Public reason secularism : a defense of liberal democracy

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Chapter Two: Secularism as a Political Doctrine

I. Introduction

The discussion of this chapter derives from the danger posed by the present political situation. Increasingly, violence is used in the name of religion, and one of the most precious virtues of liberalism—toleration—has been severely provoked. Besides this, religious and ethical disagreements about right and wrong have aggravated social divisions. Especially in the past decades, the rise of political multiculturalism has highlighted the challenge religious disagreements have posed to our communal political life. Even for citizens who live in the same nation, their deeply irreconcilable religious and moral disagreements still prevent them from shaping and sustaining a just and stable political life together. It is rather difficult to find shared ideals and principles that are upheld by all reasonable citizens on the basis of their comprehensive doctrines. This chapter is therefore going to consider a recurrent problem in our contemporary political life: how can free and equal citizens, deeply divided by conflicting religious disagreements, live together and endorse the same political principles of a constitutional democratic regime?[1]

My answer is that secularism as a political doctrine consisting of liberty of conscience and the separation of state and religion can be presented as the best candidate to solve the recurrent problem. By solving this problem, secularism does not aim or suffice to replace any comprehensive doctrine. Rather, secularism aims to serve as a publicly justified political conception, generally acceptable to all citizens on the fundamental political issue of state and religion. In other words, my aim is to defend the political legitimacy of the principle of secularism.

There are two general problems obstructing my defense of secularism. The first problem (P1) is the one brought about by "the fact of reasonable pluralism".[2] In a democratic society, reasonable citizens are profoundly divided by their disagreements on comprehensive doctrines as a result of the normal exercise of human reason.[3] Therefore, it is impossible for reasonable citizens to agree on any comprehensive doctrine. Consequently, a political principle defended from the perspective of comprehensive doctrines cannot be justifiably forced upon all citizens. The other problem (P2) is the

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[1] This is the question that John Rawls formulates in *Political Liberalism*: "How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical and moral doctrines?" See John Rawls, *Political Liberalism* (Columbia University Press, 1996) xxxix.

[2] This concept was first brought out by John Rawls in *Political Liberalism*, XIX.

[3] See ibid., xviii, xxvi, 3, 37, etc.

indeterminacy in understanding secularism. Secularism, especially the principle of the separation of state and religion (Thesis S) is subjected to four interpretations and we need to be sure which interpretation is the most tenable one. The first one (Thesis S1) understands the separation in the broadest sense as a non-establishment of state religion principle. The second (Thesis S2) considers the separation as an attitude of non-favoring on the part of the state. That is to say, states should remain neutral when it comes to religions. Two further theses depart from the second interpretation. One (Thesis S2') advocates a state neutrality principle which encourages accommodating all comprehensive (including religious) doctrines in the public discourse. In this thesis, the separation of state and religion is at most institutional, while the involvement of religion in public discussions ought not to be restrained. The other one (Thesis S3) is the narrowest one; it interprets the principle as excluding religious reasons from the public discourse. A complete argument for secularism thus needs to accommodate the problem brought by reasonable pluralism, as well as explicitly select a variation of the separation of state and religion.

Due to the first problem produced by reasonable pluralism[4], any comprehensive or moral justification for secularism is likely to prove too contentious. Hence we cannot come to a public justification for this principle in a democratic society by a comprehensive approach. In light of John Rawls's advancement of the project of political liberalism, I will argue that a successful defense of secularism calls for a political turn. Political liberalism shifts the focus from a philosophical conception of justice, formulated abstractly and meant to be applied universally, to a practical conception of political legitimacy. A political justification avoids engaging in discussions about comprehensive doctrines. Thus, we hope to uncover a public basis of political conceptions by means of a political approach which forsakes wading into religion and philosophy's profoundest controversies. However, a political approach for justifying secularism itself has no answer to the second problem, namely, which variation of the separation of state and religion ought to be endorsed. I will introduce three more justifications espousing different versions of Thesis S to try to find the most defensible justification for the most tenable thesis.

Specifically, in Section II, I will first clarify my argumentative purpose and present the variations of the separation of state and religion. I will also try to show how the principle of secularism can be defended from the perspective of a comprehensive approach and its two subsequent problems (P1& P2). The problem of reasonable

[4] I have to emphasize that the fact of reasonable pluralism *itself* is not a problem. The problem is what reasonable pluralism leads to, namely, the illegitimate forcing of a political principle upon all citizens.

pluralism (P1) fundamentally prompts a political approach to justifying secularism. As a result, I will explain the political approach to a public justification in Section III. In Section IV, the political justification of the less controversial part of secularism, liberty of conscience, will be given. In Section V and VI, I will discuss the two traditional solutions to the problem of determining Thesis S (P2), which are both unsuccessful. Specifically, in Section V, I will discuss how liberty of conscience essentially leads to Thesis S1 and Thesis S1's shortcomings. In Section VI, I will try to present how Thesis S is supported as Thesis S2 in the form of the state neutrality principle and its deficiencies as well.

II. Problems Revealed in Comprehensive Justification for Secularism

2.1 Preliminary Demarcations on Justification, Legitimacy and Coercion

My central purpose in this chapter is to provide a public justification for secularism as a constitutional principle in democratic regimes. In order to provide a political principle with legitimacy or to achieve its public justification, there are generally two approaches. One, the comprehensive approach, posits that the principle can be forced upon citizens because it is morally true (regardless of whether citizens accept it). Two, as Rawls develops into a project of political liberalism; we can argue that such a principle can be publically endorsed by the majority of citizens of a democratic state, which is a political approach. I argue that the comprehensive approach is implausible in a democratic regime. In a democratic regime, if citizens cannot agree on or persuade each other that his or her comprehensive doctrines are the only true ones, it is unreasonable and wrong to use state power to coerce those who have disagreed.[5] Instead, we should aim for a publically justified basis that is endorsed by a majority of a state's citizens for a political principle to be applied coercively. Namely, my argumentative goal is to uncover a public justification that is politically sound for the legitimacy of a political principle such as secularism. For a political principle such as secularism to be legitimate, its coercion has to be widely endorsed by or justified to a majority of the citizens.

As my readers probably have already noticed, I have recognized a political conception's legitimacy as what justifies coercive power. Taking legitimacy as what justifies the permissible use of coercive power is not the only interpretation of legitimacy though. There are two other dominant ways of understanding political legitimacy. One is to relate it to moral justification of a political authority, while the other is to see it as the

[5] John Rawls, *Political Liberalism,* 138.

element that creates political obligations.[6] The reasons behind each understanding are variously intricate. Nevertheless, for my purpose, I only have to make it clear that, although it is not the only way of interpreting political legitimacy, when I address a political principle's legitimacy I am discussing its justification for permissible coercion.[7]

2.2 The Principle of the Separation of State and Religion: Four Theses

In my view, secularism as a political principle consists of liberty of conscience and the separation of state and religion. In defending secularism's legitimacy, we need to be sure of what kind of secularism is legitimate, since the principle of secularism, especially the separation of state and religion, can be understood differently. For example, should the separation be understood and applied as a rigid separation, opposed to any mingling of the government and religious activities? Or should it be interpreted more mildly, as a system in which the government sponsors or supports religious organizations and nonreligious organizations on a neutral basis? Should religious reasons be equally incorporated into the public justification for a democratic system? Or should they be excluded from public justification? I argue that there are four versions of this principle, and all these four variations surround the different interpretations of "separation". Before unfolding these four interpretations of this principle, I need to briefly explain the limitations and reservations in addressing the concepts of "state" and "religion" respectively.

The concept and extension of "state" are somewhat inclusive and vague. However, it is enough for now that we determine the "state" to be the institutional arrangements of a state. The interpretation of religion is more precarious, and the disagreements about what counts as religion are legally significant. It is unlikely that we will find an uncontroversial definition of religion. Nonetheless, the difficulty in defining religion is not a fatal problem for understanding what religion is in terms of the principle. And we do not need to undertake a case-by-case study to determine the extension of religion. Reference to "religion" in constitutional documents are understood by most people as "pointing to institutionally organized churches or other groups worshipping some form of god" that prescribes practice, rituals, norms, beliefs, and actions.[8] Identifying the core elements of "religion" regarding state-religion issues (for instance, "forbidding the

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[6] Peter, Fabienne, "Political Legitimacy", *The Stanford Encyclopedia of Philosophy* (Summer 2017 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2017/entries/legitimacy/>.

[7] Apart from Rawls in *PL*, this way of understanding is also taken on by, for instance, Allen Buchanan, "Political Legitimacy and Democracy", in *Ethics* 112(2002):689-719. Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge University Press, 2012) 136.

[8] Ronald Dworkin, *Religion without God* (Harvard University Press, 2013) 107.

government to declare any official state religion, supporting one religion or all religions through subsidies or other special privileges, permitting legal constraints that assume one religion is preferable to others, or stating that religion is preferable to non-religion") is usually possible given our understanding of uncontroversial cases.[9] Robert Audi believes it is generally better to extend the application of the term religion than have too restrictive a definition.[10] Nevertheless, two negative demarcations should be drawn and their pertinence in constitutional cases will be illustrated later. First, "a moral outlook on life", no matter how "reverently held, is not sufficient for its possessor being religious" in terms of this principle.[11] Second, holding a view religiously does not imply that the view counts as a religion or that the person who holds the view is a religious person.[12] For instance, as the greatest tennis player of all time, Roger Federer is often claimed to be tennis fans' "God" or watching him play to be a "religious experience",[13] but no one will seriously consider Federer as a "God" or his tennis as a religion, legally speaking. When the legal definitions of "state" and "religion" are done, the major task of defining the principle of separation can begin.

Mainly, the principle of the separation of state and religion has four interpretations in terms of its scope of separation. The widest interpretation is simply to understand the separation of state and religion as the non-establishment of a state religion. As for exactly what type of approach or attitude the state should uphold toward religion or religions, or what role religion plays in political life, this broadest non-establishment interpretation has no preference. It could be either way. It is exactly why the first interpretation is the broadest one, as it only asks for no state religion. The second interpretation is less broad than the first interpretation, which understands the separation as an attitude of non-favoring from the state. Namely, for the purpose of manifesting the separation of state and religion, the state should refrain from adopting any favorable position toward any religion. That is to say, the state ought to stay neutral among all religions. Being neutral, however, implies two types of attitudes. One is to unbiasedly incorporate religious reason into the public basis of justification, and the other is to exclude it from the public justification. In both cases, the state sustains its neutrality among all religions. The last interpretation is the narrowest one. It claims that the

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9 Ibid., 106. Although defining religion is always a big problem in the judgment of freedom of religion, as I've emphasized in Chapter One, only theistic religions are qualified as "religion" legal-wise.

10 Robert Audi, "The Separation of Church and State and the Obligations of Citizenship," *Philosophy & Public Affairs* 18(1989): 273

11 Ibid.

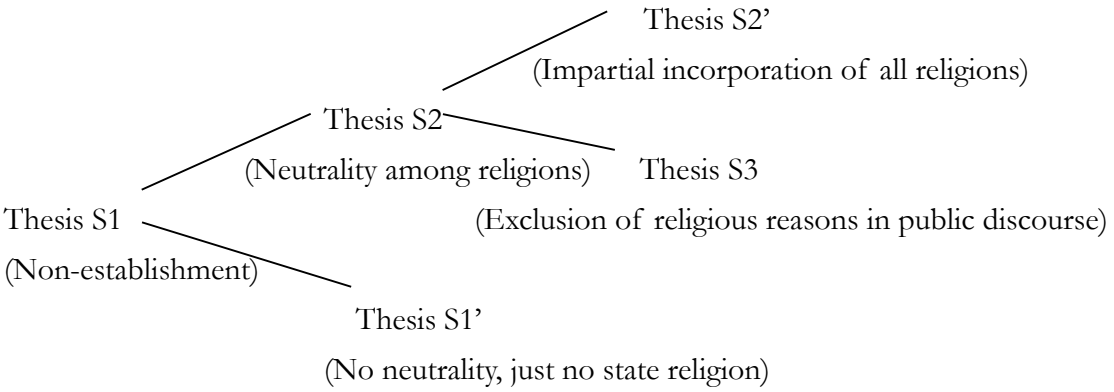
12 Ibid.

13 David Foster Wallace, "Roger Federer as Religious Experience," *New York Times*, 20/08/2006.

neutrality among all religions is not accurate either. Rather, the separation of state and religion means that the state needs to exclude religious reasons from political affairs. I will name the principle of separation of state and religion in general Thesis S, while naming the broadest interpretation Thesis S1, the neutrality claims Thesis S2, the all-inclusive-neutrality principle Thesis S2', and the narrowest version Thesis S3. All four these theses can claim various supportive grounds in judicial decisions and legislation. One of the difficulties of our task is to make sure which form is the most tenable variation of Thesis S. The forms of these theses are shown as:

Thesis S: There should be a separation of state and religion.

The four variations of Thesis S are listed from the broadest variation to the narrowest one as the chart shows:[14]



(Figure 1: Thesis S1, S2, S2', S3)

Thesis S1: Thesis S is a non-establishment of state religion principle.

Thesis S2: Thesis S is the state neutrality among all religions principle.

Thesis S2': Thesis S is a principle of including all comprehensive viewpoints in the public debate.

Thesis S3: Thesis S is a principle excluding religious reasons from the political arena.

2.3 Comprehensive Justifications for Liberty of Conscience and Thesis S

[14] Paul Cliteur has discerned five models of state and religion: (1) political atheism, (2) the secular state, (3) the multiculturalist state, (4) state religion and (5) theocracy. See Paul Cliteur, "State and Religion against the Backdrop of Religious Radicalism", in *International Journal of Constitutional Law,* 10 (2012): 127-52. Political atheism and theocracy both ignore the fact of reasonable pluralism and impose a certain kind of comprehensive doctrine, therefore they are unreasonable models. While the model of state religion is what my Thesis S1 negates, the debate between the multiculturalist state and the model of the secular state represents the competition between Thesis S2' and Thesis S3 respectively.

Before explaining why the approach of justifying a principle on its moral merits is unsuccessful, I will first illustrate how the principle of secularism, including liberty of conscience and Thesis S, can be defended on moral grounds. For example, one of the most common arguments of defending liberty of conscience departs from the protection of individual autonomy. And Thesis S is also seen as the reason why such a liberty and autonomy is fundamentally warranted.[15]

Autonomy conventionally is a substantive ideal of individuality advanced by Kant and Mill's classical liberalism. As Mill writes in *On Liberty*, "If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode."[16] Mill's ideal of autonomy requires us to consider what the supreme value is in our whole life based on our own choices and free from authoritative intervention. Apart from Mill's emulation of autonomy, Kant also considers the principle of autonomy as one of the moral formulas. According to the formula of autonomy, we are subject to the moral law only because it is the necessary expression of our own nature as rational agents. "[I]f a rational agent is truly an end in himself, he must be the author of the laws which he is bound to obey, and it is this which gives him his supreme value."[17] And such a Kantian interpretation of autonomy is also active in contemporary philosophical discussions.

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[15] I need to remark on the precarious philosophical confusion between two concepts, personal autonomy and moral autonomy, a little bit. The complex relationship between these two conceptions of autonomy was seen as an unresolved dilemma for liberalism, but I believe that the idea of conscience, especially conscience in the Kantian sense, would help us to point a way out of that dilemma.

While personal autonomy is conceived in "a morally neutral manner, without specific reference to substantive values", moral autonomy is regarded as taking up "the Kantian mantle of defining the self-governing person as having the capacity to grasp certain objective moral norms." "The central liberal principle that citizens should be allowed to pursue their own conception of the good involves recognition of personal autonomy insofar as that pursuit is understood to proceed autonomously." Here is where it gets tricky: on the one hand, personally autonomous citizens see their individual pursuits of their conception of the good as a critical reflection of their first-order desire; in that way, personal autonomy and moral autonomy could not be seen as exactly separate. On the other hand, if the autonomy respected in liberal states is moral autonomy, then respect for a deep plurality of moral views threatens an overlapping consensus generated from them. Therefore, Jeremy Waldron argues that while we do need a sharp distinction between them, we should not "erect too high a wall of separation". A moderate position is what is called for in this delicate situation.

John Christman and Joel Anderson, "Introduction" in *Autonomy and the Challenges to Liberalism* (John Christman and Joel Anderson ed., Cambridge University Press, 2005)17-18. And Jeremy Waldron, "Moral Autonomy and Personal Autonomy" in *Autonomy and the Challenges to Liberalism*, 325.

[16] John Stuart Mill, *On Liberty* (David Bromwich and George Kate ed., Yale University Press, 2003)131.

[17] Immanuel Kant, *Groundwork of The Metaphysic of Morals* (H. J. Paton trans., The Mayflower Press, 1948) 35.

Gerald Dworkin and Harry Frankfurt's understandings of autonomy are in line with their views of personhood. Frankfurt claims that humans are not alone in having first-order desires and motives, or in making choices (animals have that ability as well); however it seems that only humans are able to form a second-order desire.[18] That is to say, only humans have the capacity to stand back from our inclinations of the moment to conduct reflective self-evaluation to see whether we want to be motivated by our first-order desire.[19] Autonomy is not just a first-order value; rather; it is considered a second-order ability of people to "reflect critically upon their first-order preferences, desires, wishes, and so forth, and the capacity to accept or attempt to change these in light of higher-order preferences and values."[20] Simply put, according to Frankfurt and Dworkin, what is crucial for the claim of autonomy is not the identification of a person's first-order desires, but whether they have the capacity to question their first-order desires. That is to say, autonomy is a reflective ideal. The reflective ideal of autonomy directs us to make moral decisions according to our own rational deliberation or will,[21] and concurs with our exercise of liberty of conscience.

Conscience as the will to be moral is not only a claim about the inner mental state of a person, it is more of a reflective ethical claim about what is morally right. It is not uncommon that many people perceive conscience as an interior psychological issue, which would severely undermine the central position of ethical judgment in a human's development. Moreover, conscience shall be distinguished from personal inclination (preference, desire) no matter how strong that is. Conscience is not driven by self-interest, and the fact that it is invoked by an individual does not mean that s/he is invoking it purely out of self-interest. "Unlike matters of mere preferences, the pursuit of conscientious commitments is generally more concerned about others or matters external to one's self than it is about internal or egoistic concerns."[22] Liberty of conscience is not based on a desire to protect individuals from far-reaching consequences to them against the law. It is a moral right, not a right "in the name of one's own interest in preserving one's basic life-style and one's fundamental plans for the future."[23] In a frequently-cited paper "Four Conceptions of Conscience", Thomas Hill Jr. argues that

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18 See Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," *The Journal of Philosophy* 68(1971): 6.

19 Ibid., 7.

20 See Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge University Press, 1988) 20.

21 See Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," 11.

22 Rodney K. Smith, "Converting the Religious Equality Amendment into a Statute with a Little 'Conscience'," *Brigham Young University Law Review* (1996): 681.

23 Joseph Raz, "A Right to Dissent? II. Conscientious Objection" in *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 2009) 277.

the core idea of conscience strikingly resembles autonomy. "The core idea those conceptions have in common is, roughly, the idea of a capacity, commonly attributed to most human beings, to sense or immediately discern that what he or she has done, is doing, or is about to do is wrong, bad, and worthy of disapproval."[24] Roughly, to say that conscience is the ability to sense or immediately discern is to say that it is a way of arriving at the moral beliefs that are relevant to our actions.[25] "Following our conscience" in a Kantian sense, roughly, is treading carefully when we reflect our first-order moral actions. In other words, Kantian conscience is "a reliable guide to live a blameless life and certainly not necessarily a guarantee that we will do what is morally correct in every instance."[26] For Kant, conscience reacts to two things: "(1) that what we have done is at odds with what, even in our own judgment, is wrong in the circumstances and (2) that the act is fully imputable to ourselves as free agents."[27] Kant's conception of conscience is not only that people aim to "make good moral judgments and govern themselves by their best moral judgments", but also that they "follow a moral law that is itself a reflection of their own autonomous, rational will, not an acceptance of standards found in nature."[28] In short, liberty of conscience is first and foremost a guarantee of liberty. To be sure, the guarantee is of liberty of a specified domain; it is liberty with respect to conscientious choices and commitments. No conscientious choices or conceptions of the good life are guaranteed—only freedom is guaranteed.

The problem with this defense of liberty of conscience on the basis of autonomy is that autonomy is not uncontroversial, although this reflective level of autonomy only governs the way in which we are to affirm such views. There are two examples that illustrate the controversy with regard to autonomy: one stems from Romantic thinkers and the other is represented by religious thinking. Romantic thinkers have relentlessly argued against a fundamental ground for autonomy in our moral life. They do not take the value of choosing what is best or right for us as lying at the foundation of morality. Thus, they suspect that liberals have overstated the significant place of autonomy in our moral life. They claim that "the ideals of autonomy and individuality effectively blind us to the real merits of many ways of life,"[29] which might destroy the roots of morality. For Romantic thinkers, there are certain ways of life, or conceptions of the good life, that are more important to us than autonomy. They help build our goals in moral life, and "shape

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[24] Thomas E. Hill Jr, "Four Conceptions of Conscience" in *Human Welfare and Moral Worth: Kantian Perspectives* (Oxford University Press, 2002) 278.

[25] Ibid., 278, fn3.

[26] Ibid., 283.

[27] Ibid., 301-302.

[28] Ibid., 308.

[29] Charles Larmore, *The Morals of Modernity* (Cambridge University Press, 1996) 130.

the sense of value on the basis of which we make whatever choices we do".[30] The importance of liberty of conscience for Romantic thinkers is not liberty *per se*, but the kind of good life that such liberty can promote or lead to.

Besides Romantic thinkers, many religious believers also argue against the assumption of an autonomous view of human nature. The prevalent understanding of human nature does not suffice to incorporate the view thereof by religious people, thereby affecting the way they employ their autonomy. It is claimed that this standard view of autonomy is "inconsistent in several ways with recurring ideas in Christian theology".[31] For one thing, according to Christian theology, human nature is unable to "master sinful desires" and to freely decide to do good deeds.[32] Or, in contrast with the sin-based view of human nature, "there is an idea of grace, a kind of sharing in divine life, a power that enables us to control sinful desire, live good lives, and win salvation, which is given by God gratuitously."[33] In light of those two views, individuals do not have complete control over choosing the religious option (only God is able to).[34] Consequently, the real freedom would be freedom from sin. Additionally, religious people play a central role in formulating laws about free exercise, thus their own view of human nature cannot be easily disregarded.[35]

My aim here is not to defend the Romantic ideal or religious believers' arguments against autonomy, but only to illustrate the possibility of reasonable people with different backgrounds arriving at reasonable views. In finding a public justification for secularism, including liberty of conscience and Thesis S, that can be forced upon all citizens, we cannot disregard the profound disagreements that reasonable people might have when it comes to this justification's moral grounds.

2.4 Two Subsequent Problems: P1& P2

From these examinations of those comprehensive grounds for secularism, two obvious problems regarding comprehensive justifications have clearly manifested. In order to find a public basis for secularism, we aim to make its coercion legitimate to all citizens from different backgrounds with different moral and religious convictions. Unfortunately, in a democratic regime, there is a permanent fact called reasonable pluralism which makes it

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30 Ibid., 129.

31 John H. Garvey, "An Anti-Liberal Argument for Religious Freedom," in *Journal of Contemporary Legal Issues* 7(1996): 278.

32 Ibid.

33 Ibid.

34 Ibid.

35 See ibid., 283.

impossible for reasonable citizens to agree on any comprehensive doctrine. Reasonable citizens are profoundly divided by their disagreements on comprehensive issues such as whether autonomy is desirable, or whether we should strive for utmost happiness for most people. As I have explained in the last section, any moral justification for secularism is likely to be proved too contentious, and hence we cannot achieve a public justification for this principle. I will call the first problem resulting from reasonable pluralism P1.

The other problem is related to the fact of reasonable pluralism, although it is a separate problem. In defending secularism as liberty of conscience and Thesis S, we find that Thesis S is a precarious political principle which is subject to four interpretations. Various values and justifications espousing Thesis S tend to lead to differing theses, and due to these disagreements we cannot be sure which form of Thesis S is the most tenable thesis. In fundamental respects, Thesis S supports liberty of conscience. A constitutional democratic government refrains from promoting religious truth or bolstering any particular religious denomination and its theological positions. The separation of state and religion serves to promote the liberty of conscience of individuals by removing the government from individuals' choices of which religion to practice.

By not establishing any state religion, the government cannot demand that anyone engage in religious practice, subscribe to a religious creed or financially contribute to any religion. To demand that other people act according to established religious beliefs is to "promote or impose those beliefs",[36] which is against the basic political value of liberty of conscience. "Nor can the government make eligibility for civil benefits conditional on someone's having or expressing particular religious views."[37] The political rights of citizens do not and should not attach to their religious affiliations, and so it is the case with religious leaders, they do not exercise civil authority by virtue of their religious positions. Even "though the religious beliefs themselves are not being directly imposed, requiring other people to live their lives as the beliefs prescribe is to impose the practical consequences of the beliefs."[38] For most people, forced exposure to another religion would violate their liberty of conscience. Such a compulsion both denies liberty of conscience and amounts to establishment of the favored practice or creed. For example, if students in state schools are required or pressured into participating in rituals of an established religion, it constitutes a violation of their liberty of conscience. "When the acts that the law forbids cause no ascertainable harm, this kind of imposition should be

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36 Kent Greenawalt, *Religious Convictions and Political Choice* (Oxford University Press, 1988) 247.

37 Kent Greenawalt, *Religion and the Constitution I: Free Exercise and Fairness* (Princeton University Press, 2006) 35.

38 Kent Greenawalt, *Religious Convictions and Political Choice,* 247.

regarded as amounting to their establishment in a constitutional sense."[39]

Apart from being a means to protect liberty of conscience, there could be several other interrelated values lying behind Thesis S. However, multiple moral values lead to endorsing different variations of Thesis S, and it is not clear which form of Thesis S, Thesis S1, Thesis S2, S2', S3, is best supported by those values. For instance, the individualistic value of autonomy offers a valid justification of Thesis S2, namely the state should not promote any controversial view of the good life at the expense of others. The treatment of citizens in a liberal state will not take into account their status, preference and their comprehensive doctrines. The state ought to refrain from favoring any comprehensive doctrine, including any religious doctrines.

Furthermore, Kent Greenawalt lists some major comprehensive views that legislators and judges need to take into account, such as

> "[T]he withdrawal of civil government from an area in which it is markedly incompetent, the removal of one source of corruption of religion and deflection from religious missions, the removal of one source of corruption of government, the prevention of unhealthy mingling of government and religion, the avoidance of political conflict along religious lines that could threaten social stability, and the promotion of a sense of equal dignity among citizens and so on."[40]

These views tend to end up supporting different versions of Thesis S. Greenawalt points out that for governments which lack special competence in religious issues, although they cannot therefore establish a state religion, they would be constantly tempted to favor those religions that support their agendas or are likely to win them the next election.[41] This is an instance of support for Thesis S1. However, "the prevention of unhealthy mingling of government and religion"[42] may induce an endorsement directly for Thesis S3. In a modern society, "if public officials become heavily involved in the review and supervision of religions," or if religious power takes control in political decisions, there would be substantial risks of such a severe interference.[43] As for the promotion of a sense of equal dignity among citizens, Thesis S is also likely to be interpreted differently than Thesis S1, S2, S2' or S3, as the nature of equality is addressed differently.

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39 Ibid.

40 Kent Greenawalt, *Religion and the Constitution II: Establishment and Fairness* (Princeton University Press, 2009) 6-7.

41 See ibid., 10.

42 Ibid., 6.

43 Ibid., 11.

Therefore, defending secularism as a political conception does not suffice to point out whether we ought to uphold Thesis S1, S2, S2', or S3. I will call the problem of the indeterminacy of Thesis S P2. Further justifications for the principle are to be incorporated, and hence a clear exploration of those additional justifications is needed.

To sum up, P1 has encouraged us to forsake the comprehensive justificatory approach of defending secularism and to consider the political approach instead. However, a mere turn to the political approach still is not sufficient to solve P2. What is more, a plausible resolution to P2 also fully completes our answer to P1. Therefore, to reach my argumentative goal in this chapter, I will need a tenable solution to both P1 and P2.

III. A Political Approach to Publically Justifying Political Conceptions: The Solution to P1

3.1 Reasonable Pluralism: We Agree, to Disagree

The concept of reasonable pluralism is introduced by John Rawls in *Political Liberalism*. According to Rawls's characterization, reasonable pluralism refers to "a pluralism of incompatible yet reasonable comprehensive doctrines"[44] in a modern democratic society. It is also a defining feature of our democratic society. By comprehensive doctrines or comprehensive views, it means "views on certain fundamental questions such as the meaning and importance of human life, the kinds of freedom that human beings should strive for and are capable of, and the kind of life that is best for human beings to live."[45] For instance, Christianity, Kantian ethics, utilitarianism, quietism and so on are all comprehensive doctrines endorsing different views in those matters, such as whether the fundamental meaning of human life is to act according to God's will or act morally, and whether a deliberated life is the best life we could live. The fact of reasonable pluralism denotes that it is unrealistic to expect every reasonable citizen in a democratic regime to agree upon a conception of justice consistent with every one's comprehensive doctrines. Moreover, we understand that "a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime."[46] By realizing the normal outcome of human reason, we as reasonable persons, have at least arrived at one minimal

[44] John Rawls, *Political Liberalism*, xviii.

[45] T.M. Scanlon, "Rawls on Justification," in *The Cambridge Companion to Rawls* (Samuel Freeman ed., Cambridge University Press, 2003) 159.

[46] John Rawls, *Political Liberalism*, xviii.

consensus: we agree, to disagree. Rawls points out that the fact of reasonable pluralism is not mere historical condition, but "a permanent feature of the public culture of democracy."[47]

The key to understanding the term "reasonable pluralism" is to distinguish it from an old doctrine of pluralism as such. The plain "pluralism" is "what Isaiah Berlin has so memorably described" as the simple fact that people have different conceptions of values.[48] In contrast with monism, pluralism is precisely an account of the nature of the good, according to which there are many kinds of objective values in the world.[49] The idea of reasonable pluralism "lies at a different, more reflective level than pluralism."[50] Reasonable pluralism is the idea that reasonable people tend to disagree with each other about comprehensive religious, moral and metaphysical doctrines, precisely by virtue of exercising their human reason to their best abilities.[51] Charles Larmore points out that reasonable pluralism, unlike value pluralism in Berlin's sense, does not involve a claim about the nature of value, but is a claim about the nature of human judgment by reason. "It responds to the religious and metaphysical disenchantment of the world, not by affirming it, as pluralism seems to do, but rather by recognizing that like other deep conceptions of value, this disenchantment is an idea about which reasonable people are likely to disagree, as indeed they do."[52] Larmore emphasizes the distinctive feature of reasonable pluralism in a recent paper, "the expectation of reasonable disagreement in regard to moral questions is not itself a moral doctrine but instead a conception of reason's capacities for dealing with these questions."[53] That is to say, reasonable pluralism is an understanding or a realization of the impossibility that humans all agree with each other in terms of comprehensive doctrines. Such an understanding or a realization of this impossibility is the starting point of the political approach to secularism. Before further explaining why reasonable pluralism is where we start a political approach to secularism, I should present what accounts for reasonable pluralism.

Rawls introduced a concept called "the burdens of judgment" to illustrate the sources of reasonable pluralism. He listed six obvious sources to account for reasonable pluralism, covering a wider span than the domain of practical thinking, some of which

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47 Ibid., 36.

48 Charles Larmore, "Pluralism and Reasonable Disagreement," *Social Philosophy and Policy* 11(1994): 62.

49 Ibid.

50 Ibid., 74.

51 See Charles Larmore, "Political Liberalism: Its Motivation and Goals," in *Oxford Studies in Political Philosophy Vol I* (David Sobel, Peter Vallentyne, and Steven Wall ed.,Oxford University Press, 2015) 66.

52 Charles Larmore, "Pluralism and Reasonable Disagreement," 74.

53 Charles Larmore, "Political Liberalism: Its Motivation and Goals," 71.

also apply to theoretical reasoning.[54] These sources are: one, the evidence is "conflicting and complex", which makes it "hard to assess and evaluate"; two, even if we could agree on the content of the considerations taken into account, "we may still disagree about their weight"; three, moral and political concepts are vague and may be subject to stark disagreements in hard cases; four, to some extent, the way we assess moral values is "shaped by our total experience", which is bound to differ among reasonable people; five, different "normative considerations of different forces on both sides of an issue" cause great difficulty in making an overall assessment; six, in selecting among our cherished values, it is very difficult to set priorities.[55] Admittedly, these six sources do not include all possibilities; they are likely to be agreed on as the predominant cores of our reasonable disagreements.[56] What is noteworthy in these sources accounting for reasonable pluralism is that we have excluded "prejudice and bias, ignorance and blindness, self-interest,"[57] rivalries for power and so on. These exclusions do not mean that those elements do not play any role in moral and political life. Rather, by excluding these from the burdens of judgments, what Rawls emphasized is that not all of our differences are rooted in these elements, which stand in sharp contrast to everyone being reasonable. Reasonable pluralism is precisely what we achieve inevitably, with full powers of reason, after sufficient discussion. What divides us from each other is so deeply rooted and irreconcilable that we, as reasonable people, just have to accept it.

These burdens of judgment that Rawls has described may seem inapplicable to religious disagreements. After all, religious disagreements are about what we believe and what we do not. A Christian, a Muslim, and an atheist certainly differ with one another when it comes to religious matters, and such a divergence is to a large extent about faith, but it has nothing to do with reason or fact. It triggers the wonder that religious believers from different religions, even religious believers from the same religion but from different sects, and possibly even atheists recognize that the disagreements about their religious convictions are inevitable and acceptable as well. In my opinion, reasonable pluralism also applies to religious disagreements. The sources Rawls listed, including diverse interpretations of certain concepts, differing weights for the same consideration, and personal experience also play a part in the shaping of a person's religious belief. As long as a person is being reasonable, the fact of reasonable pluralism of religious matters

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54 See John Rawls, *Political Liberalism*, 55-57.

55 Ibid., 56-57.

56 Charles Larmore has also explained reasonable pluralism with the ideas that "central concepts can be variously interpreted, pertinent considerations ascribed different weight, especially because the way people reason can be differently guided by past experience," which correspond to the gist of Rawls's the burdens of judgments. Charles Larmore, "Political Liberalism: Its Motivation and Goals," 71.

57 John Rawls, *Political Liberalism,* 58.

is also acknowledgeable.

3.2 A Political Approach to Public Justifications

Recall that I said there are two general approaches to justify a political conception's public justification at the outset: one is to justify its moral correctness, and the other is to show it can be publically agreed on by a majority of the citizens. Likewise, the conception of secularism can be presented either by starting from within a general and comprehensive doctrine, or from "fundamental ideas regarded as latent in the public culture"[58], which "comprises the political institutions of a constitutional regime and the public traditions of their interpretation."[59]

Given the fact of reasonable pluralism, reasonable persons do not all affirm the same comprehensive doctrine, such as autonomy, or the good of some particular or all religions. Moreover, in a constitutional democratic regime, our own doctrines in general have no special claims on others who hold different reasonable comprehensive doctrines. One of the distinguishing features of a political conception is its coerciveness, and political power is always coercive power backed by a government's use of sanctions. The only way to overcome these kinds of disagreements in a constitutional regime is by oppressive political power.[60] In a democratic regime, if citizens cannot agree with or persuade others that their comprehensive doctrine is the only true one, it is unreasonable and wrong to use state power to punish those who have disagreed.[61] That is why it is unreasonable for those who possess political power to repress those different comprehensive reasonable views, if there is not a public basis of justification that applies to all. Therefore, I believe that the first approach has already lost its attractiveness, and we need to find answers from the latter approach. For the purpose of revealing the legitimacy of the principle of secularism, our awareness of reasonable pluralism therefore directs us to avoid longstanding philosophical, religious, and moral disagreements. Once we accept the fact that, in a democratic regime, reasonable people tend to disagree with each other with regard to their comprehensive doctrines, it is clear that no moral foundation is sufficiently agreed upon as a public basis of justification for political conceptions on fundamental political matters.

Instead, it is best for us to step away from the discussions of comprehensive doctrines, to look for an adequate political conception that is acceptable to citizens with

58 Ibid., 175.
59 Ibid, 13-14.
60 Ibid., 54.
61 Ibid., 138.

divergent religious and moral beliefs. The public justification of secularism can only be found in the public political culture of a constitutional democratic regime. The conception of secularism ought to be able to provide a publicly recognized point of view from which all reasonable citizens can openly examine, on the same basis, whether their political and social institutions are just. Public justification in this sense is not regarded as "valid argument from valid premises"[62], but as addressed to other citizens in a democratic society that features reasonable pluralism. For this reason, public justification must proceed from some consensus that is acceptable to us "for the purpose of reaching agreement on the fundamental aspects of political questions."[63] In this sense, the public justification we aim to reach for secularism ought to be political. It follows that the conception of secularism consists of liberty of conscience, and Thesis S, affirmed in a constitutional democratic society, therefore must be a conception whose justification is limited to the domain of the political. And this limitation perfectly represents the freestanding or the independent characteristic of a political view. By remaining independent, the justification of a political conception can be spared from referring to one or more comprehensive doctrines. The freestanding characteristic of political conceptions also calls for a clear distinction between how a political conception is presented and its being part of a comprehensive doctrine. Nevertheless, we still need to keep in mind that a political conception is still a moral conception worked out for a constitutional democratic society's "basic structures", i.e., its main political, social, and economic institutions,[64] and "how they fit together into one system of social cooperation."[65] The importance of the political turn of justifying secularism is embodied by the distinctiveness of the question of "what can be legitimately enforced" from the question of "what is morally just". It is perfectly consistent for secularism that we may, on the one hand, uphold our own religious doctrines as ultimately good and true, and on the other hand agree that it is unreasonable to use state power to enforce our religious doctrines.

To briefly summarize, reasonable pluralism is not a problem or burden as such, rather, it is a fact of the extent of human reason. Nevertheless, such a fact reminds us of the impossibility of persuading all citizens to agree on the same comprehensive doctrine. The realization of such a fact induces us to not defend secularism as a true or morally correct principle, but as a political conception that can be endorsed by the majority

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62 John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14 (1985):229.

63 Ibid.

64 See John Rawls, *Political Liberalism,* 11-12.

65 John Rawls, "Justice as Fairness: Political not Metaphysical," 229.

citizens in a democratic regime.

IV. Liberty of Conscience Justified as a Political Doctrine

4.1 Liberty of Conscience Justified as a Political Doctrine

Given the democratic feature of reasonable pluralism, it is certainly impossible to generate wide political agreement between free and equal citizens on the basis of such questions as: Which religion is the wisest or the best? What religious truth is the only truth? Or is atheism the only truth? And so on. Our purpose here is also to look for the most reasonable political conception of secularism, with the principles and values all free and equal citizens from different religious backgrounds can endorse.

It is assumed that all reasonable citizens in a well-ordered society have two views: "a comprehensive and a political view; and that our overall view can be divided into these two parts."[66] Political liberalism tries to work out a family of political conceptions of justice solely in political values, as a freestanding view that can be justified *pro tanto*, which means that it can be justified without referring to or in accordance with the existing comprehensive doctrines.[67] It is left to citizens to settle individually how they think of the connection between the values of the political domain and other values in their comprehensive doctrine. That is how the political approach of liberalism arises, that "the appeal is rather to the political value of a public life conducted on terms that all reasonable citizens can accept."[68] Such an approach leads to the idea that it is only by affirming a political and not a metaphysical conception that citizens "generally can expect to find principles that all can accept"[69], which leaves room for citizens' own conscience or reflection on their comprehensive doctrines. It is thus clear that citizens do not need to deny the deeper aspects of their reasonable comprehensive doctrines. The question of how to settle the interplay between the values of the political domain and the comprehensive religious doctrines, namely whether the full justification of a political principle could be carried out by an individual citizen, is also part of the content of liberty of conscience. Therefore, the liberty of conscience, citizens' liberty in holding diverse comprehensive religious views, is not an act of free choice based on autonomy or individuality; rather, "as free and equal citizens, whether we affirm these views is

66 John Rawls, *Political Liberalism*, 140.

67 See ibid., 389. These values are of course understood as the basis of public reason and justification.

68 Ibid., 98.

69 Ibid., 97.

regarded as within our political competence specified by basic constitutional rights and liberties."[70] As demonstrated by the burdens of judgment, differing comprehensive doctrines can reasonably be argued and defended from different standpoints, and therefore diversity arises. It is impossible to expect a comprehensive religious or moral doctrine to serve as the basis of lasting and reasoned political agreement in a free society.

Although liberty of conscience is a highly liberal idea which might be associated with Kant's or Mill's liberalism, upholding liberty of conscience does not have to invoke any comprehensive doctrines as its value foundation. A well-ordered society of political liberalism ought to be able to establish the circumstance honoring the value of liberty of conscience, namely, allowing a just basic structure within which all reasonable comprehensive views could be fairly maintained. Political liberalism is not biased toward any comprehensive conceptions, unless those conceptions in our social and political institutions cannot serve as a fair background condition for competing diverse "conceptions of the good to be affirmed and pursued".[71] Under the framework of political liberalism, the encouragement or discouragement of comprehensive doctrines depends upon either whether these comprehensive doctrines are "in direct conflict with the principles of justice", or whether these comprehensive doctrines can engender sufficient agreements "under the political and social conditions of a just constitutional regime".[72] Suppose that, in order to sustain the political value of mutual toleration of religions, a constitutional regime has to take measures to discourage various kinds of religions, it does not thereby support other religions or any other particular religion. Rather, it is important for us to distinguish "taking reasonable measures to strengthen the forms of thought and feeling that sustain fair social cooperation between its free and equal citizens", from the state's "advancing a particular comprehensive doctrine in its own name".[73]

4.2 Liberty of Conscience and Freedom of Religion

I believe my readers must have already noticed that in this chapter I refer to liberty of conscience instead of religious freedom. Does the concept of conscience cover a broader scope than religion? A full examination of this issue would require a much more extensive examination than I can produce here in this chapter. Nevertheless, I will say that referring to "liberty of conscience" is not just a semantic preference but is because

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[70] See ibid., 222.

[71] Ibid., 198-199.

[72] Ibid., 196.

[73] Ibid., 195.

conscience has a wider scope and a more solid justification than religion.

With respect to conscience's wider scope than religion, it could be objected that while almost all the international or national constitutional documents have confirmed the principle of freedom of religion, not all of them have given the same recognition to liberty of conscience. Some theorists argue that religion, compared to the much vaguer and looser concept of conscience, has enjoyed an ethically and legally superior position, which has inevitably earned it more legal protection. Generally, their strategy relies on a contentious claim that religion is fundamentally good, either drawn from the perspective of religious truth or on basis of past judicial decisions that favored religion.[74] However,

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[74] By way of illustration, I can name two strategies and analyse their own mistakes embedded in their own arguments without engaging in debates on their standpoints. For example, John Garvey concedes that there are various reasons that believers would give for protecting different forms of religious actions. For example, with regard to performance of traditional religious ritual acts, it is futile to coerce people to perform ceremonies they do not believe in. When it comes to religious actions such as acquirement and spread of religious knowledge, the supportive argument would be that freedom of religion results in truth. "Religious believers are often bound by special moral obligations, regarding which they believe that a violation of them may generate severe repentance or punishments." See John H. Garvey, "An Anti-Liberal Argument for Religious Freedom," 285-289.

Nonetheless, all these scattered reasons all just make the same error—in a more deceptively delicate way—that autonomy theory or prudential arguments also make (as John Garvey alleged), by treating religion as a means to end, in this case, truth and dreading punishment. Those who claim that the only convincing reason for religion's special treatment in constitutions lies in religion's intrinsic good all face precisely such a paradox: on the one hand, they need to establish and defend religion's intrinsic good to justify its priority position in constitutions without yielding to other explanations which are not exclusive to religion; on the other hand, all their contributory arguments cannot be supported except by doing a teleological analysis of religion. Even worse, if following that strategy's logic, that the legal fact of religious freedom is established in constitutions suffices to justify its superiority to other human freedoms, which would amount to claiming that thought, conscience, press, peaceable assembly, association, and so on are all good in themselves and also exist in competition with other freedoms. The ninth amendment of American Constitution clearly refutes that logic by stating that it "protects rights not enumerated in the Constitution".

The other strategy is to draw the same conclusion directly on basis of past judicial decisions that favored religion. Andrew Koppelman claims that the constitutional protection of religious convictions and practices does not differ so much from giving religion a *de facto* privileged position. In other words, religious protection and religious privilege are logically continuous. If deep commitments, like religious commitments, ought to be privileged relative to superficial ones, it would be insufficient to support special treatment of religion *per se*. Koppelman argues that being protected entails being protected from discrimination, and that it also implies a relative privileged position compared to other convictions that are not being protected. For example, two adults, A and B, are entitled to vote, while infant C is not, thus the two adults are privileged relative to the infant. Suppose someone proposes to deny adult A the right to vote based on his race or gender, which constitutes discrimination, thus A should be protected from such a rule because such a rule treats him/her as an infant. Granting the right to vote to both A and B protects both from discrimination by the other, but it also privileges C. See Andrew Koppelman, "Is It Fair to Give Religion Special Treatment?" *University of Illinois Law Review* 3(2006): 572, 581-582.

although the Supreme Court (of the U.S.) has given religious convictions and practices exemptions several times, there is not enough evidence to conclude that religion is ethically or legally superior to other convictions or conscience in general. These decisions merely illuminate the U.S's constitutional warrant of free exercise instead of evaluating whether it is superior or not. And more importantly, as I have argued, whether religion itself is good, or whether holding such a comprehensive conception of morality is beyond reasonable people's scope of agreement.

Actually, according to two famous judicial decisions by the U.S. Supreme Court, the U.S. has already broadened the protection of religious liberty in its first amendment to a wider realm of conscience. In the case *United States v. Seeger* (1964), even though the draft resister Daniel Andrew Seeger was agnostic about the existence of God, he called his views "religious" by referring to Plato, Aristotle, and Spinoza. The Supreme Court supported a broad interpretation of religious belief that

> "[T]he test of belief in a relation to a Supreme Being is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is in a relation to a Supreme Being and the other is not."[75]

The Seeger case was not a unique instance in American constitutional history; a similar case, *Welsh v. United States* (1970), appeared in front of the Supreme Court six years later. While Seeger succeeded in his case by citing doctrines of Paul Tillich and ethical culture as guidance, Welsh explicitly denied that his beliefs were religious in any ordinary sense.[76] Instead, Welsh argued that the duty not to kill another human being is not superior to

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However, an essential confusion is embedded in Koppelman's example. The rule, say rule f, which denies A's right to vote because of his/her race, gender, or origin is morally discriminatory law and hence fundamentally different from the rule, say rule c, declining the infant's right to vote, which is based on the infant's capacity rather than on a moral reason. Protecting A and B in order to guarantee their right to vote does not entail a privileged position for C. Similarly, protecting religious practice or conviction by no means leads to the privileging of religion. Besides, it is likely that Koppelman's conclusion also demonstrates a logical deficiency. According to Wesley Hohfeld's classical analysis of rights, if religious practices and convictions enjoy a privileged position compared to secular ones, the latter has no-right correlatively, which runs afoul of our legal practices.

75 *United States v. Seeger*, 326 F.2d 846 (1964).

76 In *The Secular Outlook*, Paul Cliteur points out that the "God" Paul Tillich refers to is not the God the theistic religions have in mind. What Tillich signifies is a symbol of ultimate human concern. See Paul Cliteur, *The Secular Outlook: in Defense of Moral and Political Secularism* (Wiley-Blackwell, 2010) 18.

human relations but rather essential to all human relations, and he based his opposition to participation in war on readings in the fields of history and sociology. The majority opinion finally ruled to extending the approach in the Seeger case; it declared that Welsh counted as "religious", as his conscience was initiated by deeply "moral, ethical, or religious beliefs, which gave him no rest or peace if he allowed himself to become a part of an instrument of war."[77] Although the Supreme Court adopted an extensive interpretation of "religious belief" in the first amendment to support Seeger and Welsh, still, I believe these rulings have clearly shown how the Supreme Court has extended its explicit religious exemption to conscientious exemption. Just like I suggested about the limitation of using the concept of "religion" in section 2.2, as quoted before, "a moral outlook on life", no matter how "reverently held, is not sufficient for its possessor's being religious in the sense relevant to the separation of church and state".[78] It is either an incongruent interpretation of "religion" in the clause of non-establishment and free exercise in the first amendment, or the court opts for a broader accommodation of liberty of conscience. Besides, religion is not tantamount to any coherent set of ideals central to one's life. We need to distinguish between "holding a world view religiously and holding a religious view," and one who holds a worldview religiously is not a religious person.[79] Moreover, the Welsh case disconnects moral authority from religion in the sense that a person need not be religious to hold committed moral concerns. Therefore, liberty of conscience has more moral substance than the claim of religious freedom too.

After all, as I have argued in section of 4.1, liberty of conscience is one of the grounding political values of a constitutional democratic regime that we all can share, which includes the liberty to hold any comprehensive views, including religious beliefs, as we deem best. The recognition of the liberty to harbor any view at all comes before the realization of a specific freedom in the realm of religious views. Therefore, liberty of conscience also occupies a more reflective level than religious liberty.

V. A Political Defense of Thesis S1: Separation as Non-Establishment

5.1 Separation as Non-establishment as the Necessary Upshot of Liberty of Conscience

As I have stated in section 2.3, once the political principle of liberty of conscience is settled, the requirement of no state-established religion as a measure to secure it naturally follows. The separation of state and religion, manifesting a no state-religion

77 *Welsh v. United States*, 398 U.S.333 (1970).

78 Robert Audi, "The Separation of Church and State and the Obligations of Citizenship," 273.

79 Ibid.

constitutional mechanism is the necessary upshot of a state verifying liberty of conscience. An absence of establishment entails that no particular religion is recognized by the government as official for its citizens or receives official financial support from citizens' taxes. Non-establishment promotes liberty of conscience by preventing the government from getting in the way of individuals' own choices about their religious belief and practice. An established religion or ideology which confirms the value of certain comprehensive doctrines would be an outspoken denial of its citizens' liberty of conscience. That is also why the clauses of non-establishment and free exercise (of religious liberty) go hand in hand in the first amendment of the U.S. constitution despite their deeper conflict, which I will come back to at the end of this section.

Liberty of conscience and the separation of state and religion not only protect individuals' basic rights; they also protect churches from coming under the control of the government and other powerful institutions.[80] For instance, those who no longer recognize a church's authority are not the church's members, and this change would not be recognized as a criminal act, since "apostasy and heresy are not legal offenses."[81] This is an example of how liberty of conscience protects individuals against the church generally. The separation of church and state can work as a mutual protection for both church and state. It allows all religious groups to worship and order their affairs autonomously. As Rawls indicates, "It protects religion from the state and the state from religion; it protects citizens from their churches and citizens from one another."[82] Although an established church has a predominant advantage over other churches, members of the official church are also vulnerable to losing their liberty. If religion is essentially not the business of a civil government, it would still be a violation of liberty of conscience if political officials exercising state power control or influence religion. Rawls takes "the vitality and wide acceptance of religion in America" as having benefited from the fact that the various religions in America have been protected by the separation of state and religion.[83] None of the religions have been able to "determinate and suppress the other religions by the capture and use of state power."[84]

Apart from being the necessary prerequisite for liberty of conscience, the

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80 John Rawls, *Political Liberalism*, 221, fn8.

81 Ibid., 221. At least they are not legal crimes according to the criminal laws of democratic states. Oddly, Iceland is an exception as it still has the crime of blasphemy in its constitution. See *The Freedom of Thought Report 2014: A Global Report on Discrimination Against Humanists, Atheists, and the Non-religious; Their Human Rights and Legal Status* (International Humanist and Ethical Union, 2014) 436.

82 John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64 (1997):795.

83 See ibid., 795-796.

84 Ibid., 796.

separation of state and religion as non-state religion (Thesis S1) can be widely supported by a family of political values that undergird liberal democratic regimes. A liberal democratic regime is organized by a set of fundamental constitutional principles which are acceptable and can be endorsed by every reasonable citizen. An established religion is a representative of an official, recognized superior comprehensive doctrine, which disadvantages those citizens whose belief conflicts with the established religion.

5.2 Non-Establishment: *De Jure* and *De Facto*

The constitutional scheme of non-establishment is so elusive in some states, however, that it is inconsistent *de jure* and *de facto*, due to historical and cultural reasons. For example, the UK and some Scandinavia countries (Denmark, Sweden) have an established church in their constitutions, and the members of their royal families also belong to that church. However, their politics in reality are not so much affected by an established church, and their citizens' liberty of conscience is also protected and respected. States like the U.S. and some European countries with Catholic traditions are now free from an established church, although they also give forms of recognition to the churches. One crucial feature of U.S. society is that it has a long and positive experience of integration through religious identities. In the early U.S., religious faith could be re-established in two ways. The first involved the presence of God at the level of the whole society as the author of a design which defines the political identity of this society. The second consists in free churches, which are "set up as instruments of mutual help whereby individuals are brought in contact with the word of God and mutually strengthen each other in ordering their lives along Godly lines."[85] The entangled relationship between religion and society continues to today as well. For example, U.S. presidents have to swear on the Bible at their inaugurations. During trials, witnesses also have to hold the Bible and swear to it that they are telling "the truth, the whole truth, and nothing but the truth". Not to mention the big engravings of the phrase "In God We Trust" in every court room. Those are simply institutional examples of how much homage a non-establishment country paid to religions (Christianity mostly), while there are more vivid examples showing the prominent place of religion in ordinary people's views of political figures and their own daily life.

For the imbalance of the *de jure* and *de facto* of non-establishment, it is not accurate to conclude that those states with an established church are not secular, whilst it is also difficult to define states like the U.S. as perfectly secular. Although the UK never had a

[85] Charles Taylor, *A Secular Age* (Harvard University Press, 2007) 453.

constitution written down like those of the U.S. or Germany, or any other statutory law country, we surely cannot claim the UK does not have a constitution or does not value it. By the same token, some contemporary democratic states still adopt a state church system, but it is plain that their state church models are very much mitigated systems of establishment, so that the maintenance of a state church is more a symbol of tradition or culture, symbolizing nothing of political legitimacy. From that perspective, a lack of the separation of church and state *de jure* does not necessarily prevent a state from being secular. On the other hand, despite the pervasive influence of religion in states like the U.S. and some southern European countries, *de facto*, the separation of church and state exists and is upheld in a fundamental position in their political systems.

5.3 The Over-Inconclusiveness of Separation as Non-establishment

Aside from the gap between *de jure* and *de facto* when it comes to Separation as Non-Establishment in many political systems, there is another, more serious issue with regard to Separation as Non-Establishment. It is a relatively general and unspecific principle which cannot give conclusive guidance in hard cases. It is clear that the core of not having an established religion as a means of realizing liberty of conscience entails that no particular religion enjoys official government status. For instance, religious groups must handle their own affairs, governmental financial support should not be involved, the government cannot establish or defend particular religious doctrines, and so on. However, since even the act of governments granting special accommodations or exemptions to religious claimants may seem to establish religion over non-religion, or to establish favored religions over those who are not favored, the matter of how to interpret the separation of state and religion is rather precarious. As previously mentioned, in the U.S. Constitution, the non-establishment clause facilitates the free exercise clause fundamentally, whereas there is also strong tension between those two constitutional principles. I believe that their tension derives from their generality as constitutional principles together with their parallel positions in the constitution, both being highest rights. A more robust interpretation of the non-establishment clause is argued to be an impairment of free exercise, while granted religious exemptions will challenge the specific content and extent of non-establishment. There is no clear boundary or traceable guidelines for their implementations in judicial decisions so far.

For instance, the landmark case of *Burwell v. Hobby Lobby*[86](2014) shows firm

[86] The Hobby Lobby Stores, Inc., with over 500 stores and over 13,000 employees across the United States, dealing in arts and crafts and considered an industry leader, is owned and operated by the Green family. The Green family has organized its business according to the principles of the Christian

support for the free exercise clause on a whole new level. In 2010, the U.S. Congress passed the Affordable Care Act (ACA), which requires for-profit health insurance companies to cover certain kinds of preventive care for women, including all twenty FDA (Food and Drug Administration)-approved contraceptives (sixteen of which are contraceptives and four of which can act to induce abortions) in their employer-based health plans. In September 2012, on the basis of another federal law, the Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the First Amendment in the U.S. Constitution, Hobby Lobby filed a suit against the U.S. department of Health and Human Services (HHS) requesting a preliminary injunction against the enforcement of the part of the law that forced employers to provide the four contraceptive drugs that lead to abortion. After a denial by the Oklahoma District Court and an overruling by the Tenth Circuit, in June 2014, the U.S. Supreme Court extended religious exemptions to the for-profit company for the first time. Moreover, recently, as a reaction to the U.S. Supreme Court's ruling in favor of nationwide same-sex marriage in June 2015, legislators in several (southern) U.S. states have proposed pieces of legislation to offer exemptions to a variety of occupations where religious citizens who are uncomfortable with serving same-sex couples' weddings. The question here is that it is not decided (by the Supreme Court) whether these bills strengthen the protection guaranteed by the free exercise clause in the first amendment of the U.S. constitution, or violate the first amendment's establishment clause.[87]

To sum up, given the fact of reasonable pluralism, the principle of liberty of conscience is a derivative from the political justification of liberalism. Reasonable persons therefore endorse the political value of liberty of conscience and freedom of thought, which "takes the truths of religion off the political agenda"[88], as it is unreasonable for us to use political power to repress other comprehensive views just because they are different from ours, provided that they are also reasonable. In fundamental respects, Thesis S (the separation of state and religion) helps guarantee the liberty of conscience. However, understanding secularism simply as non-establishment (along with liberty of conscience) is too wide and general. It cannot illustrate whether secularism as non-establishment should be further interpreted in more detail and concrete forms, and which form of Thesis S is the one we ought to defend exactly.

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faith and has also explicitly stated its intention to run the company according to Biblical precepts on its official website.

[87] For a summary of the case, see Zhang Tu, "Burwell v. Hobby Lobby: An Unprecedented Evolvement of Religious Exemptions in the U.S.", in *Leiden Law Blog*: http://leidenlawblog.nl/articles/burwell-v.-hobby-lobby-an-unprecedented-evolvement-of-religious-exemptions.

[88] John Rawls, *Political Liberalism*, 151.

Besides, lacking a more concrete form or additional designations, the implementation of non-establishment, suffering from the unevenness of its *de jure* and *de facto* manifestations, can be largely equivocal in many democratic regimes. In order to solve P2, the problem of the indeterminacy of Thesis S, in addition to adopting the political approach, more specific forms to supplement the relatively general political approach of Thesis S1 need to be taken into consideration.

VI. In Support of Separation as Neutral Treatment of all Religions?

Due to the impossibility of achieving agreement on comprehensive doctrines, many political liberals believe that a political conception's legitimacy can only be defended on grounds that are neutral between comprehensive doctrines. A liberal democratic state should demand neutrality in its relation to different religions, and also between those who embrace religious beliefs and those who do not. In other words, a state ought to be neutral with regard to different comprehensive doctrines, including religious ones. Hence, the indeterminacy problem of Thesis S could be understood or investigated under a bigger framework of liberal neutrality with respect to comprehensive doctrines of citizens in democratic societies. In this section, I shall consider whether interpreting the separation of state and religion as the state neutrality principle is desirable.

6.1 Confronting P1: Thesis S2 as the State Neutrality Principle

According to the Rawlsian political approach we just turned to, a political conception of justice is independent of any particular comprehensive doctrine. Therefore, it is possible for a society to be governed by liberal neutrality in the sense that its basic structures are not designed or sustained to move toward any particular comprehensive doctrine, including any particular religious doctrines. Thesis S interpreted in this manner is to be understood as the form of Thesis S2, a neutral attitude toward all religions and between religion and non-religion. Rawls is not alone in the sense that some political liberals' advocacy of the neutrality principle also rest on the recognition of P1, the problem of reasonable pluralism. They consider the neutrality principle as what is required by the goal of public justification under the constraint of the fact of reasonable pluralism.

Bruce Ackerman claims that the essence of liberalism is to deny anyone the moral privilege to settle the problem of reasonable pluralism, namely, to declare that they have the authority to define the only truth.[89] Convincing others of our own belief of

[89] See Bruce Ackerman, *Social Justice in the Liberal State* (Yale University Press, 1980) 10.

liberalism as truth is to make liberalism a hostage to a particular metaphysical system. Therefore, liberalism does not and does not have to depend on the truth of any single metaphysical or epistemological system.[90] Rather, liberalism's "ultimate justification locates at its strategic location in a web of talk that converges upon it from every direction."[91] Ackerman's core argument is that, if the power holder or the state asserts "his conception of the good is better than that asserted by any of his fellow citizens, or regardless of his conception of the good, he is intrinsically superior to one or many of his fellow citizens," then its power structure is illegitimate.[92] In other words, if the state does not hold to the neutrality principle in terms of conceptions of the good, then it is not a legitimate state.

Likewise, Charles Larmore regards the neutrality principle as a morally minimal solution to the problem of reasonable pluralism.[93] By "morally minimal", he means that neutrality "serves as a common ground" that is acceptable by all citizens and not that those who affirm it will easily live up to it.[94] He reckons that this problem calls for the recasting of liberal theory, marking the renovation of a familiar 17th century idea of political liberalism, which could be traced back to Locke's toleration.[95] It was an idea generated as a result of reasonable disagreements about what the true religion is.[96]

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90 See ibid., 356-357.

91 Ibid., 361.

92 See ibid., 11.

93 See Charles Larmore, *The Morals of Modernity* (Cambridge University Press, 1996); "Political Liberalism", *Political Theory* 18(1990): 339-360.

94 Charles Larmore, *The Morals of Modernity*, 123

95 Ibid., 132.

96 Ibid. Confronting the cruel and brutal religious intolerance caused by diverse religious disagreements, Locke argues the solution is the separation of church and commonwealth. He believed that "we must above all distinguish between political and religious matters, and properly define the boundary between church and commonwealth. Until this is done, no limit can be put to the disputes between those who have, or affect to have, a zeal for the salvation of souls and those who have a real or affected concern for the safety of the commonwealth." "A commonwealth is an association of people constituted solely for the purpose of preserving and promoting civil goods, including life, liberty, physical integrity, and freedom from pain, as well as external possessions, such as land, money, the necessities of everyday life," and so on. Locke also argues that, due to human wickedness and greediness, it is necessary for us to form political associations for the sake of defending the wealth and resources a person has already won or of protecting his means of winning them, such as his freedom and good health.

It is the duty of the civil ruler, namely the state, to guarantee and preserve the just possession of those civil goods which relate to this life. And the whole jurisdiction of the state lies solely with these civil goods. "All the right and authority of the civil power is confined and restricted to the protection and promotion of these civil goods and these alone. It should not, and cannot, be extended to the salvation of souls…The civil power should not use the civil law to prescribe articles of faith (or doctrines) or the manner in which one should worship God." Nor can the civil power use law, force, and penalties to enforce any religion on its citizens, as only the citizens themselves can decide whether

Larmore shares Locke's vision in terms of the goal of political liberalism: that it does not express any comprehensive aspirations about values, but is "an appropriate response to the problems of reasonable pluralism".[97] Similarly, in a modern democratic society in which citizens subscribe to many different conceptions of the good, the state cannot justify its coercive power by attaching itself to the ideals of any particular group, but can only defend its coercion on grounds that are neutral between them. It follows that a liberal state shall refrain from forcing its citizens to accept any particular conception of the good, or to force them to affirm the superiority of certain conceptions of the good to others. In other words, a liberal state ought to stay neutral among differing conceptions of the good that its citizens uphold.

6.2 The Deficiencies of Taking Thesis S as Thesis S2

Confronting the permanent fact that citizens cannot agree on a conception of the good life, the neutrality principle appears as a promising candidate to solve P2. And I will consider whether the neutrality principle is convincing in this subsection.

a. The Problem with Understanding the Neutrality Principle

Ackerman characterizes neutrality as the constraint on appealing to any privileged moral authority in justifying the use of political power. However, he refuses to pin down how to defend the neutrality principle, which renders his defense of political legitimacy incomplete as well. By declining to work out a justification for neutrality on moral foundations, Ackerman's claim of neutrality is likely to be agnostic, or is prone to be diagnosed as a form of procedural neutrality. Procedural neutrality refers to a procedure that can be legitimated without invoking any moral values, or only appealing to neutral

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the religion is acceptable to them or not. Locke underlined that neither persons, nor churches, nor even commonwealths can have any right to attack each other's civil goods and steal each other's secular assets on the pretext of religion.

Conversely, within the jurisdiction of the church, "the purpose of a religious association is public worship of God and the attainment of eternal life by means of it. This is what the whole of the church's teaching should aim at; these are the only ends to which all of its laws should be directed. There is and can be no concern in this association with the possession of civil or earthly goods. No force is to be used here for any reason." Moreover, "if a civil ruler tried to make laws about another person's religion, it is all the same whether he does so by his own judgment or by the authority of a church, that is by the opinions of other men," which violates this person's liberty of conscience.

See John Locke, "A Letter Concerning Toleration," in *Locke on Toleration*, Richard Vernon ed., (Cambridge University Press, 2010) 6-32.

[97] Charles Larmore, *The Morals of Modernity*, 144.

values like impartiality, consistency, or coherence.[98] Yet, the specification of a neutral procedure itself might draw on "substantive values that underlie the principles of rational discussion between reasonable citizens."[99] Furthermore, political liberalism is not procedurally neutral, and any liberal view must be substantive. Its political principles are substantive and express far more values than just procedural values. It is true indeed that, by insisting on the principle of neutrality, we aim to look for a common ground on which we will not be treated with bias due to our different comprehensive doctrines. Nonetheless, such a common ground is not a procedurally neutral ground.[100] In a constitutional democratic regime, citizens must already have some ideas of right and justice in their minds and some basis for their reasoning. A political principle is substantive in the sense that it "springs from and belongs to" the liberal tradition thought and the public political culture of democratic societies.[101]

Procedural neutrality is not the only approach to clarifying the neutrality principle. The principle of neutrality can be defined in a variety of ways. Conventionally, the neutrality principle can be construed as neutrality of effects and neutrality of justification (intention), which concentrates on the effects and the intention of the state policy, respectively.[102] Namely, for neutrality of effects, a policy is neutral "when and only when, relative to an appropriate baseline, it is not expected to produce unequal effects on different conceptions of the good", and for neutrality of justification or intention, the state maintains neutrality "when and only when its policies are adopted with an appropriate kind of intention."[103]

Nevertheless, both of these two traditional constructions seem to be deeply flawed. To begin with, neutrality of effect might end up excluding many policies as it regards virtually all policies as non-neutral. It is unpreventable that any policy could lead to affirming the "superiority of certain forms of moral character and encourage certain moral virtues."[104] Policies that "seek to establish a fair distribution of material resources make it relatively harder for people with expensive tastes to realize the ways of life they value."[105] On the other hand, neutrality of intention or justification is highly unrealistic as, at minimum, the state has to secure some basic public goods (basic resources for

98 John Rawls, *Political Liberalism*, 191.

99 Ibid.

100 Ibid., 192.

101 Ibid., 432.

102 See Alan Patten, *Equal Recognition: The Moral Foundations of Minority Rights* (Princeton University Press, 2014) 111-112.

103 Ibid., 112.

104 John Rawls, *Political Liberalism*, 194.

105 Alan Patten, *Equal Recognition: The Moral Foundations of Minority Rights*, 114.

sustaining human life, national defense, etc.). Furthermore, it seems to suggest that there are no important liberal values or principles that "support a general prohibition against the state acting on particular judgments about the good."[106] In other words, it is rather a questionable claim to argue for the fundamental place of the value of neutrality.[107]

Stephen Macedo expounds a quite robust view of the relation between liberalism and the neutrality principle. He strongly objects to the thought that the liberal law is "in any strong sense purposeless, or non-instrumental, or neutral with regard to conceptions of the good life, either at the level of society as a whole or at the level of individual life plans."[108] He argues that "if liberalism stands for mere toleration or an indiscriminate spirit of accommodation, then it stands for everything, and it takes a stand for nothing."[109] Macedo's robust conception of liberalism is to a certain extent a criticism of Larmore's political neutrality conception.[110] Macedo argues that Larmore's liberal neutrality, which stands for mutual respect among people and a commitment to values at the most basic level, is not neutral at all. Rather, liberalism requires the support of positive values to explain why we should equally respect other people. Liberalism stands for the "positive value of freedom, freedom to devise, criticize, revise, and pursue a plan of life, and it calls upon people to respect the rights of others whether or not they share the same goals and ideals".[111] Therefore, it is liberals' goal to design political institutions and practices to embody and sustain these values. Besides, neutrality of intention would include too many non-neutral policies as neutral. For instance, a state might set up its majority religion as the state-religion for some neutral aim—say, bringing citizens closer together—but it is clearly non-neutral in character (I will get to this point in a moment). Therefore, the conventional neutrality principle is actually quite troublesome, as Rawls calls it, "unfortunate"[112].

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106 Ibid., 112.

107 Alan Patten considers the value of neutrality as a "downstream" value in the domain of values. That is to say, "a decision to be neutral in some conflict or contest is sometimes based on nonneutral reasons. There is some justifiable set of fundamental values commit the state to being neutral among different conceptions of the good." See Alan Patten, *Equal Recognition: The Moral Foundations of Minority Rights*, 108-109.

108 Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford Clarendon Press, 1990) 258.

109 Ibid.

110 As a matter of fact, Macedo and Larmore both confirm the fundamental importance of citizens' wish to conduct a reasonable and rational dialogue about political virtue with other people who share a basic concern in such a dialogue, or in Rawls's words, citizens' public reasoning in public justifies political legitimacy. However, Larmore treats it as a procedural constraint while Macedo recognizes it as a moral core of liberalism.

111 Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism*, 258.

112 John Rawls, *Political Liberalism*, 191.

b. The Neutrality Principle and The Separation of State and Religion: A Contingent Relationship

More importantly, for my purpose here, the relationship between the state neutrality principle and secularism is only contingent: the neutrality principle does not necessarily support or entail the separation of state and religion. For the sake of protecting some individuals' liberty of conscience, a state's commitment to the neutrality principle is easily questionable. Moreover, the confusion over the concept of neutrality opens the door to subjecting neutrality to two divergent interpretations with regard to religion: one is to understand it as abstinence with regard to all comprehensive doctrines, and the other is to take neutrality as giving every comprehensive outlook the same accommodation and incorporating them all (Thesis S3 and Thesis S2' respectively, and that is also the reason we do not characterize these two theses as falling within the concept of neutrality).

Two following recent cases exactly illustrate the gap between the endorsement of the neutrality principle and secularism. One is related to legislation while the other is one of the most influential cases in Europe in recent years. Both of them have made the statement that the state neutrality principle does not necessarily entail secularism, and secularism is not necessarily a manifestation of the state neutrality principle. In February 2007, the government of Quebec (a Canadian province) organized a Consultation Commission on Accommodation Practices Related to Cultural Differences (CCPARDC) spearheaded by Gerard Bouchard and Charles Taylor.[113] After doing research for a year, they drew up a report in response to public discontent concerning reasonable accommodation and formulated their recommendations to the government to ensure that "accommodation practices conform to Quebec's values as a pluralist, democratic and egalitarian society".[114] One key issue of this report that they address is the relationship between neutrality and secularism. The commission believes "a modern democracy demands the state be neutral or impartial in its relations with different religions,"[115] that is to say, it must be neutral regarding different comprehensive doctrines, including secular and religious conceptions. The question of understanding secularism therefore cannot be deprived of the framework of a neutral state with respect to the comprehensive doctrines its citizens hold. Nevertheless, they also believe that a democratic liberal state cannot be neutral among some fundamental constituent values of democratic political

113 See Zhang Tu, "Charter of Quebec Values: New secularism challenge for Quebec," in *Leiden Law Blog*: http://leidenlawblog.nl/articles/charter-of-quebec-values-new-secularism-challenge-for-quebec.
114 Charles Taylor & Gerard Bouchard, *Building the Future: A Time for Reconciliation* (Bibliotheque et Archives Nationales du Quebec, 2008) 17.
115 Ibid., 134.

systems. The commission argues that the state must "remain neutral in the realm of core beliefs and commitments."[116] In other words, the neutrality principle that they adopt "is not only an attitude of neutrality toward religions but also toward the different philosophical conceptions that present themselves as the secular equivalents of religions."[117] As far as the commission is concerned, secularism as the separation of state and religion replaces the established religion as the foundation of a state's comprehensive doctrine. It in turn encourages an inclusion of "an array of values and principles", including religious outlooks, into common political principles.[118] Simply put, the way to formulate Thesis S in accordance with the state neutrality principle would be like Thesis S2'. These views are not held just in North-America: this particular approach to understanding the relationship between the neutrality principle and secularism is also, to some degree, largely shared in Europe.

In 2005 in Italy, Mrs. Soile Lautsi requested the school council of a state school in the province of Padua to remove the crucifixes in classrooms since it impedes her children's freedom from religion, which follows from the freedom of religion clause. Her request was denied by the school and her subsequent lawsuits in Italy were denied as well. This case was first brought to the European Court of Human Rights in 2006, and was supported as the court declared there had been a violation of human rights according to Article 9 (freedom of thought, conscience and religion) and Article 2 of the first Protocol (right to education) in 2009. The Italian government later made an appeal to the grand chamber of the court, and the case went on to cause Europe-wide upheaval. In 2011, the Court's grand chamber overruled the court's decision of 2009 and decided that the requirement of displaying crucifixes in classrooms of state schools in Italian law was not a violation of Article 2 of Protocol No. 1 and Article 9 (reached by 15:2 votes).[119] The court argued that "States have responsibility for ensuring, neutrally and impartially, the exercise of various religions, faiths and beliefs. Their role is to help maintain public order, religious harmony and tolerance in a democratic society, particularly between opposing groups",[120] while a crucifix on a wall is only a passive symbol which cannot be deemed to have an influence on pupils. One of the concurring opinions of the court also argued that to allow all religious denominations to freely manifest their religious convictions in state schools is "a demonstration of religious tolerance and state

116 Ibid.

117 Ibid.

118 Ibid, 134-135; and Jocelyn Maclure & Charles Taylor, *Secularism and Freedom of Conscience* (Jane Marie Todd trans., Harvard University Press, 2011)9-14.

119 See https://en.wikipedia.org/wiki/Lautsi_v._Italy.

120 Case of *Lautsi and Others v. Italy*, No. 30814/06, § 60, ECHR, 18 March 2011.

neutrality". [121] The concurring opinion from Judge Bonello and Judge Power straightforwardly pointed out that removing the crucifix would have been "a positive and aggressive espousal of agnosticism or of secularism, and consequently anything but neutral."[122] Along with the Consultation Commission of Quebec, they argued that a preference for secularism over an alternative world view, or comprehensive doctrines in Rawlsian language, is not a neutral option. In the same vein as the Quebec report, Judge Power also believed that the state had a duty to uphold the state neutrality principle when it comes to public education; however, neutrality requires a pluralist approach which "encourages respect for all world views rather than a secularist one".[123]

These two independent cases in North-America and Europe have shown an essential resemblance in terms of the relationship between the neutrality principle and secularism. The reasoning behind the Quebec report and that of the majority judges in *Lautsi v. Italy* (2011) undercuts the envisioned relationship between the neutrality principle and secularism upheld by Ackerman and Larmore, and therefore undermines the interpretation of Thesis S as Thesis S2. These two examples reveal a conspicuous approach of interpreting neutrality in a more accommodative and open fashion, namely, as Thesis S2'. According to the reasoning behind these two cases, a state is neutral not when it abstains from taking a stand in comprehensive views, but only when it encourages or positively supports all comprehensive doctrines, including religious ones, therefore religious manifestations are ought to be allowed and religious views cannot be outcast from public justification. The neutrality principle therefore does not necessarily entail secularism. As a result, the form of Thesis S2 as an interpretation of the separation of state and religion is, at best, inaccurate.

In short, I argue that to interpret the separation of state and religion (Thesis S) as the neutrality principle (Thesis S2) is untenable primarily for three reasons. One, the way political liberals formulate the neutrality principle is not specific to what the goal of public justification requires. Two, and more problematically, the neutrality principle itself is very likely to be subject to reasonable pluralism as well.[124] What Thesis S2 prescribes, a

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[121] See Concurring opinion of Judge Rozakis joined by Judge Vajic, Case of *Lautsi and Others v. Italy*, No. 30814/06, ECHR, 18 March 2011.

[122] See Concurring opinion of Judge Bonello and Judge Power, Case of *Lautsi and Others v. Italy*, No. 30814/06, ECHR, 18 March 2011. "The crucifix purge promoted by Ms Lautsi would not in any way be a measure to ensure neutrality in the classroom. It would be an imposition of the crucifix-hostile philosophy of the parents of one pupil, over the crucifix-receptive philosophy of the parents of all the other twenty-nine." See Concurring opinion of Judge Bonello, Case of *Lautsi and Others v. Italy*, No. 30814/06, §3.6, ECHR, 18 March 2011.

[123] Concurring opinion of Judge Power, Case of *Lautsi and Others v. Italy*, No. 30814/06, ECHR, 18 March 2011.

[124] It is not clear for why Rawls also admits that the term neutrality is in itself unfortunate. He just

neutral attitude with regard to all religions, is still less clear-cut. For instance, Thesis S2 does not answer questions as to whether the state should sponsor all religions in an impartial matter, or whether the state should not let religions mingle with political decision making. Three, connected with the second complaint about the neutrality principle, state neutrality can be characterized in two ways, which leads to two possible versions of Thesis S2: Thesis S2'and Thesis S3. One is to manifest its neutrality by incorporating all comprehensive doctrines, including religious ones, into public discourse, while the other is to exclude comprehensive doctrines, including religious ones.

VII. Concluding Remarks

Thus far, in this chapter, my task has been to provide a public justification for secularism, which rests on a successful answer to two problems. One is the problem of reasonable pluralism (P1), which marks the permanent feature of our democratic political culture. Reasonable citizens in a constitutional democratic society tend to disagree with each other in terms of comprehensive doctrines or conceptions of the good, which is "the natural outcome of the exercise of human reason" in a democratic society.[125] These disagreements are so fundamentally ingrained that they could deeply plague our conceptions of justice. It is of no use to convince religious believers that their deepest conviction of the ultimate meaning of everything is false, and it is also of no use to persuade atheists that the only truth of the world and morality is in God's hands. It is precisely because we take reasonable pluralism, this permanent democratic fact, into account; we abnegate seeking the only right conception of justice or moral truth as the moral basis for a democratic society. Instead, we retreat from the arguments in the metaphysical and comprehensive domain to the domain of the political. The quest for a moral conception of justice has hence transformed into the quest for its political legitimacy, the publically justified condition for the exercise of coercive political power against citizens.

The political approach of defending secularism itself cannot, however, resolve the second problem of P2, the confusion in interpretation of Thesis S, the separation of state and religion. A successful justification of secularism must solve both P1 and P2 *at the same time*. Tentatively, Thesis S can be interpreted from the widest meaning to the narrowest one: Thesis S1 refers to non-establishment of any single religion; Thesis S2 signifies state neutrality among all religions, and they are both untenable. Due to the

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said that while "some of its connotations are highly misleading, others suggest altogether impracticable principles." He therefore avoids neutrality by and large and only uses it as a stage piece. See John Rawls, *Political Liberalism*, 191.

[125] See ibid., xxvi.

deficiencies of the neutrality principle, state neutrality cannot work as a public justification. Two further interpretations depart from Thesis S2: Thesis S2' and Thesis S3. While Thesis S2' requires including all comprehensive reasons, including religious ones, in the public discussion, Thesis S3 prescribes restraint when it comes to bringing religious reasons into the public discourse.

Subsequently, the following four chapters are going to focus on discussing the options of Thesis S3 and Thesis S2', of which I will argue that Thesis S3 is the form of Thesis S we ought to uphold as a constitutional principle in a democratic polity. I will present a main argument for Thesis S3 in Chapter Three.