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The Relation between Democracy and Religion:
Towards a European Discursive “Model”?

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Abstract

In this paper we advance the argument that, under certain socio-political and cognitive conditions, the manifestation of religion in the opinion-oriented public spheres can have an inherent value for democratic life. However, it is only after processes of selective interpretation and transformation through inclusive discursive practices that religious semantic contents may legitimately influence decisional interpretations of constitutional principles and rights. This “model” draws on republicanism and deliberative democracy: given that these two conceptions do not start out from an abstract principle of liberty as non-interference but from a multidimensional conception of freedom embedded in various historical contexts of mutual recognition, they are more predisposed to provide conceptual resources for envisaging a discursive relation between democracy and religion

Keywords

deliberative democracy, religion, transformative interpretation, public sphere, republicanism

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Camil Ungureanu¹

Introduction²

The democratic and religious discourse are prima facie at loggerheads with each other: the former is inclusive, fallible and aspires to convince and persuade; the latter is often linked to a claim to absolute truth, expresses the thick identity of a specific group in society and is espoused through conversion.³ Is it nonetheless possible and desirable to envisage a public dialogic relation between them? If so, how and at which level of the democratic public sphere?

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² Special thanks for useful discussions to my colleagues and friends, Julie Ringelheim, Lorenzo Zucca, Benoît Challand, Irene Becci, Chiara Bottici, Daniel Augenstein, Emilie Delivré, Anna Coda Nunziante and Katherine Worthington. I also thank professor Giovanni Sartor for his support.

³ As we shall argue, religious discourse is a mixed type of discourse that includes also rhetoric, deliberation and argumentation.

In spite of certain vacillations, the European legal-political “model”⁴ as it can be distilled from documents such as the European Convention for Human Rights (art. 9), the Charter of the Fundamental Rights of the European Union (art. 10), the ECHR case-law and some new governance mechanisms, legitimizes the manifestation of religion in the democratic public sphere and suggests that religious traditions represent a vital contribution to democratic pluralism and even a valuable asset for nonreligious citizens.⁵ Furthermore, the “Treaty Establishing a Constitution for Europe,” even if for the moment without legal status, includes the notion of an “open transparent and regular dialogue” between the Union and the churches and religious organisations (art. I-52) that is already put to work by the European Commission.⁶

Is this a yielding gesture wrapped up in the rhetoric of dialogue and pluralism of a Europe confronted with the global politicization of religion? Or is it the indication of a justifiable passage to a discursive relation between religion and democracy? Important scholars such as S. Ferrari and J. Baubérot regard the “perspective” inaugurated by the European Convention and pushed forward by the path-breaking ECHR judgment *Kokinnakis vs. Greece* (1993), as a continuation of the secularist and laicist European tradition.⁷ However, this European legal-political “stance” is simultaneously remarkable and puzzling: it not merely represents a break with certain crucial elements of the laic and secular views, but it is also hardly a matter of philosophical and socio-scientific consensus.⁸

⁴ Throughout the paper we make use of inverted commas to underline that the discursive “model” does not refer to a *dogmatic* set of principles, as in the case of laicism, but to a cluster of principles to be interpreted and applied contextually. In the European case, the legal concept of the “margin of appreciation” conveys partially the notion of a plurality of interpretations characteristic to the discursive perspective. See, for instance, D. L. Donoho (2001) ‘Autonomy. Self-Governance and the Margin of Appreciation: Developing a Jurisprudence of Diversity Within Universal Human Rights’, *Emory International Law Review*, 15: 391-466 and Peter W. Edge, (1998) ‘The European Court of Human Rights and Religious Rights’, *The International and Comparative Law Quarterly*, 47: 680-687.

⁵ For two excellent discussions of the European jurisprudence concerning the relation between democracy and religion, see Rex Ahdar and Ian Leigh, (2005) *Religious Freedom in the Liberal State*. Oxford: Oxford University Press and Javier Martinez-Torron, (2002) ‘Religious Liberty in European Jurisprudence’, in Hill Mark (ed) *Religious Liberty and Human Rights*. University of Wales Press, Cardiff, pp. 99-127.

⁶ See, for instance, http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/index_en.htm. It is noteworthy that this notion of dialogue is part of the concept of “participatory democracy” dimension of the emerging European polity. For the debates concerning the dialogue between European Union and religious institutions, see “Governance in the European Union and the Commission White Paper,” Christian Joerges, Karl-Heinz Ladeur, and Jacques Ziller (eds) (2002) with the assistance of Larisa Dragomir, *EUI Working Papers*, Law, 8.

⁷ See Jean Baubérot (1994) (ed) *Religions et Laïcité dans L' Europe des Douze*. Syros : Paris; Baubérot ‘Laicization, History of,’, in Neil J. Smelser and Paul B. Baltes (eds) *International Encyclopaedia of the Social and Behavioural Sciences*. Oxford: Elsevier, pp. 8238-8242; Silvio Ferrari (1998) ‘Tolerance, Religion And The Law In Contemporary Europe’, in V. Ferrari, T. Heller, E. de Tullio E (eds) *Citizenship and Immigration*. Giuffrè Editore, Rome, pp. 159-177.

⁸ For sociology and political science, see Ronald Inghelhart and Pippa Norris, Pippa (2004) *Sacred and Secular: Religion and Politics Worldwide*. Cambridge University Press, in support of the traditional secularization theory and, in a more differentiated way, Larry Diamond, Marc Plattner, Marc F., and Philip Costopoulos (2005) (eds) *World Religions and Democracy*, Johns Hopkins University Press. In history and political theory, see Marcel Gauchet, Marcel (1998), *La Religion dans la démocratie*, Paris: Galimard and John Rawls (1999) *The Law of Peoples, with The Idea of Public Reason Revisited*, Harvard: Harvard University Press. In law, see for instance Menendez’s laicist position in Augustin

Despite the differences between laicism and secularism, they generally claim that religious semantic contents cannot have an *inherent value* for the public democratic discourse: when it is not a “conversation-stopper” (Rorty),⁹ the manifestation of religion in the public sphere is at most tolerated for prudential or functional reasons (e.g., Rawls).¹⁰ In contrast, P. Weithman and N. Wolterstorff have argued that religious *topoi* can and should sometimes have a *direct* validity for political and legal decision-making; and the legal scholar J. Weiler has advanced this claim in his recent plea for a *Europa Cristiana*: having in view the Christian dimension of the European identity, hard cases may be legitimately decided on account of Christian arguments.¹¹

Our discursive “model” sketches a middle way between these two viewpoints by drawing on republicanism and deliberative democracy. Given that these two conceptions do not start out from an abstract principle of liberty as non-interference but from a multidimensional conception of freedom embedded in various historical contexts of mutual recognition, they are more predisposed to provide conceptual resources for envisaging a discursive relation between democracy and religion.¹² Our aim is to make plausible the following thesis: under certain socio-political conditions such as the separation between state and religion and the modernization of faith, the manifestation of religion in the opinion-oriented public spheres can have an inherent value for democratic life. However, *before* being able to influence decision-making processes, religious semantic contents as part of totalizing worldviews need to be

Jose Menendez (2005) “A Christian or a Laic Europe? Christian Values and European Identity, *Ratio Juris*, 18: 179-205.

⁹ Richard Rorty (1994) ‘Religion as a Conversation-Stopper’, *Common Knowledge*, 3, 2.

¹⁰ Cf. Rawls (n. 5). Rawls refers to this functional contribution as the “social roots of democracy” (ibid. p. 145). In his view, political theory is not concerned with religion since it deals with the principles of the purely political reason which are supposedly established “*once and for all*,” John Rawls (2005) *Political Liberalism*, Harvard: Harvard University Press, p. 232 (my italics, CU). See later, section IV, for criticism.

¹¹ See Robert Audi and Nicholas Wolterstorff, N. (1997) *Religion in the Public Sphere*, Lahman: Rowman and Littlefield; Weithman, P. J. *Religion and Obligations of Citizenship*, Oxford University Press, 2002 and J. H. H. Weiler (2003), *Un’Europa cristiana. Un saggio esplorativo*, prefazione di Augusto Barbera, 2nd ed., Biblioteca Universale Rizzoli, p. 55.

¹² For deliberative democracy in relation to religion, see especially, Jürgen Habermas, (2005), *Zwischen Naturalismus und Religion*, Suhrkamp Verlag and Habermas (2003), “Faith and Reason,” in *The Future of Human Nature*, Polity Press; Waldron, Jeremy (1993), “Religious Contributions in Public Deliberations,” in *San Diego Law Review*, 30, pp. 817-847. For republicanism on religion, see Taylor, Charles (2002), *Varieties of Religion Today. William James revisited*, Harvard University Press; Sandel, Michael (2005) *Public Philosophy. Essays in Morality and Politics*, Harvard University Press and Maurizio Viroli (2002) *Republicanism*, New York: Hill and Wang; Viroli (1996) *Etica e religione nella tradizione repubblicana: aspetti storici e teorici*, Torino: Fondazione Giovanni Agnelli, Viroli (2006), *Il Dio di Machiavelli e il problema morale dell’Italia*, Laterza and M. Viroli, M and N. Bobbio, (2003) *Dialogo intorno alla repubblica*, Laterza.

Here we cannot enter in details concerning our relation to deliberative democracy and republicanism. Note, however, that there are versions of the two models that are adverse to or gloss over the issue of religion. Habermas himself has been so until recently and two major figures of the current revival of republicanism (Ph. Pettit and Q. Skinner) are silent about this topic. For the early Habermas, see esp. his treatment of religion in Habermas (1979-1982) *The Theory of Communicative Action*, I-II, Boston; for republicanism, see Philip Pettit (1997) *Republicanism: A Theory of Freedom and Government*. Oxford: Clarendon Press; Skinner, Quentin (1978) *The Foundations of Modern Political Thought, vol. 1: The Renaissance*. Cambridge: Cambridge University Press and (1998) *Liberty Before Liberalism*. Cambridge: Cambridge University Press.

selectively interpreted and transformed in secular reasons through the pragmatics of collective discursive practices.

In the following, given the confusion concerning the meanings of “laicism” and “secularism,” we first introduce two working “definitions” of these terms (Section I). In order to make a case for the notion of the discursive relation between democracy and religion, we advance the concept of a differentiated public sphere. This is comprised, on the one hand, of *decision-oriented* public spaces such as parliaments, courts and local councils and, on the other, of *opinion-oriented* public spaces such as social movements, schools, mass-media, religious institutions and NGOs (Section II). The internal distinction between opinion-oriented and decision-oriented public spheres is essential to the discursive perspective. We argue that the “properly” political or decision-oriented public spheres represent the site where the manifestation of fallible and negotiable secular reasons is generally recommendable; furthermore, only those laws and policies are accepted that are supported by secular democratic reasons. Put differently, at this level of the public sphere, there holds sway what we call, in Audi’s footsteps, the principle of secular democratic rationale (Section III).

On the other hand, the opinion-oriented public spaces or the civil society represent a set of sites of opinion-formation and interest-articulation processes where religious semantic contents can be selectively interpreted into secular democratic reasons by means of inclusive discursive practices that purport to “produce” common interests, norms and values (Section IV). In the concluding part, we briefly suggest that the discursive perspective has *justificatory* and *critical* power in relation to some of the main principles of the emerging legal-political and Catholic understanding of the relation between democracy and religion in Europe.¹³

I. Two working “definitions” of laicism and secularism

The concepts of laicism and secularism have been subject to significant historical-theoretical controversies.¹⁴ It would be beyond the scope of this paper to embark on an analysis of the different understandings of laicism and secularism. Here it suffices to set out two working characterizations. First, a common point between laicism and

¹³ For the development of the dialogical perspective, see also Tataru-Cazaban (2005) “Biserică și stat: elemente pentru o etică a dialogului într-o societate pluralistă,” Colocviul internațional Religious Freedom in the Romanian and European Context, Ministry of Culture and Religious Affairs/the State Secretariat for Religious Affairs and Conscience and Freedom Association, București), Carp, Radu, ed. (2005) *Un suflet pentru Europa: dimensiunea religioasă a unui proiect politic*, Editura Anastasia, Preda Radu, “Cultura dialogului sau despre o altă relație Biserică - stat”, în Cristian Bădiliță, Tudorel Urian, *Nostalgia Europei. Volum în onoarea lui Alexandru Paleologu*, Polirom, 2003, pp. 148 – 163 and Baconski, Teodor (2001), *Puterea schismei. Un portret al creștinismului european*, Editura Anastasia, București. See also the contribution of Bogdan Tataru-Cazaban, Anca Manolescu, Radu Preda and Radu Carrp at <http://www.revista22.ro/>, iulie, 2006, “The Role of Religion in the New European Polity-Building.”

¹⁴ See, for instance, Baubérot, Jean (1990), *Vers Un Nouveau Pacte Laïc?* Editions du Seuil ; Baubérot (n. 4) ; Casanova, José (1994), *Public Religions in the Modern World*, University of Chicago ; Casanova, José (2001), ‘Secularization’, in Smelser, J. Neil and Paul B. Baltes (n. 4) ; Talal Asad (2003) *Formations of the Secular*. Stanford University Press, pp. 159-181. For a general review of the dominant theories, see also Herbert, David (2003) *Religion and Civil Society: Rethinking Religion in the Contemporary World*. Ashgate.

secularism – one that they share with the discursive “model” – is the conviction that religious creeds and institutions have no political binding authority and, conversely, that political-legal life has no need of religious sanction.¹⁵ In a constitutional democracy, the political public life loses its religious fundament as a transcendent and unshakeable authority: in Lefort’s suggestive image, the sovereign’s place becomes “empty.”¹⁶ This is expressed by two principles shared by secularism, laicism and the discursive view, namely the principle of impartiality and that of the separation between state and religion.¹⁷ From the perspective of democratic legitimacy, the state is autonomous in relation to religious institutions and its decisions are impartial to the variety of religious beliefs.

However, these models differ in the way they interpret the two principles. On the one hand, secularism refers to the empirical value-free hypothesis that the advent of modernity brings about the steady fading away of religion.¹⁸ This hypothesis is generally accompanied by a normative negative evaluation of religious semantic contents and a corresponding saga of emancipation.¹⁹ According to it, humankind’s

¹⁵ See Arendt, Hannah (1994) ‘Religion and Politics’, in *Essays in Understanding, 1930-1954*, ed. Jerome Kohn, pp. 368-390, esp. p. 372 and Gauchet (n. 5).

¹⁶ See Claude Lefort (1988) *Democracy and Political Theory*. Cambridge: Polity Press.

¹⁷ These principles are not identical and may even go in *opposite* directions (see, for a somehow similar remark, Sadurski, Wojciech (1993) ‘Introduction’, in Sadurski, Wojciech (ed) *Law and Religion*, pp. i-xi. In our view, argue that the realization of neutrality implies not a strict separation between state and religion, but the active involvement of the state in sponsoring historically dispossessed but relevant religious communities. The state is to be seen not as favoring a religious community at the expense of other communities but as intervening with the view of ensuring fair *preconditions* of the building of stable identities and the realization of individual and collective autonomy.

¹⁸ For the origins of the “secular,” see for instance, Casanova, José (2001), ‘Secularization’, in Smelser, J. Neil and Paul B. Baltes (n. 4) 13786-13791; Asad (n. 10). For Casanova, “...Western European Christendom was structured through a double dualist system of classification. There was, on the one hand, the dualism between <this world> (the City of Man) and <the other world> (the city of God). There was, on the other hand, the dualism within <this world> between a <religious> and a <secular> sphere. Both dualisms were mediated, moreover, by the sacramental nature of the church... The differentiation between the cloistered regular clergy and the secular clergy living in the world was one of the many manifestations of this dualism. The term secularization was first used in cannon law to refer to the process whereby a religious monk left the cloister to return to the world and thus to become a secular priest. In reference to an actual historical process, however, the term secularization was first used to signify the lay expropriation of monasteries, and holdings, and the mortmain wealth of the church after the Protestant reformation. Thereafter, secularization has come to designated any transfer from religious to civil or lay use,” Casanova (ibid. 13787). Holscher distinguishes six meanings of “secularization”: interprétations de la sécularisation : « Entkirchlichung », « Kirchenfeindschaft », « Entchristlichung », « Entwicklung vom Christentum zum Sozialismus », « Modernisierung » et « Prozess der Metaphernbildung » in Lucian Hoelscher (1989) *Weltgericht oder Revolution*. Protestantische und sozialistische Zukunftsvorstellung im deutschen Kaiserreich, Stuttgart, pp. 196-97.

¹⁹ Baubérot advances a different version of the distinction between laicism and secularism. According to him, argues that, since secularization is too broad a term, one should distinguish between secularization and laicism. “When the process of secularization is predominant, the relative decline of religion’s influence takes place in parallel to other evolutions, with no major tensions between religious and political or other social forces.... Scandinavian countries are a typical example of secularization....The process of laicization differs: the tension between various social forces take on the aspect of an open conflict where the religious becomes a politico-cultural stake...Either the State imposes religion to society (clericalism) or refuses that religion to continue to be the symbol of national identity (laicization),” Baubérot (n. 4: 8242).

modern history is a triumphal march towards a free and emancipated world where religious obscurantism becomes finally irrelevant. As a corollary, any “return of the religious” is portrayed as a comeback of the “archaic” and “tribal” - a late infantile eruption in times of distress and ignorance.

On the other hand, laicism presupposes a through-and-through privatization of religion, i.e. namely the evacuation of the religious discourse from the public space.²⁰ Laicism does not hypothesize a final emancipation from religion, either at the individual or at the collective level; what’s more, it *claims* not to pass a negative judgement on religion. Laicism is not atheist, but agnostic. Its contention is that the emergence of a *volonté générale* and the attainment of justice as impartiality in conditions of ethical-religious plurality is made possible not only by the strict separation of the state and religion, but also by confining religious discourses to the private sphere.²¹ As a consequence, laicism contends to be really neutral in that it is neither inimical to the private manifestation of religion nor supportive of its maintenance and flourishing (e.g., by financing religious schools and granting tax exemptions).

In contrast, depending on whether the emphasis is put on the “empirical” or the “normative” dimension of secularism, there are different secularist understandings of the principles of impartiality and the separation between state and religion. By comparison, secularism can be both more hostile *and* more lenient than laicism with regards to the private and public manifestation of religion. “Normative” secularism believes in the desirability of a final emancipation from religion on the basis of a negative assessment of religious beliefs. When combined with “empirical” secularism, it can be linked to the idea of an *atheist* state that is inimical to the manifestation of religion *both* in the public and the private sphere: according to this view, the realization of neutrality and liberty needs to be accompanied by a complete emancipation from religion. Let us call this full-fledged secularism.²²

A second version of secularism espouses a functionalist attitude towards religion. Whereas a laicist believes that the manifestation of religion in the public sphere undermines democracy, certain secularists allow for it on the ground that social cohesion and even a regime of liberty needs religious props. Functionalist secularism takes on different forms: somebody can be agnostic and abstain from having a viewpoint on the inherent value of religious beliefs, but support its manifestation in the public sphere for functional reasons; or, one can pass a negative normative judgement

²⁰ The working definition of laicism adopted here is not the description of the French regime of the relations between democracy and religion; this is to be analyzed as a combination of models and tendencies that has been varying historically. Nonetheless, it refers to an ideological current that has been influential on the French dominant understanding of the relation between state and religion. See, for instance, Baubérot, (n. 4); Michel, Troper (2000) ‘French Secularism’, in *Cardozo Law Review*, 21; René Rémond (1998) *Réligion and Société en Europe: essai sur la sécularisation des Sociétés européennes aux XIXe et XXe siècles, 1979-1998*, Paris : Editions du Seuil.

Needless to say, there are different attempts to update the understanding of laicism. To this end, scholars have spoken of a new laic pact and of a hospitable or a plural laicism. Cf. Anca Manolescu (2006) ‘For a hospitable laicism,’ at <http://www.revista22.ro>; Baubérot, *ibid.*; Dagrás, Charlier and Marie-Dominique (2002) *La laïcité française à l'épreuve de l'intégration européenne : pluralisme et convergences*, Paris, L'Harmattan.

²¹ Cf. Luis Pena-Ruiz (2003), *Qu'est-ce que la laïcité?* Gallimard and Baubérot, (n.4).

²² Enver Hoxha’s atheist and communist regime in Albania can be considered a historical example of full-fledged secularism.

on religious discourse and practice, but consider them beneficial.²³ Functionalist secularism gives priority to the principle of collective freedom over that of the separation between state and religion: although the principle of separation is not abandoned, it becomes instrumental to the realization of “il vivere libero” (Machiavelli). Thus, for functionalist secularism, the state can enhance religious traditions through tax exemptions and religious school-sponsorships if this supports the realization of the collective good and freedom. This model is even compatible with the adoption of a state-religion regime provided that certain constitutional principles (e.g., freedom of religion and expression) are in place.

In spite of these differences, there is a common point between laicism and secularism, namely the conviction that religious motives do not have any inherent public legal-political and moral salience. For secularism and laicism, the interaction between the democratic and the religious discourse in the public sphere is a zero-sum game. Before sketching the discursive view of the role of religion in a democracy, we need to define the notion of a differentiated public sphere.

II. The concept of a differentiated public sphere: the distinction between opinion- and decision-oriented public spheres

According to the laicist model, public sphere is conceived as a homogenous space in which “reigns” the general will of a compact *demos*. At the other extreme, the theocratic model opposes the homogeneity of a particular religious system to the homogeneity of the general will.

Contrary to these two models, the discursive view puts forward a *differentiated* notion of public sphere. As we will see, the interaction between democracy and religion cannot legitimately take place in the same way in the various sites of the democratic public sphere.²⁴

Methodologically, our conception takes inspiration from Habermas’ reconstructive approach which combines normative and socio-scientific analysis.²⁵ This double-view has the advantage of simultaneously clarifying the normative meaning of the public sphere as part of a critical theory of democracy *and* being alert to two interlinked sociological aspects: first, to the existing institutional and non-institutional practices and arrangements which make possible the egalitarian effects taking place in the democratic public sphere. Second, it pays attention to the non-egalitarian power-

²³ The authors that support this position can be liberal, conservative, republican or communitarian. See, for instance, Hannah Arendt, Hannah (1989) “What is Authority,” in *Between Past and Future*, Penguin; Robert Bellah, R., et al. (1985) *Habits of the Heart*, Berkeley: University of California Press; Scruton, Roger, *The Meaning of Conservatism*, Macmillan, 1986; Rawls, John (n.5.); Viroli (n. 9).

²⁴ See esp. Habermas (n. 9); Greenawalt, Kent (1998) *Religious Convictions and Political Choice*, Oxford: Oxford University Press; Greenawalt (1995) *Private Consciences and Public Reasons*, Oxford University Press and Robert Audi (1993) ‘The Place of Religious Argument in a Free and Democratic Society’, *San Diego Law Review*, 30.

²⁵ Jürgen Habermas (1996), *Between Facts and Norms*, MIT Press, 1996, esp. ch 2 “The Sociology of Law versus the Philosophy of Justice” and ch 8, “Civil Society and the Political Public Sphere”. For Habermas’ most recent dealing with the public sphere in relation to religion, see Habermas (2005) ‘Religion in der Öffentlichkeit. Kognitive Voraussetzungen für den <öffentliche Vernunftgebrauch> religiöser und säkularer Bürger’, in Habermas (n. 9): pp. 119-155).

dynamics that affect the public sphere and tend to undermine the principles of publicity and inclusiveness that are normatively definitional to it.

From a normative viewpoint, the role of the public sphere in a democratic system is to be understood by reference to the general meaning of democracy. Democracy can be characterized as the project of realization of an association of free and equal individuals who give themselves the rules of discourse and action. The notion of a democratic public sphere is essential to this project in that it refers to a set of multilayered public sites in which are articulated and put forward interests and opinions which, through various non-institutional and institutional discursive practices, have a publicly discernible bearing on political and legal decision-making. In these public sites citizens deliberate, persuade, negotiate and act on their common affairs; from the “discursive” activities of participation (e.g. into social movements, voting, civic associations) and representation (e.g. on parliamentary, local councils) emerges a communicative power.²⁶ This power is supposed to influence decision-making concerning common matters of justice and ethical-political values in conditions of religious pluralism.

This model differs from a common view of the public sphere at a crucial point that will prove important for the conceptualization of the relation between religion and democracy.²⁷ According to this common outlook, public sphere is an intermediary space between the state system *and* the private sphere (typically constituted of family, market, etc). In this go-between space, public opinions are formed and exchanged.^{28,29} For instance, in Eisenstadt’s and Schuchter’s view, the public sphere is “located between the official and private spheres. While both the official and the public spheres work for the common good, the public sphere recruits its personnel from the private sphere, not from the ruler’s domain.”³⁰ The public sphere is thus autonomous from the political order, and “its influence rests on interpretations of the common good vis-à-vis the ruler, on the one hand, and the private sphere in the other.”³¹

The drawback of this conception is that the state is seen as separate from the public sphere. This remains tributary either to a certain liberal logic or to a systems-

²⁶ See Habermas (n. 13), pp. 147-151.

²⁷ Habermas makes a similar distinction by speaking about formal and informal public spheres (n. 9). But this terminology remains unclear: both the opinion- and decision-making public sphere are characterized by informal and formal procedures.

²⁸ Habermas supports this conception in (1989 [1962]), *The Structural Transformation of the Public Sphere: an Inquiry into A Category Of Bourgeois Society*. Cambridge: Polity Press; Habermas (n. 9); Habermas, “Further Reflexions on the Public Sphere,” in Calhoun (ed) *Habermas and the Public Sphere*, 421-461 and Habermas (n. 13). See also, Benhabib, Sheyla, ‘Models of Public Space: Hannah Arendt, the Liberal Tradition and Jürgen Habermas,’ in Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics*. Cambridge: Cambridge University Press, 1992, pp. 89-120; Fraser, Nancy, ‘Rethinking the Public Sphere: A contribution to the Critique of Actually Existing Democracy’, in Calhoun, C. (ed) (ibid.), pp. 109-142; Hoexter Miriam, Eisenstadt Shmuel & Levtzion Nehemia (eds) (2002) *The Public Sphere in Muslim Societies*, State University of Mew York Press, Albany.

²⁹ Here we do not deal with the notion of public sphere in general, but with the democratic public sphere.

³⁰ Eisenstadt et. al, (n. 25), p. 9.

³¹ *Ibid.*, 10). Although Habermas has mainly in view the emergence of the democratic public sphere and not the concept of public sphere in general, he adopts a similar understanding of it as a go-between space: “[i]n complex societies, the public sphere consists of an intermediary structure between the political system, on the one hand, and the private sectors of the lifeworld and functional systems, on the other,” Habermas (n. 21), p. 334.

theory perspective: these views regard public sphere as strictly separate and antagonistic to a state apparatus considered a necessary evil or a bureaucratic machinery. Yet, definitional elements of the democratic state such as parliaments, courts and local decision-making bodies are to be seen as part of the public sphere since, from a normative standpoint, they are characterized by public and accountable discursive practices. In a democratic regime, the public critiques of the political-legal activities are not only made from an external-to-the-state public sphere (Fraser),³² but they are institutionalized inside the state apparatus (think of Parliament and courts). A democracy is a regime in which public opinions are not just *verba volant* but emerge as the expression of a vigorous democratic association of individuals who, by way of various participatory and representative discursive mechanisms, can influence and shape decision-making. Put differently, the normative meaning of the democratic public sphere points to the establishment of a link between democratic opinion-formation and decision-making, namely between two types of public sphere – opinion-oriented and decision-oriented ones.³³

The decision-oriented or political public sphere refers to those authorities which, by acting in parliaments, courts and local bodies *actually* make the link between democratic public opinions and political-legal decisions.³⁴ The political public sphere overlaps only partially with the state. Consider two examples, i.e. of state bureaucracies and public universities. Even if state bureaucracies are connected to mechanisms of democratic accountability characteristic to the public sphere, they do not function on the basis of dialogue and negotiations but along criteria of expert knowledge and skills. In this sense, they are not, strictly speaking, part of the public sphere. Then, although public universities are, broadly speaking, an element of the state system, they are sites of opinion-formation and not of decision-making. Therefore, they generally do not pertain to the political public sphere.

Second, the opinion-oriented public sphere refers to sites of interest-articulation and opinion-formation by means of various public discursive practices. We

³² Fraser, Nancy (n. 24).

³³ Surely, public sphere is characterized by functions of intermediation. One can distinguish between two types: - *internal* mediation between the opinion-formation and interest-articulation, on the one hand, and decision-making; *external* mediation between the private sphere and some components of the state apparatus.

³⁴ In Habermas' idealist view of the civil society, “its institutional core comprises those non-governmental and non-economic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the lifeworld. Civil society is composed of those more or less spontaneously emergent associations, organizations and movements that, attuned to how societal problems resonate in the private life spheres, distil and transmit such reactions in the amplified form to the public sphere.. The core of civil society comprises a network of associations that institutionalizes problem-solving discourses on questions of general interest inside the framework of organized public spheres. These <discursive designs> have an egalitarian, open form of organization...Such associations certainly do not represent the most conspicuous element of a public sphere dominated by mass media and large agencies, observed by market and opinion research, and inundated by the public relations work, propaganda, and advertising of political parties and groups. All the same, they do form the organizational substratum of the general public of citizens,” Habermas, (n. 21), pp. 366-367.

In contrast to Habermas' idealist conception of civil society, we extend his “double perspective” on civil society as well and include all the organisations and practices that, from a normative perspective, can have “democratic effects” such as mass-media, religious organisations, schools, even political parties (up to a certain point).

can also call this second “layer” of the public sphere either social public sphere or civil society. Certainly, parliaments, courts and local councils are also sites of opinion-formation and interest articulation. But their “eminent” political character derives from the fact that therein are taken decisions concerning the common matters of the citizenry. This does not occur in the sites of interest-articulation and opinion-making such as schools, civic associations, mass-media, religious institutions, interest groups, social movements, NGOs or other non-state voluntary groups and activities.

A cautionary note: just as the political public sphere has social functions (think of the financial support for the new-born), the social public sphere has political ones. For instance, mass-media and NGOs aim, inter alia, at checking on political power. Similarly, schools - be they public or not -, have in general also the role of taking part into the formation of citizens. Yet, for our purposes, it is fundamental to underline that protagonists in the social public sphere generally do not take decisions concerning the common problems of the polity. Furthermore, the members of the social public sphere are part of society and not of a state officialdom meant to participate in decisional processes. This is why in the civil society practices can be based on religious arguments, something that should not occur at the level of the political public sphere.

Before moving to the application of the concept of public sphere to the question of the relation between democracy and religion, it is worth drawing attention to the sociological aspects of the public sphere as well. According to the proposed double-view, the public sphere is characterized not merely by a communicative power emerging from egalitarian discursive practices, but also by potentially un-egalitarian social and administrative forms of power. For instance, social power can be exerted in the public sphere by pressure groups aiming to impose their interests even against the resistance of the others or at the expense of their interest. And administrative power can be used by state bureaucracies to topple any mechanism of democratic accountability. If from a normative viewpoint the generation of communicative power is fundamentally horizontal, from the perspective of social theory, public sphere is characterized in different degrees by dynamics of asymmetry and un-equality. Egalitarian forms of discourse and action are often dominated by mass media and large agencies, observed by market and opinion research, and inundated by public relations work, propaganda of political parties and groups.³⁵

Thus, democratic public spheres contain in various degrees the tension between its normative mechanisms of validity and the factual dynamics of asymmetric power: the critique of unequal power relations within the public sphere is made by referring to the principles of publicity and inclusiveness, namely to the normative idea of the public sphere itself. The normative notion of a discursive relation between religion and democracy should not blind one to the power processes that underpin, for instance, the spreading of religious or religious-derived Western conceptions through colonization and globalization.³⁶ While here our main concern is normative, any concrete analysis of processes of transfer and interpretation of religious semantic contents into secular ones should deal to an important extent with power asymmetries between the different groups involved.

³⁵ For the concepts of administrative and social power, see Habermas (n. 21) esp. ch 4 and 8.

³⁶ See Edward Said (1978), *Orientalism*, London : Routledge and Kegan Paul; Talal, Asad (1993) *Genealogies of Religion. Discipline and Reasons of Power in Christianity and Islam*, The Johns Hopkins University Press and Asad (n. 10).

III. The validity of the principle of secular democratic rationale in the decision-oriented public spheres

Now we are in a better position to specify the relation between democracy and religion as it takes place in the public sphere. In this section we argue that *the principle of secular democratic rationale* is valid at the level of the political public sphere. This principle is different as interpreted by important authors such as Audi, Rawls or Greenawalt.³⁷ In Audi’s understanding of what he calls the principle of secular rationale, this demands that only those laws and policies be accepted which are supported by secular reasons.³⁸ Audi further defines a secular reason as follows: “[a] secular reason is roughly one whose normative force does not evidentially depend on the existence of God or on religious considerations, or on the pronouncements of a person or institution qua religious authority.”³⁹

In partial contrast with this view, we speak of the principle of the secular democratic rationale and define it as follows: *the decision-oriented public sphere is the site where the manifestation of fallible and negotiable secular reasons is generally recommendable; furthermore, only those laws and policies are accepted that are supported by secular democratic reasons.* The basis for introducing the specification “democratic” is that not all kinds of secular reasons can democratically legitimate decision-making, but only secular *democratic* reasons (or democratic reasons *tout court*). The Nazi or Stalinist ideologies provide secular reasons that make a claim to absolute truth and are exclusivist. The secular democratic ones are fallible and negotiable by virtue of having gone through the “sluices” of discursive practices and proceduralized negotiations that take place in the public spheres.⁴⁰

Specific religious beliefs cannot determine decision-making processes in democratic pluralistic societies since those who exercise legislative, judicial and executive power have the obligation to treat citizens in a way that is, as far as possible, fair or impartial. Or, given that people commonly disagree regarding religious questions and since legislators, judges and officials should be as impartial as possible, then legislators, judges and officials should not support any lay or public policy unless they have secular democratic reasons for doing so. Taking decisions on common matters on the basis of a religious framework would amount to obliging people who do not adhere to it to abide by its norms, which is contrary to the freedom of religion and conscience. The secular democratic reasons are such that they could in principle be considered

³⁷ Greenawalt (n. 20); Rawls (n. 5); Audi (n. 8).

³⁸ In Audi’s formulation, “[o]ne has a prima facie obligation not to advocate or support any law or public policy [...] unless one has, and is willing to offer, adequate secular reasons for this advocacy or support,” Audi (n. 7), p. 25. Rawls calls “the proviso,” namely the readiness to present “in due course proper political reasons – and not reasons given solely by comprehensive doctrines – ...that are sufficient to support whatever the comprehensive doctrines introduced are said to support.”, Rawls (n. 5) p. 127.

³⁹ Audi (ibid.), 692. See also Perry’s definition: “By a religious argument, I mean an argument that relies on (among other things it relies on) a religious belief: an argument that presupposes the truth of a religious belief and includes that belief as one of its essential premises.” A religious belief is, for present purposes, either the belief that transcendent reality (be it God, an aboriginal totem, etc) exists and is the source, the ground and the end of things existent,” in Michael J. Perry (1996) ‘Religious Arguments in Public Political Debate’, in *Loyola of Los Angeles Review*, vol. 29, p. 1423.

⁴⁰ Democratic arguments need to be secular, while secular reasons need not be democratic.

reasonable by all potential participants in discussion while adhering to their own religious comprehensive doctrines.

Another point of divergence with Audi's formulation results from our specification that in the decision-oriented public sphere "only the manifestation of fallible and negotiable secular reasons has democratic legitimacy and is generally recommendable." For different authors such as Waldron, Rawls or Audi, religious arguments can be legitimately expressed in the political public sphere as long as those who present them advance also secular reasons that are supposed to shape decision-making. Nonetheless, it appears unrealistic to imagine that the same persons would affirm in their political speeches something like: "these are my religious convictions and these are my secular arguments - and when you decide please take into account only the latter ones." Opening a generous door to the manifestation of religious motives in parliaments, courts, local bodies or electoral campaigns is problematic: having also in view the general politicization of religion, such a move would give too many possibilities for the religious discourse to unmediatedly shape law- and policy-making. This would represent a window of opportunity for politicians to play on the religious sensibilities of the electorate, which could produce the intensification of the politicization of religion: if representatives are elected for their religious "credentials," it is likely that they will try to shape decision-making on the basis of religious discourse.⁴¹

The point is not that a politician who invokes absolute religious truths in the Parliament or in her electoral campaign should be banned from political life. As long as others' liberties are not infringed, the freedom of expression and religion guarantees that religious claims can be articulated in the decision-oriented public spheres as well.⁴² This is part of their freedom of religion and expression. However, a liberal political culture needs to *informally* limit such manifestations: if invoking religious arguments in decision-oriented public spaces becomes a common practice, this may undermine the secular character of the state.⁴³ An example may help to clarify. That a minor politician makes use of religious arguments in Parliament is unlikely to be per se problematic; but that a prime-minister justifies religiously his policy choices may prove to be at odds with the principles of constitutional democracy. A clearer instance is when a judge

⁴¹ On this debate, see the diverging positions of Habermas and Greenawalt, on the one hand, and of Perry, Rawls, Waldron and Audi, on the other. For example, Perry argues that officials can present religious arguments as long as, in accordance with the nonestablishment norm, "government may not make a political choice about the morality of human conduct unless a plausible secular rationale supports the choice," Perry (n. 35), p. 1426.

Here we cannot undertake a differentiated analysis of the relation between the activities of various kinds of public officials and the usage of religious arguments. See, especially, Greenawalt, Kent (n.20). As Greenawalt puts it, "I do not say that legislators should deny religious bases that motivate them, only that they should not develop public arguments in these terms," Greenawalt, Kent (1998) 'Has Religion any Place in the Politics and Law of Liberal Democracy?', *Proceeding of the American Philosophical Society*, vol. 142, No. 3, p. 385. We agree with Greenawalt who does not favour a "substantially increased injection of religious premises into discussions of particular political issues" (idem. 386; for a critique, see Perry (n. 35)).

⁴² The following remark of the US Supreme Court could be generalized: "in Anglo-American history, at least, government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be *Hamlet* without the prince," in "Capitol Square Review & Advisory Bd. v. Pinette," 1995, apud Perry (n. 35), p. 1424.

⁴³ By informal limitations we mean, for instance, self-restraint from the part of politicians and the partial marginalization of politicians that claim to shape decision-making on the basis of religious arguments.

attempts to invoke religious reasons in adjudicating a case: in such a situation, the judge is to be *formally* constrained not to do so.⁴⁴

A common objection to the principle of democratic secular rationale is that deep disagreements concern not only religious comprehensive doctrines, but also all sorts of secular reasons.⁴⁵ If this is so, then it becomes unclear why we would need to exclude religious reasons from processes of decision-making. As Rääkkä puts it, liberal theorists demand that citizens use secular reasons because they believe that these reasons are, contrary to religious reasons, neutral – in the sense that they are shared among citizens.⁴⁶ However, this belief – so the argument goes – is false. As there are no secular reasons that are shared among all citizens, it follows that it is not more impartial to use secular reasons than to use religious reasons; thus, legislators, officials, and occasionally even judges are justified in using religious reasons even if – as Audi would want to – “these reasons are not always supported by secular reasons. If this is so, then it is clear that citizens too are free to use religious public arguments even if they have no secular reasons to support their views. So the principle of secular rationale is wrong.”⁴⁷

Yet, this counterargument from deep disagreement is misleading. The discursive perspective does not count on a given consensus over semantic secular contents; instead, it focuses on *processes* of deliberation, persuasion and negotiation whereby reasons become democratically legitimate in the public spheres. In other words, it concentrates on how the legitimacy of reasons emerges performatively out of democratic dialogical and decision-making practices, and not from a pre-existing majoritarian consensus over semantic contents. The rights and procedures “codified” through the constitutional practice represent “filters” which make possible and shape the content-provider debate to be carried out by the citizens themselves. These procedures and rights informing discursive practices are not to be “decided” by theoretical fiat or on the basis of a consensus, but are to be seen as embedded and continuously interpreted by those interested. Their “core” is not “substantive,” namely external to the notion of fair practice of reason exchange. For their “substance” derives from a recursive reflection on what normative justification means, and it is only as criteria of justificatory procedures that they can be applied and have a certain content.

Our argument becomes clearer if we specify some of the differences between a democratic discourse defined by recursive reflection and religious discourse. To this end, we briefly introduce the categorical distinction between conversion, persuasion and conviction. In his argument from deep disagreement, Rääkkä glosses over the fact

⁴⁴ Consider a recent court case from Italy. The Jewish Italian judge Luigi Tosti refused in 2005 to fulfil his function unless the crucifix is removed from the courtroom. Judge Tosti argued that he would resume his activity if either the state respects the principle of laicism or he is let to hang up in the courtroom the symbols of his religion. But the presence of a Crucifix in a court is not appropriate: though it is a symbol and not an argument, it can be related to a partial point of view and, thus, be in contrast to the requirement of impartiality. This means that the second solution proposed by Tosti – namely to hang up Jewish religious symbols in the courtroom – is not acceptable either.

⁴⁵ Prominent American authors such as N. Wolterstorff, P. Weithman and, more recently, R. Audi, support this view. See, for instance, Audi and Wolterstorff (n. 8). For a critique, see Habermas (n. 9), esp. pp. 130-133.

⁴⁶ Rääkkä, Juha (2002) ‘The Place of Religious Arguments in Civic Discussion’, *Ratio Juris*, Vol. 13, 2, p. 167. Even Greenawalt argues that “...religious grounds might figure in the adoption of many laws that do not impose,” in Greenawalt, Kent (1998) (n. 37), p. 382.

⁴⁷ Rääkkä (n. 42), 167.

that, while *conversion* is characteristic to the religious discourse, *conviction* and *persuasion* are specific to, and the goal of, democratic discursive practices. Conversion implies an a-rational or supra-rational "leap" from the current framework of reference into a new religious one.⁴⁸ The religious frameworks of reference are often linked to a claim to absolute or totalizing truth and orientating power for one's entire life (and sometimes for one's afterlife too).⁴⁹ By means of the supra-rational dimension of conversion we refer to the moment of "mystery" which transcends the transparency of processes of recursive reflection in the "public square" and occurs in the "privileged" relation between one or more individuals and a transcendent or sacred reality.⁵⁰ Furthermore, religious frameworks of reference are sometimes supported by hierarchical institutions trying to ensure the "infallible truth" and the stability of the religious discourse (or, better, of a part of it).⁵¹

In contrast, fallible democratic dialogue aims to convince and persuade people of revisable solutions to conflicts between individual and groups that espouse different comprehensive doctrines. Then, the formal and informal institutional "sluices" leading to the articulation of secular democratic reasons ensure their permanent exposure to inclusive criticism and non-violent change.

⁴⁸ Our focus is religious conversion. Yet conversion can be also secular when it refers to the embracing a totalizing framework of reference.

⁴⁹ "Totalizing" is not the same with "absolute" truth. A framework of reference can be totalizing, but not absolute. For the notion of a "framework of reference," see Ludwig Wittgenstein (1966) *Lectures and Conversations on Aesthetics, Psychology and Religious Belief*, ed. by Cyrill Barrett, Basil Blackwell, 1966 and R. Brian Clark, (2002) *Wittgenstein, Frazer and Religion*, Palgrave, Macmillan. In our view, "conversion" can also refer to the process of espousing a secular framework of reference that make a claim to absolute, infallible truth. It is interesting to note that Thomas Kuhn makes use of the term "conversion" to designate the passage from a paradigm to another (see Kuhn, Thomas (1970) *The Structure of Scientific Revolutions*, Chicago: Chicago University Press). However, in our view, the passage from a scientific paradigm to another one should rather be seen as a combination of persuasion and conviction. A paradigm does not presuppose a dogmatic core in the sense of sacred and revealed text such as the Bible or the Coran.

⁵⁰ A similar idea is expressed by Dworkin. According to him, "...someone who believes that the religious truth is only available through divine grace, or some other privileged access, cannot hold that all reasonable citizens could reasonably embrace his own religious convictions," Dworkin, Ronald (2004), "Keynote Address. Rawls and the Law," in *Fordham Law Review*, 72, p. 1398. And, continues Dworkin, "[j]udges may not appeal to religious convictions or goals in liberal societies because such convictions cannot figure in an overall comprehensive justification of the legal structure of a liberal and tolerant pluralistic community" (idem.), p. 1399. One might object that conversion does not presuppose a "privileged access", since everybody can convert. But "privileged access" refers to the fact that "conversion" presupposes *also* reasons that are not generally open and accessible.

⁵¹ With reference to the United States, Perry notes that many religious communities recognize that their traditions are dynamic and that their understandings of God are not identical with the reality of God. Such communities have in the past and can in the future engage in the religious equivalent of intellectual solidarity, often called ecumenical or inter-religious dialogue, Perry (n. 35). Yet, Perry's view is over-optimist. And there remains the foundationalist reference to the "reality of God" or to another transcendent reality.

Table I. Some differences between secular democratic and religious discourse

TYPE OF DISCOURSE	SECULAR DEMOCRATIC	RELIGIOUS
TYPE AND AIM OF DISCOURSE	- it is a mixed discourse that presupposes argumentation (aim: conviction) and rhetoric (aim: persuasion).	- it is a mixed discourse (it can presuppose both argumentation and rhetoric), but its <i>differentia specifica</i> presupposes that it contains a revealed or the appeal to a revealed discourse or to a discourse linked to sacred textual or experiential sources (aim: conversion)
MODE OF "TRUTH"	Fallible, changeable and negotiable.	Often it contains infallible and non-negotiable elements
MODE OF LEGITIMATION	Inclusive deliberative and rhetorical practices, proceduralized negotiations	By reference to revealed or sacred experiential and textual sources
"CARRIER"	Democratic association that presupposes generally a plurality of religious communities	A specific religious community
REFERENCE OBJECT	Conflict- and problem-solving situations of a political community	The totality of the existence of a person or of a group
FORMAL AND INFORMAL INSTITUTIONS THAT "SUPPORT" IT	- egalitarian, inclusive, ensure criticizability	- formal and informal institutions that can be hierarchical and/or ensure the "truth" and uncriticizability of <i>certain</i> religious topoi.

Democratic convictions are acquired by means of deliberative argumentation based on open and publicly accountable criteria: non-contradiction, coherence, factual evidence (e.g. in a murder trial), compliance with procedures (e.g. not trying to intimidate or bribe the jury), inclusivism (e.g. inclusion of all affected) transparency and so on, are the benchmarks for building reasonable convictions. Further, democratic acts of persuasion are accomplished by open and inclusive rhetorical practices that are to be distinguished from demagoguery: while the latter's aim is to manipulate the others through lies, threats or sophisms, the former's goal is to make people embrace particular values and principles by means of rhetorical *topoi* and figures of speech.⁵² (Note here that we do not reduce discursive practices to rationalistic deliberation following a common model of deliberative democracy or to rhetoricism in keeping with an influential republican view.)⁵³

Surely, religious discourse *is* a mixed type of discourse that presupposes both argumentation and rhetoric: as such, it comprises fallible and changeable arguments, rhetorical *topoi* and stylemes. But an important *differentia specifica* of the religious discourse is that it presupposes also an appeal to transcendent or sacred experiential sources. Two examples may help us see clearer the distinction between religious and democratic discourse. First, suppose that a town council decides to invest public money in order to build a mosque made by the famous architect Gehry. Now, assume also that the majority of citizens in the town and their representatives in the council are deeply Muslim. What are the reasons that can make democratically legitimate the legal constraint on a non-Muslim to pay taxes for such an enterprise? If these are religious (e.g. "Allah has revealed to our Imam that we should build a new mosque"), then the constraint is not legitimate as it is not justified on the basis of generally accessible,

⁵² Here we should distinguish between two understandings of fallibilism: one thing is when, in a court, a line of argumentation is shown false on the basis of new facts, and another thing is when "public values" are changed through a shift in government. One objection may be that the very term "fallibilism" is not used properly in the case of values. In this view, ethical frameworks are neither right nor wrong: they merely prevail or do not prevail in the process of democratic vote counting. However, this conception does not render justice to the "realist" assumption of the common sense according to which some values are more justified than the others. See, in this sense, the debate between Habermas and Putnam, in Habermas (2003), *Truth and Justification*. Polity Press.

⁵³ For Habermas' most recent rejection of rhetoric, see his polemic with Rorty, in Habermas (2003) (n. 48). For republicanism and rhetoric, see Viroli, (n. 9) and Quentin Skinner (2002) *Visions of Politics*. Cambridge: Cambridge University Press, esp. vol. III. The fact that the distinctions between conviction/persuasion, right/good, conviction/persuasion and universal/particular context are blurred and in continuous negotiation is not a sufficient reason for collapsing these pairs. To illustrate the reciprocal irreducibility of the logic of conviction and persuasion, think of two cases. First, when resources are scarce, the way in which certain rights are prioritized over other rights may depend on ethical frameworks that are not universalizable (see section IV, for more examples). Second, assessing massive violations of human rights (e.g. genocide) implies a logic of conviction and the universal context of humanity as a reference point.

It is also worth mentioning that Skinner's rhetorical turn is accompanied by radical historicism and relativism. He further appears to reduce rhetoric to a simple technique that can be put to use for opposite aims (see, for instance, his reflections on *paradiastole*, in Skinner (ibid.)) Skinner's position is more radical even than that of Rorty, since the latter preserves, despite his rhetoricism, the notion of 'moral progress.' This is probably not Viroli's position. He appears to write more in the tradition of Aristotle, Cicero, Quintilian, Vico, Gadamer and Derrida: despite the unquestionable differences between all these authors, they do not sever the connection between, rhetoric, on the one hand, and a "mode of truth" and morality, on the other. In this sense, the difference between our position and Viroli's may be, to a certain point, a question of label rather than of substance.

negotiable and fallible reasons. By contrast, if it is grounded on reasons such as “this enterprise will create new jobs” or “it will boost tourism and economy as many people would come to see Gehry’s last architectural <folly>,” these *could* be reasonable claims for justifying the legal constraint also for the non-Muslims. Additionally, if the town council also allocates money to other religious groups to build places of worship and to non-religious associations for their activities, financing a new mosque would appear more legitimate.

Second, for a Catholic, the Pope’s exhortation to donate money to children in Africa does not entail an absolute or non-negotiable religious obligation: believers may give more or less money for children in Africa or they may choose to help those suffering in other parts of the globe. And believers – as the Catholic Church itself exhorts them – can find autonomous reasonable motifs for helping people in distress. But, from a religious perspective, the obligation to help the other is connected to a non-negotiable religious framework: you either believe or you do not in the divinity of Jesus or the infallibility of the Pope. This “dogmatic core” accessible only through conversion cannot ground a democratically legitimate legal constraint.

IV. Reasons for including religious discursive practices in the opinion-oriented public sphere

At the empirical level, laicism and full-fledged secularism are challenged by the fact that religious discourse has been stubbornly present in the public spheres. The value-free secularization hypothesis has turned out to be highly questionable. According to Berger, “[t]he world today, with some exception... is as furiously religious as it ever was, and in some places more so than ever...”⁵⁴ Certainly, modernization has had secularizing effects, more in some places than in the others - more in Europe, for instance.⁵⁵ Yet, it has provoked powerful movements of counter-secularization. Also, secularization on the societal level is not necessarily linked to secularization on the level of individual consciousness; and the erosion of the authority of established religious institutions is sometimes replaced by new organizational forms both in the private and public spaces. For good or bad reasons, religions remain and at times become more active in the public sphere.⁵⁶

First, we shall briefly deal with the failure of normative secularism to discredit religious discourse and we shall provide some justifying reasons for religion’s manifestation in the civil society from the perspective of the construction of the democratic legitimacy (a). Second, having in view the pernicious effects of the current politicization of religion (think of fundamentalism), we will refer to some of the socio-

⁵⁴ Berger, Peter (1999) (ed) “The Desecularization Of The World : A Global Overview,” in Peter L. Berger *The Desecularization of the World: resurgent Religion and World Politics*. Washington D. C.: Ethics and Public Policy Center, W. B. Eerdmans Pub. Co., 2. Berger was one of the leading supporters of the secularization theory. But see Inghelhart and Norris (n. 5).

⁵⁵ Grace, Davie ‘Europe : the exception that proves the rule?’ in Berger (n. 51) and Grace, Davie, Grace, (2000) *Religion in Modern Europe: A Memory Mutates* Oxford: Oxford University Press.

⁵⁶ See, for instance, Peter L. Berger and P. Samuel, Huntington (2002) (eds.), *Many Globalizations: Cultural Diversity in the Contemporary World* Oxford: Oxford University Press; Casanova (n. 10); Davie (n. 52).

political and cognitive conditions of the possibility of a positive interaction between democracy and religion in the public sphere (b).

(a)

At a basic level, the public expression of religious traditions entails that democratic citizens come to know about their reciprocal differences. This is important not only due to the unfeasibility of a political community made of “complete strangers,” but also because the practice of criticism and autonomy is not acquired by hiding particularities in the private sphere, but by comparing, reflecting on and choosing them knowledgeably.⁵⁷

Exposure to different and sometimes even bizarre ways of living can foster – under certain conditions - open-mindedness and tolerance. This goes also for religious traditions: instead of remaining “frozen” into the darkness of privacy and a resentful attitude towards a hostile “outer” world, entering “open debate” might represent a test that forces individuals to update their discursive practices to deal with new situations and challenges.⁵⁸ Thereby, religious citizens do not remain outsiders to the social and political problems of their society, but interact between them and with the non-religious and atheist citizens.

The positive recognition of one’s right to manifest publicly one’s religious identity may be at once normatively desirable - especially when it is directed towards marginalized groups -, and functionally beneficial. Notwithstanding the plainly ambiguous record of the relation between religion and democracy –, one needs to think only of the Inquisition, various fundamentalisms or women’s usual subordinated position in Catholicism and Orthodoxy-, political and social recognition can lead, under certain circumstances, to the stabilization of people’s identities and their increased willingness to integrate into democratic life. For instance, in Europe, more public recognition granted to Muslims may have positive normative and functional-integrative effects – effects that are typically neglected by old-school laicism. The notion of positive acknowledgment is more congenial to republicanism’s emphasis on liberty as non-domination and deliberative democracy’s stress on mutual recognition. Recognition entails more than mere liberal tolerance: the latter is negative and can be accompanied by a patronizing attitude (“I allow you to...”), while recognition is positive (“I disagree, but I recognize the inherent value of your position and system of values...”).

The exposure to religious discourse opens up the *possibility of learning*, namely of a non-zero-sum game between religious and democratic discourse. This prospect has been denied by a variety of secularist approaches that rebuff the very meaningfulness of the religious discourse. But the secularist attempts to do away with the salience of the religious discourse have proven unsuccessful and, ironically, have often turned out to be parasitic on residual metaphysical-religious motives and normative decisions.⁵⁹

These attempts could be classified at least in two categories. On the one hand, there are those who argue that religious propositions are reducible to a “hidden” and

⁵⁷ This appears to be valid equally for the private and public life.

⁵⁸ Perry (n. 35), p. 1428.

⁵⁹ Wittgenstein, Ludwig (2001), *Tractatus Logico-Philosophicus*, with an introduction by Bertrand Russell, Routledge and Wittgenstein (n. 45).

“deeper” secular content and reality. Religious claims are regarded as the inadequate and “superficial” expression of this reality which is properly captured by various theories and disciplines, be it philosophy (Hegel), moral theory (Kant, Cassirer, Habermas), anthropology (Fraser, Lévi-Strauss) psychoanalysis (Freud) or economic sociology (Marx). Fraser saw in religion the inappropriate expression of cognitive interests, Freud of sexual desires or of a combination of *eros* and *thanatos*, Marx of class interest, Weber of unbearable suffering, Berger of fear of uncertainty, Kant, Cassirer and the early Habermas of moral “intuitions,” and so on. According to this type of argumentation, the process of secularization implies putting religion’s legitimate concerns into an adequate language. These various theories often aim to simultaneously provide a philosophical or scientific key for explaining religious claims and for showing how people can *emancipate* from them by means of true knowledge.

Nonetheless, all the attempts to prove that the “manifest” semantic contents of religion are illusory and amenable to a “latent” secular objective truth, have fallen short. While it is clear that religious traditions are related to power, sexuality, social interest, moral concerns, cognitive ignorance and so on, none of these theories has managed to reduce religion to them. Initially, religion comes intermingled with all these phenomena in an undifferentiated whole. Thus, empirically speaking, establishing a relation of derivation of religion from politics, sexuality, cognitive incapacity, suffering, etc., requires claiming to make present a temporal and “causal” sequence that is not accessible.⁶⁰ Thus, one can advance the hypothesis that these secularist attempts may be residual of a metaphysical dualism that distinguishes between a deeper, more real, positive and emancipating secular reality and its inappropriate and opaque religious “skin.”

Another secularist view does not claim that religious propositions are meaningful but inadequate formulations of real secular contents, but that they are straightforwardly meaningless (*sinnlos*). Yet, the endeavour of the early Wittgenstein and of neo-positivists such as Ayer to deny the meaningfulness of religious value-resources turned out to be implausible. Ayer’s verificationist understanding of rationality and meaningfulness and the correlative polemic against metaphysical and religious propositions turned against themselves. It is not only that philosophers got entangled into endless discussions about what verification might precisely be, but the principle of verification itself turned out to be unverifiable: as it turned out, neopositivists equated meaningfulness with empirical verifiability and, so, regarded religious statements as empty, by theoretical or metaphysical fiat.⁶¹

Wittgenstein’s initial position that influenced neo-positivists was already more intricate than theirs. First, he perceived already in the *Tractatus* the problems surrounding the principle of verifiability. In the *Tractatus* he puzzlingly claims that the status of its propositional content should, according to the accepted verificationist criterion of rationality and meaningfulness, be *stricto sensu* considered meaningless

⁶⁰ This argument is not dependent on a problematic theory of modernization and social differentiation that claims that various domains (morality, science, art, etc) differentiated themselves out of an essentially religious original amalgam.

⁶¹ For a somehow similar line of argumentation, see Leszek Kolakowski (1982) *Religion. If there is no God...On God, the Devil, Sin and other Worries of the so-called Philosophy of Religion*, Oxford: Oxford University Press. One of the differences between our position is that Kolakowski argues that scientific and religious truths are rational in the same sense. Kolakowski can collapse the distinction between conversion and conviction by means of a radically consensualist theory of meaning and truth.

along with the ethical and religious propositions. Second, he paradoxically thought that religious and ethical propositions are meaningless, but also that they convey something “profound” about human existence. In opposition to Ayer, the early Wittgenstein denies the meaningfulness of religious propositions only to claim that they are part of what is most important for one’s life.⁶²

Wittgenstein’s dissatisfaction with this paradoxical solution and his later shift are exemplary. In his *Remarks*, Wittgenstein gives up his early assessment of the meaning of religious propositions through the narrow criteria of empirical verifiability; instead, he argues that religious traditions refer to encompassing frameworks of reference that have the capacity to answer one’s “needs” to find a general orientation in life.

In keeping with this line of thought, we can call religious frameworks “arational” as they do not imply the denial of rational or reasonable propositional contents that result from scientific or democratic inclusive procedural processes that aim at solving scientific-empirical or co-existence problems. Religious frameworks represent world-disclosing imaginative attempts to answer interrogations that normally point to a totality inaccessible for finite beings who live “inside” it and refer to the meaning of life, history, suffering, evil, identity, and so on. Indeed, the *possibility of learning* or of a fruitful interaction between democracy and religion is interconnected with the fact that the constitutional principles and rights are embedded in a variety of ethical traditions and historical narratives that can have a religious dimension. This implies that their interpretation and application can take into account the *semantic resources* of the historical ethical-religious traditions, be they Buddhist, Confucian, Christian, Islamic, and so on. The constitutional principles and rights are not given naturally, but they articulated, interpreted and justified in historical contexts.⁶³ In Habermas’ words, every legal system is also the expression of a “particular form of life and not merely a reflection of the universal content of basic rights.”⁶⁴

This interaction between religion and democracy requires processes of *transformative democratic interpretation*.⁶⁵ By transformative democratic interpretation

⁶² Wittgenstein’s “quietist” recommendation is: “Whereof one cannot speak, thereof one must be silent,” in Wittgenstein (n. 56), 7.

⁶³ Wittgenstein did not pose the political problem linked to the persistence of religion in the public sphere of contemporary democracies. His followers (Winch, Malcolm) interpreted Wittgenstein’s view of religion as purely expressivistic, namely as a language game that *expresses* the particular way of being and that, as such, is in no need of justification. The consequence is either that religion’s place is in the private sphere or that theocratic regimes are justified as expressing just another way of living. For our intermediary position between cognitivism and expressivism, see later, n. 65.

⁶⁴ Habermas (n. 21), p. 217. Nonetheless, having in view the fact of pluralism (Rawls) a legal system is not only ethically permeated, but also ethically neutral. This necessity of neutrality derives from the fact that in complex plural societies it is possible only a consensus on procedures and not on values. Habermas argues for the necessity of the uncoupling between, on the one hand, the ethical-political and the political culture and, on the other hand, the ethical-cultural or comprehensive doctrines. From the political-legal perspective, citizens should build an allegiance only at the level of constitutional patriotism, namely at the level of universal principles embedded in a certain ethical context: “...the ethical substance of a constitutional patriotism cannot detract from the legal system’s neutrality vis-à-vis communities that are ethically integrated at a sub-political level. ...it is crucial to maintain the distinction between the two levels of integration,” Habermas (n. 21), p. 225.

⁶⁵ Habermas and Waldron make use of “translation.” Yet, a translation is normally designed to convey with fidelity the content and the form of a text from a language into a different language. However,

we refer to the fact that religious *topoi* can be turned into secular democratic reasons through *inclusive discursive practices* taking mainly place at the level of civil society.⁶⁶ This transformation entails a passage from the logic of conversion to a logic of democratic conviction and persuasion. Take the Christian *topos* of solidarity as exemplified by the parable of the Good Samaritan and suppose it “expresses” the ethos of a local community. Members of this community might say, for example, that the Bible, by means of “stories” such as the parable of the Good Samaritan, teaches us God’s wish that we love our neighbours; that obligation must be fulfilled by the greater aid to the poor. People are fully entitled to act upon such readings of the Bible in the civil society. Therein they can, for instance, set up corresponding religious organisations (think of *Misericordia* in Italy). Nonetheless, this ethic of solidarity can legitimately shape processes of decision-making concerning the common matters of the entire citizenry only if it is severed from dogmatic beliefs such as the divinity of Christ. Similarly, Buddhist teachings focused on suffering can nourish a public ethic of solidarity. However, if it is to influence decision-making in matters concerning all citizenry, it needs to be severed from teachings such as the Noble Eightfold Path leading to the cessation of suffering and attainment of Nirvana.⁶⁷ Thereby, solidarity is made available as a secular value that can be adopted by a broader dialogical community than the originating religious one. Thus, by democratic transformative interpretations, solidarity does not remain the *expressive* value of a particular religious community, but becomes *cognitively* relevant to the understanding of rights and policy-making in a political community.⁶⁸

One may object that the embeddedness of constitutional principles is a sociological matter rather than a normative one. According to what we may call the *convergence thesis*, particular contexts are seen as “empirical impurities” that need to be gradually done away with so that the single right interpretation of the constitutional principles emerges, warts and all. The full-fledged secularist model pictures humanity as progressively unfastening itself from the shackles of religious obscurantism until it reaches a fully luminous state of emancipation. The laic view imagines that the universal *volonté générale* of an indivisible and homogenous people, surfaces mysteriously once citizens strip themselves off their differences at the doorway in the public sphere.

the passage from religious to secular discourse implies a radical and often laborious change (see Habermas (n. 9) and Waldron (n. 9)).

⁶⁶ They are to be distinguished from those power asymmetric “mechanisms” whereby religious *topoi* can enter secular discourse (e.g. during colonization.)

⁶⁷ Carrithers, Michael (1983), *The Buddha*, Oxford: Oxford University Press. For the relation between Buddhism and democracy, see, His Holiness the Dalai Lama (2005) “Buddhism, Asian values, and democracy,” in Diamond et. al. (n. 5).

⁶⁸ The “arational” frameworks of reference are thus not simply *expressive* of a particular group, as a mainstream interpretation of Wittgenstein has it. This view misses the meaning of constitutional-democratic principles and procedures of dealing non-violently with problems of co-existence in conditions of plurality. As these are embedded, it follows that the ethical-religious frameworks of reference have also a potential *cognitive* salience for the ethical-political self-understanding of a polity. Thereby we try to avoid the flaws of the two opposite conceptions of religion, namely expressivist and cognitivist. By means of our claim that they contain both expressive and cognitive resources, we keep away from the subjectivism of the first position and the intellectualism of the second.

Despite laicism's appeal to agnosticism as a trait that distinguishes it from secularism, both models are tributary to a *metaphysics of emancipation* inimical to difference. This metaphysics imagines that *volonté générale*, public reason or common interest emerge once citizens give up their particularities – either at the entrance to the public sphere (laicism) or in the public sphere (Rawls).⁶⁹ It is worth listening for a moment to a recent apologetic voice of French laicism: "[I]a concorde laïque n'unit pas les hommes que par ce qui les élève au-dessus de leurs particularismes. ...La pensée libre, affranchie des crispations du vécu [sic !]...en mesure de cultiver la double exigence de vérité et de justice, bien précieux d'une humanité réconciliée avec elle-même."⁷⁰ Certainly, this appears to be a Rousseauian vulgate. But it is noteworthy that, notwithstanding all necessary qualifications, Habermas pictures the democratic-constitutional practice as a project that moves progressively towards “the single right solution” and ideal consensus where ethical-religious differences become irrelevant.⁷¹

But who is entitled to determine which specific differences and interpretations of the common interest are relevant in the public sphere other than the democratic citizens themselves? The image of a universality and impartiality that would inexplicably emerge in the political public sphere once we confine our particularities to the private one pertains to a unrealistic political metaphysics with *normative underpinnings*. This model presupposes a practical-normative hierarchization between universality and consensus, on the one hand, and particularity and disagreement, on the one other: when it is not actually given, this universality determined by the theoretician as a regulative ideal or *telos*. In contrast, according to the “discursive view,” significant differences and disagreements cannot be so simply left at the door of the public sphere or reason by political or theoretical fiat (be it counterfactual or not) or, alternatively, be abolished by means of one's master-vision of a completely emancipated humanity. The approximation of the common interest does not surface from the *predetermined* denial of particularities in the public sphere, but from intermeshing processes of clarification, dialogue and proceduralized negotiations taking also into account their public manifestation.

Since there is no clear reason to believe that various ethical-religious resources represent a sort of “empirical impurity” or that people have generally run out of spiritual creativity, these resources remain potentially significant for the interpretation

⁶⁹ Despite significant differences, Rawls as well thinks that the content of the “constitutional essentials are to be fixed ‘once and for all’ (Rawls) by means of a monologic-philosophical process of clarification. Thus, for him, the political-democratic discursive practices are considered principle-interpreting rather than principle-generating; they are primarily a medium of the application of the general principles of justice. It is not surprising that Rawls takes the Supreme Court as an “exemplar of public reason”⁶⁹ that “guards” and applies the “constitutional essentials.” This is to say that the substantive criteria of legitimacy which are incorporated in the constitution are not at the disposal of democratic majorities.

⁷⁰ Pena-Ruiz (n. 17), pp. 270-271. This passage testifies of a Rousseauian vulgate and suffuses with elements of a metaphysics of reconciliatory emancipation. It is interesting to note that Ruiz-Pena's laicist understanding of the homogenous public sphere is accompanied by a vision of the people as “totalité indivisible” (ibid., p. 248) which is supposedly able to “perceive” the universality of the general will. But the notion of a homogenous demos and public sphere as a collective individual who mysteriously “seizes” universality is tributary to philosophy of subject that is unsuitable for large, differentiated and multicultural societies.

⁷¹ Habermas (2001) ‘Constitutional Democracy. A Paradoxical Union of Contradictory Principles?’, 29, 6, pp. 766-781.

of the principles of constitutional democracy. Here we can differentiate between various ways in which the interaction between democracy and religion has an inherent salience.

(1)

First, cultural-religious factors can affect the *prioritizing* of rights, and this matters when rights conflict and one must decide which one to give the upper hand. Thus, various societies may rank rights differently, and even if they face a similar set of circumstances they may come to different conclusions about the right that needs to be curtailed.⁷² For example, U.S. citizens may be more willing to sacrifice a social or economic right in cases of conflict with⁷³ a civil or political right: if neither the constitution nor a majority of democratically elected representatives support universal access to health care, then the right to health care regardless of income can be curtailed (or reduced to a minimum). In contrast, the Europeans may prefer to chip off the liberal principle of liberty as non-interference in order to provide a social or economic right. The place of religion may seem less obvious in respect to welfare and capital gains (than in the case of same-sex marriage, genetics, abortion, etc.), but people’s religions influence their sense of what the community owes to its least fortunate members and their sense of whether the gap between the rich and poor is tolerable or what should be the attitude towards immigrants or asylum seekers.

Different priorities assigned to rights can also have a bearing when it must be decided how to spend scarce resources.⁷⁴ For instance, East Asian societies with a Confucian heritage will place great emphasis upon the value of education, and they may help to explain the large amount of spending on education compared to other societies with similar levels of economic development.

(2)

Second, cultural-religious factors can provide the ethical incentives for *distinctive political and rights practices and institutions* (or at least different from those found in Western-style liberal democracies). In East Asian societies influenced by Confucianism, for example, it is widely held that children have a profound duty to care for elderly parents, a duty to be forsaken only in the most exceptional circumstances.⁷⁵

⁷² See, for instance, Waldron (2001), *Law and Disagreement*, Oxford: Oxford University Press; Frank Michelman, ‘The Problem of Constitutional Interpretative Disagreement: Can <Discourses of Application> Help?’, in Anoulafia, M., et. el. (2001) (eds.), *Habermas and Pragmatism*. Routledge, pp. 113-138.

⁷⁴ Cf. Daniel Bell (2000) *East Meets West: Human Rights and Democracy in East Asia*, Princeton: Princeton University Press.

⁷⁵ For further developments, see Bell (ibid.); An-Naim, A., 1992, ‘Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment’, in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, A. An-Naim, (ed.) University of Pennsylvania Press; Taylor, C., 1999, ‘Conditions of an Unforced Consensus on Human Rights’, in J. R. Bauer and D. Bell, (eds.) *The East Asian Challenge for Human Rights*, New York: Cambridge University Press; C. Hahm, (2003) ‘Constitutionalism, Confucian Civic Virtue, and Ritual Propriety’, in D. Bell and Hahm C. (eds.) *Confucianism for the Modern World*, , Cambridge University Press.

In political practice, it means that East Asian governments have an obligation to provide the social and economic conditions that facilitate the realization of this duty.⁷⁶

(3)

Age-old ethical-religious semantic resources can be interpreted in new ways in order to deal with socio-political or technological challenges. Think of how the Christian understanding of “forgiveness” and “reconciliation” has influenced (together with other political or pragmatic factors) the South Africans’ way of dealing with a criminal past. There is no coincidence that the Nobel Prize winner Anglican priest and theologian Desmond Tutu figured as the Head of the South African Truth and Reconciliation Commission after the fall of apartheid.⁷⁷ Furthermore, Gandhi’s civic disobedience practice, Martin Luther King’s civil rights movement or John Paul II’s support of the Polish “Solidarity” cannot be understood in their specificity without taking into account their spiritual-religious background.

(4)

The processes of interaction and learning characterizing the relation between the religious and democratic discourse can also occur between different constitutional cultures. As Habermas points out, the Europeans may become more “aware” of the insularism of their interpretations of human rights while in contact with, say, the Asian interpretations and vice versa.⁷⁸ Generally speaking, the discursive perspective aims to turn the abstract universalism of the liberal view into a universalism which is more sensitive to the historical context and processes of mutual learning and de-centering.

(5)

So far, we have mainly spoken from the perspective of democratic legitimacy. But religious traditions also learn and reinterpret their “language” in relation to new challenges and situations. Take the adaptation to the notion of universality the Catholic Church as implying an active responsibility towards global problems, namely the Third-World debt and the sub-Saharan famine.⁷⁹ The reformulation of the concept of “solidarity” by the Popes John Paul II and Benedict XVI in relation to challenges such as communism and global immigration or Metz’ reflection of “compassion” as an

⁷⁶ As Bell notes, political debate tends to center on the question of whether the right to filial piety is best realized by means of a law that makes it mandatory for children to provide financial support for elderly parents as in mainland China, Japan, and Singapore or whether the state should rely more on indirect methods such as tax breaks and housing benefits that simply make at-home care for the elderly easier, as in Korea and Hong Kong. However, But the argument that there is a pressing need to secure this duty in East Asia is seemingly not a matter of political controversy. See D. Bell (1999) “Communitarianism” at <http://plato.stanford.edu> and Bell (n. 70).

⁷⁷ Desmond Tutu (1999) *No Future Without Forgiveness*, London: Rider Books; see also Richard Wilson (2001) *The Politics of Truth and Reconciliation in South Africa : Legitimizing the Post-apartheid State*. Cambridge: Cambridge University Press.

⁷⁸ Bell, Daniel (2001) “Communitarianism” at <http://plato.stanford.edu> and Habermas, Jürgen (2003), *Faith and Reason*, in *The Future of Human Nature*, Polity.

⁷⁹ See Waldron’s citations and comments from the “National Conference of Catholic Bishops Justice for All” (1986), in Waldron (n. 8).

universalizable Christian *topos* in conditions of religious plurality are significant examples.⁸⁰

(b)

There remains an important objection levelled against the discursive “model.” A legitimate concern is that, under the cover of advancing a dialogical perspective, a Pandora’s box would be naïvely opened up: the untested ideological belief in the virtues of public dialogue may be the doorway to a strife of gods and demons in the democratic public sphere. Historically, the idea of placing beliefs in the private realm was widely accepted in the aftermath of the intensification of the politicization of religion up to the breaking out of the ravaging wars of religions. The politicization of religion is nowadays, to a certain extent, a backward-looking reaction to the modern and often brutal erosion of traditional communities whereby “[a]ll that is solid melts into the air, [and] all that is holy is profaned...” (Marx & Engels).⁸¹ This politicization has undeniably problematic effects not only in countries with a partially failed modernization, but also in the longest and most powerful democracy, namely United States. Even in the American case where, historically, the functionalist case for the relation between democracy and religion has been faring better than in other places, a legitimate concern has emerged after September 11th as to the political-theological dimension of the United States politics.⁸²

The discursive model neither aims at the politicization of religion nor, conversely, at instilling politics with religious blood. Arendt is right to warn that, “[i]f we try to inspire public-political life once more with <religious passion> or to use religion as a means of political distinctions, the result may be very well the transformation and perversion of religion into an ideology and the corruption of our fight against totalitarianism by a fanaticism which is utterly alien to the very essence of freedom.”⁸³

Yet it is not only normatively problematic, but also unrealistic to try to turn back the clock and stifle the affirmation of religious identity in the public sphere: it is difficult to imagine that people would give up affirming publicly their cultural, ethnic, religious identities or the need for public recognition of them, especially when a group is marginalised or has suffered a history of oppression. Holing up religious differences in the private sphere seems no more feasible than denying the public manifestation of cultural, national, and sexual differences. These attempts would seem at best

⁸⁰ Johann Baptist Metz (2000) ‘Compassion. Zu einem Weltprogramm des Christentums im Zeitalter des Pluralismus der Religionen und Kulturen’, in Johann Baptist and Lothar Kuld, (eds), *Compassion. Weltprogramm des Christentum. Soziale Verantwortung lernen*. Verlag Herder, Freiburg im Breisgau, pp. 9-21.

⁸¹ The citation comes from the *Communist Manifesto* to be found at <http://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch01.htm>

⁸² Think also at the dangers accompanying the pernicious over-politicization of religion reaching Islamic countries where the transformation from divine law to secular law and the corresponding interpretation and implementation of liberal-democratic and human rights principles lags behind – countries which suffer from the malaises of disruptive and often failed processes of modernization.

⁸³ Arendt (n. 11), p. 384.

impracticable (e.g. France)⁸⁴ and at worst dangerous, as they could trigger long-term fundamentalist reactions (e.g. Iran).⁸⁵

The implementation of a discursive model in civil society should be practically pursued only under certain socio-political and cognitive conditions. A fruitful dialogue between religious and democratic discourse is premised on the modernization of faith. In the aftermath of the processes of secularization and pluralization of societies, faith needs to become self-reflexive. This is to say that, first, in contemporary democracies, religious doctrine has to accommodate itself to the unavoidable competition with other forms of faith and other claims to absolute or totalizing truths. Second, religious doctrine has to come to terms with two dimensions of the process of secularization: on the one hand, it needs to self-reflexively adapt to a secularized political practice based on the principles of impartiality and separation between state and religion.⁸⁶ Thus, religious frameworks encounter the scientific, secular mode of knowing that owes its legitimacy to a fallible learning process based on long-term revision.⁸⁷ On the other hand, those who reject *de plano* religion would need to become more aware of the fact that religious people also lead a dignified and valuable way of living; furthermore, they would need to become more sensitive to the historical importance and semantic richness of religious traditions.⁸⁸

⁸⁴ Even a short analysis of the current problems of the French *laïcité* in times when religious identity is self-reflectively assumed in the public sphere together with other forms of collective identity (cultural, ethnic, national, sexual, etc), strict laicism proves, empirically, non-realist and counter-productive and normatively, discriminatory. The rules of French laicism were drafted in light of those religions that were practised in France at the turn of the century: Catholicism, Protestantism, and Judaism. At that time, in France there were neither Muslims nor mosques. While the members of other religions have the benefit of places at their disposal, Muslims do not have access to mosques under the same conditions. The existing mosques have been constructed with private funds, provided in part from outside the country, where the Muslim clergy is likewise trained. Thus, the laic French model based on a strict separation between state and religion does not run only into a normative problem regarding injustices towards Muslim communities, but also into a prudential question concerning the possibility of the outside influence of fundamentalist groups and the correlative undermining of social solidarity. The current hesitant and improvised measures towards a legal and symbolic recognition of Islam in France testify to these difficulties. An over-strict notion of impartiality as non-interference of the state remains tributary to the idea that through the “invisible hand” of the market or dialogical mechanisms there emerges the impartiality of the state.

⁸⁵ In An-Na'im's words, “[a]dvocates of secularism [understood as a strict separation between state and religion] are clearly motivated by objections to the agenda of Islamic fundamentalists...If presented with European secularism as the only alternative to the so-called Islamic state and application of Shari'a, Islamic societies will clearly prefer the latter...Clear illustration of strict secularism can be seen in Iran in the drastic reversal since 1979...,” An-Na'im, Abdullahi, A. (1999) 'Political Islam in National Politics and International Relations,' in Berger (n. 51), p. 220.

⁸⁶ In contrast to Habermas, I think that not only politicians and legislators, but also the other citizens need to be aware of the secular character of politics. For instance, it is desirable that politicians do not build their political campaigns on religious reasons and religious citizens do not cast their vote on the basis religious arguments.

⁸⁷ More generally on this topic, Habermas (n. 9).

⁸⁸ Lorenzo Zucca and Chiara Bottici have pointed out that this model may be unrealistic. Bottici insists that the distinction between decision-oriented public sphere and opinion-oriented public sphere is unworkable in practice.

Instead of conclusion: towards a European “model”?

Our aim has been to advance the following argument: under certain socio-political and cognitive conditions, the manifestation of religion in the opinion-oriented public sphere can have an inherent value for democratic life. From the perspective of a discursive relation between religion and democracy, the main role of religion is in the public culture, in particular in those components of the public sphere that are the primary bearers of cultural and ethical meaning and value – universities, religious communities, the world of arts, and journalism. However, it is only after processes of selective interpretation and transformation through inclusive discursive practices that religious semantic contents may legitimately influence decisional interpretations of constitutional principles and rights.

In place of conclusion, we briefly point to a research agenda. Our intimation is that the discursive perspective is not merely a question of academic chitchat, as different European legal-political and religious developments are in tune with it. The discursive "model" has *practical-normative* relevance for the current developments: it can simultaneously *justify* them and provide *critical instruments* for their assessment. Here we refer schematically to three dimensions, i.e. European supranational, state and religious one.

First, the emerging European set of legal principles dealing with the relation between democracy and religion has moved away from laicism and full-fledged secularism. The principle of the manifestation of religion in the public sphere is clearly enhanced already in the text of the European Convention for Human Rights adopted in 1949 (art. 9).⁸⁹ Further, a common point between the discursive “model” and the ECHR’s recent case law is that the public manifestation of religion is not interpreted as having a direct impact on the legal-political decision-making, since this would lead to legal discrimination.⁹⁰ As it can be seen in the ECHR case, *Refah Partisi (the Welfare Party) and Others v. Turkey* (29 June, 2004), the public manifestation of religion becomes problematic when religious discourse threatens to unmediatedly determine decision-making processes - in this case, when a party with a religious platform forms the government and intends to turn Islamic religious law into the law of a democratic state. Additionally, some of the ECHR decisions suggest that the relation between religion and democracy in the public sphere is not a zero-sum game. Of course, it would be an overstatement to claim that the ECHR argues crystal-clearly that religious discourse has an inherent value for democratic discourse. Yet the Court does appear to make the point that religion is not allowed to manifest itself in the public sphere by default, but because it has a positive salience for democratic life. The Court maintains the relevance of different religious traditions not only for the citizens who are believers, but also for those who are indifferent or opposed to religion. In *Refah Partisi (the Welfare Party) and Others v. Turkey* "the Court reiterates that, as protected by Article 9, freedom of thought, conscience and religion is one of the foundations of a <democratic society> within the meaning of the Convention. It is, in its religious

⁸⁹ According to the fundamental article 9.1 of the European Convention, “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in *public* or private, to manifest his religion or belief, in worship, teaching, practice and observance.”

⁹⁰ A list of the decisions of the ECHR concerning religion are to be found at <http://www.uni-trier.de/~ievr/eng/emrk.htm> or <http://www.echr.coe.int/echr>

dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."⁹¹

On the other hand, the discursive model has a *critical function* in relation to the principles and arguments developed in the case-law: for instance, one of the ECHR judgements states that sharia is incompatible with the fundamental principles of democracy, as set forth in the Convention."⁹² Yet the role of a court is not to pass principled judgements over an *entire* religious tradition.⁹³ Traditions are normally not frozen; and its carriers should be free to decide on its re-interpretations and modifications. The 1990 Cairo Declaration of Human Rights, as insufficient as it may be, illustrates such efforts to make sharia compatible with human rights - efforts that the ECHR is not entitled to de-legitimize a priori.

Second, at the level of the European nation-states, historians and sociologists have noted the gradual moving away from the strict laic and state-religion models.⁹⁴ Due to social-political internal pressures and external legal ones, there are signs of a move towards the development of a more collaborative relation between state and religion (e.g. France) and more enhancement of the principles of impartiality and religious pluralism (e.g. Greece).⁹⁵

Third, the process of modernization of faith characterizes to varying degrees the European Christian churches. Here we can refer only to the Catholic view, that is mainly to the last Encyclical *Deus Caritas Est* (2005).⁹⁶ Despite the differences in interpretation, *Deus Caritas Est* shares with the discursive "model" two fundamental principles. On the one hand, it emphasizes the autonomy or the secular character of politics, justice and reason: "...the formation of just structures is not directly the duty of the Church, but belongs to the world of politics, the sphere of the autonomous use of reason." It is also noteworthy that the Catholic Church and the Catholic believers are called upon to make use of the secular reason; as we have noted following Habermas, this de-centering capacity is one of the cognitive pre-conditions of the modernization of faith. On the other hand, the encyclical supports the legitimacy of the public manifestation of religion. Having in view the autonomy of the political, this should not be understood as implying that the Catholic Church considers herself entitled to directly

⁹¹ *Refah Partisi* (the Welfare Party) and Others v. Turkey Judgement (2003), 90.

⁹² *Refah Partisi* (the Welfare Party) and Others v. Turkey Judgement (2003) 125. The Welfare Party's policy was not the introduction of full sharia law, but of a plurality of legal systems, something the Court found to be equally incompatible with the Convention.

⁹³ A. Ferrari argues that it is not a condemnation of sharia in toto, but a condemnation that applies only to the Turkish case, cf. Ferrari, Alessandro, *Religions, Secularity and Democracy in Europe: for a New Kelsenian Pact*, Jean Monnet Working Paper 03/2005, (page not provided.) At best, Court's formulation is ambiguous.

⁹⁴ For instance, Baubérot (n. 4); Davie (n. 52); Rémond (n. 16).

⁹⁵ For the still incipient and reluctant changes occurring in France, see Rémond (ibid.); Troper (n. 16). For the European-driven enhancement of legal pluralism in Greece, see the ECHR Judgements (Kokonnakis vs. Greece, 1993, Diamantides vs. Greece, 2004 Vergos vs Greece, 2004 and Agga vs Greece, 2006); see also Roger Blackburn, Roger and Jörg Polakiewicz (2001) (eds.) *Fundamental Rights in Europe*, Oxford: Oxford University Press; Ferrari, S (1998) "Tolerance, religion and the law in contemporary Europe," in Ferrari (n. 4).

⁹⁶ For an astute defence of the Christian model of the relation between religion and democracy, see Ahdar's and Leigh's defence of a Christian perspective in their landmark study (n. 2), esp. pp. 11-38.

influence decision-making on the basis of its specific religious arguments. The Catholic discourse can make only an “indirect” contribution to democracy. As the Encyclical puts it, “[t]he Church has an *indirect duty* ...in that she is called to contribute to the purification of reason and to the re-awakening of those moral forces without which just structures are neither established nor prove effective in the long run” (my italics, CU). In the Catholic view, faith helps reason to realize itself: the secular democratic discourse can take benefit from the semantic and motivational resources of the Catholic Church. An example is the social commitment and social doctrine of the Catholic Church: “the Catholic social doctrine has its place: it has no intention of giving the Church the power over the State... Its aim is simply to help purify reason and to contribute, here and now, to the acknowledgement and attainment of what is just.”⁹⁷ The passage from religious discourse to secular political one needs a processes of translation with “creative fidelity.” Admittedly, Pope Benedict XVI’s “creative fidelity” may not exactly refer to Habermas’ or Waldron’s “translation” or to “selective interpretation and transformation,” but the two views – the Catholic and the discursive one – share fundamental premises.⁹⁸

Deus Caritas Est does not and needs not specify the nature of the indirect contributions to democracy in terms identical to our understanding of the discursive perspective no more than, say, the ECHR. The role of these points of view in a democratic regime is different. Yet, it remains remarkable that there are certain *signs* of a relative emerging convergence in terms of general principles.⁹⁹ The development of a discursive “model” can help us to better justify and critically assess these practical-normative developments in Europe.¹⁰⁰

⁹⁷ The main differences between Pope Benedict XVI’s and Habermas’ conception are the following: 1. from a Habermas’ perspective, Pope Benedict XVI’s appeal to an universalist natural reason whose truths are self-evident threatens to undermine the notion of dialogue 2. For Pope Benedict XVI the interpretation of “justice” implies also a reference to the notion of sacrifice, while for Habermas sacrifice is strictly supererogatory; 3. Pope Benedict XVI rejects a procedural conception of politics similar to Habermas’; instead, he advocates a notion of politics as the pursuit of good or justice as “revealed” by an universalist natural reason with the help of faith. In contrast, Habermas distinguishes sharply between justice and good, politics and faith.

⁹⁸ An immediate objection is that the Catholic religious discourse is also anti-liberal – think of the question sexual minorities. This is true. However, here we refer first and foremost to similarities in terms of principles and not of substantial moral choices. Furthermore, whether the Catholic Church acts sometimes as a pressure group, is an important empirical matter that cannot be assessed here. It may be that the Catholic Church acts also as a pressure group and not as a partner in a dialogue in the civil society.

⁹⁹ This is not to say that this relative convergence regards also their interpretation and application.

¹⁰⁰ It would be overstretched and undesirable to distil something like an emerging European public philosophy on the model of Sandel’s American public philosophy. The purpose of this sketch is to point in the direction of a possible future analysis of the present legal-political principles that legitimate the elaboration of a critical theory of the relation between democracy and religion in Europe. See Sandel (2005) *Public Philosophy. Essays in Morality and Politics*, Harvard University Press and Habermas (n. 48), for a more mediated relation between theory and practice.