enormous impact in the lives of women," for it "generates systematic disadvantages and diminishes their prospects for economic independence."[18] In these circumstances, it is possible to claim that the state is *failing* to treat women as equal citizens, for it is preserving and enhancing women's domination. However, within the neo-republican theoretical framework, it is not possible to argue, at the same time, (a) that—at present—granting paid maternity leave is not a cooperative admissible consideration and (b) that the state is reproducing domination. If (a) is true, then the state would not be authorized to act and therefore (b) becomes false. Conversely, the truth of (b) falsifies (a).

When paid maternity leave is denied, the state is preserving and enhancing domination because it is refusing to remove the source of arbitrary interference in women's lives. The legal system that requires women to work during early motherhood constitutes an arbitrary exercise of power and therefore the state's *imperium* becomes an arbitrary form of power. Costa's interpretation of neo-republicanism suggests that the government's failure to effectively protect women in this particular case shows that society's cooperatively avowable considerations do not include considerations about the negative impact that not granting maternity leave has on women. Such claim depends upon interpreting political deliberation as the only forum in which cooperatively avowable interests are

---

[18] Ibid., 933.

expressed. If republicanism considered this to be the case, then Costa's criticism would be right.

However, it is not necessary to obtain a majority to transform institutionally enhanced forms of domination. Nor is it necessary to wait for a particular issue to become part of the political agenda in order to reduce domination. It is possible to track women's avowed interests in being recipients of such social protections and therefore their current neglect constitutes an act of domination. In other words, starting from the fact that recent governments have failed to address this kind of domination, it is not possible to say that considerations that intend to address it are not cooperatively valid considerations. The conclusion that can be derived, on the contrary, is that governments are perpetuating domination as long as the claims raised by movements requiring acknowledgement of social protections to women within their family life do not find institutional mechanisms facilitating their expression in the political sphere.

In this sense, neo-republicanism can be interpreted as a tool for democratic criticism. Republican political theory is committed to reducing domination. An efficient advancement in this direction requires a well-developed institutional system to identify relationships of domination. Once a case of interpersonal domination is identified, and there is a manifest interest by the dominated party—or even someone else sharing some sort of group affinity—it is a duty of the state to provide the necessary means to reduce such relationship. A state that falls short in identifying cases of interpersonal domination is a state that is failing to seek its duty of reducing domination. Therefore, neglect of paid maternity leave in the United States is not, as Costa argues, a sign that "cooperatively admissible

considerations do not support the idea that these benefits are essential."[19] On the contrary, it is a sign of the state's failure in protecting women from arbitrary interference with their significant life choices.

The Authorial and Editorial Dimensions

A republican democratic system, as proposed by Pettit, has two dimensions, one is authorial and the other editorial. These dimensions are intended to guide the institutional design of the state in such a way that it is successful in "searching out and generating a rich supply of presumptive common-interest policies" and in "scrutinizing and eliminating those candidate policies […] that do not advance common avowable interests."[20] This two-dimensional version of democracy intends to guarantee that the state identifies the common avowable interests of the citizens and advances such interests only.[21]

The authorial dimension of the state consists in producing a great number of candidates for policies that might constitute the common avowable interests of a particular political community. The executive power, thus, is expected to advance policies that obey to the expressed interests of the citizens. Accordingly, citizens can conceive of themselves as indirect authors of the legislation. The editorial dimension of the democratic state entails avoiding that the policies advanced by the executive power go beyond the common interests of the political community. In other words, it implements mechanisms of control that prevent

---

[19] Ibid.
[20] Pettit, *A Theory of Freedom*, 160. See also Pettit, "Democracy, Electoral and Contestatory."
[21] Pettit, *A Theory of Freedom*, 159.

sectarian interests from being advanced. More specifically, they seek to guarantee that private interests do not find their way within the institutions of the state.

The authorial and editorial dimensions of the state frame its institutions in such a way that it provides real opportunities to all democratic voices to be heard. One way in which the state might fail in reducing non-domination is by neglecting such opportunities. In this way, some social groups might be silenced and their claims for freedom would never find political echo. In this case, it is the duty of the state to remedy such lack of political recognition of such groups. If neglect to grant paid maternity leave falls into this category, the criticism should be directed to the state and not to the political doctrine it claims to follow (e.g. republicanism).

Decisions about the common goods to be collectively provided must be made upon deliberation and must be decided according "to reasons that are publicly admissible within the group." The admissible reasons within a particular group might be identified in several non-controversial ways. For instance, they can be unanimously admissible, they can be admissible for a "subgroup that is regarded as a reliable judge," or they can be defined by procedural mechanisms aiming at resolving reasonable disagreements. Such mechanisms might include lotteries, impartial panels, qualified committees, or majority vote.[22]

It is possible—and very likely—that the state fails to recognize the interests of minorities or groups that are not empowered. In other words, electoral institutions might fall short in incorporating the voice of some social groups. This

---

[22] Philip Pettit, "The Common Good," in *Justice and Democracy: Essays for Brian Barry*, ed. Professor Keith Dowding, Robert E. Goodin, and Carole Pateman (Cambridge; New York: Cambridge University Press, 2004), 163–164.

can be due to the costs it entails for small political organizations to be heard, or to the monopoly of few political parties.[23] In both cases, the political system shows an exclusivist face and silences the voice of some social groups. Thus, according to this interpretation of neo-republicanism, the neglect of granting paid maternity leave in the U.S. is a demonstration of the cooptation of politics by groups that do not allow all political voices to express themselves and thereby to take the shape of real policy proposals.

The state might be failing in both its authorial and editorial dimensions. In the former case, it might be silencing voices of social groups advancing claims for social justice. Such claims might be genuine candidates of constituting the common avowable interests of the political community in so far as they are promoting the reduction of intrapersonal domination. In the latter case, it might be failing to provide effective mechanisms of democratic contestation denouncing that the denial to grant paid maternity leave is grounded not on common interests considerations but rather on considerations that advance private interests. Likely, the reasons supporting such rejection are male-profit-based.

As Pettit conceives it, a republican democracy must arrange its institutions in such a way that both the authorial and the editorial dimensions are effectively pursued. This makes republican democracy both participatory and contestatory. The authorial dimension guarantees that the power of the state is used in such a way that reflects the will of the people. Political autonomy, thus, is achieved in the traditional republican conception of self-legislation trough democratic government. However, since institutions might not work perfectly and the

---

[23] Ibid., 167.

96

dynamics of politics is complex, the authorial dimension of democracy is not enough to pursue non-domination. At this point, the editorial dimension enters the scene and shapes democratic rule. Citizens must be able to criticize and reject state's power when it is sectarian.

The authorial dimension of republican democracy is sometimes overlooked by political theorists.[24] This might be due to the underlying theoretical commitment to a negative conception of freedom, which is associated with sensitivity towards individual freedoms. Positive liberty, which is developed within the Rousseaunian version of republicanism, emphasizes the role of the citizens in jointly deciding how political power is to be used and in jointly deciding what the common good is, even at the cost of the sincere opinion of an individual. Alan Coffe, for instance, insists on the negative character of neo-republican freedom and therefore emphasizes its editorial/constestatory rather than its authorial/participatory nature. Given that neo-republicanism is grounded on a conception of negative freedom, democratic institutions and the definition of the common good cannot be aligned with a *positive* conception of freedom.[25]

Coffee's interpretation of republicanism leads to similar problems than those signaled by Costa, namely, that social prejudices and cultural norms remain "unchecked and undetected." The editorial dimension of republican democracy enables citizens to control the law and to scrutinize its content "in the light of the community's prevailing norms, rejecting any element that does not track the

---

[24] In a recent criticism to Pettit's republicanism, Alan Coffee argues that the emphasis on the contestatory dimension of democracy and its adoption of negative freedom leaves some social sectors unprotected from arbitrary interference, Coffee, "Two Spheres of Domination."
[25] Ibid.

common good."[26] However, Coffee continues, the editorial dimension cannot be replicated at the moment of checking the community's social norms that serve as standards for determining the common good. Since the common good is not determined by abstract moral principles but only by reference to other norms—the fact of the matter—it is the politics of the local culture which challenges social norms. Therefore, bias and prejudice are inescapable elements of the editorial dimension of republican democracy.

I have showed, however, that the distinction between the authorial and the editorial dimensions of democracy is not directly related to the distinction between positive and negative freedoms. Coffee is right when he says that Pettit does not align his version of republicanism with the participatory tradition. However, the authorial dimension of democracy plays a fundamental role within the institutional design of a republican democracy, for it has to guarantee that all voices—and especially those of the dominated—get a hearing and a real say in designing what counts as the population's common good. The role attributed to the authorial dimension is to open up channels of participation to social groups that do not have the means to advance their claims against domination.

3. A real life situation: Republican Spain

A second example Costa provides to illustrate how the current version of neo-republicanism does not capture all forms of interpersonal domination is the same-sex marriage debate. As in the example discussed in the previous section, she claims that republicanism suggests that it is necessary to gain political momentum

---

[26] Ibid.

in order to advance legal transformations aimed to reduce domination. It can turn out, she argues, that the state is not authorized to act toward reducing domination in this context because allowing equal rights to homosexuals is not currently a public interest of the society. However, she reacts, this might be due to the fact that there is a widely shared ideology that supports interpersonal domination or that the public opinion represents only the views of the powerful that control "the political process and the media."[27]

I have argued that such approach is not correct. To support the argument presented above, I now provide two cases—one real, the other counterfactual—that illustrate that commitment to reduction of domination is not utterly constrained by the vicissitudes of electoral politics. I proceed, then, by arguing against the suggestion that the denial of granting same-sex marriage on equal grounds might be backed by the fact that the state is unauthorized to act in order to reduce domination in this respect.

Former Spanish Prime Minister Manuel Rodriguez Zapatero adopted neo-republicanism as the political doctrine to be followed by his government. This means the adoption of a commitment to the reduction of relations in which citizens are vulnerable to arbitrary interference against their will by the side of both private agents and the state. Particularly, it commits the government to reduce the dominating power collective corporations hold. For instance, to control

---

[27] Costa, "Is Neo-Republicanism Bad for Women?," 932.

private financial support to parliamentarians, political parties, and political campaigns.[28]

Another collective institution that enjoys of dominating power over Spanish citizens is the Catholic Church, which in 1979 agreed to become a financially autonomous institution by 1985. The fact that this agreement has not been respected, and that the state has not enforced it, indicates the power the Church has over the state. No government wants to confront the Church at the cost of losing its support. Therefore, church-state separation has not been fully achieved in Spain because of the excessive power of the former (the Catholic Church) over the latter. It can, for instance, interfere with political decision making processes and shape them according to its moral, political, and economic interests.

Perhaps the most salient example is same-sex marriage, of which the Catholic Church is arguably among the most strident opponents. Same-sex marriage is a controversial issue in many democracies worldwide and opposition to it does not come from the Catholic Church only. Reducing domination in this field means that private agents'—whether religious institutions or not is irrelevant—power to deny the right to gay couples to marry and to form a family has to be undermined. The Catholic Church receives public funding and attracts media attention whenever it pronounces its opinions on moral sensible issues such as same-sex marriage. It is possible to say, therefore, that the Church is in a situation from which it can exercise dominating power. Certainly, the debate

---

[28] José Luis Martí and Philip Pettit, *A Political Philosophy in Public Life: Civic Republicanism in Zapatero's Spain* (Princeton University Press, 2012), 83.

about same-marriage is influenced by a combination of aspects, of which the Church and the echo mass media does of it are undoubtedly significant contributors.

During Republican Spain, same-sex marriage was approved. Rodríguez Zapatero went ahead with this reform even in the face of fierce opposition coming from all sides of the political spectrum—including his own political moderate leftist party. At the time, the issue was not in the public agenda and it was not a matter of public controversy among political parties. There were no empowered social movements pressing the public agenda into debates considering reforming the legislation. Approval of same-sex marriage was not an imminent debate to be held in the public sphere. Yet the Spanish government actively pursued the reform as its own initiative. Its defense of it was republican in spirit, for it appealed to restoration of dignity and freedom. The prime minister challenged his opponents referring to what Pettit calls the "eyeball test," for he called them to "look into the eyes of homosexuals, and tell them they are second-class citizens."[29]

The question Costa's interpretation of republicanism raises at this point is whether the state was authorized to act in this situation. The fact that the issue of same-sex marriage was not on the public agenda of Spanish politics might indicate that considerations about equality in this respect were not part of the

---

[29] Ibid., 21–22, 79. On the "eyeball test," see Philip Pettit, *On the People's Terms*, 1st ed. (Cambridge University Press, 2012). It can hardly be said that such legal recognition meant the end of domination over the gay community. Social and legal transformations necessary to achieve such end are perhaps even harder to reach than granting equal family rights. The measure, no doubts, reduced domination.

common avowable interests of the Spanish political community.[30] If this is the case, the state was not authorized to act in such a way. However, this conclusion contradicts Pettit's—and Martí's—view on the issue.

A reason explaining why the Spanish state was indeed authorized to act in this particular case needs to be provided. The immediate response is the factual observation of social movements struggling in favor of the rights of homosexuals—and in favor of all sexual minorities in general. Costa rightly points out that their visibility might be determined by their powerless situation and lack of access to mass media for promoting their initiatives. Neo-republicanism acknowledges this as a form of domination and therefore it does not constitute a flow in the doctrine. According to neo-republicanism, lack of visibility of these social movements in political deliberation is a sign of a deficit of political representativeness rather than a sign of the common avowable interests of the political community. Social groups that are under conditions of domination will be more likely outvoted and excluded from scenarios of political decision making. Therefore, defining the common avowable interests of a political community in terms of what has voice and representativeness within *current* democratic institutions and practices would only reproduce injustice. By legalizing same-sex marriage, the Spanish government did not contradict the common good of the Spanish society; on the contrary, it provided some institutional mechanisms seeking to reduce arbitrary interference exercised upon a specific minority.

---

[30] "For example, depending on the views that predominate in the public culture, it may turn out that the state is not authorized to grant same-sex couples the right to get married and adopt children," Costa, "Is Neo-Republicanism Bad for Women?," 932.

4. A counterfactual case: Republican Peru*

Among numerous cases in the so called contemporary western societies, the Spanish case is relatively easy to analyze under the lenses of neo-republican political theory. In this section I show that Costa's suggestion that the state might be unauthorized to act in the case of same-sex marriage is not sound even if considered in counterfactual terms. Pettit invites us to imagine a society (call it Peru*) where all agree on certain moral or religious tenets. In this society, the common avowable interests of the community seem to support certain customs, "including customs that do badly by some of the parties to the cooperation, say, women, or those in a certain caste."[31] If the support is unanimous, Pettit claims, the reinforcement of such customs is to be regarded as common interest. However, he says that the considerations that support the collective reinforcement of the custom "are not robustly considerations of this kind; they will cease to be cooperatively avowable *as soon as a single individual departs from the tenets in question*."[32]

Although the distinction between robust and fragile considerations is not spelt out clearly, it opens up the possibility for state action for the sake of reducing domination. The problem of the unauthorized state, as it turns out, does not really prevent the state from advancing justice in so many circumstances. In Peru*, for instance, it would be enough to find *a single* dissident to be authorized to provide with some way out of domination. In the actual Peruvian case quoted by Okin, it would be enough to find women opposing against the forms of

---

[31] Pettit, "Democracy, Electoral and Contestatory," 142.
[32] Ibid., 142. Emphasis mine.

domination involved in the rape-laws in order not to consider them as part of their common avowable interests. The taxi driver's opinion, therefore, would likely be unrepresentative.

Pettit has not developed the distinction between 'robust' and 'fragile' considerations for constituting the common good of a particular political community. A single person's deviation from the considerations supporting the reinforcement of a dominating social practice is enough not to consider such measure as being constitutive of society's common interest. Thus, the opposition of one single Peruvian to the rape-legislation would be enough to deem it as not representative of the society's common interests. Being 'fragile,' these considerations can be interpreted as volatile and therefore as not constitutive of the core of the set of considerations defining a society's common interests.

In contrast, 'robust' considerations can be interpreted as playing a different role within the set of considerations defining the common interest of a community. Being core considerations, they are not volatile and therefore are not prompt to change. Consider the basic liberty to casting a vote, which is assumed to be an interest citizens are keen to protect and that democracies should not jeopardize. There are different justifications for taking this and other political rights as being fundamental and inviolable. However, nobody would say that this right loses appeal if there is 'a single individual' who departs from exhibiting a fundamental interest in its protection and reinforcement. Political rights are part of the common interests of the citizens of a republic even if there are individuals claiming not to be interested in their enjoyment. A characteristic of a robust consideration is that the circumstantial and subjective perception citizens might

have of it does not directly alters the constitution of the community's common interests.

It is certainly important to specify a clear distinction between robust and fragile considerations. Democratic societies must define what is to be collectively provided and such decisions have to be made responding to the considerations that, according to the standards of each community, should not be dismissed as irrelevant.[33] The republican idea holds that the institutions of the state must be designed as to protect the freedom of the citizens. A free citizen is a citizen that lives within an institutional system that adequately protects her meaningful choices. The basic liberties are the minimal set of significant choices any free citizen must be able to exercise. They provide the framework within which citizens can freely exercise their choices without being exposed to the interference—or threat thereof—of others.[34] It is up to each political community to decide which set of basic liberties it is going to protect. However, there are some constraints. Basic liberties must be "as numerous as they can [consistently] be," they also have to bear personal significance to citizens—and this is contextually defined—, and they must be enjoyable by all citizens on an equal basis.[35]

The basic liberties a republic protects are the pre-existing conditions guaranteeing citizens' possibility to make free and meaningful choices. This is what gives them their 'robust' character. A claim against a basic liberty would be

---

[33] Pettit repeats several times that basic liberties have to be defined by "society-wide criteria," see Pettit, "The Basic Liberties," 206–207.
[34] Ibid., 203.
[35] Ibid., 204–209.

a claim grounded on its dominating nature and therefore, *if sound*, it would call for a redefinition of the whole system of basic liberties. The more fragile the considerations supporting the basic liberty the easier to transform its nature into something that needs no protection. In other words, Peru* might have autonomously and unanimously decided to consider the right of practice x to have the status of a basic liberty. Being republican, Peru* is committed to non-domination and therefore the claim by a single citizen pointing out the dominating nature of x must be taken seriously. If x does indeed impede citizens from making meaningful choices in their lives, then x must be immediately removed from the set of basic liberties. The more oppressive x is, the more easily it will prove itself not worthy to be considered as a basic liberty. In other words, the more burdensome of meaningful choices x is, the more fragile the considerations supporting it are.

5. Concluding Remarks

In this chapter I have argued in favor of an interpretation of neo-republicanism as democratic criticism. I have showed that state commitment to freedom as non-domination provides citizens with tools to individuate instances of domination, whether by the state or by private agents, and to raise claims against failures of the state in properly addressing such cases of domination. Accordingly, I have showed why Costa's and Coffee's worries about neo-republicanism being bad for historically marginalized social groups are not as worrisome as they present them. As I have showed, given that neo-republicanism does not associate the public opinion to the common interest, failing to politically recognize the interests of a

dominated social group is not a problem of neo-republicanism but rather a problem of the state. Hence the U.S. state is promoting domination by not granting paid maternity leave. This reasoning works similarly for the case of same-sex marriage and the possibility for homosexuals to adopt children. In these cases, states are failing to meet their commitments to freedom even if these are not 'hot topics' in the public sphere.

As to the problem of the unauthorized state, I have argued that its scope as a problem is thin. Cases in which the state would indeed not be authorized to act reducing domination might be extremely rare, for cases like Peru* are not likely to exist. In order to avoid being arbitrary, the *imperum* of the state must coincide with the common interests of the political community. However, this common interest is not equivalent to the public opinion of the community. On the contrary, the common interest must be particularly sensitive to relationships of interpersonal domination and to cover the interests and ideas of those that are situated under conditions of domination. In order to avoid cases like Peru*, republican states are required to be particularly attentive to transformations in the avowable interests of the oppressed individuals, who might—sooner or later—initiate a struggle seeking social transformation and non-domination.

PART II

Church-State Separation and Minorities

So far, I have addressed issues concerning the power of majorities and the threats they pose for pluralism to thrive. I have focused on powerless and marginalized social groups that are not necessarily associated with a religious identity. The two chapters that form Part II address the institutional question concerning the separation between the state and the church. As in Part I, the main focus is on non-religious expressions of pluralism and the interferences they might suffer from powerful and majoritarian institutions. In the following two chapters, the focus is on the power the Catholic Church exercises in societies where Catholicism is the majoritarian religion and its Church is an historical political and social force. I investigate whether such circumstances require the implementation of strict church-state separation. The two chapters are contextually situated; Chapter 4 analyses the implementation of the principle of secularism in Colombia whilst Chapter 5 is focused on the Italian case. For both cases, I argue that strict church-state separation is justified.

CHAPTER 4

On Separation and Anticlericalism

It is generally accepted that the values of equality and freedom are at the core of liberalism. John Rawls' influential version of it, for instance, characterizes citizens as free and equal and develops a conception of justice in which, without jeopardizing these values, pluralism is preserved.[1] Developing an institutional design that takes into consideration the freedom and equality of citizens faces challenges when questions about the proper role of religion in the political life of society are addressed. The issue is particularly delicate when it comes to discussions about the role of religion within the system of education. Sensitive questions about children's right to autonomously develop their moral worldviews, parents' right to promote their moral views on their children, the state's aim to educate good citizens, or churches' aim to attract more followers have to be properly addressed while guaranteeing everybody's freedom and equality.

The well-known principle of church-state separation plays a decisive role in the success—or failure—of state's commitment to freedom and equality. In some cases, it is interpreted as an antireligious principle, which leads to failures in protecting freedom. In other cases, it is interpreted as an inclusive pluralist principle, which leads to friendly environments for religious pluralism to flourish. In this paper, I argue that it is also interpreted in anticlerical terms. This interpretation, I claim, is necessary in contexts where a politically dominant

---

[1] Rawls, *Political Liberalism*, Introduction to the Paperback Edition.

church controls the institutions of the state as a means to impose its moral worldview.

I illustrate these interpretations by analyzing how they have crystalized in designing the institutions for education in the French conception of republican *laïcité*, the Anglo-Saxon conception of liberal pluralism, and the Colombian conception of anticlerical liberalism.

1. Two conceptions of secularism: *laïcité* and liberal pluralism

A. Republican *laïcité*

The two pillars upon which French republican *laïcité* is built are the "Laws of Education" (1880-1883) and the "Law of Separation" (1905).[2] Both are initiatives seeking to promote state's independence from the Catholic Church, which at the time had sovereign powers and control over governmental institutions. State's implementation of the two laws confronted the Catholic Church at the political, ideological, and economical levels. At the political level, confrontations emerged as struggles over control of governmental institutions; at the ideological level, confrontations emerged as struggles over the content of the moral doctrines citizens were expected to endorse; and at the economic level, the conflict consisted in attempts to undermine the economic means to advance their respective long term projects.[3]

---

[2] Laborde, *Critical Republicanism. The Hijab Controversy and Political Philosophy*, 33–55.

[3] Sudhir Hazareesingh, *Political Traditions in Modern France* (Oxford; New York: Oxford University Press, 1994), chap. 4; Faviola Rivera, *Laicidad y Liberalismo*, Colección de Cuadernos Jorge Carpizo. Para Entender y Pensar la Laicidad 3 (Mexico D.F.: Instituto de Investigaciones Jurídicas - UNAM, 2013), 2–3.

The Separation Law embodied the "classical ideal of liberal separation" of the state from the churches.[4] It attempted to guarantee an equal right to exercise freedom of religion and neutrality of the state. The independence of the state from religion had two aims. First, it intended to differentiate functional powers between the state and the Catholic Church. And second, it promoted guarantees for equal treatment to all religions.

The Laws of Education determined the secularization of public schools. They intended to replace the religious content taught at public schools with civic—civic humanist—education. The Catholic Church had been sustaining privileged access to spreading its doctrine among the younger population by monopolizing primary education. By taking over such monopoly, the republic initiated an ideological struggle in order to modify the content of the education in such a way that the enlightened *morale laïque* replaced Catholic morality.[5]

The implementation of republican *laïcité* in public schools used a very specific interpretation of the three foundational values of the French republic, namely, equality, freedom, and fraternity. Equal treatment is guaranteed by state's blindness about characteristics defining pupils' identities, such as their religion or culture. Public schools are places detached from elements constituting pupils' identities and differences and therefore are places where they appear as equals.[6] The value of freedom is interpreted in terms of the enlightened conception of

---

[4] Laborde, *Critical Republicanism. The Hijab Controversy and Political Philosophy*, 33; Cécile Laborde, "On Republican Toleration," *Constellations* 9, no. 2 (2002): 168–169.

[5] See, for instance, Jules Ferry's justification for the foundation of women teachers' training colleges all around the country. He considered that the Catholic Church maintained its power through its influence over women, thus, he argued that "Women must belong to Science (and not) to the (Roman Catholic) Church," in Baubérot, "The Two Thresholds of Laicization," 108.

[6] A similar line of reasoning is adopted by Barry's strategy of privatization of cultural and religious differences, see Barry, *Culture and Equality*, chap. 2.

individual autonomy, which means that to be free is to live a life following self-imposed rules only. This includes emancipation from traditional values, religion, established authorities, and prejudice. In this respect, republican schools are not neutral in relation to religion and morality. Lastly, the value of fraternity is interpreted in terms of a civil religion that attempted to consolidate social cohesion and national identity. Public schools promote cohesion trough honoring the republic, its institutions, and its history. The implementation of a republican civil religion is intended to create social cohesion by appealing to a doctrine different from Catholicism.[7]

Republican *laïcité* was born in the midst of a confrontation against the Catholic Church. On the one side, the Catholic Church defended a clerical political power, which included preservation of control over the institutions of the state and of Catholicism as the moral doctrine of the French people. On the other side, republicans promoted state's autonomy from the Church's control. Historically, this project included both antireligious and anticlerical measures. The former can be defined as measures that intended to attack religion and to foster non-religious—enlightened—citizens. The latter can be defined as measures that intended to guarantee state's independence from the Catholic Church's power. In particular, it sought separation of powers, as opposed to imposition of one over the other.

---

[7] Rivera, *Laicidad y Liberalismo*, 11.

B. Liberal pluralism

Liberal pluralists consider that political secularism is the best way to face the challenges of growing pluralism (e.g., religious and cultural). They distinguish between the fundamental values the state is committed to promote—the *ends* of secularism—and the institutional arrangements designed to advance such values—the *means* of secularism. The former are the values of freedom of conscience and equal respect, while the latter are the principles of church-state separation and neutrality of the state. Institutional arrangements fostering the *ends* of secularism have only an instrumental value, which makes them circumstance-sensitive. Appeals for religious or cultural accommodations are to be decided upon considerations about freedom of conscience and equal respect rather than upon considerations about the principles of church-state separation or of neutrality of the state.[8]

The distinction between the *ends* and the *means* of secularism avoids overemphasizing 'separation' and 'neutrality' formulas that can undermine protection of fundamental values.[9] For instance, it avoids insistence on the principle of separation as justification for the French ban on headscarves at public schools even at the cost of undermining freedom of religion. By making explicit the instrumental value of the principles of secularism, liberal pluralists demonstrate that political secularism is neither hostile toward religion nor insensitive to religious and cultural pluralism. The principles of secularism are not

---

[8] Maclure and Taylor, *Secularism and Freedom of Conscience*.
[9] Overemphasis of such formulas is common in contemporary French political defenses of *laïcité*, see, for instance Henri Pena-Ruiz, *Dieu et Marianne : Philosophie de la laïcité*, Edición: édition revue et augmentée (Paris: Presses Universitaires de France - PUF, 2005), 225.

intended to undermine citizens' religiosity, but to guarantee the possibility to lead a life according to the dictates of their consciences. Nor are they insensitive to pluralism, for they can be adjusted according to the needs of citizens of diverse faiths and cultures.

Making the principles of secularism more sensitive in their relation to pluralism generates a more open institutional environment for religious and cultural accommodations.[10] This is particularly evident when it comes to acceptability of, for instance, religious presence within the institutions of the state, such as public schools. Joselyn Maclure and Charles Taylor have recently described the successful implementation of liberal pluralism in the Canadian province of Quebec. They highlight that institutional openness towards religious and cultural accommodations demonstrates that the state is not biased against such manifestations in the public sphere. An overlapping consensus about the appropriateness of the *ends* and the *means* of political secularism, they claim, has led to an environment in which social cohesion is guaranteed through wide and open respect for diversity.[11]

The case of the place of religion within public schools is of particular interest. Until 2008 the Canadian Province of Quebec had a strict policy of religious-free public schools. Protestant and Catholic education were banned. The 2008 liberal-pluralist reform did not ratify the ban but instead implemented the

---

[10] Charles Taylor has defended this emphasis on diversity in several of his previous work, see Charles Taylor, *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann, Expanded paperback edition (Princeton, N.J.: Princeton University Press, 1994), 40; Taylor, "Modes of Secularism."

[11] Maclure and Taylor, *Secularism and Freedom of Conscience*, 20–26.

"Ethics and Religious Culture" curriculum.[12] The reason why they did not ratify the ban was that the state's acknowledgment the "importance that the spiritual dimension of existence holds for some people."[13] In contrast with the historical adoption of a notion of republican *laïcité*,[14] Quebec gradually adopted a liberal pluralist model that allowed public manifestations of religion within public schools as long as they do not interfere with the rights of others.[15]

Allowing more religious presence within the institutions of the state is not limited to school curricula. Protection of freedom of conscience and of equal respect overrides the principles of separation and neutrality in a way that republican *laïcité* would deem as unacceptable. According to liberal pluralism, requiring public school teachers not to wear religious clothing and symbols illegitimately restricts their freedom of conscience. Their performance at work is not undermined by their public demonstrations of faith, which, moreover, does not necessarily have a proselytizing nature.[16]

The usual argument against allowing public school teachers to wear religious symbols is that it goes against state neutrality. If state officials display religious symbols, they might be perceived as being representatives of both the state and their respective institutional religion. Furthermore, since they are

---

[12] Secularization of Quebec schools came about in 1998, when secondary schools were removed from religious control. The "Ethics and Religious Culture" curriculum was introduced in September 2008. Ibid., 57.

[13] Ibid., 58.

[14] Whether or not public officials have a right to display their religious convictions in the performance of their duties is not a question for republican *laïcité* Ibid., 42–43.

[15] Micheline Milot, "The Secular State in Quebec: Configuration and Debates," *Diversité canadienne/Canadian Diversity* 10, no. 1 (2013): 40.

[16] Pedagogical reasons may justify some restrictions (e.g. wearing a full veil), however, there are no reasons to restrict the use of hijabs Maclure and Taylor, *Secularism and Freedom of Conscience*, 46.

representatives of the state, it might be perceived that the state is privileging one religion over the others. However, Maclure and Taylor consider that "what matters, above all, is that such officials demonstrate impartiality in the *exercise* of their duties."[17] After all, it is not fair to judge someone's impartiality just on the grounds of their religious convictions. In other words, it is not fair to assume that every act of manifestation of one's own religious convictions is an act of religious proselytism. Therefore, in stark contrast to republican institutional arrangements at public schools, liberal pluralism is open to wide permissions for religious presence within them.

So far, I have presented two of the most influential conceptions of secularism and I have highlighted how they settle the question about the place religion can legitimately occupy within public schools. According to the republican model, protection and promotion of the values of equality, freedom, and fraternity require keeping religious content outside the doors of public schools. In contrast, the liberal pluralist model recognizes the importance of religion in people's lives and assumes an accommodationist attitude that opens up public schools' doors for religious content. In the second section of this paper I focus on how secularism has been interpreted in Colombia and how it has been nurtured by both models so far described. I argue that, while it is important to celebrate its liberal pluralist spirit, it is fundamental not to forget its republican, or anticlerical, dimension.

---

[17] Ibid., 44 Emphasis in the original.

2. Secularism in Colombia

A. Religious pluralism

Before presenting the conception of secularism as it is currently applied in Colombia, it is worth mentioning the old system of religious establishment to which it is a reaction. Catholicism was an established religion in Colombia from 1886 to 1991. The Catholic doctrine was officially recognized as the guide to frame the content of private and public moralities. Religious education was mandatory in public schools and private Catholic schools were subsidized by the state, legislation about the family could not contradict the Holy See's doctrine, fiscal exemptions were recognized to the Church, and the clergy was subjected to an autonomous criminal code.[18]

The Constitution of 1991 dissolved the religious establishment that had ruled the country for more than a century. It is grounded on the values of equality and freedom, interpreted as fundamental conditions for pluralism to prosper. Since the previous institutional arrangement recognized official status to Catholicism, Colombian commitment to pluralism, freedom, and equality required the implementation of a system that undermined the privileged position enjoyed by the Catholic Church until 1991.

Commitment to equality and freedom as guarantees of pluralism raises a difficulty in determining how to interpret secularism. The system of privileges

---

[18] A Concordat signed in 1887 and ratified in 1973 intensified the already close relations between the Colombian state and the Catholic Church as established in 1886's constitution. Nowadays most of the articles of the Concordat have been declared unconstitutional, however, the Constitutional Court has found some of them Constitutional Ricardo Arias, *El Episcopado Colombiano. Intransigencia Y Laicidad (1850-2000)* (Bogota: CESO-Ediciones Uniandes-ICANH, 2003), 343.;
Sentencia C-27/93 (Constitutional Court of Colombia 1993).

enjoyed by the Catholic Church is unsustainable within a system that intends to guarantee an equal system of freedom. An interpretation of secularism, more or less captured by the French model of *laïcité*, is to remove all Catholic Church's privileges and to interpret secularism as absolute neutrality and strict separation. Another interpretation of secularism, more or less captured by the model of liberal pluralism, is to equalize the status of all religions up to a point where none is privileged. According to this interpretation, religion receives special status, for the state assumes a strong commitment in guaranteeing effective conditions for free exercise on equal grounds to all religious denominations.[19] Colombian 1991's Constitution opted for the latter interpretation.

Secularism is turned into a political value to which religious associations can appeal in order to be granted effective means for their free and equal exercise of religious practices. Since the implementation of the new system of secularism, numerous "free exercise" cases have reached to the Constitutional Court, which has usually decided in favor of religious minorities. A widespread justification for granting accommodations and exemptions to religious minorities refers to 'equal treatment' claims with respect to the Catholic Church. For instance, in 1997 the Court decided that tax exceptions enjoyed by the Catholic Church but not by other churches, such as the Christian Church "La Casa Sobre la Roca," violated the principle of equality. Instead of derogating the exception to the Catholic Church, the Court extended it to all recognized Christian Churches. In 2006, the Court

---

[19] Although it is a controversial assumption, liberal pluralism is not opposed to recognizing some sort of special status to religion, see above, p. 5. For arguments stressing the difficulties of attributing religion a special status, see Laborde, "Equal Liberty, Non-Establishment and Religious Freedom"; Sonu Bedi, "Debate: What Is so Special About Religion? The Dilemma of the Religious Exemption," *Journal of Political Philosophy* 15, no. 2 (June 1, 2007): 235–49, doi:10.1111/j.1467-9760.2006.00269.x.

recognized the right to an adequate space for worship to a prisoner devout of a Pentecostal Church. As a matter of fact, the prison had already arranged proper spaces for other three religious confessions and its reticence to open up another one was grounded on practical considerations (e.g. lack of space) rather than on any sort of religious discrimination. The Court required the prison to adapt an adequate space for the Pentecostal cult so the prisoner's rights could be guaranteed.[20]

The Colombian interpretation of secularism had implications in the way the relationship between religion and public education was to be settled. Mandatory Catholic education was not compatible with a system seeking promotion of pluralism and equal respect for the liberties of all. Thus, a new relationship between religion and public education needed to be defined. This, however, also raises problems of interpretation of the principles of secularism. One alternative is to exclude religious content from the educative system and thereby leaving total freedom to families to frame their own religious beliefs and practices. Under this interpretation, the state would refrain from aligning to any religious confessions and therefore equal treatment would be guaranteed by omission. A second alternative is to keep religious education within public schools while withdrawing its mandatory character. In an institutional order that aims at respecting all religions equally, however, defining the content of the

---

[20] For a detailed account of Constitutional cases involving the application of the principle of secularism (*laicidad*) in Colombia, see Leonardo García, *Laicidad y Justicia Constitucional*, Colección de Cuadernos Jorge Carpizo. Para Entender y Pensar la Laicidad 33 (Mexico D.F.: Instituto de Investigaciones Jurídicas - UNAM, 2013).

religious course remains a problem, for such content must give no privileges to any religious confession.

This problem was solved by a governmental decree in 1998.[21] The government established the same privileges to recognized Christian Churches, which at the time were nineteen. Based on the principle of religious freedom, the decree recognizes the right to these churches to provide, upon demand, religious assistance in state offices, including public schools. This means that the Catholic Church and nineteen recognized Christian Churches are entitled to provide religious education in public schools if such education is requested by the school. In order to protect freedom of conscience within the school, children cannot be obliged to take the religion course.

B. Cultural pluralism

The implementation of the principles of secularism is not limited to guaranteeing equal status to all religions. It is also intended to address the challenges raised by cultural minorities, particularly indigenous communities.[22] In this respect, the anticlerical dimension of secularism becomes clear since it is intended to undermine the power of the Catholic Church to spread its doctrine using the institutions of the state.

According to the Constitution of 1886, private institutions were entitled to provide (free) education in areas unreachable by the state. This allowed Catholic

---

[21]"Decreto 354 de 1998," accessed September 26, 2014,
http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=3278.
[22] Interestingly, 1991's Constitution treated separately the question of multiculturalism, which is addressed as an issue of basic social justice, and the question of *laicidad*, which is specified in terms of the freedom of religion to all religious denominations, see Arias, *El Episcopado Colombiano. Intransigencia Y Laicidad (1850-2000)*, 318–319.

missionaries to bring education to indigenous communities, who have been historically marginalized in Colombia. Undoubtedly, the missionary activity provided a service the state was physically unable to offer. However, it was planned as a project of conversion of indigenous communities to the Catholic faith and of promotion of the mainstream culture (e.g. language and lifestyles).

The new institutional order recognized that Catholic and Christian missions within indigenous communities perpetuated a wrong historically committed against them. The purported provision of a basic good (e.g., education) turned into the disavowal of another basic good (e.g., access to one's culture). In order to remedy such injustice, the new Constitution withdrew the permission of religious institutions to provide education to indigenous communities and recognized their right to self-determination. This includes the right to preserve, promote, and spread their cultural practices and religious traditions.

Within an institutional arrangement that seeks promotion of pluralism under the values of freedom and equality, restrictions to freedom of religion need a strong justification. Standard understandings of freedom of religion involve a right to promote a specific faith. In Colombia, this right does not apply to cases in which such exercise involves evangelization of indigenous communities. The justification of such restriction is found in the necessity to repair an historical injustice perpetuated against these communities. Their marginalization has led them in a condition of vulnerability such that external protections from the

mainstream culture are urgent in order to guarantee them access to primary goods.[23]

The mechanism used to protect indigenous communities was to limit the Catholic Church's power to assume functions of the state and to determine indigenous communities' private moralities. In other words, the state confronted the Church's clericalism and undermined it as a mean to guarantee the rights of indigenous communities.

C. Anticlerical Liberalism?

So far, I have presented some of the most salient features of Colombian interpretation of secularism since the instauration of 1991 Constitution. At first sight, there seem to be more similarities to Anglo-Saxon liberal pluralism than to French *laïcité*. Liberal pluralism is strongly committed to pluralism and therefore is generous in granting accommodations and exceptions to the law on "free exercise" grounds. In this section I want to make explicit some aspects that make Colombian interpretation of secularism similar to French *laïcité*. I consider these to be anticlerical aspects of Colombian liberal secularism.

Political clericalism is the political project that seeks to use the institutions of the state to frame the morality, both public and private, of a given society.[24] The system of religious establishment implemented in Colombia between 1886 and 1991 is an example of political clericalism at work, for legislation had to be

---

[23] Although the Constitution is not directly inspired by Kymlicka's multiculturalism, it operates under the logic that denying access to the proper culture is to deny access to a primary good. This argument was first presented by Kymlicka in *Liberalism, Community, and Culture* (Oxford University Press, USA, 1991).
[24] Hazareesingh, *Political Traditions in Modern France*, chap. 4.

consistent with Catholicism and it was a duty of the state to preserve Catholic morality.

Colombian Constituent Assembly in 1991 decided to guarantee an institutional regime that acknowledged pluralism. However, recognizing pluralism under the grounds of freedom of conscience and equal respect is not necessarily linked to a secular and disestablished state. It is possible, for instance, to conceive an established and privileged religion within a political system that is respectful of pluralism. In principle, religious establishment is not incompatible with full guarantees of freedom of conscience and equal respect.[25] Yet Colombia disestablished Catholicism as a means to guarantee pluralism.

The sort of religious establishment that Colombia experienced is characterized by the pervasive presence of the Catholic Church in the private and public life of society. Social and political norms were determined under the guidance of a religious doctrine. The state used its coercive power to impose Catholicism as the only morality socially and politically accepted. An institutional arrangement that promotes such uses of state power is intrinsically incompatible with protection and promotion of values like freedom of conscience and equal respect. In the face of this situation, a genuine acknowledgment of pluralism in Colombian public and private moralities required applying anticlerical principles of secularism. Thus, the process of disestablishment needs to be interpreted as a process that undermined the capacity of the Catholic Church to use the institutions

---

[25] This is a controversial claim, for it entails that it is possible to claim that, for instance, British religious establishment can guarantee equal treatment to all religions even when the latter do not receive the same status than the Anglican Church of England. However, it is widely accepted that Britain performs fairly good in respecting freedom of conscience and equal respect of non-established religions.

124

of the state to impose its doctrine at the public and private levels. Implementing an institutional arrangement that protects religious and cultural pluralism requires opening up spheres in which private moralities are freely determined according to a plurality of moral conceptions. The anticlerical spirit involved in the process of disestablishment allows pluralism to frame citizens' moral worldviews.

D. Anticlericalism and Schools

I have discussed Colombian version of secularism from its anticlerical dimension rather than from its liberal pluralist dimension. I have defined anticlericalism as the political attempt to undermine the Catholic Church's power to use the institutions of the state to impose its moral worldview. Now, I want to show that this approach to secularism adequately explains why it is still relevant within the system of education.

Projects of political secularism have direct impacts in the way the relationship between religion and public education is conceived. Indeed, often the success of a regime of secularism is assessed in terms of the way it performs at the level of public schools. Perhaps the most important reason why public education is so crucial in these debates is because of the impact education has on the formation of the character of future individuals and citizens. On the one side, religious associations consider that appropriate religious education is crucial in the development of a good believer; and, on the other side, republicans believe that appropriate civic education is crucial in the development of a good citizen. Naturally, there is no principled incompatibility between an education that is religious and one that is purely civic. Yet history provides several cases in which

they were considered to be irreconcilable. In such cases, freedom of conscience and equal respect were the first ones to be sacrificed.

At the level of education, Colombian anticlericalism manifested itself in two particularly noticeable ways, namely, the removal of the mandatory religious (e.g. Catholic) course in public education and the withdrawal of the permission to evangelize indigenous communities. These measures are anticlerical because they undermine the capacity of the Catholic Church to use state institutions in imposing its faith. It might be argued that the anticlerical project at the level of public education has succeeded in both avoiding that a particular religion is imposed upon pupils and guaranteeing that their education is provided in an environment of respect for religious and cultural pluralism. However, the process is not over yet.

In the last decade, Colombia decriminalized therapeutic abortion and advanced in the process of recognizing rights to non-traditional families (e.g. gay families). The initiative in favor of therapeutic abortion was justified in terms of a lack of state protection to women that were in life-threatening circumstances. Ongoing initiatives in favor of decriminalization of abortion during the first trimester, still illegal, are justified by claims for the recognition of already transformed gender roles in contemporary Colombia. Supporters of the pro-choice movement claim that the traditional conception of what it means to be a woman, defined in terms strictly associated to family life, does not capture the way contemporary women perceive themselves. Accordingly, they claim that women must be free to decide when to start a family and the state should not interfere

126

with that choice.[26] The initiative in favor of recognition of equal rights for gay families appeals to a similar strategy, for it claims recognition by the state of new conceptions of the family that are already part of Colombian social practices. Social norms are constantly changing, and advocates for abortion and equality for gay families are struggling for being recognized as valid forms of life.

The claims of the two initiatives have been partly recognized by the state. Schools, both private and public, have implemented programs creating adequate environments for the *new* social realities. These are campaigns about sexual health, reproductive rights, and sexual diversity. Students in public and private schools are acquainted with the existence, functioning, and efficacy of contraceptives, as well as with their respective health impact. In matters of reproductive rights, students are informed about the cases abortion is permitted and what the duties of the state in this respect are (e.g., that public hospitals *have* to provide the service to all women that are entitled to it). Campaigns raising awareness of sexual diversity and against bullying homosexual children have also been carried out. Although there are not anti-discrimination laws—some bills have been unsuccessfully discussed at parliament—public schools are required to respect sexual diversity and to act against manifestations of discrimination on grounds of sexual preferences.[27]

---

[26] For an account of the movement that led to decriminalization of abortion in Colombia, see "High Impact Litigation in Colombia to Liberalize Abortion Laws." For an account of pro-choice movements in Europe, see Dorothy McBride Stetson, *Abortion Politics, Women's Movements, and the Democratic State* (Oxford University Press, 2001).

[27] Protection against discrimination is not restricted for sexual minorities. Public schools have to guarantee nondiscrimination also on religious, ethnic, gender, and culture basis.

The Catholic Church opposes all these initiatives and refuses their implementation in both private and public schools.[28] The right to refuse to recognize *new* social norms is granted by freedom of conscience and freedom of religion. The Catholic Church is free to determine its doctrine in such a way that refuses to recognize social transformations with respect to new conceptions of gender roles, the family, or sexual diversity. This freedom, however, does not allow the Church to use the institutions of the state in order to impose its beliefs and to oppose state campaigns in favor of recognizing new expressions of moral pluralism. Active opposition of the Catholic Church to state's recognition of moral pluralism shows its reluctance to recognize pluralism and in adjusting itself to democratic rule.

State's success in recognizing moral pluralism within the education system depends on its capacity to curb Catholic Church's political clericalism as it is exercised at the level of public (and private) schools. The anticlerical dimension of secularism, I have showed, provides an adequate normative framework for guaranteeing state's commitment to recognizing moral pluralism.

3. Concluding Remarks

In this paper I have presented three interpretations of the principle of church-state separation. In particular, I identified how they specify the place religion occupies within the institutional system of public education. I have showed that the principle of church-state separation can adopt an antireligious nature, which

---

[28] This opposition is, indeed, transnational. For the cases of Colombia, Mexico, and the United States, see Lemaitre, "By Reason Alone." See also Reva B. Siegel, "Dignity and Sexuality: Claims on Dignity in Transnational Debates over Abortion and Same-Sex Marriage," *International Journal of Constitutional Law* 10, no. 2 (March 30, 2012): 355–79, doi:10.1093/icon/mos013.

prescribes exclusion of religion from public schools on the grounds of the promotion of a superior ideology. It can also adopt a liberal pluralist nature, which strongly relies on protection of freedom of conscience and allows for a wide system of accommodation on religious grounds. Lastly, it can adopt an anticlerical nature, which emphasizes the necessity to guarantee that no religious institution uses the institutions of the state to impose its doctrine. In this case, exclusion of religion from public schools is grounded on a commitment to protection of freedom of conscience in so far as it seeks to guarantee that no religion is imposed on pupils. What differentiates the antireligious interpretation from the anticlerical one is that the former imposes a moral doctrine that replaces religion while the latter seeks an environment in which no moral doctrine is imposed on pupils through the use of the institutions of the state. The former tries to undermine religion while the latter tries to undermine the capacity of a religious institution to illegitimately impose its doctrine. I have argued that, in contexts like the Colombian one, Catholic Church's opposition to state initiatives that seek to protect new socially accepted ways of life shows the necessity of the anticlerical interpretation of the principle of church-state separation. Commitment to pluralism requires adopting effective means to protect its diverse manifestations, whether religious, cultural, and moral.

CHAPTER 5

Italy and the Principle of (Strict) Church-State Separation

Post-secular theory, open secularism, and liberal pluralism, have proposed to modify the way the question about the proper role of religion in the public sphere is addressed.[1] These three views have in common that all adopt a welcoming attitude of religion in the public sphere. Furthermore, they consider that the principle of separation between the state and the church(es) was biased against religion and grounded on a *secularistic* ideology.[2] Consequently, they propose to abandon the way principles of church-state separation are understood and to abandon the expectative of privatization of religion.[3] They emphasize on requirements of mutual learning, recognition, participation, and inclusion of diversity. Thus, instead of insisting in raising walls of separation, they promote what they call an "ethics of citizenship"[4] or an "ethics of diversity."[5]

In this chapter I argue that this approach must be taken with caution, for it might overlook crucial political problems proper of several contemporary western democracies. I claim that this approach pays too much attention to contemporary

---

[1] See, respectively Habermas, "Religion in the Public Sphere"; Bouchard and Taylor, *Building the Future. A Time for Reconciliation*; Jocelyn Maclure, "Political Secularism and Public Reason. Three Remarks on Audi's Democratic Authority and the Separation of Church and State," *Philosophy and Public Issues (New Series)* 3, no. 2 (2013): 37–46.

[2] Ferrara, "The Separation of Religion and Politics in a Post-Secular Society," 79; Maclure, "Political Secularism and Public Reason. Three Remarks on Audi's Democratic Authority and the Separation of Church and State."

[3] The most visible defenders of religious restraint in political deliberation are John Rawls, "The Idea of Public Reason," in *Political Liberalism* (New York: Columbia University Press, 1996), 212–54; Audi, *Democratic Authority and the Separation of Church and State*.

[4] Habermas, "Religion in the Public Sphere."

[5] Zucca, *A Secular Europe*.

pluralism and overlooks the possibility to identify the *unfinished* project of political secularism. The claim that political secularism is an unfinished project might be interpreted as a defense of the secularist ideal of the secularization thesis. As it will become clear, I do not attempt to defend a political project that purposely aims religions' waning. On the contrary, I will defend a view according to which political secularism attempts to undermine any sort of manipulation of the institutions of the state by religious organizations.

The question about the proper role of religion in the public sphere *in certain* contexts has two dimensions. First, it has to deal with the challenges derived from the fact of pluralism, which is understood as a consequence of the "diversification of immigration" and the transformation of religious beliefs in contemporary societies.[6] And second, it has to deal with the internal struggle between the state and a politically powerful religious institution for the control of the institutions of the state. I argue that the post-secular approach overlooks the latter.

The paper is divided as follows; in the first section I introduce the post-secular reaction to the "secularization thesis." In sections two and three, I focus on one particular case in which the post-secular approach does not address the second dimension stated above, namely, the Italian controversy about the display of

---

[6] Maclure, "Political Secularism and Public Reason. Three Remarks on Audi's Democratic Authority and the Separation of Church and State," 37; Maclure and Taylor, *Secularism and Freedom of Conscience*, 57–58; François Boucher, "Freedom of Religion and Freedom of Conscience in Postsecular Societies," *Philosophy and Public Issues (New Series)* 3, no. 2 (2013): 159–200; Dieter Grimm, "Conflicts Between General Laws and Religious Norms," in *Constitutional Secularism in an Age of Religious Revival*, ed. Susanna Mancini and Michel Rosenfeld (New york, NY: OUP Oxford, 2014), 4.

crucifixes in public schools. In section four I conclude by arguing in favor of a principle of strict separation.[7]

1. Secularism: from hostility to recognition

The secularization thesis predicts the decline of religion and the privatization of religious beliefs. As a sociological explanation, it is a product of modernity, for it is influenced by the enlightenment, capitalism, and the consolidation of the modern state. Sociologists such as Marx, Weber, or Durkheim considered that the more modern a society is the more secular it will be.[8] Accordingly, the diverse 'laws of church-state separation' approved during the consolidation of the modern states were intended to promote or facilitate the process of privatization of religion.

Whether this thesis is mistaken depends upon how "secularization" is understood. Charles Taylor distinguishes at least three senses of the term. The first refers to "the emptying of religion from autonomous social spheres," particularly to the political sphere; the second refers to the degree on which people turns away from God and no longer go to Church; and the third refers to a move from a society where "belief in God is unchallenged […] to one in which it is understood to be one option among others."[9] These distinctions help to understand why a highly religious society can rank at the same time as highly

---

[7] Rather than being an exception, the Italian case is but one exemplar among many in which a principle of strict separation might be needed. Similar arguments can be made with virtually all Catholic Europe and Latin America.

[8] See, for instance: "In the secularist reading, we can envisage that, in the long run, religious views will inevitably melt under the sun of scientific criticism and that religious communities will not be able to withstand the pressures of some unstoppable cultural and social modernization," Habermas, "Religion in the Public Sphere," 15. See also, Zucca, *A Secular Europe*, chap. 1; Casanova, *Public Religions in the Modern World*, chap. 1; Casanova, "Secularization, Religion, and Multicultural Citizenship," 23.

[9] Taylor, *A Secular Age*, 2–3.

secular. Such society can be religious in the third sense and fairly secular in the second one.

The secularization thesis understood "secularism" in Taylor's second sense and therefore mistakenly predicted religious vanishing. In contrast, post-secular approaches acknowledge the fact that the secular world is secular in the third sense. The prefix "post" in "post-secular" highlights the acceptance of secularism in the third sense and its accompanying idea that religion is not disappearing, but that has become a view— "frequently not the easiest to embrace,"[10]—among other competing views.[11]

Habermas' post-secular "ethics of citizenship" does not involve the liberal requirement of religious restraint as proposed, among others, by Rawls.[12] Habermas argues that *all* citizens must acknowledge that their respective contributions in public debate can be "serious candidate(s) to transporting possible truth content."[13] Consequently, a post-secular society is "epistemically adjusted" in such a way that gives religion its due respect. A post-secular ethics of citizenship requires two particular kind of civic duties: first, religious citizens have the duty to incorporate into their respective faiths the "secular legitimation of constitutional principles;"[14] and second, secular citizens must learn not to

---

[10] Ibid., 3.
[11] There is much controversy about what "post-secularism" means. I am not going to grasp out such discussion. For a classification of different uses of the term in contemporary literature, see James A. Beckford, "SSSR Presidential Address Public Religions and the Postsecular: Critical Reflections," *Journal for the Scientific Study of Religion* 51, no. 1 (March 1, 2012): 1–19, doi:10.1111/j.1468-5906.2011.01625.x.
[12] See Rawls, "The Idea of Public Reason"; Audi, *Democratic Authority and the Separation of Church and State*.
[13] Habermas, "Religion in the Public Sphere," 10.
[14] Jürgen Habermas, "Notes on Post-Secular Society," *New Perspectives Quarterly* 25, no. 4 (2008): 27, doi:10.1111/j.1540-5842.2008.01017.x.

encounter their religious fellow citizens with reservations due to their religious mindset. "Secular citizens—Habermas says—in civil society and in the political public sphere must be able to meet their religious fellow citizens as equals."[15] Importantly, this latter requirement includes a duty to engage in the cooperative task to translate sectarian contributions into political deliberations in cases in which their holders are unable to do so by themselves.[16] Western societies have to "adjust to the continued existence of religious communities in an increasingly secularized environment." This adjustment implies acknowledging religions as valid *communities of interpretation* in the public arena of secular societies. This characteristic acknowledges them as valid sources of political claims in contested issues such as abortion, active euthanasia, protection of animals, or climate change.[17]

2. Contexts Matter: "The Concordat's Distortion"

Alessandro Ferrara argues that the presence of the Vatican in the core of Italian capital has more than symbolic relevance.[18] Political institutions defining the relation between the church—the Catholic Church—and the Italian state cannot underestimate the relevance of such *structural* contingency.[19] Ferrara distinguishes between *mono-confessional* and *pluri-confessional* contexts.[20] In the former, religious neutrality is achieved through a bargaining process between two independent institutions, namely, the state and a particular religious organization.

---

[15] Ibid., 29.
[16] Habermas, "Religion in the Public Sphere," 10–11.
[17] Habermas, "Notes on Post-Secular Society," 20.
[18] Alessandro Ferrara, *The Force of the Example: Explorations in the Paradigm of Judgment (New Directions in Critical Theory)* (Columbia University Press, 2008), 200.
[19] In part four I develop the distinction between symbolically and structurally grounded injustices.
[20] Ferrara, "The Separation of Religion and Politics in a Post-Secular Society," 88.

In the latter, neutrality of the state is achieved due to a more or less equal power of different religious organizations.

In a *mono-confessional* context like Italy, the situation of the dominant confession is such that it does not find a counterbalance by other "religious cultures" and, furthermore, has the means to silence political initiatives and to frustrate political careers of their opponents.[21] As a consequence, Italian Catholic Church is in a position to use its spiritual influence for political ends, a behavior that contradicts the liberal project of "a free and neutral public space."[22] This state of affairs can be described as an institutionalization of political participation of the Catholic Church.

An important dimension of the distinction is the fact that the "classical liberal picture" of the emergence of religious neutrality is related to the *pluri-confessional* context but not to the *mono-confessional* one.[23][24] Such difference plays a fundamental role in framing the institutional arrangements that regulate state-church(es) relations. In the former case, given the fact of religious pluralism, people's drawing of what is tolerable and what is not derives in the neutrality of

---

[21] Ibid., 88–89. Ferrara is not the only one pointing out the relevance of taking in consideration the fact that Italy is majoritarian Catholic and that the Catholic Church enjoys of a privileged position within Italian political structure, see: Susanna Mancini, "The Crucifix Rage: Supranational Constitutionalism Bumps Against the Counter-Majoritarian Difficulty," *European Constitutional Law Review (EuConst)* 6, no. 01 (2010): 26, doi:10.1017/S1574019610100029; Sebastiano Maffettone, *Rawls: An Introduction* (Cambridge, UK; Malden, MA: Polity, 2010), 157. On her part, Galeotti has claimed "the state, especially in Italy, has never been completely separated from the Catholic religion," in Galeotti, *Toleration as Recognition*, 123. Footnote.
[22] Ferrara, "The Separation of Religion and Politics in a Post-Secular Society," 88–89; Ferrara, *The Force of the Example*, 240.
[23] Ferrara, "The Separation of Religion and Politics in a Post-Secular Society," 88–89.
[24] Ibid., 88. Recently, Nadia Urbinati has developed a similar account, see her Nadia Urbinati, "The Context of Secularism: A Critical Appraisal of the Post-Secular Argument," in *Constitutional Secularism in an Age of Religious Revival*, ed. Susanna Mancini and Michel Rosenfeld (New York, NY: Oxford University Press, 2014), 14–32.

the state, which is conceived as state's sovereign autonomy.[25]In contrast, in the latter case, the two "autonomous and sovereign" powers bargain their respective scopes of political and social influence. Such bargaining process defines church-state relations and settles the threshold of what is tolerable and what is not in function of the bargaining power of the two actors.[26] Therefore, toleration in Italy is conditioned by the Holy See's stand in morally sensible issues. The outcome of such context, according to Ferrara, is a *sui generis* religious neutrality that can be reconciled "only with difficulty" with the liberal ideal of equality and that would lead to weak versions of political secularism.[27]

The picture Ferrara draws about the bargaining process between only two actors must be understood in a very specific sense. Otherwise it may conflict with the inherently pluralist character of Italian Constitution. As Susana Mancini describes it, the Italian constituent assembly included different sectors of society, which contributed to specify the principles of its basic structure. The outcome is a constitution that "reflects the interests of all the political forces […] that sat in the Constituent Assembly." Some parts of the Constitution reflect communist and socialist interests, such as aspects concerning workers' rights, while other parts reflect the Catholic Church concerns, such as regulations about marriage and the

---

[25] Ferrara, *The Force of the Example*, 200.
[26] In Italy, the bargaining power of the Catholic Church is particularly high for obvious historical reasons. As a reminder, consider that Italy was a confessional state from 1929, when Fascist Italy and the Vatican signed the Lateran Pacts, to 1948, when the new republican constitution was drafted.
[27] Ferrara, *The Force of the Example*, 200.

family.[28] From this perspective, the Italian Constitution is pluralist because it included a broad spectrum of political organizations.

3. Italian secularism: weak or incomplete?

The post-secular approach faces challenges when it is confronted to monoconfessional societies in which the majoritarian religion is politically powerful and closely entrenched within the institutions of the state. The challenge for post-seculars is that in mono-confessional contexts such proposal is deemed to privilege the majoritarian religion and therefore to discriminate against minorities. Consider the case of Italy.

Italian secularism is better understood as it was described and defended during the famous *Lautsi* case. The controversy started in 2002, when an Italian-Finnish marriage requested the removal of the crucifixes in the public school their children were attending to. They argued that crucifixes violated the principle of secularism as embraced by the Italian state. The case arrived to the Veneto Administrative Court and then to the Supreme Administrative Court. Both coincided that crucifixes do not violate the principle of secularism (*laicità*).[29] Afterwards, the case arrived to the European Court of Human Rights. On November 2009, a Chamber of the Second Section of the Court considered that crucifixes violated the European Convention of Human Rights. However, in 2010

---

[28] Susanna Mancini, "Taking Secularism (not Too) Seriously: The Italian 'Crucifix Case,'" *Religion and Human Rights* 1, no. 2 (2006): 187, doi:10.1163/187103206778884820.

[29] Sentenza N. 1110/2005, Ric. N. 2007/02 (Tribunale Amministrativo Regionale Veneto 2005). There is an English translation by Frederick Mark Gedicks and Pasquale Annicchino, see Frederick Mark Gedicks and Pasquale Annicchino, trans., *Lautsi v. Italy: English Translations of Italian Trial and Appellate Decisions*, November 17, 2013, http://papers.ssrn.com/abstract=2361188. For a critical analysis of the case, see Lorenzo Zucca, "Lautsi: A Commentary on a Decision by the ECtHR Grand Chamber," *International Journal of Constitutional Law* 11, no. 1 (January 1, 2013): 218–29, doi:10.1093/icon/mos008.

the Italian government, alongside numerous governmental and religious organizations, reacted and appealed to the Grand Chamber of the European Court, which in March 2010 acknowledged Italy's autonomy in deciding whether or not to display crucifixes in public schools. Thus, the Grand Chamber's decision indirectly validated the arguments presented by the two Italian Courts.

The two Courts justified the presence of crucifixes and crosses in public schools appealing to the same arguments. Let's consider the Veneto Administrative Court's argument. The Court considered that the display of crucifixes in public schools not only does not violate the principle of *laicità*, but that represents and honors it. The Court's argument defending the display of crucifixes in public schools has four key points.[30] First, it is worked out from the observation that, in Italy, crosses and crucifixes are used interchangeably and represent exactly the same values. Second, it is important for the Court to insist that crosses are not uniquely religious symbols. Depending on the location of the cross, it can have an exclusive religious connotation, as it is the case of the altar in a church. However, crosses can perfectly be detached from a religious meaning, as it is the case of the Red Cross or the Scandinavian cross in Nordic countries' national flags. Thus, when a cross is displayed in a public school, it is not indented to be interpreted as a religious symbol. Third, the Court argues that the fundamental values of the modern secular state, such as religious freedom, equality, tolerance, and human dignity, find their origins in the Christian tradition. Crosses and crucifixes can be interpreted in a civic way as representations of the

---

[30] See particularly paragraphs 4.1; 5.8; 6.1; 7.1; 9.1; 9.2; 11.1; 11.2; 12.2; 12.6; 13.4; 14.1; 15.1; and 15.2 of Sentenza N. 1110/2005, Ric. N. 2007/02 (Tribunale Amministrativo Regionale Veneto 2005).

values endorsed by modern secular states. Therefore, the Court maintains, crucifixes and crosses in public schools must be interpreted as representations of the values of the Italian Republic. Fourth, the Court anticipates possible criticisms about insensitiveness to non-Christian immigrants and therefore addresses the problem of social and cultural integration of foreign students. The civic interpretation of the crucifix, the Court holds, enhances values that need to be promulgated among foreign students. This promulgation obeys to the intention to "transmit principles of openness to diversity and rejection of all fundamentalisms—be they religious or secular."[31]The success of such transmission of values, the Court maintains, depends upon the symbolic reaffirmation of Italian identity.[32]

This form of secularism has been described as *sui generis*, "weak," and "confessional"[33] due to its incapacity to guarantee a free and neutral public sphere.[34] An accurate account of the weakness of Italian secularism must consider a hitherto neglected fact characteristic of mono-confessional contexts such as the Italian, namely, that the closeness to religion derives from the structural entrenchment—or the lack of separation—between religious and political institutions that have historically characterized the Italian state.

---

[31] Ibid., Para. 12.6.

[32] For more on this line of reasoning , see Weiler, *Un'Europa cristiana*; Zucca, *A Secular Europe*, 167 ; Federic Gedicks and Pasquale Annicchino, "Cross, Crucifix, Culture: An Approach to the Constitutional Meaning of Confessional Symbols," *EUI Working Papers*, EUI Working Paper RSCA 2013/88, 2013, 14.

[33] Nadia Urbinati, "Laicità a Rovescio. I Diritti in Una Società Monoreligiosa," in *Missione Impossibile. La Riconquista Cattolica Della Sfera Pubblica*, ed. Marco Marzano and Nadia Urbinati (Bologna: Il Mulino, 2013), 113–118.

[34] Ferrara, *The Force of the Example*, 200.

Mainstream approaches to the question about the proper role of religion in the public sphere identify immigration and its related phenomenon of cultural and religious diversity as the most urgent challenges to be dealt with by conceptions of secularism. As it is showed by *Lautsi*, the question about secularism in Italy does not refer directly to immigration-related issues, but to the existing closeness between the Catholic Church and the institutions of the state.[35]

Contemporary Western democracies do not have to face the question of the proper role of religion in the public sphere similarly. In some cases, the question to be addressed may be 'how can an already secular state promote integration of citizens of diverse faiths and cultures?' And the answer may involve an evenhanded attitude toward new public religious and cultural manifestations, as post-secular theorists argue. However, in other cases, the question to be addressed may be 'how can a non-yet secular state promote secular political institutions in order to guarantee freedom and equality to all its citizens?' And the answer may involve the implementation of principles of strict church-state separation. A proper approach to the Italian case cannot neglect the latter question.

4. Principle of strict separation

A. Definition

The principle of church-state separation is traditionally understood as a protection of the state from religious interference and of religions from state interference. So

---

[35] Mancini explains such phenomenon as follows: on the one side, Muslim immigration to Italy started much later than to other European countries, and therefore the number and concentration of immigrants is lower in Italy. On the other side, Italy has developed a tradition of cultural and political compromise that "has proved particularly suitable platform for minority religious accommodation." Mancini, "Taking Secularism (not Too) Seriously," 182.

conceived, the state would not be converted in the instrument of a particular religion and religious institutions would not be instrumentalized by the state. In both cases, what is to be protected is religious freedom and, ultimately, freedom of conscience.[36]

The principle of strict separation maintains the spirit of the traditional liberal principle of separation, but emphasizes the necessity to embrace a defensive strategy against unduly interference within the institutions of the state by one or various religious institutions. More concretely, the principle of strict separation pleads for a cautionary attitude with regards to Catholic Church's intervention in politics, which, as I have showed so far, constitutes a fundamental reason explaining the weakness of Italian secularism. It seeks to counter-balance the privileged position the Catholic Church has within the institutions of the state. By entailing a defensive attitude, the principle of strict separation is constituted as a principle promoting state's action in secularizing the institutions that are not secular yet. Differently to the liberal principle of separation, the principle of strict separation adopts an active role, for it requires active exclusion of religious content already occupying a prominent role within the institutions of the state.[37]

In practical terms, it entails a removal of concessions made to the Catholic Church, including the display of religious symbols in official buildings, tax exemptions and incentives, permission for religious education in public schools—

---

[36] Audi, *Democratic Authority and the Separation of Church and State*, 39.
[37] Strict separation is defended in: Sajó, "Preliminaries to a Concept of Constitutional Secularism." However, my account is different since I do not intend to address the broader problem of the presence of religion in the public sphere all around Europe, but only in *mono-confessional* contexts in which the religious institution displays power that goes against the interests of the democratic state. The advantage of my approach is that it is better protected from objections pointing out an undue secularist bias.

including the Catholic Church's role in assigning the school teachers in charge of religious education—, and so on. Naturally, such separation cannot avoid the normal vicissitudes of politics, yet the relevant point is the implementation of a principle that recognizes the *current* status of the Catholic Church as a *real* challenge of Italy's political secularism instead of the nowadays recurrent mentioned "fact of pluralism" as diagnosed by post-secular theorists.[38]

The contemporary focus on pluralism among political theorists makes it difficult to defend a principle of strict separation. For instance, András Sajó's defense of constitutional secularism is criticized because of its focus on religion instead of on diversity.[39] Sajó argues that contemporary secular states are too weak to face the challenges that "strong religions," which are politically organized religious groups, raise to them. Constitutional secularism, Sajó claims, provides the state with stronger institutional resources to face such challenges.[40] In contrast, Zucca argues that the weakness of contemporary secular states is not to be found in "strong religions," but in a "greater malaise: the inability of secular states to cope with diversity."[41]

The principle of strict separation that I am defending assumes "strong religions" to be a real challenge for contemporary secular states. However, my notion of "strong religion" is thinner than Sajó's. Strong religions are religious-

---

[38] Currently, Italian political theorists and intellectuals tend to rightly identify the excessive power the Catholic Church has within Italian politics, however, they adopt principles akin to post-secular theorists or open secularism theorists. By opting for this strategy, they are applying the wrong solution to the diagnosed problem. Examples of such attitude are found in Claudia Mancina, *La laicità al tempo della bioetica* (Bologna: Il Mulino, 2009); Stefano Rodotà, *Perché laico* (Editori Laterza, 2009).

[39] Zucca, *A Secular Europe*, 24.

[40] Sajó, "Preliminaries to a Concept of Constitutional Secularism."

[41] Zucca, *A Secular Europe*, 24.

based political associations that seek to be recognized as political actors. One of their main targets is, Sajó argues, is to legitimize their presence in the public sphere. His examples of cases reflecting the activity of strong religions is broad and somehow puzzling due to its heterogeneity: the Danish cartoon controversy; the Rushdie affair; the Canadian Supreme Court considering that secularism is compatible with religion-based policy considerations; the *Otto-Preminger-Institut v. Austria* case, in which the ECtHR held that banning a film on the grounds of its offensiveness to Christian values was justified; exceptions of *laïcité* in French region of Alsace-Moselle; Indian permissions for personal religious law; and Turkish mandatory religious course based exclusively on Sunni Islam.[42] To this, it can perfectly be added the resolution of *Lautsi.*

The principle of strict separation I am defending is addressed only to those cases in which a political powerful religious institution influences the institutions of the state *from within* and therefore takes advantage of its privileged position to either impose its moral doctrine or to reaffirm its social influence. Hence while the Canadian Supreme Court has adopted a "liberal pluralist" conception of secularism that grants broad accommodations on religious and cultural grounds appealing to the values of freedom and equality, I argue throughout this paper that the display of crucifixes in the Italian case obeys to a reaffirmation of the institutional power the Catholic Church enjoys within the institutions of the Italian state.

Another difficulty a principle of strict separation faces is its association to the authoritarian character of French *laïcité* with regards to Muslim minorities.

---

[42] Sajó, "Preliminaries to a Concept of Constitutional Secularism," 606, 609, 611, 612, 617.

There is—justified—skepticism about projects that intend to purge "of the political public sphere of all religious contributions."[43] Contemporary official interpretation of *laïcité* has been labeled as illiberal due to its disproportionate and targeted restrictions to religious freedom. Consequently, it is important that the principle of strict separation be differentiated from French *laïcité*. In other words, it has to be proven that strict separation constitutes a valid institutional arrangement instrumentally promoting the fundamental liberal goals of a liberal democracy, namely, freedom of conscience and equal respect.[44]

A distinction between "antireligious" and "anticlerical" principles will make the difference more clear. The former are a general attitude against religion.[45] Antireligious measures include criticism to religion and the project to liberate individuals from the darkness and oppression of religious beliefs, as they were referred to by enlightened philosophy.[46] Criticisms to the French ban on "ostentatious religious symbols" in public schools denounce a skeptical attitude by the French state against some religious (e.g. Islamic) practices. Defenders of

---

[43] Habermas, "Notes on Post-Secular Society," 28. Descriptions of Italian political secularism are usually presented in contrast with French secularist model, see Mancini, "Taking Secularism (not Too) Seriously," 181; Ferrara, "The Separation of Religion and Politics in a Post-Secular Society," 88; Zucca, *A Secular Europe*, chap. 2. For *secularist*-related worries about principles of separation, see Veit Bader, "Religious Pluralism: Secularism or Priority for Democracy?," *Political Theory* 27, no. 5 (1999): 597–633; Catherine Audard, *Qu'est-ce que le libéralisme ?: Éthique, politique, société* (Paris: Folio, 2009), chap. 9.

[44] For a characterization of the principle of separation as an institutional arrangement having only instrumental value in function of the fundamental ends of a liberal democracy, see Maclure and Taylor, *Secularism and Freedom of Conscience*, 19–26; Cécile Laborde, "Political Liberalism and Religion: On Separation and Establishment," *Journal of Political Philosophy*, 2011, 79.

[45] Reacting to the Second Chamber's decision, Italian government appealed with an defensive argument grounded in the idea that removing crucifixes from schools would be a *secularist* and anti-religious measure, see Urbinati, "Laicità a Rovescio," 125. See also Joseph H. H. Weiler, "Il Crocefisso a Strasburgo: Una Decisione 'Imbarazzante,'" *Quaderni Costituzionali*, no. 1/2010 (2010), doi:10.1439/31542.

[46] As expressed in Mexican and French antireligious constitutions in the late nineteenth and early twentieth century. For instance, contemporary Mexican constitution states that education "shall strive against ignorance and its effects, servitudes, fanaticism, and prejudices" (Art. 24), quoted by Sajó, "Preliminaries to a Concept of Constitutional Secularism," 616. Footnote.

the ban conceive as a function of the state the pursuit of women's liberation from cultural and religious oppression by discouraging, and in some cases banning, the use of religious headscarves. The justification of the ban appeals to a conception of autonomy that is incompatible with a life of religious observance.[47]

In contrast, an anticlerical principle focuses on the political power of a religious institution. Historically, it has pursued the consolidation of the civic authority by assuming functions performed by religious institutions. In other words, it intends to transform a political authority that is religiously grounded into pure civic authority. Anticlerical principles aim at undermining the power religious institutions have within the institutions of the state. An updated version of the principle would seek independence from religious interference in the way legal regulations ruling the private life of society are carried out. For example, it pursuits independence in the way legal regulations about marriage or family life are designed. In other words, an anticlerical principle guarantees that decision making processes defining the essentials of what would be considered as "accepted moralities" are done independently of pressures from powerful religious organizations.

An historical example of anticlericalism is the secularization of elementary schools in Mexico under Juárez *Laws of Reform*, which were enacted between 1859 and 1863, that is, about twenty years before the French "Laws of Education." Juárez political project consisted in advancing liberalism in post-colonial Catholic Mexico. Unsurprisingly, such project faced the opposition of a powerful Catholic Church, which at the time explicitly rejected liberalism,

---

[47] Laborde, *Critical Republicanism. The Hijab Controversy and Political Philosophy*, 101–124.

145

democracy, and religious tolerance. As it is common throughout the world with states that tried to implement liberal values, the role of schools was of paramount importance, and the success of the liberal project depended to a great extent on the success of the secularization of elementary education. The goal was not to produce citizens with a negative idea of the Catholic Church, but to consolidate the power of the liberal and secular state. For this reason, the secularization of schools excluded all religious content from the curriculum but did not promote a program that criticized religious doctrines. Furthermore, protections of religious freedom, a paramount liberal value, were granted despite the secularization of schools and consequently "academic freedom" (*libertad de cátedra*), a value that has little or no importance among early Anglo-Saxon liberals, was erected as a political value of uttermost importance within the Mexican liberal system. Under the protection of academic freedom, religious freedom in elementary education was granted, for religious institutions were free to set religious schools and to include in their curriculums religious education.[48]

Another example is French *laïcité* interpreted as a "philosophy of neutrality"[49] The 1905 Law of Separation establishes a regime of mutual independence between religion and the state, implementing a regime of state's neutrality. The Law can be interpreted as corresponding to the "non-establishment clause" of the First Amendment of the US Constitution and thereby as forbidding "all forms of governmental assistance to any religion." In the context it was implemented, the Law intended to suppress all the privileges enjoyed by the

---

[48] Rivera, *Laicidad y Liberalismo*.
[49] This interpretation of *laïcité* contrasts with *laïcité* as autonomy and communitarian *laïcité*, see Laborde, "On Republican Toleration."

Catholic Church and to guarantee equal treatment toward all citizens regardless of their religious affiliations. The Law can also be interpreted in terms of the "free-exercise clause" of the First Amendment. As Cécile Laborde points out, the latter interpretation is common among Catholics as it implies support for religious activities, historically granted by the French state to the Catholic Church. This interpretation, however, fails "to displace the dominant philosophical interpretation of *laïcité* [as neutrality]"[50] and active commitment to the actual exercise of religion is usually seen as a "pragmatic compromise between the state and the Catholic Church in 1905."[51] Secular republicans interpret concessions to the Church as unfortunate exceptions to the Law rather than as principled applications of *laïcité*.[52] Under this interpretation, the Law is anticlerical and not antireligious because it intends to take over the political power of the Catholic Church in order to establish a civic and secular political authority that can guarantee equal rights to all individuals—not groups—regardless of their religious affinities.

The parallelism between the Italian context with the two historical cases in which anticlerical principles were applied helps out to understand their relevance and appropriateness. Were it to be applied to the *Lautsi* case, the principle of strict separation would require a straightforward removal of crucifixes from public schools and governmental offices.[53] Moreover, if applied to public education in

---

[50] Ibid., 169.
[51] Ibid.
[52] Ibid.
[53] Religious iconography of high aesthetic value is pervasive in Italy, so exceptions grounded on historic and aesthetic considerations might be granted. However, such reasons might not be valid to justify inauguration of religious monuments, such as John Paul II's statue at the square of the biggest train station of Italy. It is also clear that crucifixes in courtrooms, school and university

general, it would imply secularization of school programs, which requires religion to be taught in secular terms, that is, as a historical phenomenon. Teachers would be public officials and therefore autonomous from the Vatican.

Thus described, anticlericalism has not much in common with post-secular proposals and with open secularism. This must be not surprising. Anticlerical institutions intend to promote civic political authority in domains where, on the one side, religious institutions have traditionally exercised influence, and, on the other side, such influence threatens liberal political values such as freedom of conscience or equal respect.[54] Anticlericalism and post-secularism, liberal pluralism, or open secularism intend to address different challenges. The former is concerned with excessive powers of a religious institution, while the latter seeks peaceful coexistence in a plural—multirreligious, multicultural, multinational, and so on—society. However, what they have in common is that both intend to promote liberalism and its respect for religion and for diversity.

B. A CLERICAL OBJECTION

It might be argued that the principle violates the Italian version of secularism, which has been defined in terms of the Christian values of tolerance, inclusion, and equality. Given that there is an Italian tradition of secularism and that such tradition is broadly compatible with liberal and democratic values, the principle of strict separation is objectionable for the Italian context. I call this objection the

---

classrooms, migration offices, or police stations can hardly be attributed aesthetic and historical value.

[54] This threat is clearly expressed by Rodotà: "Vatican hierarchy explicitly considered Italy as a missionary land, the base land from which a new conquest of the world restarts," Rodotà, *Perché laico*, 16.

"clerical objection."[55] Clerical objectors, namely, the Holy See and the Italian official secularism, defend the display of crucifixes at public schools.

In order to reply to the clerical objection, it would be enough to say that state's symbolic embracement of a religion—Christianity—sends an exclusionary message to citizens not embracing such religion. Furthermore, as Laborde claims, the exclusionary message harms such individuals' self-respect and therefore creates first and second-class citizens.[56]

Additionally, the Court's arguments about the civic interpretation of crucifixes are too weak. The claim that a crucifix, or a cross, in a public school can be detached from religious—and thereby sectarian—content and replaced by civic values is weak given the strong presence of Catholicism in Italian public life and history. Contrary to the opinion of the Court, the cases of Scandinavian crosses in North European countries' flags and Italian symbolic association with the same Christian heritage are not identical. Social secularization, in the third sense mentioned above, is greater in Northern Europe than it is in Italy. Furthermore, it is plausible to assume that no immediate religious reference comes to mind when one faces a, say, Swedish flag with its Scandinavian cross on it. This is explained because of the low public visibility of Christian Swedish officials and because of the high level of social secularization of north European

---

[55] The adjective "clerical" is reminiscent of Pope Benedict XVI's address to the participants in the 56th national study congress organized by the union of Italian catholic jurists in December 9, 2006, in which the Pope distinguished between a secularism "in which there is no room for God" and a "healthy secularism," in which "the state does not consider religion merely as an individual sentiment that may be confined to the private sphere alone." See: "Address to the Union of Italian Catholic Jurists," accessed September 2, 2014, http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/december/documents/hf_ben_xvi_spe_20061209_giuristi-cattolici_en.html.
[56] Nussbaum, *Liberty of Conscience*, 85–86; Laborde, "Political Liberalism and Religion"; Maclure and Taylor, *Secularism and Freedom of Conscience*, 13.

societies. In other words, the presence of a Scandinavian cross in an official symbol does not threaten the secularity of Swedish public sphere in the same level as the presence of crucifixes and crosses does in the Italian public sphere. Such difference is rooted in the fact that Northern European public spheres are more secularized than Italian public sphere.

The Court's claim is even less plausible when analyzed under the light of social and cultural integration of foreign students in public schools, many of whom come from non-Christian societies. Arguably, a non-Christian student in an Italian public school facing a crucifix finds herself contemplating a specifically Christian symbol and not a symbol that represents abstract civic values developed at the core of European political history and culture. By teaching pupils that Christian values—and not Muslim or Buddhist values—crystallized in the values of the Italian Republic, public schools are reproducing a hierarchy among religions and cultures that is translated into first, second, and third class citizens. As Richard Bulliet argues, associating European identity only with Christian values neglects cultural contributions from the Islamic world and therefore constitutes a serious—and perhaps deliberate—omission of the historic relevance non-Christian cultures have played in framing our vision of contemporary western culture and its identity.[57]

---

[57] Richard W. Bulliet, *The Case for Islamo-Christian Civilization* (New York: Columbia University Press, 2006), 32–33, 45.

C. POST-SECULAR OBJECTION

It can be objected that the unilateral removal of all crucifixes causes division, social struggle, or mutual mistrust because it is ultimately grounded in the liberal secularist attitude of skepticism toward religious mindsets. This view is adopted by post-secular and open secularism theorists.[58]

Post-secular theorists' stand on *Lautsi* does not defend a principled attitude in relation to the display of crucifixes. According to them, processes of justification are more important than principled commitments. Zucca's suggestion, for instance, is to encourage each school to deliberate and confront all views, both sectarian and non-sectarian. After deliberation, they can proceed to make an informed decision, which will be legitimate given its participatory and inclusive character.[59] According to Habermas, there must be processes of mutual learning that include a positive attitude to understand and appreciate contributions of Catholicism or Christianity to Italy as a political community. Open secularism also argues against principled attitudes toward religious symbols within state buildings. For instance, they do not discard the possibility of allowing public officials, among them school teachers, to wear with them visibly—ostentatious— religious symbols if they do not interfere with an impartial exercise of their duties.[60]

Two arguments can be developed in order to respond to the post-secular normative attitude toward *Lautsi*. First, it can be said that it does not tackle *status*

---

[58] Habermas, for instance, presents the contemporary debate in terms of radical multiculturalism and militant secularism, "Notes on Post-Secular Society," 24–26.

[59] Display of crucifixes is thus the measure adopted by default. Zucca, *A Secular Europe*; Zucca, "Lautsi."

[60] Maclure and Taylor, *Secularism and Freedom of Conscience*, 44–48.

quo powers and therefore misrepresents the sources of the weakness of Italian secularism. Second, it raises unfair burdens to currently oppressed social groups. Let's consider each at the time.

Post-secular view's attractiveness lies in its pluralist, participatory, and deliberative inspiration. However, it risks from perpetuating an environment that is already hostile for pluralism to thrive. If we follow Zucca's recommendation, the Catholic Church keeps its *de facto* privileges. The display of crucifixes is taken as the default situation and deliberation about them would start only when a case against crucifixes is made. If in a certain school there is a struggle about crucifixes and, if after due deliberation it is consensually decided to maintain them exposed, then such display is legitimate and violates nobody's freedom of conscience. In such not very unlikely scenario, nothing changes from the initial measure to the final decision, for crucifixes are still the only religious symbol displayed in classrooms. However, inclusive and participatory deliberation makes a moral difference, for in the initial stage no valid justification is given to all relevant citizens (in this case, the school community), while after deliberation the display of crucifixes is properly justified to all relevant citizens.[61]

According to this line of reasoning, given the initial lack of justification, the display of crucifixes is an illegitimate endorsement of a religious symbol, but its display after deliberation is legitimate. Keeping crucifixes in public schools while waiting struggles to appear is nothing more than maintaining a privilege

---

[61] The Habermasian inspiration is found in Zucca if we consider Habermas' two components that give legitimacy to democratic authority. First, he identifies a participatory character, which guarantees an equal access to democratic self-rule, and second, he identifies a deliberative character, which guarantees "rationally acceptable outcomes," see Habermas, "Religion in the Public Sphere," 5,12.

granted to a religious association until a courageous enough or powerful enough organization challenges such *status quo*. As I have shown in previous sections, in mono-confessional societies like the Italian misbalances in power are particularly notorious and therefore keeping privileges to the powerful constitutes a preservation of an illegitimate use of state power. If we follow the post-secular proposal, the privilege of being a symbolically represented institution within public schools finds little challenge. Therefore, post-secular approaches to cases like *Lautsi* fall short from correcting *status quo* illegitimate uses of power.

Italian secularism is weak because of the partial or unfinished separation between the state and the church. This has allowed the latter to preserve its social and political power in detriment of other associations, both religious and secular. This situation leads to a lack of protection for new manifestations of moral pluralism, which find in the entanglement between the church and the state an obstacle for their free development. Zucca's participatory and inclusivist approach to *Lautsi* ignores this fact and seems to assume that all participants to the debate would stand as equals and would have equal possibilities to influence the outcome. Zucca, and with him most post-secular theorists, considers that the project of guaranteeing equal grounds for participation and inclusion in deliberation does not require a previous step in which separation between the state and a powerful religious institution has taken place. Without such step, however, pluralism can hardly prosper in such a way that constitutes a contestatory citizenry that challenges potential illegitimate uses of state power (e.g. display of crucifixes.)

A second argument against post-secular approaches points out that it raises unfair burdens to currently oppressed social groups because it involves the presumption of an implicit consent about the acceptability of the display of crucifixes in contexts where no complain has been raised yet. It follows from Zucca's ideas that the reason explaining the absence of cases against crucifixes is that they are not a source of discontent and therefore that everybody agrees with their display. This consequence is problematic, for the idea of implicit consent assumes a homogeneous society that does not find crucifixes in public schools objectionable. It can be assumed that nobody raises a case against crucifixes because there is either agreement or indifference toward them. In either case, such attitude may be motivated by a perception of crucifixes being inoffensive or neutral with respect to pupils' education and socialization. Legitimacy may be defined in terms of a hypothetical deliberation scenario in which all agreed upon the display. Since the display of crucifixes is legitimate if it is reasonable to assume implicit consent upon them, only homogeneous societies would meet such requirement.

However, the assumption of homogeneity in society is problematic. Homogenous societies do not exist, and, in cases in which there is such, it is very likely that homogeneity is maintained through the oppressive use of state power.[62] Hence, such assumption risks perpetuating—or starting—oppression over certain social groups. Expecting potentially excluded groups to raise their claims against crucifixes as a first step in the legitimation process of such symbols—or toward

---

[62] This is the Rawlsian "fact of oppression," Rawls, *Political Liberalism*, 37.

their removal—neglects some aspects of the conditions in which oppressed groups find themselves within society.

Iris Marion Young argued about the structural character of oppression, which makes it independent from the people's choices or policies. Causes of oppression, she claims, "are embedded in unquestioned norms, habits, and symbols, in the rules underlying institutional rules and the collective consequences of following those rules."[63] A consequence of Zucca's proposal is that oppressed groups, which are characterized by the internalization and normalization of structural oppression, are required to take the first step in overcoming their position of marginalization.

Consider the case of crucifixes in public schools. Dissenters of such measure have to take a step forward and start a controversy in order to involve the larger community in a deliberation that will generate a consented, informed, inclusive, and therefore legitimate decision. However, Zucca does not take in consideration the possibility that dissenters of such sort of measures be oppressed social groups that may perceive crucifixes as symbols of perpetuation of their oppression. Homosexuals, women, immigrants, or non-Catholics might feel excluded by the display of crucifixes, for it may be that crucifixes are not embraced by their conceptions of the good or moral doctrines, or that crucifixes do not represent their cultural and identitarian heritage.

What is more important, nonetheless, is that oppressed social groups can also consider such symbol as representatives of a social and political force that impinges their political struggles. Pubic identification as a dissenter of the

---

[63] Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 1990), 41.

society's majoritarian cultural references can derive in deepening an already impoverished situation. The case against crucifixes initiated by Mrs. Soile Lautsi, for instance, risked becoming an issue of national identity and integration of immigrants. The way society would have reacted were she Muslim, for instance, would have evidenced a deep problem involving not only a lack of neutrality and secularism within the institutions of the Italian state but also a lack of integration of immigrants of non-Christian origin.[64]

Summing up, it can be said that, despite being open to pluralism and deliberation, the post-secular approach does not face *status quo* powers and raises unfair burdens to oppressed social groups.[65] Part of belonging to an oppressed social group consists in being in a powerless condition,[66] thus, to expect from the worst-off to make a case against the crucifix is to expect them to overcome a situation in which they stand in a powerless situation in order to convince a majority to modify well established legal, ideological, and cultural assumptions about society (e.g. that Italy is a morally homogeneous country).

D. SYMBOLIC *V.* STRUCTURAL INJUSTICES

A defense of the post-secular and open secularism positions might raise a counter-argument by claiming that opening up the possibility for transformation, inclusion, and deliberation is already a liberating devise for promoting justice. The possibility to jointly decide whether or not a specific public school should

---

[64] As a matter of fact, that is the tone the debate has adopted when the controversy involves non-Christian immigrants. French headscarves issues constitute a clear example.

[65] Considering the Catholic Church's understanding of human life and of the role women must play in society, Catholic Church's influence in debates about legislation on abortion would risk oppressing not a minority but at least half the population.

[66] Young, *Justice and the Politics of Difference*, 56–58.

display crucifixes concedes the opportunity to transform an exclusionary and illegitimate institutional policy into an inclusivist and legitimate one.

This reaction is not plausible because it overlooks the relevance of the second dimension of the question about the proper role of religion in the public sphere. Injustices can be grounded on a symbolic basis and on a structural basis. Injustices structurally grounded are different from injustices derived from unequal treatment by state's endorsement of religious iconography. Nussbaum rightly describes the unfairness involved in such endorsements by several European states, but she does not consider the possibility of unmasking structural injustices in some of such symbolic embracement.[67] State's adoption of religious iconography (i.e. crucifixes) involves an indirect empowerment of the ideals and projects of the religious institution embraced by the state. Nussbaum does not take into consideration the fact that adoption of a Catholic symbol within official buildings is not only the public manifestation of some degree of closeness between the state and what the symbol represents; it is a gesture that serves to legitimize a discourse used in politics.

Consider the status of marriage and the family within Italian legal system, which is particularly restrictive in comparison to other state members of the European Union. According to Art. 29 of the Italian constitution, a family is "a natural society founded on marriage."[68] This definition excludes unions that do not seek marriage and yet could be considered as families. There is no legislation

---

[67] Nussbaum, *Liberty of Conscience*, chap. 1. She hints at a possible case for structural injustice when discussing opposition to same-sex marriage in the United States, but discards such possibility by generalizing her argument about the negative attitudes that fear to *the unknown* may generate (unknown immigrants, cultures, practices).
[68] "La Costituzione," accessed June 12, 2014,
http://www.quirinale.it/qrnw/statico/costituzione/costituzione.htm.

regulating the status of the so called *de facto* unions, who find no legal coverture as so far as they get involved in family-like situations.[69] Thus, Italian legislation about marriage obliges (heterosexual loving) couples to search for "state legitimation of relationships," as Elizabeth Brake calls them, in order to have access to some set of rights and protections that come with the institution of marriage.[70]

Attempts to institutionalize a form of marriage that guarantees equal treatment to all members of society have had to overcome the opposition of religious organizations (e.g. the Catholic Church). Hence, the Catholic Church has an interest in preserving the institution of marriage as it is within the Italian legal system. This interest derives from the fact that it protects and privileges the conception of marriage promulgated by the Catholic Church.[71]

The display of crucifixes in public schools is not only a display of a symbol belonging to a religion historically linked to the state. It is an embracement of an iconography related with a politically influential player in

---

[69] On December 2013, the Consiglio Nazionale del Notariato announced that *de facto* couples could register at a "Notaria" and thereby would have access to some civic protections enjoyed by married couples. These protections (*contratti di convivenza*) are not legal but administrative. Therefore, they are handled by different processes, usually more complicated and bureaucratic. See "Contratti Di Convivenza, Open Day 30 Novembre 2013," accessed September 1, 2014, http://www.contrattidiconvivenza.it/contratti-convivenza.html.

[70] According to Brake, "amatonormativity" "consists in the assumptions that a central, exclusive, amorous relationship is normal for humans, in that it is a universally shared goal, and that such a relationship is normative, in that it should be aimed at in preference to other relationship types." The criticism to "amatonormativity" is that is excludes other types of relations: marital or amorous relationships as considered as of more value that friendship "and other caring relationships." "By attributing a special value to exclusive amorous relationships, "amatonormativity" implies that alternatives such as celibacy, singledom, care networks, and friendships lack a central human good." See Brake, *Minimizing Marriage*, 88–94, 122.

[71] In 2007, Italian government approved a bill (Diritti e Doveri delle Persone Stabilmente Conviventi *DICO*) drafted by a center-left coalition (Romano Prodi's) aiming to recognize domestic partnerships. The bill recognized health and social welfare benefits, and inheritance rights after nine years of connivance. The bill was never voted in the Senate for it was resisted by right wing parties backed by the Catholic Church and even by members of the coalition drafting it.

debates that concern reforms aiming at guaranteeing equal treatment by the state to all citizenry. The morality defended by the Catholic Church in the case of marriage reforms, regardless of whether or not it is presented according to public reason requirements, finds reinforcement by the display of the Catholic iconography within the institutions of the state (i.e., public schools or courtrooms). Crucifixes represent the doctrine emanated by the Vatican and its stand in political issues. By displaying the iconography of a politically active association, the state is taking sides in debates that divide society and is indirectly empowering an already powerful actor.

This 'taking sides' by the state is not merely symbolic, for it is not just a public expression of a symbol that might or might not have religious meaning only. If it were only symbolic, the question about the legitimacy of the display of crucifixes would be reduced to debates referring to guarantees for equal treatment of state's endorsement of iconographic representations of the diverse moralities constituting society. In this context, perhaps the best way to deal with proliferation of claims for equal treatment would be the proposed by post-secular theory. However, I the question about secularism in contexts like the Italian, the challenge is not only about equal recognition of all faiths and moral doctrines. It is also about the excessive power the Catholic Church has within the institutions of the state to arbitrarily interfere with decisions that affect the whole society. The problem of secularism in Italy, in other words, has to take into consideration that the institutions of the state have not completely achieved full independence from the Catholic Church. The display of crucifixes in courtrooms or public schools is an example of such unfinished process.

The possibility for transformation, inclusion, and deliberation that post-secular and open secularists try to defend risks perpetuating injustices that are structural rather than symbolic. To address the problem of deficit of secularism by promoting plural participation and inclusiveness, they are assuming that the problem of secularism is only about facing new challenges raised by pluralism. They are, therefore, neglecting a fundamental political problem, namely, that the deficit of secularism is also structurally grounded at the interior of the institutions of the state. Separation was not achieved, and therefore the task of guaranteeing a neutral public sphere where diversity can freely express was not accomplished. The principle of strict separation intends to finish such task.

5. Concluding Remarks

In this chapter I have argued that the post-secular approach to the question about the proper role of religion in the public sphere overlooks a crucial aspect addressed by the traditional conception of secularism as church-state separation. I explained this fault by showing that the distinction between *pluriconfessional* and *monoconfessional* contexts is normatively relevant in order to address the question about religion in the public sphere. I appealed to the Italian controversy about crucifixes in public schools in order to illustrate the relevance of the distinction, for it allows making explicit that in some monoconfessional societies, protections of freedom of religion and of conscience depend to a great extent on clearly implementing principles of strict church-state separation. In the last section I presented three arguments in favor of a principle of strict separation in contexts in which there is a majoritarian and powerful religious institution that

160

uses the institutions of the state to impose its doctrine. I defended the principle of strict separation from what I have called the clerical and the post-secular objections. Furthermore, I argued that the principle of strict separation advances justice better than post-secular approaches because it considers that the active presence of a powerful religious institution within the institutions of the state constitutes a structurally grounded injustice.

Bibliography

"Address to the Union of Italian Catholic Jurists." Accessed September 2, 2014. http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/december/documents/hf_ben_xvi_spe_20061209_giuristi-cattolici_en.html.

Anderson, Elizabeth. "Integration, Affirmative Action, and Strict Scrutiny." *New York University Law Review* 77 (November 2002): 1195–1271.

———. *The Imperative of Integration*. Princeton, N.J.: Princeton University Press, 2010.

Appiah, Kwame Anthony. *Color Conscious*. Princeton University Press, 1998.

Arias, Ricardo. *El Episcopado Colombiano. Intransigencia Y Laicidad (1850-2000)*. Bogota: CESO-Ediciones Uniandes-ICANH, 2003.

Audard, Catherine. *Qu'est-ce que le libéralisme ?: Éthique, politique, société*. Paris: Folio, 2009.

Audi, Robert. *Democratic Authority and the Separation of Church and State*. New York: Oxford University Press, 2011.

———. "The Separation of Church and State and the Obligations of Citizenship." *Philosophy & Public Affairs* 18, no. 3 (July 1, 1989): 259–96.

Bader, Veit. "Religious Pluralism: Secularism or Priority for Democracy?" *Political Theory* 27, no. 5 (1999): 597–633.

Barry, Brian. *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Harvard University Press, 2002.

Bates, Thomas R. "Gramsci and the Theory of Hegemony." *Journal of the History of Ideas* 36, no. 2 (April 1, 1975): 351–66. doi:10.2307/2708933.

Baubérot, Jean. *Histoire de la laïcité en France*. Paris: Presses Univ. de France, 2007.

———. "The Two Thresholds of Laicization." In *Secularism and Its Critics*, edited by Rajeev Bhargava, 94–136. New Delhi: Oxford University Press, 1998.

———. *Une laïcité interculturelle : Le Québec, avenir de la France ?*. La Tour d'Aigues: Editions de l'Aube, 2008.

162

Beckford, James A. "SSSR Presidential Address Public Religions and the Postsecular: Critical Reflections." *Journal for the Scientific Study of Religion* 51, no. 1 (March 1, 2012): 1–19. doi:10.1111/j.1468-5906.2011.01625.x.

Bedi, Sonu. "Debate: What Is so Special About Religion? The Dilemma of the Religious Exemption." *Journal of Political Philosophy* 15, no. 2 (June 1, 2007): 235–49. doi:10.1111/j.1467-9760.2006.00269.x.

Berlin, Isaiah. "Two Concepts of Liberty." In *Liberty*, edited by Henry Hardy. Oxford University Press, 2002.

Bhargava, Rajeev. "Rehabilitating Secularism." In *Rethinking Secularism*, edited by Craig Calhoun, Mark Juergensmeyer, and Jonathan VanAntwerpen. 92-113: Oxford University Press, USA, 2011.

Bouchard, Gérard, and Charles Taylor. *Building the Future. A Time for Reconciliation*. Quebec: Government of Quebec, 2008.

Boucher, François. "Freedom of Religion and Freedom of Conscience in Postsecular Societies." *Philosophy and Public Issues (New Series)* 3, no. 2 (2013): 159–200.

Brake, Elizabeth. *Minimizing Marriage: Morality, Marriage, and the Law*. Oxford; New York: Oxford University Press, 2012.

Brettschneider, Corey. "A Transformative Theory of Religious Freedom: Promoting the Reasons for Rights." *Political Theory* 38, no. 2 (April 1, 2010): 187–213. doi:10.1177/0090591709354868.

———. *When the State Speaks, What Should It Say?: How Democracies Can Protect Expression and Promote Equality*. Princeton, N.J.: Princeton University Press, 2012.

Brown, Wendy, Rainer Forst, Luca Di Blasi, Christoph F. E. Holzhey, and & 1 more. *The Power of Tolerance: A Debate*. Columbia University Press, 2014.

Bulliet, Richard W. *The Case for Islamo-Christian Civilization*. New York: Columbia University Press, 2006.

Cage, Feilding, Tara Herman, and Nathan Good. "Lesbian, Gay, Bisexual and Transgender Rights around the World." *The Guardian*. Accessed July 14, 2014. http://www.theguardian.com/world/ng-interactive/2014/may/-sp-gay-rights-world-lesbian-bisexual-transgender.

Casanova, Jose. *Public Religions in the Modern World*. 1st ed. University Of Chicago Press, 1994.

———. "Secularization, Religion, and Multicultural Citizenship." In *Religions and Dialogue International Approaches*, edited by Wolfram Weiße, Katajun Amirpur, and Anna Körs, 21–32. Religionen Im Dialog. Münster, Westf: Waxmann Verlag GmbH, 2014.

"Catechism of the Catholic Church - The Sixth Commandment." Accessed May 26, 2014. http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a6.htm#2 357.

Coffee, Alan M. S. J. "Two Spheres of Domination: Republican Theory, Social Norms and the Insufficiency of Negative Freedom." *Contemporary Political Theory*, Forthcoming 2014. doi:10.1057/cpt.2014.5.

"Contratti Di Convivenza, Open Day 30 Novembre 2013." Accessed September 1, 2014. http://www.contrattidiconvivenza.it/contratti-convivenza.html.

Costa, Victoria M. "Is Neo-Republicanism Bad for Women?" *Hypatia* 28, no. 4 (November 1, 2013): 921–36. doi:10.1111/hypa.12002.

"Decreto 354 de 1998." Accessed September 26, 2014. http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=3278.

Dworkin, Ronald. *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*. 1st Vintage Bks Ed, July 1994. Vintage, 1994.

———. *Taking Rights Seriously*. Cambridge: Harvard University Press, 1978.

Eberle, Christopher J. "Basic Human Worth and Religious Restraint." *Philosophy & Social Criticism* 35, no. 1–2 (January 1, 2009): 151–81. doi:10.1177/0191453708098759.

Eberle, Christopher J. *Religious Conviction in Liberal Politics*. 1st ed. Cambridge University Press, 2002.

Ferrara, Alessandro. *The Force of the Example: Explorations in the Paradigm of Judgment (New Directions in Critical Theory)*. Columbia University Press, 2008.

———. "The Separation of Religion and Politics in a Post-Secular Society." *Philosophy & Social Criticism* 35, no. 1–2 (January 1, 2009): 77–91. doi:10.1177/0191453708098755.

Fitzmaurice, Deborah. "Autonomy as a Good: Liberalism, Autonomy and Toleration." *Journal of Political Philosophy* 1, no. 1 (March 1, 1993): 1–16. doi:10.1111/j.1467-9760.1993.tb00001.x.

Forst, Rainer. *Toleration in Conflict: Past and Present*. Cambridge: Cambridge University Press, 2013.

Freeman, Samuel. *Justice and the Social Contract: Essays on Rawlsian Political Philosophy*. New York: Oxford University Press, 2009.

Galeotti, Anna E. *Toleration as Recognition*. Cambridge, UK; New York: Cambridge University Press, 2005.

Galston, William A. *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*. Cambridge University Press, 2002.

———. *The Practice of Liberal Pluralism*. Cambridge University Press, 2004.

———. "Two Concepts of Liberalism." *Ethics* 105, no. 3 (April 1, 1995): 516–34. doi:10.2307/2382140.

García, Leonardo. *Laicidad y Justicia Constitucional*. Colección de Cuadernos Jorge Carpizo. Para Entender y Pensar la Laicidad 33. Mexico D.F.: Instituto de Investigaciones Jurídicas - UNAM, 2013.

Gaus, Gerald. *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*. 1st ed. Cambridge University Press, 2010.

Gedicks, Federic, and Pasquale Annicchino. "Cross, Crucifix, Culture: An Approach to the Constitutional Meaning of Confessional Symbols." *EUI Working Papers*, EUI Working Paper RSCA 2013/88, 2013, 1–56.

Gedicks, Frederick Mark, and Pasquale Annicchino, trans. *Lautsi v. Italy: English Translations of Italian Trial and Appellate Decisions*, November 17, 2013. http://papers.ssrn.com/abstract=2361188.

George, Robert P. "Law, Democracy, and Moral Disagreement." *Harvard Law Review* 110, no. 7 (May 1997): 1388. doi:10.2307/1342176.

———. "Public Reason and Political Conflict: Abortion and Homosexuality." *The Yale Law Journal* 106, no. 8 (June 1997): 2475.

Gray, John. *Two Faces of Liberalism*. The New Press, 2002.

Grimm, Dieter. "Conflicts Between General Laws and Religious Norms." In *Constitutional Secularism in an Age of Religious Revival*, edited by

Susanna Mancini and Michel Rosenfeld, 3–13. New york, NY: OUP Oxford, 2014.

Gutmann, Amy, and Dennis Thompson. *Democracy and Disagreement*. Belknap Press of Harvard University Press, 1996.

———. *Why Deliberative Democracy?*. Princeton: Princeton University Press, 2004.

Habermas, Jürgen. "Notes on Post-Secular Society." *New Perspectives Quarterly* 25, no. 4 (2008): 17–29. doi:10.1111/j.1540-5842.2008.01017.x.

———. "Religion in the Public Sphere." *European Journal of Philosophy* 14, no. 1 (April 1, 2006): 1–25. doi:10.1111/j.1468-0378.2006.00241.x.

Haidt, Jonathan. *The Righteous Mind: Why Good People Are Divided by Politics and Religion*. 1 edition. New York: Pantheon, 2012.

Hazareesingh, Sudhir. *Political Traditions in Modern France*. Oxford; New York: Oxford University Press, 1994.

"High Impact Litigation in Colombia to Liberalize Abortion Laws." *Women's Link Worldwide*. Accessed October 8, 2013. http://www.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&tp=proyectos&dc=10&lang=en.

"Il Papa: 'La Chiesa? Un Ospedale Da Campo' E Chiede Misericordia per Gay E Chi Ha Abortito - Repubblica.it." *La Repubblica*, September 19, 2013. http://www.repubblica.it/esteri/2013/09/19/news/papa-66887013/.

Kertzer, David I. "Gramsci's Concept of Hegemony: The Italian Church-Communist Struggle." *Dialectical Anthropology* 4, no. 4 (December 1, 1979): 321–28. doi:10.1007/BF00247875.

Kukathas, Chandran. *The Liberal Archipelago*. Oxford University Press, 2003.

Kymlicka, Will. *Liberalism, Community, and Culture*. Oxford University Press, USA, 1991.

———. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford University Press, USA, 1996.

———. "Two Models of Pluralism and Tolerance." In *Toleration. An Elusive Virtue*, edited by David Heyd, 81–105. Princeton University Press, 1996.

Laborde, Cécile. *Critical Republicanism. The Hijab Controversy and Political Philosophy*. Oxford: Oxford University Press, 2008.

———. "Equal Liberty, Non-Establishment and Religious Freedom." *Legal Theory*, 2013.

———. "On Republican Toleration." *Constellations* 9, no. 2 (2002): 167–83.

———. "Political Liberalism and Religion: On Separation and Establishment." *Journal of Political Philosophy*, 2011, 67–86.

———. "Toleration and Laïcité." In *The Culture of Toleration in Diverse Societies. Reasonable Tolerance*, 161–78. Manchester; New York: Manchester University Press, 2003.

"La Costituzione." Accessed June 12, 2014. http://www.quirinale.it/qrnw/statico/costituzione/costituzione.htm.

Lafont, Cristina. "Religion in the Public Sphere: Remarks on Habermas's Conception of Public Deliberation in Postsecular Societies." *Constellations* 14, no. 2 (June 1, 2007): 239–59. doi:10.1111/j.1467-8675.2007.00436.x.

Larmore, Charles. *The Morals of Modernity*. 1st ed. Cambridge University Press, 1996.

Lee, Patrick, and Robert P. George. *Body-Self Dualism in Contemporary Ethics and Politics*. 1 edition. Cambridge; New York: Cambridge University Press, 2007.

Lemaitre, Julieta. "By Reason Alone: Catholicism, Constitutions, and Sex in the Americas." *International Journal of Constitutional Law* 10, no. 2 (March 30, 2012): 493–511. doi:10.1093/icon/mor060.

Locke, John. "A Letter Concerning Toleration." In *Two Treatises of Government and A Letter Concerning Toleration*, edited by Ian Shapiro, 211–54. New Heaven and London: Yale University Press, 2003.

Luckmann, Thomas. *The Invisible Religion: The Problem of Religion in Modern Society.* First edition. MacMillan Publishing Company, 1967.

Macedo, Stephen. *Deliberative Politics: Essays on Democracy and Disagreement*. New York: Oxford University Press, 1999.

———. "In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases." *American Journal of Jurisprudence* 42 (1997): 1–29.

———. "Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?" *Ethics* 105, no. 3 (abril 1995): 468–96.

Maclure, Jocelyn. "Political Secularism and Public Reason. Three Remarks on Audi's Democratic Authority and the Separation of Church and State." *Philosophy and Public Issues (New Series)* 3, no. 2 (2013): 37–46.

Maclure, Jocelyn, and Charles Taylor. *Secularism and Freedom of Conscience*. Translated by Jane Marie Todd. Harvard University Press, 2011.

Maffettone, Sebastiano. *Rawls: An Introduction*. Cambridge, UK; Malden, MA: Polity, 2010.

Malkin, Elisabeth. "Mexican States Crack Down on Abortion." *The New York Times*, September 22, 2010, sec. World / Americas. http://www.nytimes.com/2010/09/23/world/americas/23mexico.html.

Mancina, Claudia. *La laicità al tempo della bioetica*. Bologna: Il Mulino, 2009.

Mancini, Susanna. "Taking Secularism (not Too) Seriously: The Italian 'Crucifix Case.'" *Religion and Human Rights* 1, no. 2 (2006): 179–95. doi:10.1163/187103206778884820.

———. "The Crucifix Rage: Supranational Constitutionalism Bumps Against the Counter-Majoritarian Difficulty." *European Constitutional Law Review (EuConst)* 6, no. 01 (2010): 6–27. doi:10.1017/S1574019610100029.

Martí, José Luis, and Philip Pettit. *A Political Philosophy in Public Life: Civic Republicanism in Zapatero's Spain*. Princeton University Press, 2012.

May, Simon Căbulea. "Principled Compromise and the Abortion Controversy." *Philosophy & Public Affairs* 33, no. 4 (September 2005): 317–48. doi:10.1111/j.1088-4963.2005.00035.x.

McLeod, Carolyn. "Referral in the Wake of Conscientious Objection to Abortion." *Hypatia* 23, no. 4 (October 12, 2008): 30–47. doi:10.1111/j.1527-2001.2008.tb01432.x.

McMahon, Christopher. *Reasonable Disagreement: A Theory of Political Morality*. 1 edition. Cambridge, UK ; New York: Cambridge University Press, 2009.

Milot, Micheline. "The Secular State in Quebec: Configuration and Debates." *Diversité canadienne/Canadian Diversity* 10, no. 1 (2013): 39–43.

Modood, Tariq. "Is There a Crisis of Secularism in Western Europe?" *Sociology of Religion*, May 4, 2012, 130–49. doi:10.1093/socrel/srs028.

Nagel, Thomas. "The Fragmentation of Value." In *Mortal Questions*. Canto Classics. Cambridge University Press, 2012. http://dx.doi.org/10.1017/CBO9781107341050.011.

Nussbaum, Martha. *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*. Paperback Edition. Basic Books, 2009.

———. "Rawls and Feminism." In *The Cambridge Companion to Rawls*, edited by Samuel Freeman, 488–520. New York: Cambridge University Press, 2002.

Okin, Susan Moller. *Justice, Gender, And The Family*. Reprint edition. New York: Basic Books, 1991.

———. "Political Liberalism, Justice, and Gender." *Ethics* 105, no. 1 (October 1, 1994): 23–43.

Okin, Susan Moller, and Martha C. Nussbaum. *Is Multiculturalism Bad for Women?*. 1st Edition. Princeton, N.J.: Princeton University Press, 1999.

Pena-Ruiz, Henri. *Dieu et Marianne : Philosophie de la laïcité*. Edición: édition revue et augmentée. Paris: Presses Universitaires de France - PUF, 2005.

Peter, Fabienne. "Epistemic Foundations of Political Liberalism." *Journal of Moral Philosophy*, 2013.

Pettit, Philip. *A Theory of Freedom: From the Psychology to the Politics of Agency*. Oxford ; New York: Oxford University Press, 2001.

———. "Democracy, Electoral and Contestatory." In *Designing Democratic Institutions*, edited by Ian Shapiro and Stephen Macedo, 105–44. NOMOS, XLII. NYU Press, 2000.

———. *On the People's Terms*. 1st ed. Cambridge University Press, 2012.

———. *Republicanism: A Theory of Freedom and Government*. Oxford; New York: Oxford University Press, 1999.

———. "The Basic Liberties." In *The Legacy of H.L.A. Hart: Legal, Political and Moral Philosophy*, edited by Matthew Kramer, Claire Grant, Ben Colburn, and Antony Hatzistavrou, 201–21. Oxford; New York: Oxford University Press, 2008.

———. "The Common Good." In *Justice and Democracy: Essays for Brian Barry*, edited by Professor Keith Dowding, Robert E. Goodin, and Carole Pateman, 150–69. Cambridge; New York: Cambridge University Press, 2004.

———. "The Determinacy of Republican Policy: A Reply to McMahon."
         Philosophy & Public Affairs 34, no. 3 (June 2006): 275–83.
         doi:10.1111/j.1088-4963.2006.00068.x.

Phillips, Anne. "Feminism and Republicanism: Is This a Plausible Alliance?"
         Journal of Political Philosophy 8, no. 2 (2000): 279–93.

Prada, Elena, Susheela Singh, Lisa Remez, and Cristina Villarreal. *Unintended
         Pregnancy and Induced Abortion in Colombia: Causes and Consequences*.
         New York: Guttmacher Institutte, 2011.

Purdy, Laura M. "In Defense of Hiring Apparently Less Qualified Women."
         Journal of Social Philosophy 15, no. 2 (May 1, 1984): 26–33.
         doi:10.1111/j.1467-9833.1984.tb00573.x.

Quong, Jonathan. *Liberalism without Perfection*. OUP Oxford, 2011.

Rawls, John. *A Theory of Justice*. Belknap Press of Harvard University Press,
         1999.

———. *Political Liberalism: Expanded Edition*. 2nd ed. Columbia University
         Press, 2005.

———. "The Idea of Public Reason." In *Political Liberalism*, 212–54. New
         York: Columbia University Press, 1996.

———. "The Idea of Public Reason Revisited." *The University of Chicago Law
         Review* 64, no. 3 (July 1, 1997): 765–807. doi:10.2307/1600311.

Raz, Joseph. "Autonomy, Toleration, and the Harm Principle." In *Justifying
         Toleration*. Cambridge University Press, 1988.
         http://dx.doi.org/10.1017/CBO9780511735295.009.

Riley, Dilan John. "Hegemony and Democracy in Gramsci's Prison Notebooks."
         California Italian Studies 2, no. 2 (2011): 1–22.

Rivera, Faviola. *Laicidad y Liberalismo*. Colección de Cuadernos Jorge Carpizo.
         Para Entender y Pensar la Laicidad 3. Mexico D.F.: Instituto de
         Investigaciones Jurídicas - UNAM, 2013.

Rodotà, Stefano. *Perché laico*. Editori Laterza, 2009.

Roe v. Wade 410 U.S. 113, (1973).

Rousseau, Jean-Jacques. *The Social Contract and The First and Second
         Discourses*. New Haven: Yale University Press, 2002.

Sajó, András. "Preliminaries to a Concept of Constitutional Secularism." *International Journal of Constitutional Law* 6, no. 3–4 (July 1, 2008): 605–29. doi:10.1093/icon/mon018.

Sandel, Michael J. "Moral Argument and Liberal Toleration: Abortion and Homosexuality." *California Law Review* 77, no. 3 (May 1989): 521–38.

Sentencia C-27/93, (Constitutional Court of Colombia 1993).

Sentencia C-355/06., (Constitutional Court of Colombia 2006).

Sentenza N. 1110/2005, Ric. N. 2007/02, (Tribunale Amministrativo Regionale Veneto 2005).

Shapiro, Ian. "Enough of Deliberation: Politics Is about Interests and Power." In *Deliberative Politics: Essays on Democracy and Disagreement*, edited by Stephen Macedo, 28–38. New York: Oxford University Press, 1999.

Siegel, Reva B. "Dignity and Sexuality: Claims on Dignity in Transnational Debates over Abortion and Same-Sex Marriage." *International Journal of Constitutional Law* 10, no. 2 (March 30, 2012): 355–79. doi:10.1093/icon/mos013.

Stetson, Dorothy McBride. *Abortion Politics, Women's Movements, and the Democratic State*. Oxford University Press, 2001.

Taylor, Charles. *A Secular Age*. First Edition. Belknap Press of Harvard University Press, 2007.

———. "Modes of Secularism." In *Secularism and Its Critics*, edited by Rajeev Bhargava, 31–53. New Delhi: Oxford University Press, 1998.

———. *Multiculturalism: Examining the Politics of Recognition*. Edited by Amy Gutmann. Expanded paperback edition. Princeton, N.J.: Princeton University Press, 1994.

"Texas Abortion Clinic to Reopen After Ruling." Accessed November 5, 2014. http://www.nytimes.com/2014/09/04/us/texas-abortion-clinic-to-reopen-after-court-ruling.html?_r=0.

Thomson, Judith Jarvis. "A Defense of Abortion." *Philosophy & Public Affairs* 1, no. 1 (October 1, 1971): 47–66.

———. "Preferential Hiring." *Philosophy and Public Affairs* 2, no. 4 (1973): 364–84.

Tooley, Michael. "Abortion and Infanticide." *Philosophy & Public Affairs* 2, no. 1 (October 1, 1972): 37–65.

Urbinati, Nadia. "Laicità a Rovescio. I Diritti in Una Società Monoreligiosa." In *Missione Impossibile. La Riconquista Cattolica Della Sfera Pubblica*, edited by Marco Marzano and Nadia Urbinati, 63–133. Bologna: Il Mulino, 2013.

———. "The Context of Secularism: A Critical Appraisal of the Post-Secular Argument." In *Constitutional Secularism in an Age of Religious Revival*, edited by Susanna Mancini and Michel Rosenfeld, 14–32. New York, NY: Oxford University Press, 2014.

Vallier, Kevin. "Against Public Reason Liberalism's Accessibility Requirement." *Journal of Moral Philosophy* 8, no. 3 (October 1, 2011): 366–89. doi:10.1163/174552411X588991.

———. *Liberal Politics and Public Faith: Beyond Separation*. New York: Routledge, 2014.

Waldron, Jeremy. *God, Locke, and Equality: Christian Foundations in Locke's Political Thought*. Cambridge University Press, 2002.

———. *Law and Disagreement*. Oxford; New York: Oxford University Press, 1999.

———. "The Core of the Case against Judicial Review." *The Yale Law Journal* 115, no. 6 (April 1, 2006): 1346. doi:10.2307/20455656.

Weiler, Joseph H. H. "Il Crocefisso a Strasburgo: Una Decisione 'Imbarazzante.'" *Quaderni Costituzionali*, no. 1/2010 (2010). doi:10.1439/31542.

Weiler, Joseph H.H. *Un'Europa cristiana: un saggio esplorativo*. Milan: Rizzoli University, 2003.

Weinstock, Daniel. "On the Possibility of Principled Moral Compromise." *Critical Review of International Social and Political Philosophy* 16, no. 4 (2013): 537–56. doi:10.1080/13698230.2013.810392.

Wertheimer, Roger. "Internal Disagreements: Deliberation and Abortion." In *Deliberative Politics: Essays on Democracy and Disagreement*, edited by Stephen Macedo, 170–83. New York: Oxford University Press, 1999.

Wolterstorff, Nicholas, and Robert Audi. *Religion in the Public Square: The Place of Religious Convictions in Political Debate*. Lanham, Md: Rowman & Littlefield Publishers, 1996.

Young, Iris Marion. *Justice and the Politics of Difference*. Princeton University Press, 1990.

Zagorin, Perez. *How the Idea of Religious Toleration Came to the West*. Princeton, N.J.; Woodstock: Princeton University Press, 2005.

Zucca, Lorenzo. *A Secular Europe: Law and Religion in the European Constitutional Landscape*. Oxford University Press, 2012.

———. "Lautsi: A Commentary on a Decision by the ECtHR Grand Chamber." *International Journal of Constitutional Law* 11, no. 1 (January 1, 2013): 218–29. doi:10.1093/icon/mos008.

———. "The Crisis of the Secular State—A Reply to Professor Sajó." *International Journal of Constitutional Law* 7, no. 3 (July 1, 2009): 494–514. doi:10.1093/icon/mop010.