

3 Religious pluralism in a deliberative democracy

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In all liberal democracies the neutrality of the state is at the core of the debates on religion and politics. However, in the American context, this debate is framed in terms of a broader debate on the ethics of democratic citizenship (i.e., on the question of what kinds of reasons and considerations citizens may use as a basis to justify the coercive power they exercise over one another, so that such coercion can be considered legitimate), whereas this issue is much less prominent in European debates. However, I have the impression that the debate on the ethics of democratic citizenship could actually be very helpful for addressing some of the issues that are peculiar to European debates – e.g., the debates on banning the Islamic headscarf from public places – which have no counterpart in the American context. Thus, I would like to first indicate what motivates the debate on the ethics of democratic citizenship in the American context in particular and then show why, in spite of all differences, this debate is equally needed and relevant in the European context (pp. 000). In a second step, I present my specific answer to the question of the obligations of democratic citizenship in a deliberative democracy (pp. 000) and then show how it can help illuminate specific European debates on the presence of religion in the public sphere (p. 000). I conclude with some brief remarks on the democratic implications of the concept of public reason and democratic citizenship that I defend (p. 000).

The debate on the ethics of citizenship in the USA and its relevance in Europe

The neutrality of the state is entrenched in the US Constitution as a way of securing equal rights and freedoms for all citizens. This normative goal has two components, which are expressed in the two “religion clauses” found in the First Amendment to the Constitution: the “establishment clause” that prohibits the establishment of a national religion as well as the preferential treatment of any one religion over another by the state and the “free exercise clause” that protects citizen’s right to the free exercise of religion. Naturally, these aims oftentimes conflict and this generates hard cases similar to those debated in Europe, such as the provision of public funding for religious activities, the allowance of voluntary prayer in public schools or the display of religious symbols (like the Ten

Commandments) in public places. Despite this similarity, an important difference between the American and European debates arises out of the fact that most American citizens are religious rather than secular. In distinction to Europe, secularism is not part of the majority culture. In fact, nonbelievers are a minority group that is rarely mentioned or represented as part of the official public culture. Now, in the context of a country with a majority of religious citizens, the main problem with the presence of religion in the public sphere is not only that it challenges the neutrality of the state, but also that it influences the outcome of democratic decision-making processes regarding the fundamental rights and freedoms of fellow citizens. What is at stake in debates about same-sex marriage, abortion, euthanasia, stem-cell research, etc. – which are deeply influenced by the religious beliefs of citizens – is the legitimacy of democratic decision-making in light of the possibility that a majority, on the basis of their religious beliefs, may illicitly restrict the rights and freedoms of fellow citizens. This is why in the American context, the debate on the presence of religion in the public sphere has been framed in terms of the ethics of democratic citizenship.

Looking at Europe from this perspective, it seems to me that here we find the opposite situation. Secularism is not merely a reflection of the neutrality of the state, but it is also an important ingredient of the majority culture. In distinction from the American experience, in the context of European countries, the secular state's neutrality is not seen as simply an institutional tool to protect the rights and freedoms of all citizens, but also as an expression of the collective identity of the majority of the population. Against the background of a secular majority culture, it is not surprising that the European debates have focused much less on the issue of what role religious beliefs should play in political deliberation in the public sphere. For, in comparison to the American social milieu, the possibility that a religious majority may curtail the rights and freedoms of fellow citizens on the basis of their religious beliefs seems quite remote in Europe. Nonetheless, as I said before, I have the impression that the American debate on the ethics of democratic citizenship is highly relevant to the European debates on the presence of religion in the public sphere. But before I try to illustrate this claim with some examples, let me try to motivate its relevance by addressing first the most obvious point of overlap between both debates: namely, the question of the neutrality of the state.

Taking the US Constitution as a guide, the principle of neutrality requires that the state finds a balance between two distinct aims: the non-preferential treatment of any religion over another or over no religion, which obviously includes the non-establishment of any particular religion as the national religion, and the protection of the free exercise of all religions. On both counts, European countries are far from doing an ideal job. From the establishment of the Anglican Church as official religion in England and the historical privileges conceded to Christian denominations in most European countries (e.g., public funding provided to Catholic churches and schools in Spain, Italy, France, Poland, etc.) to the official disregard of the obligation to protect in similar ways the right to the free exercise of non-Christian religions, notably Islam. It is not coincidental,

I think, that the wide range of privileges and financial support offered to a variety of Christian denominations by different European states creates a direct problem once non-Christian religions like Islam appear on the scene. The emergence of non-Christian religions puts pressure on the actual lack of neutrality of the state in European countries. As a consequence, these states may be forced to live up to their official secularism and in fact disentangle themselves from the long historical tradition of conceding preferential treatment to those religions practiced by the majority. The popular claim that the presence of Islamic symbols, beliefs and practices in European countries threatens the secular state can hardly be understood without translating it into what seems to be the *real* issue: namely, that the presence of Islam in Europe threatens the possibility of maintaining the pattern of preferential treatment and privileges that different Christian denominations currently enjoy in European states. Without such a translation, inattentive outsiders would have a hard time understanding how the popular debate regarding the presence of Islam in Europe can so easily oscillate between the claim that European countries are secular and the claim that they are Christian. Clearly, Europeans must make up their minds, for they cannot have it both ways. This patent inconsistency in part explains the puzzling fact that such a relatively small presence of citizens of Islamic faith in European countries can produce such agitated reactions. Their presence confronts European countries with a choice they seem equally unwilling to make: either to live up to their official commitment to the neutrality of the secular state as a means to protect the rights and freedoms of all citizens, the Muslim minority included – this would require that these countries dismantle the historical privileges conceded to (mainly) Christian denominations – or to end the current discrimination against Islam and offer Muslims the same kind of support, funding, protections and accommodations that other religions in fact enjoy,¹ in spite of the official doctrine of state neutrality.

Now, regarding the either/or that European countries face, it is hard to take a clear-cut stand between a strictly neutralist and a more accommodative state model. From a purely normative point of view, and assuming all other things to be equal, it seems to me that the more neutral the state, the better it is suited to protect the rights and freedoms of all citizens, most notably those of secular citizens.² However, some deviations from strict neutrality may nonetheless be needed to protect the right to free exercise of religion in particular circumstances. For example, if members of some religions are too poor to have effective access to the means or facilities needed for religious practice, then some form of state support may be the best means for the goal of securing effective rights to the free exercise of religion for those citizens. This indicates that the line between a policy of strict neutrality and a policy of positive accommodation is fuzzy and cannot be drawn too sharply in practice.

Moreover, in light of the high diversity of historical circumstances in which different countries find themselves, it seems impossible to extract a “one size fits all” political agenda from the ideal of state neutrality, i.e., an agenda that would be suitable for implementation in all contexts and at all times. This seems true of

all political ideals, actually. From a purely normative point of view, it may be plausible to claim that a democratic republic is the ideal form of government, but adopting a political agenda to immediately dismantle all European monarchies on the basis of that ideal may not be an equally plausible claim. Similarly, whether or not the disestablishment of the Anglican Church in England or the removal of public funding for Catholic schools in Spain is the right political goal under current historical circumstances cannot be simply read-off from the normative ideal of state neutrality itself. Sensible political action always involves striking a difficult balance between different goals and risks, opportunities and constraints, short and long-term considerations, etc. Consequently, since there are always alternative ways to strike such a balance, the right political choice in the specific circumstances of each political community ought to be determined by its own citizens through an ongoing democratic process of political opinion- and will-formation.

But, if this is so, we can see why the question of the ethics of democratic citizenship that is at the core of the American debate on the role of religion in the public sphere is equally relevant to the European debate. If in democratic societies it is ultimately up to the citizens to collectively determine the specific ways in which their institutions need to be shaped and transformed in light of their political goals, ideals and historical circumstances, then it is crucial to figure out what kinds of reasons and considerations form an appropriate basis upon which citizens can make those fundamental political decisions so that the coercive power they exercise over one another is legitimate. In what follows, I would like to offer a specific answer to this question and to show, by way of example, how it can be applied to the European debates on the presence of religious symbols in the public sphere.

Mutual accountability: the priority of proper political reasons in public debates

The debate on the kinds of reasons that citizens can use to justify the coercive power they exercise over one another has become very prominent in recent years, due to the increased popularity of the deliberative model of democracy. The ideal of a deliberative democracy contains many attractive features that explain this popularity. Within the context of a discussion on religious pluralism, perhaps the most important feature is that it promises citizens some measure of protection against political domination by majorities. Other models of democracy (notably aggregative models) can only promise citizens the fair treatment involved in the right to vote, that is, in having the equal opportunity to influence the outcome of the democratic decision-making procedures in which they participate. However, it is obvious that the right to vote is compatible with a scenario in which some citizens systematically and repeatedly lose out when decisions are made in a majoritarian fashion. For permanent minorities, this right-to-vote version of equal opportunity can easily amount to the absence of any actual effective opportunity to prevent majoritarian outcomes that are unjust. In

contrast, the deliberative model offers citizens some resources that can help them avoid the domination potentially exercised by a consolidated majority. The deliberative model can grant better reasons greater influence over outcomes, while still upholding to equal voting rights by requiring that democratic deliberation takes place before collective decisions are made if the outcomes of such decisions are to be considered legitimate. By adding this requirement, the deliberative model indicates a way in which minorities may be able to prevent political domination by the majority. Instead of resentfully biding their time until they can seize an opportunity for their group's own ascent to dominance, they can try to engage in public deliberation so as to show that their proposals are supported by better reasons and hold out realistic hope that the unforced force of the better argument, to use Habermas's expression, may move the majority to change their initial preferences. The idea that better reasons (and not just a higher numbers of votes) are what lends legitimacy to the outcomes of democratic decisions, is reflected in the criterion of democratic legitimacy that underlies the ideal of a deliberative democracy. According to this criterion, citizens owe one another justifications based on reasons that everyone can reasonably accept for coercive policies with which they all must comply. Only in this way can all citizens see themselves not simply as subject to the law but also as authors of the law, as the democratic ideal of self-government requires.

However, in light of the pluralism characteristic of democratic societies which encompass secular citizens as well as citizens of different faiths, it can hardly be expected that citizens will generally agree on what constitutes "acceptable reasons" for or against specific policies. What is acceptable to a Christian, say, may not be acceptable to a Muslim or to a secular citizen. If this is so, the deliberative ideal is doomed to fail, for it seems to subject citizens to mutually incompatible obligations. Here lies the key difficulty. According to the deliberative ideal, citizens who participate in public deliberation have the cognitive obligation of judging the policies under discussion strictly on their merits (instead of, say, their self-interest). In order to do so, they must examine all the relevant reasons and give priority to those reasons that support the better argument, whichever reasons these may turn out to be. But they also have the democratic obligation of providing reasons that are acceptable to others. And this requires them to give priority to generally acceptable reasons, whether or not they are the most compelling in any given case.

The potential conflict between these obligations poses a serious dilemma for a defense of the ideal of deliberative democracy. It is easy to imagine a scenario in which certain policies (e.g., on abortion or same-sex marriage) are morally objectionable to some citizens for exclusively religious reasons. Since religious reasons are a paradigmatic case of reasons that are not generally acceptable to secular citizens and to citizens of different faiths, the democratic obligation to provide a justification against these policies based on reasons that are generally acceptable to others would force these religious citizens either to be dishonest in their political advocacy (that is, to argue for something other than what they genuinely believe) or to withdraw from participation in political deliberation

altogether. If citizens are forced to choose the first horn of the dilemma, public deliberation would not have the requisite cognitive properties. A deliberative practice in which participants cannot assume that all parties are being sincere could not count as a practice of argumentation that tracks the force of the better argument, and therefore such a practice could not lend any special legitimacy to its outcomes. If citizens are forced to choose the second horn of the dilemma, then public deliberation would not meet the criterion of democratic legitimacy, since it would fail to provide justifications based on reasons that the self-excluded citizens could reasonably accept.

Here lies the challenge for defending deliberative democracy. Can public deliberation under conditions of pluralism be structured in such a way that all democratic citizens are able to adopt their own cognitive stances within deliberation, whether these stances be religious or secular, such that they may reach genuine convictions in the deliberative process while nevertheless attempting to fulfill the democratic obligation of providing reasons that are acceptable to everyone, so as to justify coercive policies to which all must comply? In what follows, I would like to offer a proposal to show how an affirmative answer is possible.³

An essential element of my proposal is that it does not identify the pool of “generally acceptable reasons” with secular reasons, as authors such as Audi⁴ or Habermas⁵ do. Although religious reasons may be considered a paradigmatic case of reasons that are not generally acceptable to secular citizens and citizens of different faiths, it does not follow that all nonreligious reasons can be considered generally acceptable just in virtue of being secular. Nonreligious reasons that are based on different and conflicting comprehensive doctrines and conceptions of the good cannot be expected to be generally acceptable to all citizens under conditions of pluralism, regardless of whether or not they are secular. Here, my proposal sides with Rawls in identifying a narrower subset of nonreligious reasons, what he calls “public” or “properly political” reasons, as those that must be endorsed by all democratic citizens.⁶ These are reasons based on those political values and ideals that are the very conditions of possibility for a democracy: the ideal of citizens as free and equal, and of society as a fair scheme of cooperation, which find expression in the constitutional principles to which citizens are bound in liberal democracies.⁷ To the extent that an overlapping consensus around basic political values of freedom and equality can be expected among democratic citizens, these values provide the needed reservoir of generally acceptable reasons from which all citizens can draw to justify the coercive policies they advocate for their fellow citizens.

However, my proposal does not endorse Rawls’s famous proviso, according to which religious reasons can be included in public deliberation but only provided that “in due course” proper political reasons are offered in support of whatever policies the religious reasons are supposed to support.⁸ As I mentioned before, the obligation to offer corroborating public reasons leaves citizens two equally unacceptable options whenever the reasons they have in support of the policies they favor are not public reasons: (1) either to be disingenuous in their

political advocacy or (2) to withdraw from political participation in the public sphere. In light of this difficulty, critics of the Rawlsian proposal have objected that the obligation to provide nonreligious reasons in support of policy proposals imposes an undue cognitive burden on religious citizens. As Wolterstorff argues:

it belongs to the religious convictions of many religious people that *they ought to base* their decisions concerning fundamental issues of justice *on* their religious convictions. They do not view it as an option whether or not to do it.⁹

Rawls's proposal may seem plausible if one assumes that citizens will always have at their disposal two parallel pools of reasons to draw from. However, in cases of direct conflict between religious and nonreligious reasons, it seems that being religious consists precisely in giving priority to religious over nonreligious reasons in forming one's own convictions. If this is the case, so the objection goes, Rawls's "duty of civility" threatens the political integration of religious citizens in democratic societies.

However, if, following Wolterstorff's counter proposal, we simply drop the democratic obligation to offer reasons generally acceptable to others, it follows that a majority of religious citizens would be licensed to base their political decisions on their religious convictions and thereby impose coercive policies on other citizens without any obligation to give them reasons that they can reasonably accept.

As a way to avoid this unattractive alternative, Habermas proposes to interpret Rawls's proviso in terms of an "institutional translation proviso." He accepts the Rawlsian proviso regarding political deliberation at the institutional level of parliaments, courts, ministries and administrations, that is, in what he calls the *formal* public sphere. But he proposes to eliminate the requirement of providing corroborating nonreligious reasons in political deliberations in the *informal* public sphere whenever such reasons are not available. Ordinary citizens who participate in political advocacy in the informal public sphere can offer exclusively religious reasons in support of the policies they favor in the hope that they may be successfully translated into nonreligious reasons. But the obligation of translation should not fall exclusively on the shoulders of religious citizens. Instead, all citizens involved in public deliberation, secular citizens included, must share this obligation. This proposal is supposed to yield a more even distribution of cognitive burdens among citizens. On the one hand, religious citizens, like all citizens, must accept the neutrality of the state and therefore must accept that only nonreligious reasons count in determining coercive policies with which all citizens must comply. On the other hand, secular citizens, like all citizens, must share the burden of translating religious into nonreligious reasons. In order to do so, according to Habermas, secular citizens have to take religious reasons seriously and cannot deny their possible truth from the outset. They must open their mind to the possible truth of religious beliefs and reasons as a precondition for finding out whether they can be translated into secular ones.

Now, by shifting the burden of translation from religious to secular citizens, the dilemma facing religious citizens that we saw before comes to face secular citizens as well. For, whenever the reasons that they hold in support for favored policies happen to be of a secularist type that contradicts the possible truth of religious claims, it appears that in order to participate in public deliberation these secular citizens have no alternative but to be disingenuous and come up with alternative reasons that are independent of their authentic beliefs. However, if disallowing citizens to publicly adopt their own cognitive stance is unacceptable, it seems that this would be so whether those citizens have a religious or secularist stance. This problem is also aggravated by what is likely to strike many secular citizens as a disquieting additional obligation: namely, the obligation to open their minds to the possible truth of religious beliefs and reasons as a precondition for finding out whether they can be translated into public ones. Beyond its doubtful feasibility, this obligation seems to deprive secular citizens of the very same right to publicly adopt their own cognitive stance that the proposal aims to recognize for religious citizens. By imposing such additional burdens, Habermas's proposal opens itself to similar objections as those facing Rawls's proposal. Moreover, it is far from clear that his proposal offers religious citizens a way out of their own dilemma. For what is at stake in this debate is not so much whether religious citizens can express their religious convictions in the informal public sphere, but above all whether they can base their political decisions on those religious convictions, as Wolterstorff contends. If the Habermasian proposal allows citizens to vote on the basis of exclusively religious reasons, it collapses into Wolterstorff's proposal against the neutrality of the state. This, however, would directly undermine the criterion of legitimacy contained in the "institutional translation proviso," according to which only secular reasons should count in determining coercive political decisions. But, if it excludes this possibility, then it collapses into the Rawlsian proposal it aims to modify. It lets citizens include religious reasons in political deliberation in the informal public sphere, but when it comes to casting their votes it does not let them base their political decisions on their religious reasons if corroborating secular reasons cannot be found. Thus, these citizens must engage in a way of thinking entirely foreign to their own religious convictions in order to determine how to vote. To the extent that this is so, this proposal does not provide *any* answer to Wolterstorff's objection.

In contradistinction to Rawls's and Habermas's proposals, my proposal interprets the democratic obligation to justify the coercive policies one favors with generally acceptable reasons in such a way that it can be discharged by all democratic citizens, whether religious or secular, without forcing them to abandon their own cognitive stance and disingenuously engage in a foreign way of thinking. To the extent that it does so, it does not impose undue cognitive burdens on any citizens and therefore avoids Wolterstorff's objection without giving up on the ideal of mutual accountability. According to the accountability proviso that I defend, citizens who participate in political advocacy in the informal public sphere can appeal to any reasons they sincerely believe in, which support the

coercive policies they favor, provided that they are prepared to show – against any objections to the contrary – that these policies are compatible with the democratic commitment to treat all citizens as free and equal and therefore can be reasonably accepted by everyone.¹⁰ In order to fulfill this democratic obligation, citizens must be willing to engage in an argument on the compatibility of the policies they favor with the protection of the fundamental rights and freedoms of all citizens, and they must be willing to accept the outcome of that argument as decisive in settling the question of the legitimacy of enforcing these policies.

Although the accountability proviso is similar in spirit to the Rawlsian proviso, it is based on an *interpersonal* interpretation of the nature and rationale of the obligation in question. By interpreting accountability in interpersonal instead of intrapersonal terms, it can avoid the objections against the Rawlsian proviso that I mentioned before. Whereas it seems at best unfeasible, and at worst disingenuous, to ask religious citizens who participate in political advocacy to come up with nonreligious reasons in support of the policies they favor, regardless of what their sincere beliefs happen to be in each specific case, it does seem both feasible and legitimate to ask them to address any objections offered by other citizens against such policies, which are based upon basic democratic principles and ideals. Since, according to this proposal religious citizens, just as much as any other citizens, are only obligated to address those objections that are based upon reasons acceptable to all democratic citizens, they are perfectly capable of understanding and engaging them without being cognitively dishonest. But since those who offer the objections drive the challenge, religious citizens do not have to artificially generate a foreign or insincere rationale based on such reasons to support the policies they favor, as Rawls's proposal suggests. Instead, those who oppose such policies fulfill this task on the basis of their sincere beliefs. All that religious (as well as nonreligious) citizens have to do is to come up with compelling reasons to show why these objections are wrong, if they think they are. Their public debate must show that the policies they favor are indeed consistent with treating all citizens as free and equal and therefore can be reasonably accepted by everyone.¹¹

It is in virtue of this democratic obligation that public reasons have priority. They are the only reasons towards which no one can remain indifferent in their political advocacy. Whereas public reasons, that is, reasons based on basic democratic principles and ideals, need not be the source from which a rationale in support of each proposed coercive policy must be crafted, they are the kind of reasons that cannot be ignored, disregarded or overridden once citizens bring them into public deliberation. They are the reasons that must be engaged *in their own terms* by all politically active citizens if they are offered as objections to the coercive policies under discussion. Objections to the constitutionality of these policies must be (1) properly addressed in public debate and (2) defeated with compelling arguments¹² before any citizens can legitimately support (or vote for) their enforcement.

A secular bias? Two examples

Let me mention two examples to illustrate the sense in which public reasons have priority over other substantive reasons, as well as the different ways in which this priority may play out in specific public debates on contested policies. The point of discussing these specific examples here is not to contribute to their solution, but to show how my proposal is supposed to work in democratic societies with different dynamics between majority and minority cultures. One is the debate on same-sex marriage as it is currently discussed in the USA, that is, in a country with a majority made up of religious citizens. The other is the debates on banning the Islamic headscarf from public places as they are currently discussed in European countries, that is, in countries with a majority made up of secular citizens. Showing how my proposal operates in these very different contexts will also be helpful in illustrating the issue that I mentioned at the beginning: namely, the way in which, in a deliberative democracy, minorities can be protected from political domination by a consolidated majority.

The same-sex marriage debate in the USA

Let's look first at the debate on same-sex marriage. According to the accountability proviso I propose, citizens may adduce religious reasons against homosexuality and in support of a ban on same-sex marriage, provided that they fulfill the correlative obligation of addressing any objections based on public reasons that other citizens may advance against such policy. Whereas citizens may not feel compelled to address objections based upon, say, the intrinsic value of homosexual lifestyles or the value of cultural diversity – values that they may not share – they must nevertheless feel compelled to address objections based upon the political value of equal treatment that they do share as democratic citizens. Unless next time around they are willing to accept unequal treatment themselves, before their proposal can be legitimately enforced they must present a convincing explanation of how and why is it that “separate but equal” is an acceptable policy with respect to a particular group of citizens yet not towards others. Similarly, secular citizens do not have to address justifications based on religious reasons concerning the sinful nature of homosexuality – reasons that they do not share – in order to meaningfully participate in that debate. A perfectly appropriate way of engaging in that debate is to offer counterarguments in order to show why the proposed policy is wrong, if they think it is. Objecting to the unequal treatment involved in denying the right to marriage to a group of citizens seems a perfectly meaningful way to participate in that debate.

Of course, citizens may disagree about whether or not the reasons offered against the objections are compelling just as much as they may disagree about whether the objections themselves are compelling, and such disagreements will typically be settled (at least temporarily) by majority rule. But, according to this proposal, the cognitive significance of the majority vote should be that it reflects the judgment of the majority regarding whether or not a given policy is

consistent with treating all citizens as free and equal, and not simply that it reflects their judgment regarding whether or not the enforcement of that policy accords with what they take to be the right way to act.

This crucial distinction helps to illuminate what is wrong with Wolterstorff's claim that religious citizens ought to base their decisions about justice on their religious convictions. This view implies that religious reasons, whatever they may be, that purport to explain why homosexuality (and thus same-sex marriage) is wrong are at the same time both appropriate and sufficient to justify something totally different: namely, the imposition of coercion on others who have the right to be co-legislators. Once the distinction between these questions is recognized,¹³ it becomes clear why reasons geared to prove the compatibility of the proposed policies with the constitutional principles of freedom and equality (i.e., with the equal protection of the fundamental rights and freedoms of all citizens) should have priority in determining the mutual acceptability of coercive policies, even by the citizens's own lights. If this is so, Wolterstorff's claim needs to be qualified accordingly: religious citizens ought to base their decisions concerning fundamental issues of justice on their religious convictions, *provided that those decisions are compatible with treating all citizens as free and equal*.

Now, this claim may suggest that giving priority to proper political reasons stacks the deck in favor of secular and against religious citizens, so that the latter are bound to lose out whenever there is a conflict between religious and secular reasons. To show why the suspicion of a secularist bias in this specific account of public reason is unwarranted, let me introduce the other example I mentioned before to illustrate the correlative claim regarding secular citizens: namely, that these citizens ought to base their decisions concerning fundamental issues of justice on their secular convictions *provided that those decisions are compatible with treating all citizens as free and equal*.

The Islamic headscarf debate in Europe

The current debates in European countries on whether to ban the Islamic headscarf from public places offer a good example. These debates are highly complex. They involve a variety of policy proposals as well as underlying reasons and justifications that I cannot properly address here. But for present purposes, let's (drastically) simplify the example and focus on a single type of reason that each side of the debate may put forward: the appeal made by some secular citizens to considerations of gender equality¹⁴ as the reason that justifies the ban and the insistence on the religious importance (or even obligation) of wearing the headscarf by some of those who oppose the ban. As in the previous example regarding the ban on same-sex marriage, I would argue here that a meaningful political debate among religious and secular citizens about the permissibility of wearing Muslim headscarves in public places is possible and that it would not require citizens to abandon their respective cognitive stance (whether it be secular or religious) and disingenuously engage in a foreign way of thinking. The argument runs as follows: Citizens can adduce secular reasons

that appeal to substantive ideals of gender equality in support of banning the Islamic headscarf from public places provided that they fulfill the correlative obligation of addressing any objections based on proper political reasons that other citizens may advance against such policy. Whereas citizens need not feel compelled to address objections based on, say, the religious obligation to wear a headscarf, the intrinsic value of a Muslim lifestyle or of cultural diversity in general – obligations and values which they may not share – they must nevertheless feel compelled to address objections that are based upon the political values that they do share as democratic citizens.

Now, these secular citizens may claim that precisely because their proposal draws on the value of equality, it is already based on properly political reasons and therefore meets the “priority of public reasons” test. But here, like in the prior example, lies an illicit conflation. For such a claim would seem to imply that secular reasons, whatever they may be, that purport to explain why the use of the Islamic scarf by women is wrong are at the same time both appropriate and sufficient for the justification of something entirely different: namely, the imposition of coercion on others who have the right to be co-legislators.¹⁵ Whether or not the Islamic headscarf is a symbol of female oppression and thus undermines gender equality is an interesting and intricate question, but it has no direct bearing on whether citizens have the right to impose coercive measures on other citizens in total disregard of their rights to be treated as equals.¹⁶ Recognizing the right of all citizens to be co-legislators implies recognizing their right to *participate on equal footing within the deliberative process of shaping, contesting and transforming the collective understanding of what is and what is not compatible with gender equality, non-discrimination, freedom of religion, state neutrality, etc.* – in light of the social and historical circumstances specific to a particular political community.

Thus, irrespective of the religious reasons that some citizens may have for wearing the scarf, if these citizens cast their objections to the ban by appealing to the unequal treatment involved in denying a certain group of citizens the right to freely exercise their religion or to freely choose how to dress, or if they appeal to anti-discrimination laws to justify their opposition to the proposed ban, then other citizens have an obligation to address these objections and to offer convincing arguments to defeat them before the enforcement of the ban can be considered legitimate.

The interpretation of the priority of properly political reasons defended here stacks the deck neither in favor of secular citizens nor against religious citizens, but in favor of *political inclusion and against some citizens exercising political domination over others*. This interpretation tells all citizens that they can base their decisions concerning fundamental issues of justice on their substantive views (whether about religion, equality, or anything else), *provided that they can show those decisions are compatible with the democratic commitment to treat all citizens as free and equal*. Consequently, citizens cannot determine in advance of actual public deliberation the substantive reasons upon which their political decisions ought to be based (whether they be secular or religious).

In order to be legitimate, their decisions *ought to be based on those reasons that have survived the scrutiny of political deliberation in a fully inclusive public sphere.*

Conclusion: citizens in robes

As noted at the start, the danger that a majority could, simply on the basis of their *substantive religious* beliefs, illicitly restrict the fundamental rights and freedoms of their fellow citizens provides an essential motivation for the American debate about the kinds of reasons that citizens should use to justify coercive policies. As I hope to have shown, this debate is necessary in Europe because of the very same danger: namely, the possibility that a majority could, simply on the basis of their *substantive secular* beliefs, illicitly restrict the fundamental rights and freedoms of fellow citizens. However, framing the problem in such anti-majoritarian terms may obscure the democratic character of my proposal. So, let me make a brief final clarification.

In *Political Liberalism*, Rawls (2005) famously claims that in constitutional democracies with judicial review, the Supreme Court is the exemplar of public reason. In my view, this claim is trivially true. For supreme constitutional courts are precisely the institutions in charge of ensuring, among other things, that political decisions respect the priority of public reason; that is, that they do not violate the constitutional rights of citizens. However, since this claim immediately raises questions concerning the democratic legitimacy of judicial review, its true significance and implications may be misunderstood. The point of recognizing the Supreme Court as exemplar of public reason can hardly be that citizens should delegate the task of securing the priority of public reason to the court, while allowing themselves to make political decisions without respecting that very same priority. To the contrary, the democratic implication of the Rawlsian claim is that citizens themselves should behave like they expect the court to behave, that is, *they should strive to meet the same standard of public reason that the exemplar they have instituted is supposed to meet.*¹⁷ Indeed, the danger that a majority, simply on the basis of their substantive beliefs, whether religious or secular, may illicitly restrict the fundamental rights and freedoms of fellow citizens can only be averted in a democratic fashion if all citizens respect the priority of public reason while forming their political convictions through deliberation in a fully inclusive public sphere.

Notes

- 1 For an interesting analysis of this tension in the specific case of France see Laborde (2008). For a defense of the second option out of the dilemma see Modood (2007). His proposals in favor of religious accommodation of Islam are particularly interesting in this context because they are explicitly defended on the basis of their consistency with the moderate secularism actually practiced in most European countries.
- 2 I do not have the space to offer a detailed defense of this claim here, but as it will become clear later, according to my interpretation of deliberative democracy,

protecting the rights and freedoms of all citizens is not merely a matter of creating formal equality among them, but also of granting their political integration, so that they can see themselves as full members of the political community who have the right to be co-legislators. From that perspective, the less religiously neutral a political community is the harder it will be for secular citizens and citizens of different faiths to see themselves as full and equal members of it. For a defense of a similar view see Laborde (2011).

3 The characterization of my proposal that follows draws on Lafont (2009).

4 See Audi (1993, 1997, 2000 and 2011).

5 See Habermas (2006b).

6 See Rawls (1993: 212–54 and 1997: 573–615). In my opinion, Rawls's interpretation of the content of public reason in terms of basic democratic values offers the most plausible account of the kind of reasons that must have priority in public political deliberation. However, this is all that my proposal borrows from Rawls's account of public reason. In particular, it does not require the endorsement of some stronger (and contentious) assumptions that Rawls includes in his account, such as the completeness of public reason. For a brief discussion of this issue see note 11 below.

7 Rawls's account of public reason also includes trivial elements that belong to common human reason, such as "presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial." (Rawls 1993: 224). For the details of Rawls's account of the content of an overlapping consensus see Rawls (1993: 133–72).

8 See Rawls (1997: 584).

9 Wolterstorff (1997: 105).

10 Cohen (1996: 156) explains the precise content of this democratic commitment as follows:

To say that citizens are free is to say, inter alia, that no comprehensive moral or religious view provides a defining condition of membership or the foundation of the authorization to exercise political power. To say that they are equal is to say that each is recognized as having the capacities required for participating in discussion aimed at authorizing the exercise of power.

11 As mentioned in note 6, my approach does not share Rawls's assumption of the completeness of public reason. Thus I concede that public reasons alone may be sufficient to rule out some coercive policies in many cases, but may not be sufficient to determine which coercive policy to adopt in cases in which both alternatives either are considered equally compatible with treating all citizens as free and equal, or are equally contested as incompatible. The abortion debate can be seen as an example of the latter case. In my view, both sides to the debate have fulfilled the obligation of articulating their objections to the opposite view in terms of properly political reasons, since both of them appeal to the priority of protecting fundamental rights (in one case of women and in the other of fetuses). They just disagree on their non-political views on what constitutes personhood, whether fetuses are human beings and many such comprehensive issues. So, although the priority of public reasons is indeed reflected in the way the debate has been structured, those reasons alone do not suffice to resolve it. In view of the possibility of a stand-off of these characteristics, the political resolution of those types of cases may just have to be a compromise that both sides can live with (at least for so long as there are basic metaphysical or comprehensive disagreements, which are directly relevant to the issue but irresolvable). Even so, since according to both sides of the debate the protection of fundamental rights is putatively at stake, the priority of public reasons does explain why citizens on both sides may consider accommodation a reasonable (even if temporary) solution in such cases (instead of simply choosing whichever policy happens to be favored by the majority). Thus, as this example shows, accepting the incompleteness of public reason does not require

- denial of the normative significance of the priority of public reasons or the practical significance of the accountability proviso. For Rawls's defense of the completeness of public reason based on the example of abortion see Rawls (1993: 243f. and 1996: lvff.). For a similar defense see Freeman (2007: 242–52). For criticisms of the completeness of public reason see Greenawalt (1988: 183–7 and 1995: 106–20), Sandel (2005: 223ff) and Eberle (2002: part III). For an interesting defense of the normative significance of public reasons in spite of its incompleteness see Schwartzman (2004).
- 12 How high the standard of proof must be in order to count an objection as defeated may vary depending on what is at stake. In some contexts, just showing a preponderance of evidence against the available objections may be sufficient to persuade most people of the constitutionality of a policy proposal, whereas in other cases, it may be needed to show beyond reasonable doubt that the objection is indeed unsound. However, acceptance of a lower standard of proof by the time a decision has to be made only means that if conclusive arguments against the enforced policy are brought to public debate at a later time, the issue will need to be revisited and the policy changed. For an interesting discussion of the appropriate standards of proof in public political debate see Gaus (1996).
- 13 See Rawls (1999: 148).
- 14 My focus on this particular reason is not meant to suggest that this is the only or even the main consideration behind the arguments in favor of the ban. Rather, I am focusing on it because it is the kind of reason that may seem most challenging for a defense of the priority of public reasons like the one I am articulating here.
- 15 As in many other cases (e.g., pornography, hate speech) it is perfectly consistent with democratic principles to be simultaneously against the use of the headscarf and against the ban of the headscarf. For an argument along these lines see Laborde (2012). I agree with much of Laborde's argumentation here. However, in my view she fails to emphasize the different bearing on the democratic legitimacy of coercive legislation that debates based on public and those based on comprehensive reasons (whether religious or secular) have. As a consequence, her defense of the normative significance of non-domination varies from the one I offer here. It does not focus on the *political* domination of Muslim women by a majority willing to impose coercive legislation on the basis of comprehensive (secular) reasons, but only on the putative *social* domination of Muslim women by others (e.g., male family members, religious authorities or oppressive ideologies) and the appropriate legal means for its prevention.
- 16 From this perspective, one of the main problems with European debates on coercive measures that specifically target citizens who are Muslim is that these citizens are oftentimes not seen as full and equal members of the societies they live in. Their right to be co-legislators, even if it is legally granted in terms of voting rights, is not fully accepted by the population. Indeed, it is quite common in Europe to refer to Muslim citizens as "immigrants," even to those who are native second or third generation nationals. As Casanova (2009: 140) points out, "most European countries still have difficulty viewing themselves as permanent immigrant societies, or viewing the foreign-born, and even the native second and third generation, as nationals, irrespective of their legal status."
- 17 As Rawls (1993: 1v) puts it, "public reason sees the office of citizen with its duty of civility as analogous to that of judgeship with its duty of deciding cases."