Relativism in Democracy
Response to a New Form of Political Theology

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This dissertation identifies and discusses a new form of political theology. The starting observation is that over the past few decades, the position of organized Christianity with respect to democracy has changed. Traditionally, the notion of political theology referred to a doctrine of sovereignty which opposed the ‘People’ to ‘God’ as the ultimate sources of political legitimacy. Now, most Christian organizations have come to accept the democratic principle of popular sovereignty, attempting to define a new role for themselves within this framework as guardians of the moral principles democratic societies supposedly need in order to survive. This is reflected by a discursive shift in the rhetoric employed by such organizations: over the past few decades we have witnessed the rise of a new religious discourse primarily focused on ‘moral relativism’ as the principal ‘threat’ confronting contemporary democratic societies. In the first homily he gave as Pope, for example, Benedict XVI famously denounced a ‘dictatorship of relativism’ as the most urgent social and political problem of our age. A similar discourse of ‘anti-relativism’ has also been increasingly adopted by numerous Protestant and Evangelical preachers across the world, particularly in the United States. The argument I want to advance is that there are two ways democratic theory can respond to this new form of anti-relativist political theology. The dominant one, pursued for example by Jurgen Habermas and many of the contemporary theorists writing in the lineage of John Rawls, agrees that ‘moral relativism’ would indeed constitute a problem for democratic societies. However, it suggests that these societies do not necessarily
need to draw their substantive moral commitments from ‘religion’, because they can succeed in establishing them *autonomously*, on the basis of the necessary presuppositions of ‘reason’ itself. My contention is that this ‘rationalist’ response to the contemporary form of political theology ultimately fails for the same reason Hegel already criticized Kant’s practical philosophy: that ‘reason’ only stipulates a purely formal set of criteria, and it is impossible to deduce anything substantive from something merely formal. ‘Rationalists’ are therefore ultimately forced to re-import their substantive moral commitments from ‘outside’; and, in particular, the source from which these commitments are drawn always prove to be the religious traditions within which these conceptions of rationality are embedded. Thus, the opposition between ‘reason’ and ‘religion’ proves to be more problematic than the rationalists suppose. For this reason, I attempt to recover an alternative response to the contemporary form of political theology, which questions the assumption that ‘moral relativism’ does indeed represent such a serious ‘threat’ for democratic societies. Indeed, what the work of authors such as Hans Kelsen and Claude Lefort seems to suggest, is that some form of ‘moral relativism’ may actually be the only sound philosophical foundation for an allegiance to democracy in the first place. Focusing on this work therefore provides the occasion for the recovery of a resolutely ‘relativist’ conception of democracy, as a more adequate response to the contemporary form of ‘anti-relativist’ political theology.
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INTRODUCTION –

THE RELIGIOUS DISCOURSE OF ANTI-RELATIVISM

Organized religion seems to have a new enemy: relativism in all its forms is increasingly denounced as the principal ‘threat’ confronting contemporary societies, and in particular contemporary democracies. Once only thought to constitute a relatively marginal philosophical or meta-ethical position, it is now treated as a social and political problem, and it is primarily as an antidote against this problem that the reference to a set of ‘absolute’ moral and political ‘truths’ is now defended. Consider, for example, what cardinal Josef Ratzinger asserted in the last homily he gave before the assembled conclave, the day before being elected pope:

Today, having a clear faith based on the creed of the Church is often labeled fundamentalism. Whereas relativism; that is, letting oneself be tossed here and there by every wind of doctrine, seems the only attitude that can cope with modern times. We are building a dictatorship of relativism that does not recognize anything as definitive and whose ultimate goal consists solely in satisfying one’s ego and desires.¹

In the years that have elapsed since Benedict XVI’s election, this opposition between ‘relativism’ and ‘a clear faith based on the creed of the Catholic Church’ has been made into the backbone of the Vatican’s pontifical message. Neither the pope himself nor any other official spokesmen of the Catholic Church have missed an occasion to denounce the poisonous effects that relativism is supposedly having on modern societies, and to present Christianity as the only available antidote against it. This has led to the constitution of a whole body of discourse that

certain commentators have not hesitated to describe as amounting to an intellectual ‘crusade’ against relativism.  

Nor is this discourse restricted exclusively to the Catholic Church. The concern with relativism cuts across denominational distinctions. A recent poll conducted amongst evangelical preachers in the United States, for example, found that, after ‘abortion’, ‘moral relativism’ is considered “the most pressing moral issue faced by America today”. For anybody familiar with the language used in contemporary evangelical Churches in the United States, this is unlikely to come as a surprise. In a lecture delivered at the National Ligonier Conference in 2007, John Piper, pastor at the Bethlehem Baptist Church in Minneapolis, Minnesota, summed up the objections moved by evangelical Christians against relativism as follows:

Relativism is an invisible gas, odorless, deadly, that is now polluting every free society on earth. It is a gas that attacks the central nervous system of moral striving. The most perilous threat to the free society today is, therefore, neither political nor economic. It is the poisonous, corrupting culture of relativism … Here is a list of seven amongst the most evil and destructive effects of relativism: 1) Relativism commits treason against God. 2) Relativism cultivates duplicity. 3) Relativism conceals doctrinal defection. 4) Relativism cloaks greed with flattery. 5) Relativism enslaves people. 7) Relativism leads to brutal totalitarianism.

The political overtones implicit in the notion of a ‘dictatorship of relativism’ and in the idea that ‘relativism leads to brutal totalitarianism’ are by no means coincidental. For, the claim is not simply that relativism constitutes a problem for the spiritual lives of individuals, but also that it constitutes a danger for the survival of modern societies. There is thus a political

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2 This point was made for example by René Girard in an interview entitled ‘Ratzinger is Right’, published on the New Perspectives Quarterly, 22(3), 2005. The number of official documents and public statements by members of the Catholic Church denouncing relativism is far too large to give an exhaustive list. For illustrative examples see the address given by pope Benedict XVI to the members of the international theological commission on 5 October 2007 and the statement delivered by Cardinal Silvano Maria Tomasi at the 16th ordinary session of the Human Rights council on religious freedom at the United Nations (UN) on the 10th of March 2011, both available at www.vatican.va. For scholarly publications by Catholics or institutions connected with the Catholic Church see Peter Kreft, A refutation of moral relativism. Interviews with an absolutist, Ignatius Press, 1999; Francis Beckwith and Gregory Koukl, Relativism: Feet firmly planted in mid-air, Baker Books, 2005; Peter Berger (ed.), Between relativism and fundamentalism: Religious resources for a middle position, Eedermans Publishing Co., 2010. For publications in other languages see also Roberto de Mattei, La dittatura del relativismo, Solfanelli, 2007; Stefano Zamagni e Adriano Guarnieri (ed.), Laicità e relativismo nell’epoca post-secolare, il Mulino, 2009; and Jacques Rollet, La tentation relativiste. La démocratie en danger, Desclée de Brouwer, 2007.


dimension to the religious discourse of anti-relativism, which translates into a project of reasserting the importance of a reference to the notion of ‘absolute truth’, not only in the private domain of individual morality, but also in the public domain of contemporary politics.

It is this political dimension of the religious discourse of anti-relativism that I intend to discuss over the course of the following dissertation. Specifically, what I am interested in discussing is the bearing of this discourse on the political form of democracy, for my contention is that the call for a reassertion of a notion of ‘absolute truth’ within contemporary politics constitutes one of the last remaining grounds upon which the democratic principle of self-government is still criticized. To substantiate this point, it may be useful to start by situating the religious discourse of anti-relativism within the broader history of anti-democratic rhetoric.

THE CRITIQUE OF RELATIVISM AS A CRITIQUE OF DEMOCRACY

Prior to the 19th century, democracy did not enjoy the same privileged status amongst known political forms as it does today. On the contrary, it was generally assumed to constitute one of the ‘degenerate’ forms of political regime, incompatible with the requirements of good government. The arguments sustaining this consensus can mostly be traced back to a Platonic heritage. In the famous chapter 8 of *The Republic*, for example, Plato argues that democracy leads to a degeneration of the moral and political standards of a society, because individuals are led into believing that they can do whatever they want by the absence of a common authority. Chaos and disorder are assumed to ensue, and the only way in which peace can be reasserted is said to be through a form of tyranny keeping society under control with an iron fist.

For centuries, this – or some set of views akin to it – constituted the political common sense on democracy. Opinions only began to shift gradually over the course of the past two
centuries, during which time democracy was progressively posited as the bedrock of all forms of political legitimacy. Today, the process has reached such an extent that it appears very difficult to find anybody explicitly declaring him or herself ‘against’ the democratic principle itself: even those who might secretly harbor other sympathies usually say they are democrats, and couch their arguments in democratic terms.

This does not mean that the previous critiques of democracy have simply been forgotten. Rather, they have been incorporated within a democratic framework by being transformed into arguments for ‘limiting’ democracy from within. The political struggle today is therefore largely fought in terms of different conceptions of democracy, and in particular of the limits that should be imposed on them. Within this struggle, critiques of the democratic principle still have an important role to play because they serve as the basis for different views as to whether, and in what way, democracy should be limited for its own sake.

The political significance of the religious discourse of anti-relativism can be made to emerge by being situated within this context. As I have already mentioned above, one of the central claims of this discourse is that a political regime founded on relativism ultimately ‘leads to totalitarianism’. From the point of view of the contemporary political common sense, this can be interpreted as a way of stating that relativism represents a serious threat for the survival of existing democratic regimes. The political consequence which follows is therefore that, in order to be sustainable on their own terms, democracies need to make reference to some notion of ‘absolute truth’, capable of limiting them from within, for which organized religion is presented as the natural foundation.

This link between the issue of relativism and that of democracy was drawn explicitly, for example, by John Paul II in the Encyclical ‘Veritatis Splendor’, written in the immediate
aftermath of the collapse of the Soviet Union, at the beginning of an age when democracy finally appeared to have defeated all its ‘external’ enemies:

Today – he wrote – when many countries have seen the fall of ideologies which bound politics to a totalitarian conception of the world, there is no less grave a danger that the fundamental rights of the human person will be denied … This is the risk of an alliance between democracy and ethical relativism, which would remove any sure moral reference point from political and social life, and on a deeper level make the acknowledgement of truth impossible. Indeed, if there is no ultimate truth to guide and direct political activity, then ideas and convictions can easily be manipulated for reasons of power. As history demonstrates, a democracy without values easily turns into open or thinly disguised totalitarianism.5

The central argument that John Paul II seems to be making in this passage is that a conception of democracy founded on relativism would ultimately be self-defeating. The reason he alludes to is that relativism is incapable of specifying any determinate principles to “guide and direct political activity”. This is taken to make a relativist conception of democracy vulnerable to the paradox whereby democracy may be overthrown by democratic means, because it is taken to imply that there can be no ‘limits’ on what a sovereign people may legitimately do to itself. Relativism is therefore accused of providing no guarantee that democracy will not transform itself into a form of ‘totalitarianism’.

From this, John Paul II goes on to deduce that democratic regimes need to make reference to some notion of ‘absolute truth’ in order to be able to remain sustainable on their own terms, because by imposing a set of external limits on the power exercised by the people over themselves, the reference to a notion of truth offers the only available guarantee that democracy will not overthrow itself. Moreover, since Christianity is implicitly assumed to constitute the natural foundation for such a notion of ‘absolute truth’, faith in Jesus Christ is ultimately posited as a necessary complement to the good functioning of democracy.

Although he does not mention democracy explicitly, a very similar argument was also made by John Piper in the context of the lecture I already quoted from above:

The formula – he stated – is simple: when relativism holds sway long enough in a society, everyone begins to do what is right in his or her own eyes, without any regard for submission to truth. In this atmosphere, a society begins to break down … When the chaos of relativism reaches a certain point, the people will welcome any ruler who can bring some semblance of order and security. So a dictator steps forward and crushes the chaos with absolute control. Ironically, relativism, the great lover of unfettered freedom, destroys freedom in the end.6

The Platonic heritage is still clearly visible in both the formulations of this argument, since the claim they both make is that a political system founded on relativism leads to the dissolution of the moral fabric of society and ultimately to the emergence of a kind of political regime that radically negates the essential principles of freedom and democracy. Indeed, even the antidote recommended against this danger can be seen as a Christianization of the Platonic idea that the political order must be founded on a set of absolute truths standing above and beyond the human order of things. The key difference with Plato, however, is that the contemporary critics of relativism do not present their argument as a critique of democracy as such, but rather as an analysis of the conditions for its survival.

In this sense, it is possible to say that the critique has become ‘internal’: instead of opposing democracy from outside, the point advanced is that democracy needs to be complemented by a religious criterion of legitimacy for its own sake, in order to guide and ‘limit’ its own exercise of political power.

A NEW FORM OF POLITICAL THEOLOGY

Another way of putting the point I have sought to advance in the previous section, which I shall often be referring to in the rest of this discussion, is that the religious discourse of anti-relativism can be seen as amounting to a new form of political theology. By this I mean that it

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6 John Piper, *The Challenge of Relativism*. 
amounts to a call for grounding the legitimacy of the political order on a transcendent source, ultimately traceable to the will of a sovereign God.

For the purposes of the following discussion I will therefore not be using the notion of political theology in the sense in which it is employed by Carl Schmitt in his famous book on this topic, but rather in a sense that is more akin to the way in which the expression is employed in the classical tradition of Christian scholastics, where it was used to refer to the branch of theology devoted to a study of a specifically Christian theory of good government. The assumption on which this branch of theology was predicated was that the absolute sovereignty of God extends over the political domain; and hence that the duty of good Christians is to make sure that the way in which humanity governs itself remains in conformity with the essential commandments dictated by God.

It is in this sense that I shall be using the notion of political theology over the course of the following discussion: as a label for the assertion of the absolute sovereignty of God over and above the sovereignty that human beings may exercise over themselves in the political domain. From this perspective, the reason why the contemporary religious discourse of anti-relativism can be understood as a form of political theology lies in the fact that it serves as a preliminary for making the claim that democratic self-government can only be made sustainable on its own terms if it is limited by the reference to a notion of ‘absolute truth’ assumed to derive have been posited by God. Hence, the sovereignty of the people is ultimately subordinated to a requirement of consistency with a set of commandments derived from a transcendent source.

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7 Cf. Carl Schmitt, Political Theology, Chicago University Press, 1985. In this book, the concept of political theology is defined in terms of the idea that “all significant concepts of the modern theory of the state are secularized theological concepts. This appears to define a specific field of study rather than a concrete political project (even though, in reality, the analysis Schmitt goes on to develop in the rest of the book functions in the service of a political project that is indeed more akin to the way in which I will be employing the concept for the purposes of this discussion).

The element of originality in this form of political theology lies in the fact that it is not posited as an antithesis to democracy. On the contrary, democracy is assumed to presuppose something of this sort as a condition for its practical survival. Hence, the sovereignty of the people and the sovereignty of God are ultimately posited as complementary, even though this complementarity does not suppose either equivalence or reciprocity, but rather preserves the idea of the absolute pre-eminence of God. Traditionally, political theology was predicated on the assumption that the sovereignty of God is incompatible with popular sovereignty. The new form of political theology implicit in the religious discourse of anti-relativism, on the other hand, has found a way of reconciling the two, without relinquishing the assumption of the priority of God’s will over human self-government.

A POLITICAL RESPONSE

In the light of what has been said above, to discuss the new form of political theology implicit in the religious discourse of anti-relativism can be understood as a way of intervening in the contemporary political struggle over the meaning of democracy. In particular, what I want to do over the course of this dissertation is examine the challenge represented for democratic theory by the idea that democracy ‘needs’ to be complemented by the reference to an essentially religious conception of truth, in order to establish whether it is compelling and indeed what potential replies are available to democrats for responding to this critique.

In this respect, it should perhaps be made clear from the start that I will not be adopting the position of a neutral or disengaged observer: it is because I consider myself both a committed democrat and an unbeliever that I am interested in examining the challenge raised for democratic theory by the contemporary form of political theology and responding to it. There is thus a
polemical dimension to this dissertation, which consists in the project of rebutting the critique of democracy implicit in the idea that democracy ‘needs’ to make reference to a religious conception of absolute truth in order to be sustainable on its own terms.

At the same time, since I remain convinced that a necessary preliminary for a convincing rebuttal is an adequate understanding of one’s opponent’s position, a large part of this dissertation will be devoted to the project of reconstructing the intellectual grounds and arguments underscoring the contemporary form of political theology. Paradoxically, therefore, it is because I want to take a stand against the religious discourse of anti-relativism that I will first have to bring into relief the challenge that it represents for democratic theory in the fairest possible way.

Another clarification which is worth making from the start is that, for the purposes of this discussion, I have decided to restrict the domain of analysis to the formulations of the discourse of anti-relativism advanced by the Catholic Church. The reason for this is basically one of focus: the discourse of anti-relativism has recently been employed by a variety of both religious and non-religious advocates for the purpose of substantiating a number of different political projects. It would simply be unmanageable to try to discuss all the various strands of this discourse in one dissertation.

At the same time, however, I also think that the decision to focus on the rhetoric of the Catholic Church can be justified positively. First of all, as we will see in more detail in what

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9 The non-religious literature attacking relativism as a political problem, and in particular as a threat for democracy, is almost as vast as the religious one, and perhaps even more heterogeneous. Leo Strauss, for example, has used the critique of relativism as a way of grounding his essentially aristocratic project calling for the reaffirmation of the principles of natural right and honor. See for instance his essay on ‘Relativism’, in H. Schoeck and J. Wiggins Relativism and the Study of Man, Van Nostrand, 1961, pp. 135-168. Various liberal authors on the other hand, have criticized relativism in the name of a rationalistic conception of human rights. See for example the essays by Martha Nussbaum and Thomas Nagel in the reader on Moral Relativism edited by P. Moser and T. Carson, Oxford University Press, 2001. Finally, Alain Badiou has vigorously criticized what he perceives as the relativism implicit in contemporary ‘postmodern’ philosophy from a Marxist perspective. See for example his essay on Ethics published by Verso in 2001. Further exemplary critical discussions of relativism from a non-religious perspective can be found in Steven Lukes’ recent book on Moral Relativism published by Picador in 2008 and in the Blackwell Companion to Relativism edited by Stephen Hales and published in 2011.
follows, the political use of the discourse of anti-relativism originates from within Catholicism. The first recorded usage of the term to refer to a social and political problem, rather than simply a philosophical position, occurs in a papal encyclical of 1864.\footnote{10} Since then, Catholic apologists have continued to elaborate and refine this original intuition, so that today it is within Catholicism that one finds the most articulate and sophisticated formulations of the religious discourse of anti-relativism. Compared to the formulations one might encounter amongst evangelical preachers in the United States, for example, the difference is often striking, simply because the Catholic Church has a much more established tradition of scholarly apologetics than evangelical Protestantism.

The second reason for focusing on the Catholic Church, then, is its degree of political influence. Even in the United States, this is not something that can afford to be underestimated. Catholicism is currently both the largest single denominational affiliation in this country and the fastest growing, largely due to the influx of immigration from Latin America. What Catholics think and stand for is therefore going to be a very important determinant of the political life of this country in the future. Outside the United States, then, the political influence of the Catholic Church is so well-established as to require little demonstration. Every time the pope makes a public statement, millions of people listen, all over the world, and the resonance of these messages in the political life of individual countries is enormous. No other religious organization has the same degree of capillary diffusion, bolstered by a highly centralized organizational structure and an availability of economic and political resources comparable to those of a sizeable state.\footnote{11}

\footnote{10} Cf. Leo XII, ‘*Humanum Genus*’, 1884, available at: http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_18840420_humanum-genus_it.html

\footnote{11} For an interesting collection of statistics relating to this see the recent volume on ‘The Geopolitics of the Vatican’ of the French journal *Diplomatie*, Issue n. 4, August-September 2011. Catholicism is currently the largest denominational affiliation in the world, with an estimated number of over a billion and a half believers. The Vatican currently entertains diplomatic relations with
To examine and discuss the political discourse advanced by this institution therefore constitutes an intellectually and politically worthwhile task in its own right. Even if this will not exhaust the range of different formulations of the discourse of anti-relativism advanced in the contemporary public sphere, it is certainly a necessary step in that direction. The analysis conducted in this dissertation can therefore be seen as laying the foundations for a larger project to be continued and expanded in the future, while at the same time engaging with an interlocutor that deserves to be confronted on its own terms.

THE ISSUE OF POST-SECULARISM

Although, as I have sought to suggest in the section above, the primary purpose of this dissertation is essentially political – to respond from a democratic perspective to the critique of democracy implicit in the Catholic discourse of anti-relativism – engaging in this endeavor will also enable me to address a number of more theoretical debates that are central to the contemporary discipline of political theory. Before moving on to outline my argument, it might be useful to show the bearing of this discussion on those debates, because this will serve to show what is at stake theoretically, as well as politically, in this dissertation.

First of all, the following discussion will have a bearing on the contemporary debate over the notion of ‘post-secularism’. At root, this debate stems from the recognition of a fact: that, contrary to previous expectations, the assumption that modernity would coincide with a progressive erosion of religious belief seems to have proven false. As the previous cursory analysis of the contemporary political vitality of the Catholic Church already suggests, religion is

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178 countries, of which over 100 host permanent diplomatic missions from the Holy See. According to a Gallup poll of 2009, the political influence of the Catholic Church on the politics of these countries is judged “very high” by over 90% of the population in 39 of these countries.
by no means on its way out. On the contrary, it appears more vital than ever, not only in the private domain of individual belief but also as a political factor to be reckoned with.\(^\text{12}\)

Moreover, this is not only a feature of ‘backward’ or ‘anti-democratic’ countries, that can be explained away merely as a consequence of underdevelopment: it is precisely in the most ‘advanced’ and ‘democratic’ countries that the resurgence of religion as a political factor appears most striking. This is testified to by the centrality of a plurality of issues that have to do with religious questions in the political life of these countries, such as abortion, bioethics, religious education and multiculturalism.

As a reaction to this recognition, political theory has been confronted by the question of how to come to terms with this ‘return of the religious’ in contemporary politics. To the extent that political institutions and projects were predicated on the assumption that religion would somehow disappear, or at least be relegated to the marginal domain of the private sphere, it appears necessary to rethink the very foundations of our way of approaching political problems. In particular, within the context of democratic regimes, this appears as a pressing question, because democracy is supposedly based on the principle that government should reflect the opinions and preferences of its citizens. A question is therefore posed concerning the relationship between popular sovereignty and religious belief in the context of societies that seem to be on the path towards becoming both religious and democratic.

The way in which contemporary political theorists have approached this question is, in my opinion, rather narrow. Essentially, the debate over the notion of post-secularism has been reduced to a debate over the appropriate scope for the expression of religious belief in the

democratic public sphere. Contributors to this debate disagree on the ‘extent’ to which religious arguments ought to be accepted in a democratic context, but the overall way of approaching the question remains the same. This has effectively reduced the debate over the notion of post-secularism to a debate over the notion of toleration.

From this point of view, the paradigmatic articulation of the secularist position has been taken to be embodied by Rawls’ conception of public reason, which boils down to the idea that only arguments acceptable to all individuals who recognize each other as free and equal ought to be tolerated in the democratic public sphere.\footnote{Cf. John Rawls, \textit{Political Liberalism}, Columbia University Press, 1996.} Habermas’ much discussed ‘post-secularist’ turn consists essentially in a revision of this idea, based on the claim that it imposes an unfair burden on religious citizens to translate their views in terms acceptable to public reason.\footnote{See in particular Habermas’ essay ‘Religion in the Public Sphere’, \textit{Between Naturalism and Religion}, Polity Press, 2008.}

Finally, other post-secularists, writing in the vein of Habermas’ revision of Rawls, have proposed to further relax even the formal limits imposed on the public expression of religious belief by the requirement of translation, on the grounds that religious arguments tap upon deep-seated resources of meaning and identity, and should therefore not be excluded from the public sphere even if they cannot be adequately translated in communicatively rational terms right away.\footnote{See for example Alessandro Ferrara, ‘The separation of religion and politics in a post-secular society’, in \textit{Philosophy & Social Criticism}, 2009, Vol. 35, p. 77-92. For a similar argument, although drawing from a different set of theoretical coordinates see also William Connolly, \textit{Why I Am Not a Secularist}, University of Minnesota Press, 2000.}

The reason I find this way of approaching the question limited is that it fails to address the actual ‘content’ of the arguments made by religious organizations in the contemporary public sphere. As a consequence, the debate on the notion of post-secularism seems to miss something much more fundamental that is at stake in the persistence of religion as a political factor than the
appropriate space for the public expression of religious belief, which is the question of the 
*foundation* for the legitimacy of publicly binding legislation in the first place.

In a sense, it is as if the participants to this debate, all adopted the haughty position of ‘referees’ with respect to the arguments made by religious organizations in the contemporary public sphere, without realizing that what is at stake are the basic rules of the game itself. If they took notice of what religious organizations are actually saying, they would realize that *for them* ‘post-secularism’ doesn’t simply mean that the scope for the appropriate expression of religious belief in the public sphere ought to be re-evaluated. What is being challenged is the assumption that the foundation for publicly binding legislation ought to be ‘secular’ in the first place.

The latter is something that the political theorists who have taken part in the debate on the notion of post-secularism have largely taken for granted. However, since they do not engage with the actual content of the arguments moved by religious organizations, it is not something that has been justified explicitly. Simply to say that anything else would be incompatible with the democratic principles of freedom and equality is not sufficient because, as we have seen, the argument made by the Catholic Church through its critique of relativism is precisely that democracy ‘needs’ to make reference to a transcendent criterion of legitimacy in order to be sustainable on its own terms.

From the point of view of the contemporary debate on the notion of post-secularism, the project of discussing the Catholic discourse of anti-relativism can therefore be seen as a way of engaging with the actual content of one of the arguments moved by religious organizations in the contemporary public sphere on its own terms, rather than by adopting the haughty position of ‘referee’ with respect to them. At the same time, this will also offer the opportunity to deepen the discussion on the relationship between secularism and democracy, because it will force us to
confront the question concerning the foundation for the legitimacy of publicly binding legislation.

THE QUESTION OF THE ABSOLUTE

The second contemporary debate within the field of political theory that I hope to address through the discussion of the Catholic discourse of anti-relativism stems from the first, since it concerns the question of the intellectual foundations for the legitimacy of a democratic order, in particular from the point of view of whether such an order can do without the reference to a notion of the ‘absolute’ to ground its claim to legitimacy. This question has been posed in a compelling manner by Hannah Arendt in her book *On Revolution*.\(^\text{16}\)

Her starting point is the claim that prior to modern revolutions, the question concerning the foundations for the legitimacy of the political order did not really emerge because it was in a sense already resolved in advance. A hierarchical order of authority was assumed to be implicit in the natural order of things, and this prevented the question concerning the foundations for its legitimacy from being raised in a politically meaningful manner.

At the beginning of modernity, Arendt contends that this assumption began to be called into question. The theory of the divine rights of monarchs, for her, already constituted a response to this problem, which consisted in making explicit something that had previously been assumed to be implicit: that the foundation for the legitimacy of the political order ultimately lay in the sanction received by the transcendent will of God. A conceptual ‘absolute’ was therefore posited as the foundation for the early modern theories of absolute monarchy.

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To be sure, modern revolutions emerged out of the rejection of divine right theories. However, precisely for this reason, Arendt suggests that they posed the question of the foundation for the legitimacy of the political order even more acutely. The solution that was initially adopted – especially in France, but also to some extent in the United States – was to posit a new ‘absolute’, as a substitute for the one that had been rejected: the collective will of the people in the place of the transcendent will of God.

Arendt’s claim, however, is that this solution posed more problems than it actually solved, because the ‘people’ proved to be an abstract entity, incapable of solving the concrete political question of who is to formulate publicly binding legislation. As a result, the idea of popular sovereignty opens up the dangerous possibility that a new and even more oppressive form of tyranny may be exercised against the people, in the name of the people itself. Arendt takes this to be at least part of the explanation for the failure of the French Revolution to achieve the stated goal of instituting the conditions for political freedom.

Having identified the root of the problem with the attempt to substitute the old (transcendent) ‘absolute’ with a new (immanent) version of it, she therefore poses the question of whether it is possible to found a political order without making reference to a notion of the ‘absolute’ at all. The proposal she puts forward draws from a specific interpretation of the experience of the American Revolution, which she reads as having succeeded precisely where the French Revolution failed. Its core lies in a combination of the contractualist idea of a political order founded on the reciprocal agreements amongst its members and the republican idea of a quasi-religious attachment to the founding moment itself.

I will have to return to the details of this proposal, as well as to its complex relation with the notion of democracy in the course of the substantive discussion carried out in the ensuing
chapters of this dissertation. For the time being, what I am interested in extracting from Arendt is the specific problem she poses through her discussion of the vicissitudes of the notion of the ‘absolute’. This ultimately boils down to a question over whether a political regime can be founded without making reference to the idea of something that does not depend on anything else. In other words: whether political legitimacy requires an ‘absolute’ foundation, or whether it is possible to do without it.

This has been a central question in political theory at least since the beginning of the democratic age, and Arendt’s is by no means the only available answer. Indeed, contemporary democratic theories can be classified rather neatly on the basis of the way in which they attempt to address this question. On one hand, what I will be calling ‘rationalist’ theories of democracy attempt to overcome the problems generated by the voluntaristic conception of the ‘people’ implicit in the earliest theories of popular sovereignty by employing the category of rationality to provide an autonomous set of foundations for the legitimacy of democratic regimes. What I will be calling ‘post-foundationalist’ theories of democracy, on the other hand, attempt to circumvent the need for an ‘absolute’ by questioning the assumption that a democratic order requires a philosophical foundation in the first place.

The Catholic discourse of anti-relativism constitutes an alternative to both these strands of contemporary democratic theory. As we have seen, it is neither ‘anti-aboslutist’ nor ‘post-foundational’ but resolutely affirms that democracies can only succeed in establishing a stable political order if they make reference to a set of ‘absolute’ moral truths assumed to be derived

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17 In the work of Jurgen Habermas, for example, the notion of popular sovereignty is effectively decomposed into the set of procedures assumed to be necessary to reach a rational consensus. From the point of view of the question under consideration, this can be seen as substituting a ‘post-metaphysical’ conception of rationality for the theological notion of the ‘absolute’. Cf. Jurgen Habermas, Between Facts and Norms, MIT Press, 1996.

18 The term ‘post-foundationalism’ was first used by Richard Rorty to describe his own views in the book on Philosophy and the Mirror of Nature, Princeton University Press, 1981. Since then, however, it has been expanded to include a wider variety of political and philosophical views. A recent book entitled Post-Foundational Political Thought, for example, includes contributions on Claude Lefort, Jean-Luc Nancy, Jacques Rancière and Ernesto Laclau. Cf Oliver Marchart, Edimburgh University Press, 2007.
from a transcendent source. From the point of view of the question under consideration, this can be seen as a way of challenging the very premise of most contemporary democratic theory, by reasserting the need for political theology from within a democratic framework.

Examining this discourse and attempting to respond to it therefore offers the opportunity for addressing one of the central questions of contemporary democratic theory from a different perspective. By comparing the way in which ‘rationalist’ and ‘post-foundational’ theories of democracy can succeed in responding to a challenge that is raised for both by the new form of political theology implicit in the Catholic discourse of anti-relativism, I hope to shed new light on the question of whether democracy can do without the reference to some notion of the ‘absolute’. A large part of this dissertation will therefore be devoted to a comparative analysis of existing democratic theories, from the point of view of their capacity to address this question.

THE PARADOX OF DEMOCRACY OVERTHROWING ITSELF

Finally, a third contemporary debate within the field of political theory I hope to address through the discussion carried out in this dissertation concerns a paradox that apparently emerges from within a democratic perspective: that democracy may be overthrown by democratic means. As we have seen, the Catholic discourse of anti-relativism pivots essentially around this possibility, because the argument moved against a relativistic conception of democracy is that it would not be capable of preventing such an outcome. If, for example, a majority of the people were to be manipulated into relinquishing their democratic rights, a relativist would seem to have no grounds for urging a defense of the democratic order against this temporary expression of the people’s will.
It is on these grounds that the Catholic Church claims it is necessary to complement the democratic principle with a religious conception of ‘absolute truth’, by suggesting that this is the only way to immunize it against its potentially suicidal tendencies. As we have also seen, however, from a longer term perspective, this argument can be understood as a version of a well-established theme within the tradition of anti-democratic rhetoric. Even Plato had already suggested that democracy would ultimately convert itself into a form of tyranny through a process whereby the people themselves relinquish their democratic rights to a demagogue.

Stated formally, the problem seems to be that there is nothing within the democratic principle itself capable of preventing the ‘demos’ from turning against democracy as such. If this were to happen, therefore, democracy would seem to be incapable of sustaining itself, unless it were complemented by some additional principle of legitimacy, limiting it from outside. This has obviously been a central problem within democratic theory, at least since the beginning of the democratic age: all the most important theorists of democracy have had to grapple with it in one form or another, because what is at stake is whether democracy is capable of sustaining itself on its own, or requires being supported by an ‘external’ set of premises.

Rousseau was able to circumvent this problem by supposing that the people could never will anything against their own interests. This conviction, however, relied on such a stringent set of assumptions concerning the conditions under which the “general will” was to be formulated, that it was never held to be politically pertinent. Especially in the aftermath of the French Revolution, a large part of the theoretical effort of 19th century liberalism consisted precisely in the attempt to ‘limit’ the power that the people would exercise over themselves in a democratic context, in order to prevent it from slipping out of hand and turning against itself.
The problem with this ‘solution’ to the paradox of popular sovereignty is that it poses a further question concerning the grounds for restricting the power of the people over themselves in the first place: can the ‘limits’ on the democratic exercise of political power be justified democratically? From this point of view, the problem presented by the possibility of democracy overthrowing itself merely appears to be translated into the problem of whether democracy is capable of establishing limits to its own exercise of power, without relying on an ‘external’ principle of legitimacy.

The Catholic Church was by no means the first to claim that the democratic principle ought to be limited for its own sake. However, when it did begin to make this claim, it provided a clear criterion for doing so: the absolute will of God was posited as the foundation for a set of ‘natural laws’ that were supposed to provide guidelines to the democratic power of the people, in the interest of good government and a preservation of the democratic order itself. Nineteenth century liberals were necessarily ambivalent with respect to this idea, because of their acceptance of the notion of natural law on one hand, and their skepticism of the attempt to ground political legitimacy on religious foundations on the other.

Contemporary political theory remains divided along these lines. On one hand, there are those who believe that democracy must draw from ‘outside’ of itself the grounds for limiting its own power. This strand of thought includes both Catholics and liberals, whose consensus over the idea of ‘natural law’ has evolved into a specific conception of ‘human rights’ as absolute checks on the democratic exercise of political power. On the other hand, radical democrats insist on the idea that democracy may contain ‘within’ itself the grounds for limiting its own power. In practice, this strand of thought has revolved around the idea that instead of being seen

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as ‘external’ checks on the democratic exercise of political power, certain fundamental rights
must be seen as ‘constitutive’ of the democratic principle itself.\(^{20}\)

Discussing the new form of political theology implicit in the Catholic discourse of anti-
relativism may therefore also offer the opportunity for engaging with this controversy within the
field of contemporary political theory. By examining different possible responses to it, I will be
forced to confront the question of whether an unfettered conception of democracy is indeed self-
defeating, as the Catholic critics contend. By implication, this will allow me to confront the
question of whether democracy is capable of establishing adequate limits to its own exercise of
power ‘autonomously’, or whether it requires being complemented by the reference to an
‘external’ source of legitimacy.

Another way of framing this question is in terms of the relationship between democracy
and the rule of law. The Catholic discourse of anti-relativism seems to take for granted that the
rule of law is a separate and independent principle from that of democracy, whose function is to
establish ‘external’ limits on the democratic exercise of political power. Indeed, the Catholic
discourse of anti-relativism depends on this conception of the rule of law, because its ultimate
goal, as we have seen, is to posit religious faith as the ultimate foundation for the legitimacy of
the laws that are supposed to limit the democratic exercise of power from outside. What will
need to be established, therefore, is whether democracy cannot be tied to a different conception
of the rule of law, which does not require such an ‘external’ foundation, but is rather inscribed
within the organizational structure of democracy itself.

\(^{20}\) The author who is most commonly associated with this view amongst contemporary political theorists is probably Jurgen
Habermas (Cf. Between Facts and Norms). However, other prominent authors who have also defended analogous views are Hans
Kelsen (Cf. Essence and Value of Democracy, Translation by Brian Graf, forthcoming) and Stephen Holmes (Cf. Passions and
THE HISTORY OF THE CATHOLIC DISCOURSE OF ANTI-RELATIVISM

In the light of the above exposition of the set of question this dissertation will attempt to address, I will now move on to outline its overall argument. Since the reasoning proceeds in stages, and there is always more than one issue at stake at the same time, I will follow the order of the individual chapters, outlining the central argument of each in order to show its place and function within the whole. Hopefully, this will provide the reader with a sort of ‘map’ of the discussion to follow, that will help him or her follow the main lines of the reasoning even when the details begin to come into the forefront.

The first chapter is devoted to a reconstruction of the history of the Catholic discourse of anti-relativism. Its function is therefore to spell out, in a greater degree of detail than could be done up this point, the essential arguments on which this discourse relies, and thereby to clarify the central object of discussion, with which the rest of the dissertation is concerned. The analysis is based on a study of the corpus of encyclical letters and Vatican councils promulgated by the Catholic Church over the past 150 years. Within this corpus, I have sought to isolate the specific occurrences of the term ‘relativism’ and to relate them to the broader set of arguments and intellectual projects in which they are embedded, in order to establish the specific meanings that are progressively attached to the term and the political and intellectual function its critique is made to serve.

The central argument advanced is that the term ‘relativism’ has historically served the function of mediating the relationship between the Catholic Church and the distinctive political forms of modernity, liberalism and democracy. It first began to be employed by the Catholic Church in the second half of the 19th century, from within the framework of the so-called ‘intransigentist’ doctrine that had developed as a reaction to the French Revolution and the
political upheavals of the first half of the century. From the start, therefore, the discourse of anti-relativism was associated with a concern to reassert the political authority of Catholicism, as a counterpoint to the perceived destructive tendencies of the democratic principle of popular sovereignty and the liberal call for the separation of Church and State.

In particular, the function that the term was initially made to serve was to establish a distinction within the political landscape of modernity between the aspects that the Catholic Church could come to terms with and those that it couldn’t. Drawing on the Augustinian conception of the distinction between the ‘city of God’ and the ‘city of Man’, the Church sought to distinguish between two aspects of modernity: a ‘good’ one and an ‘bad’ one. The former was identified in the greater awareness of the special dignity of humanity and of the element of progress in human history. The negative aspect of modernity, on the other hand, was assumed to reside in the challenge to the absolute sovereignty of God manifested by the authority of the Catholic Church over the political domain.

Since the immediate aftermath of the French Revolution, this challenge had been assumed to take the form of two philosophical doctrines in particular: the doctrine of ‘immanentism’, which was assumed to consist in the negation of the existence of a transcendent domain beyond that perceivable by human faculties; and the doctrine of ‘indifferentism’, which was assumed to consist in the idea that that there are multiple, equally valuable, ways of accessing the truth. When the notion of relativism first began to be employed in the second half of the 19th century, it was defined in terms of the conjunction of these two doctrines. From the start, therefore, it functioned essentially as a label for all the negative aspects of modernity, that the Church could not come to terms with, despite its historical mission of advancing the cause of the ‘city of God’ within the context of human history.
The argument that was moved against relativism has always been that it leads to unacceptable political consequences. As we have already seen above, today this argument is usually made in terms of the notion of ‘totalitarianism’. In the second half of the 19th century, however, an essentially analogous point was made with reference to the experience of the French Revolution, by constructing a chain of implications between the doctrine of relativism, the principles of popular sovereignty and political liberalism, and the so-called ‘terror’ regime that supposedly resulted from the French Revolution. The contemporary idea that relativism ‘leads to totalitarianism’ can therefore be seen as an adaptation of the central argument which already underscored the ‘intransigentist’ critique of modernity employed by the Catholic Church in the aftermath of the French Revolution.

The other essential dynamic in the history of the Catholic discourse of anti-relativism I will focus on is its relation with the discourse of anti-communism. When the notion of relativism first began to be employed by the Catholic Church during the second half of the 19th century, the prospect of communist revolution was still perceived as a relatively distant threat on the horizon. The more immediate ‘enemies’ of the Catholic Church were liberalism and democracy. Hence, the critique of relativism, which served to mediate the Church’s relation with these political forms, occupied a more prominent position within the context of the official discourse of the Catholic Church than the critique of communism. Indeed, the first formulations of the latter function essentially as a way of wrapping up the political *reductio ad absurdum* of relativism, by suggesting that it would ultimately lead to the abolition of all forms of political authority and private property.\(^2\)

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21 In the encyclical *Humanum Genus*, for example, Leo XIII writes the following with specific reference to the masonic sects that have been accused of endorsing relativism as their moral and philosophical standpoint: “That they would wish to constitute States according to this example and model, is too well known to require proof. For some time past they have openly endeavored to bring this about with all their strength and resources; and in this they prepare the way for not a few bolder men who are
After the Bolshevik revolution of 1917, and with something similar threatening to take place in many other countries of Europe, the critique of communism assumed a much more important place within the framework of the official discourse of the Catholic Church. Indeed, as the focus of the political struggle shifted from the opposition between the *ancien régime* and modernity to that between capitalism and socialism, the critique of communism tended to overshadow the discourse of anti-relativism within the official rhetoric of the Catholic Church. In particular, within the context of the Cold War, the critique of relativism had to be underplayed, since it had originally been associated with a critique of liberal democracy that was now the side the Church had decided to throw its lot with, against ‘atheistic communism’.

After the collapse of the Soviet regimes in Eastern Europe, however, the conditions were created for a recovery of the political dimension of the discourse of anti-relativism, since democracy re-emerged as the principal focus of the political struggle and the Catholic Church found itself deprived of what had been its principal ‘enemy’ for the past few decades. The contemporary rise to prominence of the discourse of anti-relativism within the framework of the official discourse of the Catholic Church is therefore related to the end of the Cold War: in the new political scenario that was created, the Church resurrected the discourse of anti-relativism in order to carve out a new political role for itself as the guarantor of the ‘absolute’ moral principles democracies supposedly need in order to survive.

The classical themes of 19th century ‘intransigentism’ – a concern for ‘order’ and ‘authority’ and especially the opposition to the principle of ‘secularism’ – were therefore fused with the 20th century concern with avoiding a relapse into totalitarianism by positing ‘relativism’ hurrying on even to worse things, in their endeavor to obtain equality and community of all goods by the destruction of every distinction of rank and property”.
as the root of all contemporary dangers and the reference to a religious conception of absolute truth as the only antidote against it.

GROUND FOR A ‘PUBLIC’ CRITIQUE

On the basis of the historical reconstruction provided in the first chapter of this dissertation, the second is dedicated to what I call a ‘public’ critique. By this I mean that I propose to treat the Catholic discourse of anti-relativism as a contribution to a public debate on the relationship between relativism and democracy, and examine it on those terms. Hence, I will seek to establish whether the claims it makes are rationally compelling from the point of view of a disengaged observer that is willing to be swayed by valid arguments, or whether they are only convincing from a point of view that already shares its essential premises.

In particular, this chapter is structured around the discussion of five ‘key terms’ that I think are central for the contemporary formulation of the Catholic discourse of anti-relativism: ‘relativism’, ‘truth’, ‘authority’, ‘freedom’ and ‘totalitarianism’. In each case, I attempt to examine the function that the term plays within the framework of the Catholic discourse of anti-relativism, bringing out some of the hidden assumptions, conceptual slippages and elements of tension that may serve to cast some doubt on the persuasiveness of the argument as a whole. In the context of this introduction, I will only attempt to outline the claims advanced with respect to three of these ‘key terms’, in order to give a sense of the way in which the analysis will proceed.

With respect to the notion of ‘relativism’ itself, the first claim advanced is that the Catholic discourse of anti-relativism tends to blur the distinction between relativism and nihilism. Relativism is treated as if it amounted to a negation of the existence of moral values as such by being inscribed within the terms of an artificial binary between the idea that moral
values are either ‘absolute’ or they are no values at all. What this binary excludes is the only truly democratic option: that human beings establish their own moral values autonomously, through a process of reciprocal confrontation with each other. The implication that follows from this is that the values established democratically are indeed ‘relative’, because they depend on the conditions in which they have been formulated; however, this does not mean that they are nonexistent, because they can still serve to bind human behavior even if they are not ‘absolute’.

By treating relativism as a form of nihilism, the Catholic Church is able to suggest that it represents a threat for the survival of contemporary democracies because it undermines the grounds for establishing limits to the democratic exercise of political power. Against this contention, however, I suggest that relativism can be more properly understood as a meta-ethical position that involves taking a second order stance with respect to one’s own moral commitments. If relativism is understood in this way, the stated grounds for the Church’s objection collapse, because relativists can still take a principled stand against the enemies of democracy. The only difference is that relativism brings out the element of choice, and therefore arbitrariness, that is present in this stance. Hence, far from abolishing it, the ultimate effect of relativism is to situate morality within the framework of the nexus between freedom and responsibility rather than obedience to a higher authority.

The second notion discussed in chapter 2 concerns the antidote proposed by the Catholic Church for preventing the supposedly disastrous political consequences of relativism: the idea of ‘absolute moral truth’. Accepting, for the sake of argument, that relativism would indeed lead to such disastrous political consequences, I point out that the reference to a notion of ‘absolute moral truth’ does not resolve the problem, but may actually serve to exacerbate it. The basic reason is that the Catholic discourse of anti-relativism fails to take into account the problems
raised by the question of the ‘interpretation’ of truth. Even assuming that such a truth existed, this would not be enough to know what its content is. The same problems that emerge in connection with the notion of relativism can therefore be shown to re-emerge in connection with the issue of the ‘interpretation’ of truth.

Moreover, once the reference to an idea of ‘absolute truth’ is introduced, there is a risk that political conflicts might assume an even more intractable nature, because between two conceptions of truth no compromise is possible. The opposite of truth is error, and it makes no sense to try to come to terms with error. Thus, conflicts in the name of truth display a natural tendency towards degenerating into violence, since every party can only take it as its duty to ‘impose’ its conception of truth on others, or at least prevent them from doing any harm. The history of the so-called ‘wars of religion’, in particular in the aftermath of the Protestant Reformation, is briefly discussed in order to substantiate this point.

Finally, the last notion examined in chapter 2 is that of ‘totalitarianism’. In this respect, the point advanced is that the connection established between the notion of relativism and that of totalitarianism is rather tenuous. The reason is that the Church’s argument does not really rely on a concrete historical analysis of the actual conditions that led to the emergence of this kind of political regime: the claim is simply that, from a logical point of view, relativism is incapable of providing ‘absolute’ guarantees that democracy will not transform itself into a form of totalitarianism. This, however, is not sufficient to establish that relativism ‘leads to totalitarianism’, because an additional set of conditions that do not stem from relativism are also clearly required.

Indeed, through a consideration of the work of a number of authors who have actually studied the historical processes that led to the emergence of totalitarian regimes, such as Hannah
Arendt and Claude Lefort, I point out that while both have recognized that there is a connection between the erosion of the previous bulwarks of certainty that is a characteristic of modern ‘mass society’ and the emergence of totalitarianism, neither has concluded that the link between the two is either necessary or automatic. Rather, the claim is that totalitarianism has emerged in the past as the outcome of the attempt to reintroduce political certainties in a situation in which they had previously been undermined. Neither the National-Socialists nor the Bolsheviks, for example, were relativists: on the contrary, they both had pretty clear ideas as to what absolute political truth amounted to.

This appears to shed an eerie light on the contemporary project of the Catholic Church to reassert the importance of a reference to ‘truth’ as an antidote to the evil consequences of relativism. The point I want to make, however, is not that the reference to an idea of truth in politics necessarily ‘leads to totalitarianism’. Such a mechanical inversion of the argument made by the Catholic Church against relativism would be equally simplistic. Rather, the point I want to suggest is that the political use of the notion of totalitarianism itself is problematic, because it is situated at such a high level of abstraction as to be perfectly reversible. In one way or another, any political position could be criticized by saying that it ‘leads to totalitarianism’.

This is tied to the fact that the way in which the notion is employed by the contemporary Catholic discourse of anti-relativism seems to have deprived it of any concrete political content. Effectively, the notion of totalitarianism seems to have been reduced exclusively to a figure of ‘absolute evil’. Employing it therefore implies a moralistic approach to politics, which assumes the ‘good’ can be neatly separated from ‘evil’, and the two opposed to each other. This dualism is a characteristic feature of Catholic social thought, which in my opinion explains many of the most embarrassing political mistakes the Church has committed over the course of its history.
The obvious example, which will of course need to be discussed at greater length in what follows, is the Church’s ambivalence with respect to both Fascism in Italy and National-Socialism in Germany (at least for the first part of their respective history). What I will attempt to show is that what made this possible, even though the same regimes were later to be condemned as totalitarian, was precisely that during the inter-war years the Church continued to interpret the world in terms of the binary opposition between ‘good’ and ‘evil’. Since the grounding assumption was that Soviet-style communism represented an absolute evil, the Church, like many other conservative forces of the time, hesitated with respect to Fascism and National-Socialism because it saw in them a potential bulwark against the greater evil of communism.

THE ‘RATIONALIST’ RESPONSE TO THE CATHOLIC DISCOURSE OF ANTI-RELATIVISM

In the light of the ‘public’ critiques of the Catholic discourse of anti-relativism advanced in chapter 2, the last two chapters of this dissertation examine some potential responses that can be moved against it from a democratic perspective. In chapter 3, I consider what I take to be the dominant response within the field of contemporary democratic theory, based on a form of neo-kantian ‘rationalism’. This response agrees with the Catholic discourse of anti-relativism that if democracy were founded on relativism it would indeed be self-defeating; however, it contends that democracy does not necessarily need to draw its substantive moral values from religion, because it can succeed in founding them autonomously on the basis of the necessary presuppositions of reason itself.
Two prominent authors who have notoriously defended such a view within the field of contemporary political theory are Jurgen Habermas and John Rawls. The former has attempted to infer a criterion of legitimacy from a ‘universal pragmatics’ of language that leads him to postulate as presumptively ‘rational’ the outcome of an ideally expanded deliberative procedure that approximates the conditions of an ‘ideal speech situation’. The latter, on the other hand, has extracted two substantive ‘principles of justice’ from an analysis of what could be rationally agreed to by a set of ‘reasonable’ individuals in the hypothetical conditions of an ‘original position’. It is primarily with reference to the work of these two authors that I seek to discuss the contemporary strand of neo-kantian rationalism within the field of political theory.

Although I will find useful insights in both of their works for responding to the Catholic discourse of anti-relativism, I will ultimately be led to the conclusion that neither is capable of offering a fully convincing response. The basic reason is a version of the objection already made by Hegel against Kant’s attempt to found morality exclusively on the necessary presuppositions of reason: that reason only stipulates a purely ‘formal’ set of requirements concerning the relations amongst propositions, and it is impossible to deduce anything ‘substantive’ from something merely formal. Rationalists are therefore always forced to introduce the substantive content of their normative theories from ‘outside’ the domain of reason itself. This compromises the claim to the autonomy of a morality founded exclusively on reason.

Of course, it is necessary to show how this objection is pertinent to both Habermas’ and Rawls’ versions of rationalism in particular. For this reason, a large part of chapter 3 consists in a detailed critique of their respective works. Here, I can only indicate the key points that will be touched upon. Habermas encounters the problem of formalism while discussing the question of the motivation to engage in rational deliberation in the first place. This leads him to inscribe his
conception of rationality within an overarching philosophy of history axed around the idea of a ‘linguistification of the sacred’. The implication is that the substantive content of the deliberative procedure necessarily needs to be drawn from ‘outside’, because reason is effectively understood as a mechanism for translating previously held religious views into communicatively rational terms.

Indeed, this latter point was recognized explicitly by Habermas himself in the context of his debate with Ratzinger, where he ultimately conceded that reason and faith are not conceptual opposites within the framework of his own theory, but rather inscribed within the terms of a dialectical relationship that can never be overcome completely. Habermas’ recent appropriation of the notion of ‘post-secularism’ is therefore not seen as marking a fundamental transformation in his views, but merely a recognition of something that was implicit from the start: that rationality on its own does not constitute an alternative to faith, but merely a specific way of relating to it.

The problem of formalism in Rawls’ justification for his principles of justice, on the other hand, is shown to be overcome through the assumption that the parties in the original position all already share a common ‘political culture’ that commits them to the democratic values of freedom and equality. The original position is therefore ultimately posited as a mechanism of clarification of views and commitments that are not themselves justified rationally, but merely taken for granted as cultural givens. While this confirms that the substantive content of Rawls’ principles of justice is drawn from ‘outside’ the framework of reason itself, it does not imply that his theory falls back into a parasitic relationship with religious faith, like Habermas’. The ‘outside’ of Rawls’ conception of reason, from which his theory draws its substantive content, is the notion of ‘political culture’.
The implication is that Rawls’ political theory ultimately falls back on a form of cultural relativism. For, Rawls’ argument would appear to have no persuasive power over those that do not already share the required ‘political culture’. This is implicitly recognized by Rawls himself through the restriction of the domain of application of his theory to the set of people he describes as ‘reasonable’, since reasonability ultimately boils down to a recognition of the fundamental values of freedom and equality, which underscore his theory of justice. The same point was also brought out explicitly and persuasively by Richard Rorty in the reading of Rawls he offers in the article entitled ‘The Priority of Democracy over Philosophy’\(^\text{22}\), which will also be discussed in some detail in chapter 3.

The upshot therefore seems to be that the neo-kantian conception of reason is incapable of tracing a ‘middle course’ between religious faith and relativism. Because it is merely formal, it must draw its substantive content from ‘outside’. However, if this ‘outside’ is understood as religious faith, rationality falls back into a parasitic relationship with religion. If, instead, it is understood in a broader sense as ‘political culture’, rationality merely becomes a way for clarifying one’s previously held values and therefore falls back into a form of cultural relativism. Either way, rationality on its own proves incapable of providing an alternative to the antithesis between religious faith and relativism.

The last part of chapter 3, then, is devoted to a discussion of the specific kind of cultural relativism implicit in Rawls’ political liberalism and explicitly endorsed by Rorty in the article on ‘The Priority of Democracy over Philosophy’. In this discussion, I try to explain why I find this conception of relativism problematic, but also different from the one I will then defend as an integral component of democracy in the ensuing chapter. The key point is that the form of

cultural relativism implicit in Rawls’ political liberalism (as well as in Rorty’s theory of democracy) is compatible with a recognition of pluralism between cultural groups, but requires homogeneity within them. The form of philosophical relativism I will attempt to articulate and defend in the last chapter of this dissertation, on the other hand, is predicated on the idea that cultural groups are always internally heterogeneous and dynamic, which implies that it is ultimately up to individuals to take responsibility for the specific criteria they employ for making their moral judgments. This results in a form of pluralism that is much more radical than Rawls’ and Rorty’s because it prevents the possibility of logically deducing one’s moral preferences and orientations directly from his or her political culture.

TOWARDS A RELATIVIST CONCEPTION OF DEMOCRACY

Chapter 4 is devoted to the discussion of a different response to the Catholic discourse of anti-relativism, which I find more compelling than the ‘rationalist’ one discussed in the previous section. Instead of attempting to substitute the religious conception of ‘absolute’ truth with an alternative set of values, supposedly derived from the category of rationality itself, this response challenges the assumption that a conception of democracy predicated on a form of philosophical relativism must necessarily be self-defeating. On the contrary, it contends that it is possible to devise a theory of democracy which includes relativism as one of its integral components, but is also politically sustainable on its own terms, without needing to rely on any ‘external’ or ‘transcendent’ (i.e. religious) source of legitimacy.

The primary inspiration for advancing this theory of democracy comes from the work of the great Austrian jurist and political theorist, Hans Kelsen. Although the reference to this author may be said to constitute in itself a contribution to the debate (given that, especially in the
Anglo-Saxon world, his writings on democracy remain relatively unknown compared to his theory of law), this chapter will not consist exclusively in an exposition, or even an interpretation, of his thought. Kelsen himself never addressed the question of the relationship between his theory of democracy and the Catholic discourse of anti-relativism; moreover, even on its own terms, I will find a number of crucial aspects of his theory inadequate for advancing a compelling response to it. For this reason, I will be forced to both extrapolate from what Kelsen has written and complement it with some additional ideas drawn from elsewhere in order to advance a compelling response to the Catholic discourse of anti-relativism.

The best way to formulate the relationship between Kelsen’s thought and mine is therefore to say that I will be ‘using’ Kelsen’s work for the purpose of constructing a self-standing theory of democracy, which I will then posit as the basis for a compelling response to the Catholic discourse of anti-relativism. The criterion by which I hope this theory will be evaluated is therefore not the accuracy with which it reflects what Kelsen ‘really’ thought, but rather whether it is compelling on its own terms as the basis for a response to the Catholic discourse of anti-relativism.

The distinctive features of this specific theory of democracy can be summed up in terms of three essential ‘pillars’. The first is a conception of popular sovereignty understood as a principle of identity between the subject and the object of the juridical order. This is assumed to have to be realized institutionally through a parliamentary procedure based on the majority principle, and politically through an inclusive process of deliberation oriented towards the formation of ‘compromise’ solutions between the conflicting views and interests of the parties involved. Against standard theories of deliberative democracy, this conception of the deliberative process as oriented towards the formation of ‘compromise’ solutions is defended as a more
compelling basis for the normativity of democratic outcomes, because it implies that the deliberative procedure does not aim at approximating any context-transcending ideas of ‘truth’ or ‘rationality’, but only to reflect the underlying constellation of forces within a given social order, according to the principle of an identity between the subject and the object of the juridical order.

The second essential ‘pillar’ of the specific theory of democracy I will try to oppose to the Catholic discourse of anti-relativism is the notion of constitutionalism. Defined as the requirement that the set of procedures whereby the juridical order is created are themselves subject to the control of juridical norms, the argument I try to advance is that this conception of constitutionalism does not necessarily have to rely on an ‘external’ ground of legitimacy, independent from the principle of popular sovereignty itself, but can rather be seen as an ‘internal’ presupposition of such a principle in the first place. The reason I submit is that a deliberative process such as the one I have described cannot take place in a ‘state of nature’: in order for the outcome to reflect a real ‘compromise’ between the conflicting views and interests that are present within society, it must take place according to a set of juridically-defined norms. Thus, the constitutional order can be seen as defining the set of procedures necessary for instituting a democratic process of deliberation in the first place.

By the logic of this argument, the principles of popular sovereignty and constitutionalism enter into a relation of reciprocal interdependence, whereby the democratic process of deliberation serves to define the content of the juridical order according to a set of procedures that are themselves juridically defined, and must therefore emerge from a previous deliberative process, according to Kelsen’s idea of the constitutional order as a dynamic system of norms that “regulates the mechanism for its own production”. This essentially dynamic structure of the constitutional order is also held to be the way in which the apparent paradox according to which
a democratic constitution cannot be created democratically is overcome, because the grounds for its legitimacy are not assumed to be located in some hypothetical founding ‘moment’, but rather in the ongoing political process whereby a democratic constitution can alter itself, recursively establishing the grounds for its own legitimacy. The consequence is that there doesn’t necessarily have to remain any unmediated element of ‘externality’ to the constitutional order: the grounds for its own legitimacy are drawn ‘immanently’ from the functioning of the constitutional order itself.

Finally, the third and last ‘pillar’ of the specific theory of democracy I intend to oppose to the Catholic discourse of anti-relativism is a political defense of the notion of relativism itself. Differently from Kelsen, I do not understand relativism as the philosophical ‘foundation’ for democracy, because I do not accept his argument that if you are a relativist in your philosophical views then you must accept the democratic principle as the only legitimate grounds for making publicly binding legislation. As many of Kelsen’s critics have already pointed out, it is at least logically possible to arrive at very different political conclusions from relativist premises. What I will attempt to suggest, however, is that (properly understood) some form of relativism can still be assumed to play an important role within a democratic framework, as the specific kind of civic ‘ethos’ that is required for democratic institutions to function properly.

The reason, I contend, is that if relativism is understood as the adoption of a second-order reflexive attitude with respect to one’s first-order moral commitments (which preserves a consciousness of their relativity, instead of negating of the possibility of making any moral judgments at all), there are grounds for supposing that relativism may at least dispose individuals to try to reach reciprocally acceptable ‘compromises’ with others, for the purpose of coexisting peacefully and freely with them, even though reaching an ‘absolute’ consensus or agreement
may not be possible. From this point of view, the advantage of shifting from the idea that relativism constitutes the philosophical ‘foundation’ for democracy to the idea that it constitutes its required kind of civic ‘ethos’ lies in the fact that the latter does not suppose a logically watertight relationship of reciprocal implication between relativism and democracy, but only a more practical relationship of mutual stabilization: something I also attempt to capture through the idea that there exists an ‘elective affinity’ between relativism and democracy.

This way of understanding the relationship between relativism and democracy is also said to result in a more compelling theory of the necessary ‘ethical’ preconditions of democracy than Rawls’ idea of ‘reasonability’ as the specific kind of ‘political culture’ on which democracy is based. The reason adduced is that since, in the way I have defined it, relativism does not suppose the commitment to any substantive set of moral values, but only the adoption a second-order perspective with respect to whatever first-order commitments one might have, it amounts to a ‘thinner’ conception of the necessary cultural preconditions of democracy than Rawls’ notion of reasonability, which is instead predicated on the substantive commitment to a (very specific and intrinsically liberal) conception of freedom and equality. For this reason, I contend that the overall theory of democracy I will attempt to put forwards is compatible with a wider degree of pluralism than Rawls’: although it is not possible to extend this pluralism indefinitely (because some kind of ‘cultural’ or ‘ethical’ preconditions are necessarily presupposed by democracy, which after all emerges from a specific historical and intellectual trajectory), my theory strives to ‘minimize’ these preconditions, and therefore to extend the range of possible views and attitudes that may be accepted within it as much as possible.

On the basis of this overall theory of democracy, in the last part of chapter 4, I attempt to lay out my straightforward response to the Catholic discourse of anti-relativism. The gist of this
response is that the theory of democracy I have begun to outline here is politically sustainable on its own terms, without needing to rely on any ‘external’ or ‘transcendent’ (i.e. religious) sources of legitimacy. This shows that it is possible to advance a theory of democracy which includes a form of philosophical relativism as one of its integral components, but is not self-defeating in the way the Catholic Church contends. Thus, the conclusion reached is that the Church’s proposal to complement the theory of democracy with the reference to a set of ‘absolute’ moral values does not stem from an immanent ‘need’ of democracy itself, but rather from an independent mistrust of democracy itself, which there is no reason why a theory of democracy should accept.

The central aspect of the specific theory of democracy I will have attempted to reconstruct which explains its political sustainability is the ‘internal’ relationship between the notions of popular sovereignty and constitutionalism. For, what this effectively means is that, because the democratic process of collective self-government is assumed to have to be juridically instituted, the popular expression of the sovereign will is limited ‘internally’, by the logic of its own exercise. In other words: the same procedures that serve to institute the democratic process of collective deliberation in the first place also at the same time impose ‘limits’ on the outcome of this process itself. This means that it is not so easy for a democratic order to ‘overthrow itself’ as the Catholic Church supposes.

In practice, the only way in which a democratic order can satisfy the requirement that the legislative process be itself juridically controlled is by varying the relative degree of ‘rigidity’ of the norms that institute it in the first place; that is, by imposing increasingly stringent political requirements for creating norms that are considered more fundamental for the political identity of the juridical order as a whole, inasmuch as they determine the procedures by which other norms are created. My contention is that these increasingly stringent political requirement (i.e.
the concept of legal ‘rigidity’ itself) provide the concrete political limits that prevent a democratic order from overthrowing itself.

From this point of view, what the present analysis reveals is that the Church’s objection to relativism in democracy is ultimately predicated on a simplistic conception of popular sovereignty, as the unmediated expression of will by a popular body assumed to pre-exist the legal order as such. The theory I have attempted to put forwards, on the other hand, decomposes popular sovereignty into a deliberative process that is itself juridically instituted, and therefore always subject to a set of prior norms that function as effective limits on what the people can legitimately do to themselves, even though such norms remain politically self-imposed, because the assumption is that they emerge out of a previous process of democratic deliberation, according to the recursive logic whereby a constitutional order can regulate the mechanism for its own production.

To be sure, against this it might be objected that precisely because the limits implicit in the hierarchical structure of the constitutional order are assumed to be ‘self-imposed’, if the required juridical conditions are met, it is in principle possible for the democratic process of collective deliberation to completely alter the political nature of the constitution, and therefore effectively ‘overthrow democracy by democratic means’. My response to this objection, however, is that it is politically disingenuous, because it implicitly relies on the suggestion that if the limits imposed on the democratic process of collective self-government are not ‘absolute’ they are no limits at all. That appears to beg the fundamental question, because the key idea I have attempted to put forwards with reference to Kelsen’s concept of the ‘rigidity’ of norms is that a democratic order can coherently impose limits upon itself which are politically effective, even if they are not philosophically ‘absolute’.
The fact that in most existing constitutional democracies the interplay and even conflict between the elected bodies supposedly representing the ‘people’ and the constitutional order itself constitutes one of the key determinants of political outcomes is taken as evidence for this proposition. However, since the historical example which inevitably hovers in the background of this discussion (and from which the Church’s argument claims to draw most of its plausibility) is that of the rise to power of Hitler in Germany through supposedly ‘legal’ means, the last part of chapter 4 is devoted to a discussion of this specific case. In this discussion, I point out that the claim according to which Hitler came to power ‘legally’ is juridically inaccurate, because in reality Hitler was first nominated Chancellor of Germany through an exercise of article 48 of the Weimar constitution: an emergency provision which effectively suspended the principle of legality itself.

Juridically, the situation that was thereby created is best understood as a domain of ‘indeterminacy’ between fact and law; however, what is most important for me is that the inclusion of article 48 within the Weimar constitution itself was clearly incompatible with the conception of constitutionalism I have attempt to outline here and will discuss in more detail in chapter 4, since as Kelsen himself had already pointed out at the time, it effectively re-inscribed a principle of ‘absolute’ sovereignty within the constitutional framework of the Weimar Republic. From this perspective, therefore, it appears possible to contend that the example of Hitler coming to power in Germany doesn’t really apply to the theory I am attempting to put forwards because, strictly speaking, the Weimar Republic was not a constitutional democracy in the sense in which I defend it.

In addition, I also point out that it is unclear what the Catholic Church supposes the contribution of the reference to a set of ‘absolute’ moral values could have achieved concretely
in this case. Even ignoring the fact that, historically, the Catholic Church initially adopted an extremely ambivalent attitude with respect to Hitler’s rise to power, because it perceived National-Socialism as a potential bulwark against the greater threat of communist revolution in Germany, if the claim is that a real commitment to Catholic moral values would have prevented Hitler from doing much of what he did, then it doesn’t appear necessary to appeal to Christianity to ‘save’ democracy from its potentially suicidal tendencies, because Hitler clearly wasn’t a relativist either. On the contrary, his whole project has been interpreted as stemming from the attempt to reaffirm a conception of ‘absolute’ truth, in a situation in which it had previously been undermined. A conception of democracy resolutely founded on a form of philosophical relativism, such as the one I propose, therefore appears at least as compelling as the one proposed by the Catholic Church as an antidote to totalitarianism.

Finally, in this respect, I also think it is important to keep in mind that the prospect of something of this sort developing out of the contemporary political landscape within the foreseeable future appears rather remote. The Catholic Church continues to insist on the looming danger of ‘totalitarianism’ in order to present itself (unconvincingly, I hope to have shown) as the only available antidote against it. However, the most urgent problems confronted by contemporary democracies are of a different nature. For this reason, in the concluding remarks of this dissertation, I also attempt to illustrate how the specific theory of democracy I am attempting to put forwards may serve as a useful tool for addressing at least some of these problems, with reference in particular to the three conceptual ‘issues’ I mentioned at the beginning of this introduction.
CHAPTER 1 –

THE DISCOURSE OF ANTI-RELATIVISM IN THE POLITICAL THOUGHT OF THE CATHOLIC CHURCH

INTRODUCTION

The purpose of this chapter is to clarify the principal object of this dissertation. By reconstructing the history of the discourse of anti-relativism within the political thought of the Catholic Church, I hope to bring out the key arguments on which this discourse has relied, as well as the theoretical and political purposes it has been made to serve. All the ensuing chapters will then be framed as ‘responses’ to the arguments reconstructed in this context; hence, it is essential to put forwards a clear picture from the start.

The historical approach has been judged necessary because, as we will see over the course of the following analysis, the Catholic discourse of anti-relativism constitutes a complex and multi-faceted thematic whole, which has been employed in different contexts and for a plurality of purposes throughout the Church’s history. It will therefore be necessary to bring out the progressive evolution of this discourse and the way in which its sedimented layers of meaning have been constantly reorganized for addressing a shifting set of concerns, before a more abstract ‘synthetic’ statement of the central argument can be provided in the last section of this chapter.

The method employed will be that of conceptual history. By this I mean that, taking the body of encyclical letters and Vatican Councils produced by the Catholic Church over the past
two centuries as a terrain of study, I will seek to identify and isolate the specific occurrences of the term ‘relativism’. In each case I will try to determine what is the specific meaning attached to the term, its relation to the wider discursive and historical context in which it is situated, and especially the theoretical and political functions it has been made to serve. In this way, I hope to be able to unearth some of the deeper semantic layers and conceptual concerns which underscore the contemporary formulations of the Catholic discourse of anti-relativism.

To my knowledge, no such history of the Catholic discourse of anti-relativism has yet been written. This is surprising, given the prominence this discourse has recently acquired both within the framework of the Church’s political thought and also, more broadly, amongst advocates of organized religion and conservative critics of democracy in general. The present chapter can therefore also be read as a scholarly contribution to the reconstruction of a history that is both increasingly relevant from a political point of view and still relatively unknown, especially within the field of contemporary political theory.

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23 The decision to restrict the terrain of study to the official documents published by the Vatican itself is justified by the specific role this institution is assumed to play within the framework of Catholicism by the Catholic faith itself. Indeed, as we will see in more detail later, inasmuch as they constitute integral components of the Catholic ‘Tradition’, the official pronouncements by the Vatican are considered a locus fidei, almost on the same level as Scripture itself. This should not be taken to imply, however, that Catholicism is not an internally heterogeneous religion, encompassing a variety of different theological strands and religious views within itself. It would be impossible for such a large organization not to develop internal tensions. However, because of the specific magisterium that the Vatican is assumed to exercise by all the strands that are recognized as belonging to Catholicism in the first place, it appears legitimate to focus exclusively on the official documents of the Catholic Church, at least as a starting point for this analysis. A more detailed discussion of the way in which the discourse of anti-relativism has been employed by the other strands of Catholicism, not necessarily represented at the level of the Vatican, would be an interesting extension of the analysis conducted here, but for the time being must remain outside the scope of this study.

24 For a detailed discussion of the theoretical premises underpinning the notion of conceptual history, as well as various examples of its application see Reinhart Koselleck, The Practice of Conceptual History, Stanford University Press, 2002. For a different, although related, treatment of the same issues, see also Quentin Skinner, Visions of Politics, Vol. 1: Regarding Method, Cambridge University Press, 2011. In this context, I do not intend to get involved in the complex technical debates that emerge in connection with this notion of conceptual history. I am only using the term in the loose sense that I have attempted to define above.

a) The reaction to the French Revolution

In order to understand the cultural and theological background from which the discourse of anti-relativism emerged, it is necessary to start from an account of the doctrine of ‘intransigentism’ that dominated the Church’s political thought in the aftermath of the French Revolution. Explicitly reactionary, this doctrine was characterized by the refusal to accept any sort of ‘compromise’ with the ideological and political changes that had occurred in Europe since 1789, calling instead for a Christian ‘reconquest of society’ that would reassert the rightful sovereigns of the ancien régime and the corresponding political role of the Catholic Church.

The intellectual roots of this stance can be traced back to the work of the first reactionary authors in the wake of the French Revolution. One of the main arguments that was immediately advanced to criticize it was that the denial of the absolute sovereignty of God over man implicit in the doctrines which sustained this revolution, would lead to the dissolution of the moral fabric of society and ultimately to a form of brutal tyranny, because political power deprived of religious sanction necessarily has to rely on brute force in order to obtain obedience. Consider for example what Joseph de Maistre had written already in 1797 in his famous Considerations on France:

What distinguishes the French Revolution and makes it an event unique in history is that it is radically bad. No element of good disturbs the eye of the observer; it is the highest degree of corruption ever known … Already from its birth, there was evidence of what it would become. There was a certain inexplicable delirium, a blind impetuosity, a new kind of atrocity that joked about its crimes … When I consider the general weakening of moral principles, the divergence of opinions, and the slackening of spineless monarchies, it seems to me that all true philosophy must opt between these two hypotheses: either humanity will be destroyed or Christianity will be rejuvenated in some extraordinary way.25

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In this passage, it is already possible to discern many of the key features that will later characterize Catholic discourse of anti-relativism: the idea that the political order requires being founded on solid moral principles, because these serve to keep the evil and destructive impulses of humanity in check, and that the only stable foundation for such principles is the absolute authority of God over man. In the same text, however, de Maistre also made another important argument that would affect the later development of the Church’s doctrine of ‘intransigentism’ even more directly: he claimed that the French Revolution was the manifestation of a ‘Providential’ force at work in human history, whose function was to punish humanity for its growing irreligiosity, and thereby to purify it, opening the way for a new epoch in which the absolute sovereignty of God over man would finally be given its full effect.26

This argument drew on a long tradition within the history of Catholic apologetics that interpreted human events as expressions of underlying spiritual causes. In his treatise on The City of God Against the Pagans, for example, Augustine had already used essentially the same argument to refute the claim that the fall of Rome had been caused by its adoption of the Christian religion.27 In the aftermath of the French Revolution, the Church therefore quickly appropriated this idea in order to suggest that the underlying cause for all the troubling upheavals Europe had been undergoing since 1789 was the growing lack of faith in Christ, which translated in a misrecognition of the authority of the Catholic Church over the political domain. This enabled it to convert what must have appeared to many Christians at the time as a political catastrophe into an argument for reasserting the principle of religious authority.

26 In the chapter of his Considerations on France entitled ‘Reflections on the ways of Providence in the French Revolution’, for example, Joseph de Maistre writes that: “It has been a long time since we have seen such frightful punishment inflicted on such a large number of guilty people … If it entered into God’s designs to reveal his plans with respect to the French Revolution, we would read the chastisement of the French like the decrees of a parliament. But what more would we know? Is the chastisement not obvious? Have we not seen France dishonored by more than one hundred thousand murderers? … Here again we may admire order in disorder, for it is evident if we reflect a bit that the guiltiest revolutionaries could be felled only by the blows of their accomplices. If force alone had accomplished what they call a counter-revolution and restored the king to his throne, there would have been no way of rendering justice” pp. 9-14.

In particular, starting from the second half of the 19th century, the Church increasingly focused on two underlying spiritual causes for the ongoing political upheavals, respectively referred to as the doctrines of *immanentism* and *indifferentism*. The former was assumed to consist in a denial of the existence of God, or at least the capacity of knowing anything about him through the exercise of human faculties. From this it was assumed to follow that human beings must govern themselves, both in their individual and collective endeavors, without regard for any higher authority. The latter, on the other hand, was assumed to correspond to the idea that there exist multiple and equivalent ways of accessing the truth, from which it was taken to follow that the Church should not occupy any privileged position of authority with respect to other religious or even non-religious institutions.

*b) Pius IX and the ‘Syllabus of Errors’*

A clear illustration of both the above claims can be found in the encyclicals promulgated by pope Pius IX during the course of his long pontificate, which spanned from 1846 to 1878. Initially elected as a reformer, this pope was profoundly affected by the political upheavals of 1848, which temporarily forced him to abandon the city of Rome, and his reaction was to retreat into a staunch ‘intransigentism’ with respect to anything that could even remotely be associated with modernity. This position was then further radicalized after 1861, when the Vatican permanently lost control of the greatest part of its previous territorial possessions out of the process of unification of the Italian state. His writings have therefore remained as a paradigmatic statement of the doctrine of ‘intransigentism’ which sustained the policy of the Church’s staunch opposition to modernity.
In particular, in 1864, Pius IX promulgated an encyclical letter entitled ‘Quanta Cura’ which was intended to offer a sort of ‘synthesis’ of the previous doctrinal statements he had made as pope, in reaction to the political upheavals he had been witness to. This encyclical contained as an appendix the famous ‘Syllabus of Errors’, which has since become one of the most often quoted documents produced by the Catholic Church over the past two centuries. Examining these two documents in conjunction will enable me to reconstruct a broad picture of the intellectual and theological background from which the discourse of anti-relativism first emerged, only a couple of decades later.

The encyclical begins with a bitter description of the contemporary situation, which in many ways recalls the criticisms that had already been made by Joseph de Maistre against what he took to be the necessary political consequences of the French Revolution: “Now – the pope writes – is truly the time in which the powers of darkness winnow the elect like wheat … Depravity exults; science is impudent; liberty dissolute. The holiness of the sacred is despised and the majesty of divine worship is not only disapproved by evil men but defiled and held up to ridicule”. In the face of this situation, Pius IX declares that “it is not enough for us to deplore these innumerable evils, unless we strive to uproot them”. The purpose of the ensuing encyclical, and indeed also of the ‘Syllabus of Errors’ that accompanies it, is therefore said to be that of unearthing and stigmatizing the “roots” of the contemporary political upheavals, in order to lay the grounds for a principled critique.28

The first ‘error’ condemned both in the encyclical and in the ‘Syllabus’ is a form of ‘naturalism’ which Pius IX defines in terms of the following proposition: “There exists no supreme all-wise, all-provident Divine Being, distinct from the universe … in effect, God is produced in man and in the world and all things are God and have the very substance of God, so

God is one and the same thing with the world”\(^{29}\). This passage shows that, for the Catholic Church of the time, the notions of ‘immanentism’, ‘naturalism’ and ‘pantheism’ were essentially interchangeable. Their intellectual roots were all traced back to what the Church had previously referred to as ‘Spinozism’; that is, the idea that God, and therefore truth, does not exist in a separate realm from the domain of things perceivable by the natural faculties, but is rather immanent to them and therefore accessible through them.

Logically, immanentism was also assumed to be tied to a form of ‘rationalism’, since from the fact that there is no transcendent realm accessible to human beings, it was taken to follow that human beings must necessarily govern themselves through the exercise of their own natural faculties. This is in fact the ensuing ‘error’ that Pius IX lists in the ‘Syllabus’: the idea that “human reason, without any reference whatsoever to God, is the sole arbiter of truth and falsehood and of good and evil; it is a law onto itself and suffices, by its natural force, to secure the welfare of men and of nations”\(^{30}\).

Here, the important thing to point out is that the significance of these various ‘errors’ is not assumed to be exclusively religious or epistemological, but also distinctively political, since Pius IX is explicitly saying that ‘immanentism’, ‘naturalism’ and ‘rationalism’ are not only insufficient to secure the welfare “of men” but also “of nations”. This point is further elaborated upon in the encyclical that accompanies the ‘Syllabus’, where Pius IX writes that from the conjunction of these doctrines there follows the idea that “the people’s will, manifested by what is called public opinion or in some other way, constitutes a supreme law, free from all divine and human control”\(^{31}\).

\(^{29}\) Pius IX, *Syllabus of Errors Condemned by the Catholic Church*, 1864, §1, available at http://www.papalencyclicals.net/Pius09/p9syll.htm

\(^{30}\) *Ibid.*, §3.

\(^{31}\) Pius IX, ‘*Quanta Cura*’, §4.
This is obviously intended as a reference to the principle of popular sovereignty, which was widely assumed at the time to have constituted the founding value of the French Revolution, and therefore to be directly responsible for all the trouble that followed. The same principle is also explicitly condemned in the ‘Syllabus’, with reference to the idea that “the State, as being the origin and source of all rights is endowed with a certain right not circumscribed by any limits”.

From the start, therefore, the notion of ‘immanentism’ was assumed to have a political dimension, tied to the rebellion against the sovereign authority of God and to the presumptuous desire of man to govern himself without making reference to any higher principle of truth.

The second set of ‘errors’ Pius IX refers to, after noting that even “moderate” forms of rationalism ought to be condemned with equal rigor, are those tied to the notion of ‘indifferentism’, which he formally defines as follows: “Man may, in observance of any religion whatever, find the way of eternal salvation and arrive at eternal salvation”. The intellectual roots of this polemic against ‘indifferentism’ can be traced back to the Church’s historical opposition to Protestantism. This is revealed by the fact that, in the same section of the ‘Syllabus’, Pius IX also explicitly condemns the following proposition, as if it were a sort of corollary of the former: “Protestantism is nothing more than another form of the same true Christian religion, in which form it is given to please God equally as in the Catholic Church”.

This is significant because, historically, the core of the conflict between the Catholic Church and Protestantism had revolved around the notion of religious authority, and in particular the question of whether absolute submission to the authority of the Catholic Church was necessary to achieve salvation. By calling this assumption into question, Protestants had not only cast doubt on the grounds for the Church’s ‘spiritual’ authority, but also, more immediately, on

32 Pius IX, Syllabus of Errors, §39.
33 Ibid., §16.
34 Ibid., §18.
the grounds for its exercise of ‘temporal’ power over the political domain. Hence, there was also a political question at stake in the Church’s vigorous attack against ‘indifferentism’.

This is made clear by the fact that in the encyclical ‘Quanta Cura’, Pius IX explicitly states that from this doctrine there follows logically “the erroneous opinion, most fatal in its effects on the Catholic Church and the salvation of the souls, according to which liberty of conscience and worship is each man’s personal right, which ought to be legally proclaimed and asserted in every rightly constituted society; and that a right resides in the citizens to an absolute liberty, which should be restrained by no authority whether ecclesiastical or civil, whereby they may be able openly and publicly to manifest any of their ideas whatever, either by word of mouth, by the press or in any other way”. 35

This passage clearly implies a reference to the principles of political liberalism, which were widely considered at the time as the other key intellectual pillar of the French Revolution, alongside the notion of popular sovereignty. Hence, the two founding values of this revolution are ultimately traced back to two underlying ‘spiritual’ causes: on one hand, a direct line of continuity is set up between the doctrine of ‘immanentism’ (defined in conjunction with the notions of ‘naturalism’ and ‘rationalism’) and the principle of popular sovereignty; on the other hand, a parallel chain of implications is also set up between the notion of ‘indifferentism’ (historically tied to the emergence of Protestantism) and the modern conception of liberalism and individual rights.

The refutation of these two spiritual ‘errors’, then, relies almost entirely on an appeal to the conviction that the political consequences of their adoption had already proved themselves to be disastrous: “Who does not see – the pope writes, towards the end of the encyclical ‘Quanta Cura’ – that human society, when set loose from the bonds of religion and true justice, can have,

35 Pius IX, ‘Quanta Cura’, §3.
in truth, no other end than the purpose of obtaining and amassing wealth, and that society under such circumstances follows no other law in its actions except the unchastened desire of ministering to its own pleasure and interests?36.

Here again, we can see the emergence of a theme that will later become fundamental for the development of the discourse of anti-relativism: the idea that human desires and impulses require ‘limits’ and that the only way to establish such constrains is on the basis of “religion and true justice”. To further wrap up the political *reductio ad absurdum* of the political consequences assumed to follow from the conjunction of the doctrines of ‘immanentism’ and ‘indifferentism’, however, pope Pius IX makes another point which would also assume an enormous significance for the later history of the discourse of anti-relativism:

Moreover – he writes – not content with removing religion from public society, they wish to banish it also from private families. For teaching and professing the most fatal error of ‘Communism’ or ‘Socialism’ they assert that domestic society or the family derives the whole principle of its existence from the civil law alone … For all those who have endeavored to throw into confusion things both sacred and secular and to subvert the right order of society have always devoted all their nefarious schemes, devices and efforts to deceiving and depraving incautious youth.37

It is not necessary to dwell here on the accuracy of this definition of ‘communism’ with respect to the claims actually advanced by the movements defending this idea at the time, because the function of this reference within the context of Pius IX’s argument proves to be of a wholly different order. Communism and socialism are presented as figures of ‘absolute evil’ in order to discredit all political forms and doctrinal views that are assumed to pave the way for them. Their function is therefore to wrap up the political *reductio ad absurdum* of the doctrines of ‘immanentism’ and ‘indifferentism’ by showing that they ultimately “subvert the right order of society” and “throw into confusion things both sacred and secular”.

As we will see, this will later become an important component of the critique of relativism too: although the precise identification of communism as a figure of ‘absolute evil’ will be made more concrete after the Bolshevik revolution of 1917, and then progressively merged into that of ‘totalitarianism’ after that second world war, the idea that relativism leads to unacceptable political consequences has remained central throughout the history of the Catholic discourse of anti-relativism. What the present analysis reveals, therefore, is that the fundamental structure of the argument that sustains this discourse had been already set in place by the ‘intransigentist’ doctrine of the second half of the 19th century. In the ensuing section, I will attempt to explain why the notion of relativism was introduced within this framework by Pius IX’s successor and the way in which it further complicated the Church’s position with respect to modernity.

THE FIRST FORMULATION OF THE CATHOLIC CRITIQUE OF RELATIVISM IN THE POLITICAL THEOLOGY OF POPE LEO XIII

a) The encyclical ‘Humanum Genus’

The first mention of the term ‘relativism’ in an official document of the Catholic Church occurs in the encyclical letter ‘Humanum Genus’ promulgated by Pope Leo XIII in 1884. Before then, the term had only been employed very rarely and exclusively in academic journals, primarily as a means to criticize certain forms of epistemological or meta-ethical skepticism.\(^\text{38}\)

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\(^{38}\) According to the *Oxford English Dictionary*, the term ‘relativism’ was first employed in the English language in a review of the work of the British philosopher William Hamilton published on the *North British Review* in 1857: “Instead of the great realist – the reviewer wrote – Hamilton should be called the great relativist”. This shows that from the start, the notion of relativism was employed to serve a polemical function, as a criticism of the positions that were so described. The first author to appropriate it as a positive description of his own views was probably Herbert Spencer, who wrote in an 1863 essay that “I diverge from other relativists in asserting that the existence of a non-relative is … a positive deliverance of consciousness”. Cf. Herbert Spencer,
Leo XIII was the first to use it to refer to a broader social and political problem, and therefore to endow it with the importance it later acquired within social and political theory in general.

The specific theme with which the encyclical was concerned was that of the freemasonry, as is indicated by its subtitle: ‘Condemnation of the moral and philosophical relativism of the freemasonry’. This is significant because, in the second half of the 19th century, the association between the freemasonry and the constitutive political values of modernity was still something that could be taken for granted: the role of the so-called ‘secret sects’ in spreading the values of the Enlightenment and the French Revolution throughout Europe was already well known, and various popes prior to Leo XIII had already condemned it explicitly.\textsuperscript{39}

The fact that the reference to the notion of relativism began in connection with a condemnation of the freemasonry can therefore already be read as a confirmation of the principal thesis that I am seeking to advance over the course of this chapter: that the discourse of anti-relativism has historically served the purpose of mediating the Church’s relationship with what it has taken to be the distinctive political forms of modernity, liberalism and democracy. The arguments that Leo XIII advances to criticize what he calls the “moral and philosophical relativism of the freemasonry” are in fact essentially analogous to those that had traditionally been made against these political forms by his predecessors: that they would lead to a dissolution of the moral fabric of society, the unchecked expression of the most destructive impulses of humanity, and ultimately pave the way for the emergence of ‘communism’ or ‘socialism’, taken as labels for the complete inversion of the natural and rightful order of society.\textsuperscript{40}

\textsuperscript{39} The first official condemnation of the freemasonry by the Catholic Church was made by Clement XII in a papal bull of 1738, and since then it had gradually become one of the standard tropes of the rhetoric of ‘intransigentism’, mentioned also by Pius IX in his encyclical ‘Qui Pluribus’ of 1846.

\textsuperscript{40} Compare for example the following passage from the encyclical ‘Humanum Genus’ with the ones I already quoted above from Pius IX’s writings. Talking about the “moral and philosophical relativism of the freemasonry” Leo XIII writes: “How insufficient...
If this document were read in isolation, therefore, it could well appear merely as a reiteration of the already well-established ‘intransigentist’ critique of modernity, merely complemented by the addition of a new term to mean essentially the same thing. If that were the case, however, it would be difficult to understand why Leo XIII would have felt the need to introduce a new term in the first place. For, it is important to bear in mind that, since the Catholic Church considers its own previous pronouncements as a locus fidei on the same level as Scripture itself, any terminological innovation within the framework of its official doctrine must necessarily carry a very significant weight. Moreover, since the Second Vatican Council of 1870 had just introduced the dogma of papal infallibility, Leo XIII would have had to be particularly careful about the way he formulated his pronouncements, because this dogma effectively meant that any recognizable divergence with his predecessor could have been regarded as a form of heresy.\(^{41}\)

My contention is that in order to understand what lay behind Leo XIII’s terminological innovation, it is necessary to situate it within the context of his wider theological and political project. It is therefore to a discussion of that wider project that I shall now turn in order to try to unearth the deeper layers of significance of the introduction of the concept of relativism within the official vocabulary of the Catholic Church.

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\(^{41}\) For an interesting discussion of the significance of the First Vatican Council in the history of the political thought of the Catholic Church see Emile Perreau-Saussine, *Catholic political thought in a democratic age*, Princeton University Press, 2011.
b) The wider theological and political project of pope Leo XIII

Since the beginning of his pontificate, Leo XIII had been convinced that the policy of blanket rejection of modernity pursued by his predecessor was becoming unsustainable, because it ran the risk of marginalizing the Catholic Church from the political life of the time. He therefore set out to define a new role for the Catholic Church within the political structure of the modern state, without at the same time renouncing the intellectual core of the ‘intransigentist’ doctrine that had already been established. The formulation of a critique of ‘relativism’ served as a doctrinal support for this political project.

Essentially what Leo XIII was able to do through it was to establish a distinction within the modern world between the aspects that the Catholic Church could and could not accept. This operation relied heavily on the Augustinian distinction between the ‘city of God’ and the ‘city of Man’, which Leo XIII refers to since the very beginning of the encyclical ‘Humanum Genus’:

> The race of man – he writes – after its miserable fall from God, separated into two diverse and opposite parts, of which the one steadfastly contends for truth and virtue, the other of those things which are contrary to virtue and to truth. This twofold kingdom St. Augustine keenly discerned and described after the manner of two cities, contrary in their laws because striving for contrary objects … At every period of time each has been in conflict with the other, with a variety and multiplicity of weapons and of warfare, although not always with equal ardor and assault. At this period, however, the partisans of evil seems to be combining together, and to be struggling with united vehemence, led on or assisted by that strongly organized and widespread association called the Freemasons.42

As the distinctive feature of the doctrine of the freemasonry, the notion of relativism was therefore first introduced within the framework of the official vocabulary of the Catholic Church as a label for the combined forces of the Augustinian ‘city of Man’. That is, in other words, as a label for everything, within modernity, that the Church considered opposed to the salvation of mankind, and that it was thereby bound to struggle against. The implication is that all the ‘errors’ which had previously been condemned by the ‘intransigentist’ doctrine were assumed to be condensed within it. This is confirmed by the ensuing part of the encyclical, where Leo XIII goes

42 Leo XIII ‘Humanum Genus’, §1-2.
on to spell out the distinctive features of what he has called the “moral and philosophical relativism of the freemasonry”.

First of all, he says that “the fundamental doctrine [of the freemasons], which they sufficiently make known by their name, is that human nature and human reason ought in all things be mistress and guide. Laying this down, they care little for the duties of God, or pervert them by erroneous or vague opinions … For they deny that anything has been taught by God; they allow no dogma of religion or truth which cannot be understood by human intelligence, nor any teacher who ought to be believed by reason of his authority”.

In the light of the discussion carried out in the section above, it will be recognized that the set of ideas referred to in this passage is essentially analogous to the ones that had been associated with the doctrine of ‘immanentism’ in the previous documents of the Catholic Church we have considered: the key point is once again the denial of the possibility of knowing anything about a transcendent domain, from which it is assumed to follow that human beings must in all things govern themselves on the basis of their natural faculties. This suggests that the traditional Catholic critique of ‘immanentism’ was incorporated by Leo XIII into the first formulation of the critique of relativism.

Later in the same document, Leo XIII also writes that: “If those who are admitted as members [by the freemasons] are not commanded to abjure by any form of words the Catholic doctrines, this omission, so far from being adverse to their designs is more useful for their purposes … For they thereby teach the great error of this age: that a regard for religion should be held as an indifferent matter, and that all religions are alike. This manner of reasoning is calculated to bring about the ruin of all forms of religion, and especially of the Catholic religion,

\[\text{43 Ibid., §12.}\]
which, as it is the only one that is true, cannot, without great injustice, be regarded as merely equal to other religions”.

This passage clearly implies a reference to the other great pillar of the ‘intransigentist’ critique of modernity: the attack against what the Church had historically referred to as ‘indifferentism’. Together with the notion of ‘immanentism’, this theme is therefore also effectively incorporated within the framework of the first formulation of the discourse of anti-relativism. Indeed, in absence of a formal definition of the notion of relativism itself, it appears as if the latter is understood precisely as the conjunction, or synthesis, of these two traditional ‘errors’, whose direct political expressions were assumed to be the principles of popular sovereignty and political liberalism.

Within the context of Leo XIII’s overarching theological and political project, this condensation served the purpose of restricting the domain of application of the Church’s ‘intransigentist’ critique of modernity. For, by focusing the Church’s critical attention on a single term, ultimately traceable to an expression of the active impulse of the ‘city of Man’ in human history, Leo XIII was able to implicitly carve out the scope for the recognition that there also exist other aspects of the modern world, not tied to relativism or the freemasonry, with which the Church can come to terms. Hence, paradoxically, the focalization on the notion of relativism succeeded in opening up the conceptual space for the possibility of a ‘compromise’ with the aspects of modernity that had been left out from this critique.

This is made clear by the content of another encyclical promulgated by Leo XIII less than a year after ‘Humanum Genus’, in which he attempts to expound a ‘positive’ vision of the political project to be pursued by the Catholic Church. Relying even more explicitly on the

44 Ibid., § 16.
Augustinian idea that the role of every good Christian is to distinguish between the elements of

the ‘city of God’ and the ‘city of Man’ within the given historical situation he writes:

Our eyes are not closed to the spirit of the times. We repudiate not the assured and useful improvements of

our age, but devoutly wish affairs of State to take a safer course than they are now taking ... Therefore, when

it is said that the Church is hostile to modern political regimes and that she repudiates the discoveries of

modern research, the charge is a ridiculous and groundless calumny. Wild opinions she does repudiate,

wicked and seditious projects she does condemn, together with that attitude of mind which points to the

beginning of a willful departure from God. But, as all truth must necessarily proceed from God, the Church

recognizes in all truth that is reached by research a trace of the divine intelligence.  

From the point of view of the later political history of the Catholic Church, this was an

extremely important statement, because it effectively overcame the Church’s self-imposed

limitation to have anything to do with the political life of the modern world. Instead of

condemning it outright, the new mission that Leo XIII prescribed for Catholics was to find within

the modern world the elements that could further the Christian project of salvation. This posed

the foundation for the participation of Catholics in the political life of the modern ‘secular’

liberal and democratic states as agents of the Catholic Church.

From the point of view of the more focused history of the Catholic discourse of anti-

relativism carried out in this chapter, this is relevant because it shows that the Church’s change

of attitude with respect to modernity, and therefore implicitly liberalism and democracy, was

made possible through the introduction of the notion of ‘relativism’ within the framework of the

previous ‘intransigentist’ critique of modernity. For, it is this term that sustained the distinction

between the aspects of modernity that the Church could and could not accept and therefore

carved out the space for the possibility of a ‘compromise’ with what was left out.

In the remaining sections of this chapter we will see that, over the course of its recent

history, the Catholic Church has made a number of further ‘compromises’ and accomodations

with the political forms of modernity, always in pursuit of the goal of preserving a measure of

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political influence that would enable it to fulfill its historical mission of contributing to the progressive advance of humanity towards the goal of final redemption. The one principle it has never been willing to compromise on or come to terms with, however, is precisely that of ‘relativism’. This notion has therefore progressively been posited as the bedrock of what the Church has always stood against, precisely because it was originally defined in terms of the conjunction of the two great pillars of the Church’s ‘intransigent’ critique of modernity: ‘immanence’ and ‘indifferentism’.


a) Relativism and communism as two competing ‘enemies’ of the Catholic Church

As I have already pointed out above, from the very beginning, the discourse of anti-relativism was conceptually tied to a critique of communism. Already in its first formulation, Leo XIII had used the idea that the relativists (i.e. the freemasons) were “preparing the way” for those seeking to impose an “equality and community of all goods” to wrap up the political reductio ad absurdum of relativism. Taking for granted that such an equalization would be inconsistent with natural law and ultimately undermine the grounds for the unity and stability of the social order itself, he therefore introduced the idea that relativism would ‘lead to communism’ as a way of discrediting the former.

This shows that, at least initially, the critique of communism was conceptually subordinated to the discourse of anti-relativism: the core of Leo XIII’s interest remained the notion of relativism, and the reference to communism only served an instrumental purpose in its
refutation. This can be explained historically by the fact that, at the time in which Leo XIII was writing, the principal political conflict that concerned the Catholic Church was still that between Christianity and the modern liberal and democratic states. Although some communist movements and parties had already begun to develop since 1848, these were not perceived as such an immediate threat to the political interests of the Catholic Church. From a perspective that was still oriented towards the possibility of a return to the ancien regime, it was the principles of the separation of the Church from the State and the unrestricted sovereignty of the people that were perceived as doing the most damage. Hence, communism was simply identified as one of the potential consequences of the ‘relativism’ assumed to be implicit in liberal democracy.

This estimation of the relative danger posed by relativism and communism was profoundly modified by the Bolshevik revolution of 1917. Suddenly, ‘atheistic communism’ emerged as a very real historical possibility alongside liberal democracy, and the confrontation between the organized forces of capital and labor was thrust into the center of the political scene, to a large extent displacing the previous concern with the opposition between modernity and the ancien regime. From the perspective of the Catholic Church, this must have appeared as the realization of one of its worst fears: instead of heeding its advice, the world was rushing headlong towards the outcomes it had for decades been warning against.

As a consequence, the Church found it necessary to reorganize its priorities, devoting more weight and attention to the critique of communism, at the expense of the emphasis that had previously been laid on the discourse of anti-relativism. Indeed, for a time that spanned from the immediate aftermath of the first world war up to the end of the second world war, the focalization on communism as the most immediate threat confronting organized Christianity almost completely overshadowed the discourse of anti-relativism within the political thought of
the Catholic Church. In order to fully understand what lay behind this shift in emphasis, however, it is necessary to look more closely at the way the Catholic Church reacted to the Bolshevik revolution and then again to the renewed menace of socialist revolution in the context of the Cold War.

b) The Catholic Church during the inter-war years: the pontificate of Pius XI

While the pontificates of Leo XIII’s two immediate successors had developed along the lines of an essential continuity with the policy of ‘compromise’ with the institutions of liberal democracy that he had pursued, the election of pope Pius XI in 1922 marked a radical break. This pope was convinced that the contemporary liberal democratic regimes were incapable of successfully withstanding the crisis that had been sparked by the first world war and especially the Bolshevik revolution of 1917. Instead, he saw in the new kinds of ‘authoritarianism’ that began to emerge in Europe during the inter-war years a more reliable bulwark against the threat of communism (and also, to some extent, the opportunity of breaking the Church free from the rigorous constraints that had been imposed upon it by the liberal democratic framework itself).

Where and when such forms of ‘authoritarianism’ succeeded in coming to power, the Church therefore endorsed them and sought to find agreements with them. Concretely, this took the form of a series of ‘Concordats’ signed by Pius XI with Mussolini’s Italy in 1929, Hitler’s Germany in 1933, and Franco’s Spain in 1938. In exchange for official recognition and political backing, the Church thereby obtained the right to exercise a certain degree of political influence within these states, particularly in the fields of education, family regulation and social security. The ‘glue’ that held these agreements together was an emphasis on the common enemies of
Catholicism and authoritarianism: first and foremost Soviet-style communism; but also, increasingly, the institutions of liberal democracy itself.

At a doctrinal level, the way in which these agreements were justified was through a further reorganization of the classical themes of the Church’s ‘intransigentist’ critique of modernity. This can be seen in the encyclical ‘Divini Redemptoris’ promulgated by Pope Pius XI in 1937, at the height of the so-called ‘crisis of parliamentary democracy’: a time where it appeared that the coalized forces of fascism and national-socialism might indeed succeed in extending their hegemony over the whole of Europe. Nominally, this encyclical is supposed to be dedicated to the problem of communism; however, in reality, it provides a comprehensive illustration of the doctrinal framework that underscored the Church’s political stance throughout the inter-war years.

The starting point is the relatively standard claim that the roots for the contemporary social and political crisis must be sought for in the active impulse of ‘evil’ in human history, which is explicitly tied to the “modern revolution” threatening to undermine the political authority of the Catholic Church. From this premise, however, Pius XI immediately moves to the suggestion that the clearest manifestation of this danger is represented by “bolshevistic and atheistic communism” which for him aims at “upsetting the social order and undermining the very foundations of the Christian civilization”.  

Although, as I have already pointed out above, the claim that modernity would ultimately culminate in the ‘absolute evil’ of communism had already been an integral part of both Pius IX’s formulation of the doctrine of ‘intransigentism’ and Leo XIII’s critique of relativism, what is striking here is that all the intermediary terms which had previously operated the conceptual

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transition between them are cut out. This suggests that there is a direct line of implication between the original rebellion against the sovereign authority of God embodied in the ‘modern revolution’ and the absolute political evil of ‘communism’.

Indeed, neither the notions of popular sovereignty or political liberalism are ever mentioned explicitly in this encyclical letter; and wherever the reference to them is implicit, it is always instrumental to the further indictment of communism itself: “If we would explain the blind acceptance of Communism by so many thousands of workmen – Pius XI writes, for example – we must remember that the way had been already prepared for it by the religious and moral destitution in which wage-earners had been left by liberal economics … No one thought of building churches within convenient distance of factories, nor of facilitating the work of the priest. On the contrary, laicism was actively and persistently promoted, with the result that we are now reaping the fruits of the errors so often denounced by Our Predecessors and by Ourselves”.

Most of the rest of Pius XI’s encyclical is then devoted to a demonstration of the nefarious political consequences of communism, primarily with reference to the experience of Bolshevik Russia: “But the law of nature and its Author – the pope continues – cannot be flouted with impunity … Terrorism is the only possible substitute, and it is terrorism that reigns today in Russia, where former comrades in revolution are exterminating each other. Terrorism, having failed despite all to stem the tide of moral corruption, cannot even prevent the dissolution of society itself”.

The overall effect of this reorganization of the Church’s priorities is therefore to simplify the critique of modernity and make it totalizing once more, by assimilating it to the critique of

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47 Ibid., §16.
48 Ibid., §23.
communism. Within the context of Pius XI’s overall political project, this can be interpreted as a way of *polarizing* the political field for the purpose of justifying the policy of making alliances with the authoritarian regimes of the inter-war years. In effect, Christians are being told that modernity constitutes a homogenous unit which is immediately and directly responsible for the ‘absolute evil’ of communism. Liberalism and democracy are therefore implicitly accused of complicity with it, and a binary opposition is set up between the allied forces of modernity on one hand and Christianity on the other: “For the first time in history – Pius XI writes – we are witnessing a struggle, cold blooded in purpose and mapped out to the least detail, between man and all that is called God”.  

Within the terms of this opposition, no space is left for any intermediary policy of ‘compromise’ with the political institutions of modernity. Hence, also the discourse of anti-relativism, which had previously served as the doctrinal framework for it, was left aside. The focalization on the critique of communism was judged to better serve the policy of radical rejection of modernity that the Church chose to adopt during the inter-war years. This suggests that it was not only because communism was perceived as a more radical ‘threat’ than liberal democracy that the discourse of anti-relativism was effectively eclipsed at this time, but also because the Church’s position with respect to these political forms underwent a significant re-evaluation too.

If this interpretation of the factors that underscore the eclipse of the discourse of anti-relativism during the inter-war years can be accepted, then paradoxically it can be taken to offer an *a contrario* confirmation of the central thesis I am seeking to advance over the course of this chapter: that this discourse has historically served the purpose of mediating the Church’s relation with liberalism and democracy. For, what I have effectively been saying is that just as this

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49 Ibid., §22.
discourse had originally been developed for the purpose of opening up the possibility of a ‘compromise’ with the political institutions of modernity, it was almost entirely abandoned as soon as the Church sought to disentangle itself from these political forms during the inter-war years.

c) The Catholic Church during the Cold War: the pontificate of Pius XII

Although the Church’s position with respect to the fascist and the National-Socialist regimes began to change towards the late 1930s – as the consolidation of the logic of totalitarianism inevitably restricted the scope for its exercise of political influence within them – its position with respect to liberalism and democracy remained essentially unchanged until the end of the Second World War. Indeed, despite repeated requests, especially by the United States, the Vatican refused to formally declare its support for the so-called ‘Allied’ front throughout the whole duration of the conflict, sticking instead to a policy of rigorous neutrality.

It was only in the immediate aftermath of the conflict, when the contours of the looming ‘Cold War’ between the two principal powers in the ‘Allied’ front were beginning to take shape, that the newly elected pope Pius XII decided to formally take sides in favor of the so-called ‘western’ liberal democracies. This meant that the re-evaluation of the Church’s stance with respect to these political forms was not tied to a questioning of its historical opposition to communism. On the contrary, the radicalization of the critique of communism was a condition for the Church’s endorsement of liberal democracy, as an antidote against it.

50 See in particular the encyclicals ‘Non Abbiamo Bisogno’ (1931) and ‘Mit Brenner Sorge’ (1937), respectively devoted to the Vatican’s relations with the fascist state in Italy and National-Socialism in Germany, both available at http://www.vatican.va/holy_father/pius_xi/encyclicals/index.htm.
51 On this matter, see Carlo Falconi, The Silence of Pius XII, Faber, 1970.
A new alliance was therefore forged between the ‘western’ liberal democratic regimes and the Catholic Church on the basis of a shared commitment to the principles of anti-communism. The Church’s previous complicity with the ‘authoritarian’ regimes during the interwar years was conveniently forgotten, in exchange for the measure of political legitimacy that the newly established liberal democracies in the west could obtain from its explicit endorsement. At the same time, the Church was also heavily involved in the foundation of the United Nations organizations, which was presented as a framework for the resolution of international conflicts on the basis of a shared commitment to the principles of human rights and global peace.52

Within the framework of this new political configuration, the Church found it expedient to continue keeping the discourse of anti-relativism in the background relative to the critique of communism. The reason is that many of the themes that had previously been associated with the discourse of anti-relativism – the critique of liberal democracy and of the lack of moral standards of contemporary societies – overlapped in troubling ways with the kinds of critiques that were increasingly also moved by communist propaganda of capitalist democracies. It is in fact important to point out that, coinciding with a transformation in the nature of capitalism itself, in the aftermath of the second world war, there also developed from within the intellectual current of Marxism a distinctively anti-capitalist strand of the discourse of anti-relativism, which attacked precisely the perceived sense of moral decadence assumed to be implicit in the logic of late capitalism.53

52 For a clear exposition of the new theological synthesis which sustained this political readjustment see Jacques Maritain, Christianity and Democracy, Scribner, 1944. One of the drafters of the UN Declaration of Human Rights, in this text, Maritain relies on a Providential conception of history in order to suggest that, in the present historical circumstances, the Church’s historical mission would be best fulfilled by supporting the institutions of liberal democracy. This shows that, even at the moment of its greatest sympathy for them, the Church’s commitment to the values of liberalism and democracy has always remained conditional on the conviction that this represented the best way to serve the political interests of Christianity. This has remained the basis of the Church’s endorsement of liberalism and democracy since then.

Unfortunately, this is not something I will be able to pursue in this context. However, what is relevant for our present purposes is that at this time, it became very important for the Catholic Church to distinguish itself from these strands of anti-capitalist discourse. Indeed, the top priority was precisely to rally Catholics towards an endorsement of capitalist regimes as a bulwark against the renewed threat of communism. Hence, the discourse of anti-relativism was effectively silenced throughout the duration of the Cold War, in order to avoid any ambiguity over the side that the Church had chosen to endorse.

The way this was achieved was through a remolding of the themes traditionally associated with the discourse of anti-relativism that effectively incorporated them within the framework of the critique of communism. This can be observed for example in the radio address delivered by pope Pius XII on Christmas day 1955, which contains a section explicitly devoted to an exposition of “the thought of the Catholic Church with respect to the doctrine of communism”. While this section begins by stating that “the Catholic Church rejects communism as a social system in virtue of Christian doctrine, and in particular of the notion of natural right” the pope also immediately adds that:

At the same time, we also warn Christians … not to settle for an anti-communism founded on the defense of a conception of freedom that is empty of content. On the contrary, we exhort them to edify a society in which the security of man rests on the moral order of which we have many times exposed the necessity and the correspondence to human nature. Now, Christians (to which this message is particularly addressed) should know better than others that the son of God made man is the only solid foundation for such a moral order.

In this passage it is possible to recognize many of the key themes traditionally associated with the discourse of anti-relativism: the idea that human freedom may function as a destructive force for the social order unless it is guided and restricted by a solid conception of morality, and that the only foundation for such a conception of morality can be the faith in Jesus Christ. The

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54 The text of this speech, entitled ‘Col Cuore Aperto’, is available from the Vatican’s website at http://www.vatican.va/holy_father/pius_xii/speeches/1955/documents/hf_p-xii_spe_19551224_cuore-aperto_it.html
key point, however, is that these themes are effectively incorporated into the critique of communism, by being presented as ways of making the opposition to it deeper and more concrete.

In many ways this is exemplary of the intellectual strategy employed by the Catholic Church during the Cold War: while apparently pretending to step back from the conflict and advance criticisms of both sides, it consistently subordinated the critiques of capitalism and liberal democracy to the discourse of anti-communism, so as to make clear which one was to be considered the most immediate ‘enemy’ by Catholics. This further confirms the idea that, aside from the relationship with liberal democracy, the other key factor which explains the relative prominence of the discourse of anti-relativism in the political thought of the Catholic Church is the degree to which communism has been perceived as an immediate threat.

To sum up, in this section I have attempted to show that while during the first part of its history the discourse of anti-relativism enjoyed a relative pre-eminence with respect to the discourse of anti-communism, in the aftermath of the Bolshevik revolution and throughout the duration of the Cold War, the confrontation with communism took the center stage, effectively overshadowing the discourse of anti-relativism. Later, we will also see how the dissolution of the Soviet Union, which significantly decreased the extent to which communism was perceived as an immediate threat, posed the conditions for a recovery of the discourse of anti-relativism as the principal axis of the Church’s political thought.

As far as I am aware, this correlation has not yet been explicitly pointed out by any of the existing commentaries on the recent history of the political thought of the Catholic Church. Nonetheless, it seems to me a central factor in explaining this history: since, starting from the immediate aftermath of the French Revolution, the Catholic Church has understood its role
primarily as that of condemning the ‘errors’ of modernity, it has always been in need of identifying a specific enemy on which to focalize its critical attention. The names that were given to this ‘enemy’, and the ideas it has been associated with, have changed over time. However, the need for one has been a structural feature of the Church’s political self-understanding over the past few decades. This explains the logic of substitution between the discourses of anti-relativism and anti-communism that has prevailed over the course of the recent history of the Church’s political thought.

THE DISCOURSE OF ANTI-RELATIVISM IN THE ‘INTERNAL’ STRUGGLES WITHIN CATHOLICISM: FROM THE CRITIQUE OF MODERNISM TO THE SECOND VATICAN COUNCIL

a) Relativism in Christianity

Although in the previous section I have attempted to show that during the Cold War the discourse of anti-relativism was overshadowed by the focalization on communism as the most immediate threat for the political interests of the Catholic Church, this does not mean that this discourse was abandoned entirely throughout this period. Rather, what I would like to show in this section is that this discourse went through a parallel phase of development at this time, by being put to a different use: instead of being employed for mediating the Church’s relations with the political forms of the ‘outside’ world, it began to be employed as a conceptual weapon for dealing with ‘internal’ dissidence within the Catholic Church.

The connection with the political goal of reasserting the principle of authority was therefore maintained; however, the domain of application of this discourse was restricted to the framework of Catholicism itself. This is visible for example in the encyclical ‘Humani Generis’
promulgated by pope Pius XII in 1950, whose explicit purpose is that of condemning various “false opinions threatening to undermine the foundations of Catholic doctrine”. Consider for example the following passage from this document:

In theology – the pope writes – some want to reduce to a minimum the meaning of dogmas; and to free dogma itself from terminology long established in the Church … They assert that when Catholic doctrine has been reduced to this condition, a way will be found to satisfy modern needs, that will permit of dogma being expressed also by the concepts of modern philosophy, whether of immanentism or idealism or existentialism or any other system … It is evident from what We have already said, that such tentatives not only lead to what they call dogmatic relativism, but that they actually contain it. 55

In this passage, the notion of relativism is still clearly being used as a label to refer to the synthesis of all the ‘errors’ condemned by the Catholic Church. Moreover, also the connection with the notion of modernity as the incriminated ‘source’ of all these errors is maintained. However, the domain of application of the critique has changed: the referent has ceased to be the political form of liberal democracy and become the notion of ‘dogma’, specifically as it applies to the ‘internal’ politics of the Catholic Church. Thus, the discourse of anti-relativism is here being employed as a way of reasserting the principle of the Vatican’s authority within the Catholic Church, against the perceived threat of theological positions that call it into question.

Of course, the 1950s were not the first time that the Catholic Church had to face ‘internal’ as well as ‘external’ disagreement and even challenges to its own magisterial authority. However, prior to this time, the critique of these tendencies had been carried out in different terms. The notion of ‘heresy’ refers precisely to the idea of ‘choice’ or ‘disagreement’, which the Church has always been very determined to clamp down against, throughout its history. In the context of modernity, however, the emphasis that had previously been laid on this concept was progressively diminished, largely because of its association with the Church’s previous

inquisitorial practices, which had become the object of great scorn during the epoch of the ‘Enlightenment’.56

The term that began to be progressively used to refer to the specific set of heresies prevalent in the context of modernity was that of ‘modernism’. The history of the Church’s opposition to this notion is at least as rich and complex as the history of the discourse of anti-relativism I am attempting to reconstruct in this chapter. However, it is not something we can get into in any detail in this context.57 What is relevant for our present purposes is that, starting from the 1950s, the reference to the notion of modernism too begins to be played down, and the critique of internal dissidence within the Catholic Church is increasingly formulated in terms of a refutation of theological or dogmatic ‘relativism’.

This suggests that the themes previously associated with the critique of ‘heresy’ and especially of dogmatic and theological ‘modernism’ were channeled into the discourse of anti-relativism during the period when this discourse was restricted to the domain of the ‘internal’ relations of the Catholic Church. This represented an important development for the history of this discourse, because it meant that it was actually enriched at this time by acquiring new layers of meaning it had previously not been associated with. In particular, the incorporation of the themes previously associated with the critiques of ‘heresy’ and ‘modernism’ served to reassert the connection with the notion of religious dogma, and therefore implicitly with the idea of ‘absolute truth’, which had previously remained in the background when relativism was understood essentially as the fusion of the doctrines of ‘immanentism’ and ‘indifferentism’.


57 For an account of the history of the Church’s opposition to modernism, explicitly linking it to the previous history of heresy hunts see Lester Kurtz, The Politics of Heresy: the Modernist Crisis in Roman Catholicism, University of California Press, 1986. See also Guido Verucci, Eresia del Novecento: la Chiesa e la repressione del modernismo in Italia, Einaudi, 2010.
Indeed, it is perhaps possible to say that while the previous emphasis of the Catholic discourse of anti-relativism had been primarily political, it was the employment of this discourse as a weapon to censure ‘internal’ disagreement within the Catholic Church during the period of the Cold War that shifted its emphasis more clearly towards the epistemological dimension. This does not mean that the political dimension was abandoned, but rather that it was made more complex, because the political point began to be made through an epistemological one. This has remained a central feature of the Catholic discourse of anti-relativism to this day.

b) The doctrinal innovations introduced by the Second Vatican Council

The Second Vatican Council of 1962-65 marked a moment of radical renewal in the self-understanding of the Catholic Church, both with respect to its relations with its own members and with the outside world. This transformation inevitably had a profound effect on the conditions for the formulation of the discourse of anti-relativism. Indeed, in the following section I will claim that it was in a large measure as a reaction against this council that the discourse of anti-relativism first began to be restored to a position of prominence within the framework of the Church’s political thought in the second half of the twentieth century. In order to understand the reason why that was the case, however, it is necessary to start from an account of the doctrinal innovations introduced by this council in the first place. As we will see these came close to undermining the conditions for a recovery of the discourse of anti-relativism altogether.

The extent to which the second Vatican Council marked a ‘new beginning’ in the history of the Catholic Church is disputed. However, what is beyond doubt is that it reformulated a

58 The following statement made in 1988 by Cardinal Ratzinger (who had himself participated in the council’s deliberations on the ‘reformist’ side, but was later moved to adopt a much more cautious position) is illustrative of the controversy: “According to some descriptions, it would seem that after Vatican II everything became different, and that everything which came before must
number of key aspects of Catholic doctrine in a way that profoundly affected the later history of
the Church. In particular, what I am going to focus on in the ensuing analysis is the change that
was operated at the level of the method employed for analyzing and discussing the Church’s
relations with the modern world.

This consisted in an endorsement of the notion of the ‘signs of the times’ which had
already been employed by Pope John XXIII as a justification for calling the council to meet in
the first place. Instead of taking its role to be that of condemning the ‘errors’ of the contemporary
age, the Church was invited to focus on the specific elements within it that could contribute to
the advancement of humanity towards the ultimate goal of final redemption, making it its task to
try to further and foster those.\textsuperscript{59}

This new method still relied on an essentially Augustinian conception of history. However, instead of focusing on the active impulse of ‘evil’ in human history, it focused on the
progressive or ‘providential’ element within it, and sought to make it the Church’s task to
contribute to that. Within the context of the council’s internal deliberations, this methodological
shift was referred to as the passage from a ‘deductive’ to an ‘inductive’ method. The reason is
that, as we have already seen above, the way in which the Church had previously sought to
condemn the ‘errors’ of the modern age was essentially by ‘deducing’ them from the active
impulse of evil in human history, thereby tying them all together in a sort logical chain that
amounted to a political \textit{reductio ad absurdum}.

\textsuperscript{59} For a full discussion of the theological basis of the notion of the ‘signs of the times’ see the encyclical \textit{Pacem in Terris}
documents/hf_j-xxiii_enc_11041963_pacem_en.html
The so-called ‘inductive’ method, on the other hand, was based on the idea that the Church’s role was to scrutinize the providential ‘signs of the times’ within the given historical situation and extrapolate the Church’s role and mission from those. This is made clear by the following passage which occurs at the beginning of the pastoral constitution ‘Gaudium et Spes’ promulgated by the Second Vatican Council:

Inspired by no earthly ambition, the Church seeks but a solitary goal: to carry forward the work of Christ under the lead of the befriending Spirit. And Christ entered this world to give witness to the truth, to rescue and not to sit in judgment, to serve and not to be served … To carry out such a task, the Church has always had the duty of scrutinizing the signs of the times and of interpreting them in the light of the Gospel. Thus, in language intelligible to each generation, she can respond to the perennial questions which men ask about this present life and the life to come, and about the relationship of the one to the other.60

With respect to the other documents examined up to this point, the change in both tone and substance manifested by this passage is remarkable. The council explicitly affirms that the Church ought to be “inspired by no earthly ambition” and that it should be on this earth “to serve and not to be served”. Even more importantly, it asserts that its function should be “to rescue and not to sit in judgment”. From the point of view of the history of the discourse of anti-relativism, this is significant because it effectively renders obsolete all the previous disquisitions that had focused on the condemnation of the ‘errors’ of modernity.

Although, as we have seen, the original function of the discourse of anti-relativism had actually been to circumscribe the domain of application of the Church’s ‘intransigentist’ critique of modernity, it was also obviously affected by this re-articulation. The reason is that the Second Vatican Council did not intend to simply resurrect the leonine strategy of seeking to make space for a ‘compromise’ with modernity. It rather sought to re-conceptualize the very framework of the Church’s relationship with modernity, by suggesting that its primary function should be that of ‘serving’ it by helping to advance the most progressive tendencies present within it.

There was therefore no real space for the discourse of anti-relativism within the framework of the new theological synthesis introduced by the Second Vatican Council, and in fact the term itself is never even mentioned in any of the documents this council produced: just like all the other ‘errors’ that had previously been condemned by the Catholic Church, the concern with it had been rendered obsolete by the idea that the Church ought to focus on trying to advance the most progressive tendencies at work within modernity, according to the notion of the ‘signs of the times’.

c) The reaction to Vatican II

Far from marking the death of this discourse, the methodological shift introduced by the Second Vatican Council paradoxically contributed to its later re-appropriation precisely because it came close to undermining the conditions for its recovery altogether. The reason is that the discourse of anti-relativism became the principal conceptual tool that was used by the critics of the council in its aftermath for the purpose of circumscribing its significance and imposing ‘limits’ on the innovations that were perceived as potentially dangerous.

To understand this relationship, it is necessary to take into account that the Second Vatican Council had a very powerful impact on the ‘internal’ dynamics within the Catholic Church. On one hand, it had the effect of releasing a lot of previously compressed energies amongst the most progressive currents present within it, which led to an efflorescence of new movements and organizations pushing for further reform. On the other hand, the most
conservative members of the clergy reacted very negatively, reading the Second Vatican Council as a capitulation in the face of the pressures of the modern world.\(^6\)

These internal divisions seriously threatened to undermine the unity of the Church and gravely worried the highest authorities of the Vatican. Without delegitimizing the council itself, a decision was therefore taken to circumscribe its significance and impose ‘limits’ on the range of its doctrinal implications, with the intent of recomposing the unity of the Catholic Church behind the guiding authority of the Vatican itself. It is within this framework that the discourse of anti-relativism acquired a renewed significance as a strategy for reasserting the principle of authority \textit{within} the Catholic Church against the perceived destructive effects of the Second Vatican Council.

This is visible already in an encyclical letter written by pope Paul VI in 1963, when the Second Vatican Council was still in session.\(^6\) The specific topic with which this encyclical is concerned is the concept of ‘renewal’ (‘aggiornamento’) which had originally been posited by John XXIII as the guiding thread for the council’s mission. After a lengthy introduction, in which he solemnly confirms the legitimacy of the council and of the concept of ‘aggiornamento’, Paul VI asserts that this concept must nonetheless be inscribed within a set of clear “guidelines” in order to achieve the results for which it was intended. Hence, the sovereignty of the council over its own deliberations (which had been willingly been made as

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\(^6\) Although the Second Vatican Council had been called by pope John XXIII, he died less than a year after this council had begun to meet. Since the Canonic Law stipulates that all Church councils must necessarily come to a close with the death of the pope that called them, this made it a real question whether the council would even continue after the death of John XXIII. The encyclical ‘Ecclesiam Suam’ that pope Paul VI promulgated almost immediately upon coming to office is the document in which he formally confirmed he intended this council to continue, while at the same time exposing his vision for the way its deliberations ought to be oriented, and the specific ‘limits’ that ought to be imposed upon it.
wide as possible by John XXIII) is effectively restricted by the intimation that “we must first of all establish certain norms according to which the work of reform is to be effected”.63

The rest of the encyclical is then devoted to an exposition of the “norms” that are supposed to function as “guidelines” for the council’s deliberations. The pope begins by saying that although the concept of ‘aggiornamento’ literally means ‘renewal’, the Church cannot afford to introduce any ‘new’ elements within the framework of its doctrine that are inconsistent with its original founding principles. The reason adduced is that the historical function of the Church is that of articulating “in a language intelligible to each generation” the original message delivered to it by Jesus Christ, for the purpose of contributing to humanity’s advance towards the goal of final salvation. Thus, although a measure of ‘renewal’ in the form of this message is conveyed is said to be acceptable, and sometimes even required, its essential content is said to have to remains always the same.

On the basis of this distinction between ‘form’ and ‘content’, Paul VI goes on to state that even though it is part of the Church’s mission to ‘adapt’ the original message received from Jesus Christ to the historical exigencies of the time, there are nevertheless certain views and positions that the Church will never be able to come to terms with, because they are fundamentally at incompatible with it. And it is in this connection that he mentions the concept of relativism, as a sort of label for all the aspects of the modern mentality that the council must steer clear from in order to remain consistent with the founding principles of Catholicism itself:

The Church will rediscover her renewed youthfulness not so much by changing her exterior laws as by interiorly assimilating her true spirit of obedience to Christ and accordingly by observing those laws which the Church prescribes for herself with the intention of following Christ.\textsuperscript{64}

In this passage, the concept of ‘relativism’ is clearly being used as a ‘warning’ of the dangers that the Church might encounter if it were to import too much from the external world, without properly discriminating between the elements that may indeed contribute to the fulfillment of the Christian plan of salvation, and those that instead would have the effect of hampering it. Thus, relativism is confirmed as an irreducible locus of ‘alterity’ with respect to Catholic faith: a label for everything that the Church cannot come to terms with, even when it understands its mission as that of identifying within the framework of modernity the aspects that are most suited to promoting progress.

This makes its function much closer to what it had originally been for Leo XIII: to operate a distinction within the modern world between the elements that the Church can come to terms with and those that it must refuse. The only difference is that, while in the context of Leo XIII’s overall theological and political project this distinction had originally served the purpose of carving out a space for the possibility of a ‘compromise’ with modernity (by restricting the domain of application of the previous ‘intransigentist’ critique) in the aftermath of the Second Vatican Council, the same distinction served the purpose of imposing ‘limits’ on this process (by reminding the Church of the aspects of modernity that remained irreconcilable with the Catholic faith).

Another way of putting the point is therefore to say that, from the beginning of the 1960s, the leonine framework that had originally been associated with the discourse of anti-relativism was resurrected as a way of countering the perceived dangers implicit in an excessively

\textsuperscript{64} Ibid., §§ 48-51.
‘reformist’ reading of the Second Vatican Council. Indeed, in the light of the doctrinal innovations that had been introduced by this council, even just to continue focusing on the condemnation of a specific ‘error’ in this way implied a challenge to its authority, because it meant refusing the proposed shift to an ‘inductive’ method focused on the notion of the ‘signs of the times’.

In the years that followed the closure of the council in 1965, the discourse of anti-relativism was consolidated in this anti-conciliar function, progressively becoming the principal language employed by the ‘conservative’ wing within the Church to criticize the openness to reform that was judged responsible for the crisis that Catholicism was undergoing. In 1976, for example, the French Archbishop Marcel Lefebvre wrote an influential dissenting pamphlet entitled *J’accuse le Concile*, in which he explicitly accused the Second Vatican Council of having given in to a form of doctrinal relativism.

All the classical themes from the Church’s previous formulations of this discourse were summoned and put in the service of this condemnation. Consider, for instance, the following passage from the pamphlet:

Who will be able to determine the dividing-line between good and evil when the criterion of morals in accordance with the Catholic truth revealed by Christ has been set aside? … This statement is based on a certain relativism and a certain idealism. On one hand, it considers individual and changing situations of our times and seeks new guiding lines for our activities … On the other hand, as this declaration is not based on the rights of truth that alone can supply a solution that is true and unshakeable in every event, we inevitably find ourselves confronted by the gravest difficulties.65

From the point of view of the Church’s previous formulations of the discourse of anti-relativism, this passage does not seem to add much that is conceptually new (except, perhaps, the greater focalization on the issue of ‘truth’, following the logic I already referred to above). However, in the aftermath of the Second Vatican Council, this very continuity assumes a great

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political significance, because it effectively implies a rejection of the council’s proposed innovations, and therefore amounts to a criticism of the council itself.

Although Lefebvre would later be excommunicated for his decision to ordain four new ultra-conservative bishops against the express prohibition of the pope, his views remained extremely influential within the Catholic Church, where they progressively became the backbone for a current of ‘neo-intransigentism’ that coalesced around the opposition to the Second Vatican Council. Since the critique of relativism has been one of the principal conceptual weapons employed by this strand of Catholicism, it is in this sense that I claim that the Second Vatican Council contributed in a backhanded way to the contemporary rise to prominence of the discourse of anti-relativism: precisely because it introduced a new theological synthesis that effectively made this discourse obsolete, the roots of its contemporary revival must be sought for in the critical reaction that was generated against the Second Vatican Council right from its immediate aftermath.


Although the ‘internal’ dynamics related to the struggles between reformists and conservatives within the Catholic Church played an important role in the recovery of the discourse of anti-relativism in the aftermath of the Second Vatican Council, it was actually an ‘external’ historical event that contributed most to its re-appropriation as the principal axis of the Church’s political thought: the collapse of the Soviet Regimes in Russia and Eastern Europe after 1989. This event posed the conditions for a recovery of the discourse of anti-relativism for at least two different reasons: first of all, it deprived the Catholic Church of its principal political
‘enemy’, thereby putting it in a position of requiring a new focus to structure its political engagement. Secondly, it projected liberal democracy once again as the most prominent (indeed, virtually unchallenged) form of political expression of modernity.

As we have already seen, the discourse that had previously been employed by the Catholic Church to come to terms with this political form, prior to its focalization on communism, had been that axed around the critique of relativism. To some extent, therefore, the recovery of the discourse of anti-relativism in the aftermath of the Cold War can be seen as a return to the pre-1917 doctrinal framework, when liberal democracy had already been perceived as the principal political threat for Catholicism. This logic of substitution is however by no means sufficient to fully explain what lies behind the contemporary rise to prominence of the discourse of anti-relativism as the principal axis of the Church’s political thought.

To obtain a more complete picture, it will be necessary to situate this recovery within the context of the political and theological projects pursued by Pope John Paul II: the pope who presided over the end of the Cold War and was directly responsible for the re-calibration the Church’s attention on the issue of relativism in its aftermath. The remaining part of this section will therefore be devoted to a discussion of the factors that underscored John Paul II’s recovery of this discourse and the way in which he contributed to its further development.

a) The first part of John Paul II’s pontificate: from election to the end of the Cold War

Elected after the brief pontificate of John Paul I, who had promised a continuation of the process of reform but died in uncertain circumstances only a few months after assuming office, John Paul II represented a victory for the conservative front within the Catholic Church. Of Polish origin, he had been brought up in the context of the rigidly counter-Reformist
ecclesiastical tradition of his native country, radicalized by the stern confrontation with the Socialist regime in the aftermath of the second world war. During the Second Vatican Council he had distinguished himself as a member of the so-called ‘conservative minority’, actively taking part in the negotiations aimed at tempering the council’s reformist spur.66

Immediately upon assuming office, he demonstrated a clear determination to carry through with this conservative project, making moves to centralize the structure of authority within the Catholic Church, suppressing all forms of internal dissent and condemning the most liberal interpretations of Vatican II. The first encyclical he promulgated in 1979 explicitly declared that the period of “confusion” and “contestation” which had followed the Second Vatican Council was over, and that the Church ought to focus its attention on the eradication of the forms of “ethical permissiveness” that had been allowed to penetrate within it.67

In terms of the relations with the ‘outside’ world, the first part of John Paul II’s pontificate was characterized by an escalation of the confrontation with the communist regimes, portrayed as a condensation of all the most destructive tendencies implicit in modernity. In many of his early encyclical letters, this attack took the form of a condemnation of ‘totalitarianism’, a term which had been closely associated with the anti-Soviet propaganda since the beginning of the Cold War, and which the pope used almost interchangeably with the notions of ‘socialism’ or ‘communism’.68 Various highly-publicized events were also used as occasions for denouncing the Soviet regimes as incompatible with natural law, and focusing international attention on the concrete violations of human rights that occurred within them.

66 For an in-depth discussion of John Paul II’s upbringing as well as his overarching theological and political orientation see the excellent book by Philippe Portier, La pensée de Jean Paul II, Editions de l’Atelier, 2006.
68 See for example the encyclical ‘Sollicitudo Rei Socialis’, promulgated in 1987, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/index.htm
From a doctrinal point of view, the actual content of the message that was thereby put forwards was not particularly original: most of the terms of John Paul II’s critique of communism had already been established by his predecessors. The real element of originality, however, lay in the way he sought to put this message across: through an effective use of the mass media and highly publicized international travels, John Paul II succeeded in concentrating an extraordinary degree of attention and notoriety around his own person, and therefore to convey an image of dynamism and renovation while at the same time pursuing a profoundly conservative agenda.

In the light of this outspoken opposition, when the Soviet regimes finally collapsed, after the fall of the Berlin wall in 1989, John Paul II’s international prestige was greatly heightened. In the popular press, he was widely identified as ‘the pope who defeated communism’. Paradoxically, however, this success forced him to recalibrate the terms of his political message, by depriving it of one of its essential conceptual referents: the identification of communism as the embodiment of all the most destructive tendencies assumed to be at work in the modern world.

The strategy he adopted consisted in an apparent retreat from the domain of international politics, in favor of a renewed emphasis on the dimension of morality. This enabled the Catholic Church to disentangle itself from the fate of a specific political project and to carve out a new role for itself within the unipolar world as the critical conscience of liberal democracy. It is important to point out, however, that this renewed focus on the dimension of morality did not imply an abandonment of the concern with political matters as such, but rather a different way of approaching politics, through the lens of morality. This is testified to by the fact that the Church

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increasingly chose to intervene in the politics of individual countries as the advocate of certain specifically ‘moral’ causes, such as the opposition to abortion, euthanasia, gay marriage and certain kinds of scientific research.\(^7^0\)

The recovery of the discourse of anti-relativism can be inscribed within this framework, because it is what enabled the Vatican to claim that, without a solid anchoring in a set of ‘absolute’ moral values, liberal democratic regimes would run the risk of undermining the conditions for their own viability. In this way, the Catholic Church sought to present itself as the guarantor of the ‘truths’ these kinds of regimes supposedly need in order to survive. Hence, through the recovery of the discourse of anti-relativism, the Church’s historical opposition to the principle of popular sovereignty was converted into an ‘internal’ critique, which appeared more appropriate for the ideological climate that prevailed in the aftermath of the Cold War.

\(b\) The second part of John Paul II’s pontificate: the encyclical ‘Veritatis Splendor’

The doctrinal elaboration that underscored this reconfiguration can be observed in the text of the encyclical ‘Veritatis Splendor’, written in the immediate aftermath of the collapse of the Soviet regimes and in many ways one of the ‘founding documents’ of the contemporary rise to prominence of the discourse of anti-relativism. Its starting point is the claim that, while undoubtedly representing a great victory for humanity, the recent changes that had occurred at the level of the world’s geo-political organization had also occasioned a sense of “genuine crisis”, both within humanity at large and Christianity in particular, because they had called into

\(^7^0\) For an interesting discussion of the history of the Catholic Church’s political intervention on specifically moral issues in the United States see Charles Curran and Leslie Griffin (ed.), The Catholic Church, Morality and Politics, Paulist Press, 2001. For a discussion focused more specifically on the issue of bioethics see Pádraig Corkery, Bioethics and the Catholic Moral Tradition, Veritas Publications, 2011.
question many of the certainties and points of reference that had previously served to structure the political and spiritual lives of human beings. An “authoritative intervention” was therefore said to be required to help human beings find their bearings in the context of a new and rapidly changing situation.\(^{71}\)

The approach employed by John Paul II to address this challenge follows the characteristic pre-conciliar methodology of seeking to identify the “root causes” of the contemporary “crisis”. From this point of view, the issue he focuses on right away is precisely that of relativism:

As a result of that mysterious original sin committed at the prompting of Satan – he writes – man is constantly tempted to turn his gaze away from the living and true God in order to direct it towards idols ... Man's capacity to know the truth is also darkened, and his will to submit to it is weakened. Thus, giving himself over to relativism and scepticism, he goes off in search of an illusory freedom apart from truth itself. But no darkness of error or of sin can totally take away from man the light of God the Creator. In the depths of his heart there always remains a yearning for absolute truth and a thirst to attain full knowledge of it.\(^{72}\)

Situated at the very beginning of the encyclical, this passage shows that the notion of relativism is attributed an extremely important position within the framework of John Paul II’s new doctrinal synthesis. The other thing that is worth noting is the connection this passage establishes between the notion of relativism and a specific conception of ‘freedom’, separated from a relationship with the idea of ‘truth’. This is significant because it demonstrates the pope’s intention to reformulate the Church’s traditional critique of relativism in terms that would make it more resonant with the prevailing intellectual and political climate in the aftermath of the Cold War.

The assumption he takes for granted is that, after the collapse of the Soviet regimes, the value of human freedom has emerged as the dominant intellectual and political reference point for humanity. For this reason, he attempts to reformulate the Church’s critique of relativism in


\(^{72}\) \textit{Ibid.}, §1.
terms of this principle. In order to do this, John Paul II relies on the classical idea, long established within the Christian tradition, that “genuine” freedom should not be understood as consisting in a license to do “whatever one wants” in pursuit of one’s interests and desires, but rather in the willful conformity to the moral law, ultimately assumed to have been dictated by God.

The way in which this idea had usually been formulated in the tradition of Catholic moral theology is in terms of a conflict between the notion of ‘autonomy’ and the recognition of ‘authority’. However, John Paul II redefines these terms in order to appropriate the value of autonomy for Christianity: relying on the idea that, according to the Christian tradition, Man was created ‘in the image of God’, he argues that when man submits to the authority of God, he is not really submitting to anything ‘external’ to him, but rather to the highest and most noble part of his own intrinsic nature. From this, in turn, he deduces that obedience to God is not incompatible with autonomy but rather required by it.73

What the Church had traditionally referred to using this term is instead identified as a form of ‘relativism’, which at one point John Paul II explicitly defines as a doctrine that “ends by detaching human freedom from its essential and constitutive relationship to truth”.74 Hence, the characteristic dualism that had historically been associated with the discourse of anti-relativism is projected into the notion of freedom itself, resulting in a distinction between, on one hand, the “genuine” conception of freedom as autonomy advocated by the Catholic Church, and on the other hand the “relativistic” conception of freedom, deprived of any constitutive relationship to the idea of truth.

73 “Man's genuine moral autonomy – he writes – in no way means the rejection but rather the acceptance of the moral law, of God's command … Hence obedience to God is not, as some would believe, a heteronomy, as if the moral life were subject to the will of something all-powerful, absolute, extraneous to man and intolerant of his freedom … Others speak, and rightly so, of theonomy, or participated theonomy, since man's free obedience to God's law effectively implies that human reason and human will participate in God's wisdom and providence”, Ibid., §41.

74 Ibid., §4.
Following established tradition also in this respect, the central argument that John Paul II moves against this relativistic conception of freedom is that its practical consequences are unacceptable. At the level of individual morality, it is assumed to be incapable of providing any guidance to human beings concerning the way they ought to behave, and therefore to leave them helpless and disoriented, but also – what is worse – prey to their most evil and destructive impulses:

Pilate's question: "What is truth" – John Paul II writes – reflects the distressing perplexity of a man who often no longer knows who he is, whence he comes and where he is going. Hence we not infrequently witness the fearful plunging of the human person into situations of gradual self-destruction ... All around us we encounter contempt for human life after conception and before birth; the ongoing violation of basic rights of the person; the unjust destruction of goods minimally necessary for a human life.\(^75\)

The crucial assumption in this passage is that man’s exercise of his own freedom requires guidance because otherwise it is prone to assuming a self-destructive character. Since the only possible grounds for such a guidance is further implicitly assumed to be a notion of ‘absolute truth’, the implication is that tempering the value of freedom with the reference to a notion of ‘absolute truth’ is a necessary condition for its sustainability in the first place: deprived of such a referent, freedom is assumed to degenerate merely into an excuse for the violation of the rights of others. Moreover, since the Catholic Church is assumed to be the privileged depositary of such a notion of ‘absolute truth’, it follows that Catholicism is posited as the necessary moral complement of the idea of freedom itself: the only available guarantee that it will not degenerate into its opposite.

In the ensuing paragraphs, then, the same logic is also applied more specifically to the political domain, where the concrete translation of a ‘relativist’ conception of freedom is assumed to be an ‘absolutist’ conception of democracy: “If there is no ultimate truth to guide and direct political activity – John Paul II writes – then ideas and convictions can easily be

\(^75\) Ibid., 84.
manipulated for reasons of power. As history demonstrates, a democracy without values easily turns into openly or thinly disguised totalitarianism … This is the risk of an alliance between democracy and ethical relativism”.

From the point of view of the history of the development of the Catholic discourse of anti-relativism, this passage is extremely significant for at least three separate reasons. First of all, it makes the conceptual connection between the critique of relativism and the political form of democracy explicit. In the previous sections of this chapter, I have already pointed out that one of the most important functions of the Catholic discourse of anti-relativism had historically been to mediate the Church’s relation with the political form of democracy. Here, however, the link becomes explicit: the central claim is that, like freedom, democracy requires ‘guidance’, because if it is grounded merely on a form of philosophical ‘relativism’, it is deprived of any sense of the necessary moral ‘limits’ that must be imposed on the people’s exercise of power over themselves, and therefore runs the risk of converting into its opposite.

Secondly, the passage above also ties the critique of relativism to the critique of political ‘absolutism’. This may appear surprising given that, logically, relativism is normally considered the conceptual opposite of absolutism and that, historically, the Catholic Church had been directly involved in the development and justification of the idea of absolute sovereignty. What lies behind this apparent contradiction, however, is a deeper transformation in the Church’s understanding of its political function. At the time in which the Church had defended the notion of absolute sovereignty, the Christian faith was still considered the ‘foundation’ for the exercise of political power, according to the idea of the divine right of monarchs. In the new democratic context, on the other hand, the Church has come to recognize that the foundation for the exercise of political power is essentially human, and accordingly sought to redefine its role as that of

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76 Ibid., §101.
providing external guidance to it. The critique of absolutism has therefore become a way of reaffirming the necessity of imposing ‘limits’ on the democratic exercise of political power.

Finally, the third reason why the passage above is extremely significant from the point of view of the history of the development of the Catholic discourse of anti-relativism is that it also explicitly introduces the notion of ‘totalitarianism’ within the framework of this critique. In the analysis conducted above we have already seen that, in the previous formulations of this discourse, the argument that had been employed to refute relativism had already consisted in a political *reductio ad absurdum*, aiming to show that it would ultimately lead to consequences unacceptable also for the relativists themselves. The specific term that had been employed for illustrating this point was that of ‘communism’, taking for granted that this represented an inversion of the natural law and an attack on all the sound principles of good government.

In the aftermath of the Cold War, however, this term must have seemed both too outdated and too compromised with the Church’s previous political commitments to fulfill the same function. A new term was therefore required to wrap up the political *reductio ad absurdum* of relativism. Because of the possibility of framing it as a synthesis of all the worse aspects of the traditional enemies of liberal democracy – not only Soviet-style communism but also National-Socialism and Fascism – the notion of totalitarianism proved adequate for the task. In the encyclical ‘*Veritatis Splendor*’ it is used essentially as a label for the idea of an ‘absolute political evil’ which must be prevented at all costs.

Concretely, therefore, the argument that is moved against relativism in this encyclical is that is contemporary democracies were to accept it as their grounding philosophy, they would run the risk of falling back into a form of totalitarianism. This is made clear also by the following illustrative passage:
Totalitarianism – John Paul II writes – arises out of a denial of truth in the objective sense. If there is no transcendent truth, in obedience to which man achieves his full identity, then there is no sure principle for guaranteeing just relations between people, the force of power takes over, and each person tends to make full use of the means at his disposal in order to impose his own interests or his own opinion, with no regard for the rights of others.\(^7\)

The only antidote that the pope identifies against this potential danger is to ground the democratic principle on a solid conception of ‘truth’ capable of imposing ‘limits’ on the power exercised by man over man. In turn, the only foundation for such a conception of ‘truth’ is assumed to be the divine will of God itself. Hence, the encyclical concludes with a passionate call for a recognition of the sovereign authority of God over the political domain, presented as a condition for the sustainability of contemporary democracies: “Only God – the pope writes – the Supreme Good, constitutes the unshakable foundation and essential condition of morality … Thus, upon this truth is it possible to construct a renewed society and to solve the complex and weighty problems affecting it”.\(^8\)

Taking the argument developed by John Paul II in this encyclical as a whole it is therefore possible to find within it all the distinctive elements of the contemporary discourse of anti-relativism, which has since been elevated by Benedict XVI into the core of the Church’s political message: the connection with a specific conception of freedom and therefore democracy, the emphasis on the importance of the imposition of moral ‘limits’ on the exercise of political power, the claim that if such limits are not imposed democracy might convert itself into a form of ‘totalitarianism’, and finally the idea that the only possible foundation for such limits is a divinely ordained conception of ‘absolute truth’. What remains to be seen is how all these themes were weaved into an even more elaborate and tighter whole by John Paul II’s successor, while being elevated to the central position they occupy today.

\(^7\) Ibid., §99.
\(^8\) Ibid.
THE ELEVATION OF THE DISCOURSE OF ANTI-RELATIVISM INTO THE PRINCIPAL AXIS OF THE CHURCH’S POLITICAL THOUGHT

Before being elected pope in 2005, Cardinal Ratzinger had previously served as Prefect of the Congregation for the Doctrine of Faith, the institution that replaced the Vatican Inquisition and currently functions as the principal body responsible for the elaboration of Catholic doctrine. His collaboration with John Paul II when the latter was still in office was therefore very close. Upon assuming the pontifical office himself, however, Benedict XVI escalated the discourse of anti-relativism to an even greater importance within the framework of the Church’s political discourse as a whole.

As I have already pointed out in the first introductory chapter of this dissertation, already in the last sermon he gave as Cardinal before the conclave, he spoke of a “dictatorship of relativism” as the principal political “threat” confronting contemporary societies. In his ensuing writings and public pronouncements as pope, then, the discourse of anti-relativism has become pervasive, employed almost as a catch-phrase to explain the roots of all contemporary ills, both within and outside the Catholic Church.

Unfortunately, in the few years that have elapsed since his election, Benedict XVI has not yet had the time to systematize his views on the matters in an encyclical letter: to date, only three such letters have been written, of which only one is devoted to social matters and tangentially addresses the question of relativism.79 Thanks to his rich intellectual production as Prefect of the Congregation for the Doctrine of Faith, however, it is possible to reconstruct the theological

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79 The encyclical ‘Caritas in Veritate’ is devoted to a discussion of the Christian duty of ‘charity’, particularly in relation to the economically less developed regions of the world. The question of relativism is here mentioned in relation to the issue of transculturality, which is increasingly becoming an inextricable dimension of charity, due to the global structure of wealth relations, and in relation to the issue of education, considered as an indispensable complement to material aid for the less well-off. In both cases, Ratzinger makes reference to the discussions of the notion of relativism he had already offered as Prefect of the Congregation for the Doctrine of Faith. Cf. Benedict XVI, ‘Caritas in Veritate’, 2009, §§ 26 and 61, available at http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-verbatim_en.html.
underpinnings of Benedict XVI’s escalation of the discourse of anti-relativism on the basis of some of the writings published before his election as pope.

In particular, in the following analysis, I will focus on three such writings: first of all, the text of an academic article published in 1992 in the Catholic review ‘Communio’, entitled ‘What is Truth? The Significance of Religious and Ethical Values in a Pluralistic Society’; secondly, the text of a speech Ratzinger gave before the Congregation for the Doctrine of Faith in 1996 entitled ‘Relativism: the Central Problem for Faith Today’; finally, the text of the much-publicized debate Ratzinger had with Habermas in 2004 on the topic of ‘The Pre-Political Foundations of the Free State’.

Instead of examining these texts in a chronological order, however, I will proceed in the order that is most conducive to a systematic exposition of Ratzinger’s thought, starting with the 1996 speech before the Congregation for the Doctrine of Faith.

a) Relativism as “the central problem for faith today”

Already the title of this document is eloquent about the place occupied by the notion of relativism within Ratzinger’s overarching theological vision: relativism is seen as “the central problem for faith today”. This speech is however also interesting because it begins by providing a sort of ‘genealogy’ of the contemporary rise to prominence of the concern with relativism within Catholic social thought:

In the 1980s – Ratzinger asserts – the theology of liberation in its radical forms seemed to be the most urgent challenge for the faith of the church ... The fall of the European governmental systems based on Marxism turned out to be a kind of twilight of the gods for that theology of redeeming political praxis. Precisely in those places where the Marxist liberating ideology had been applied consistently, a radical lack of freedom had been produced, the horror of which now appeared out in the open before the eyes of world public opinion ... For this reason, the political events of 1989 have also changed the theological scenario ... The failure of the only scientifically
based system for solving human problems could only justify nihilism or, in any case, total relativism.\textsuperscript{80}

The contemporary significance of the question of relativism is here traced back by Ratzinger himself to the collapse of the Soviet regimes in Eastern Europe. This offers further confirmation of the thesis I have already sought to advance above, according to which one of the factors which explains the relative prominence of the discourse of anti-relativism within the political thought of the Catholic Church is the degree to which communism is perceived as an immediate threat, overshadowing the concern with relativism. Within the economy of Ratzinger’s speech, however, this genealogical premise also has a rhetorical function: by positing relativism as a substitute for the discredited ideology of Marxism, Ratzinger wants to make it clear from the start that the two must be seen as an equally dangerous ‘threats’ from the point of view of Catholicism.

Another interesting aspect of the discussion of relativism contained in this speech concerns the ‘positive’ definition of the term that Ratzinger offers at the beginning: “Relativism – he asserts – has become the central problem for faith at the present time. No doubt it is not presented only with its aspects of resignation before the immensity of the truth. It is also presented as a position defined positively by the concepts of tolerance and knowledge through dialogue and freedom, concepts which would be limited if the existence of one valid truth for all were affirmed”\textsuperscript{81}.

While clearly building upon the connection established by John Paul II between relativism and freedom, this definition also at the same time carries it a couple of steps further. First of all, it ties the notion of relativism to that of ‘tolerance’. This introduces the dimension of


\textsuperscript{81} Ibid.
cultural pluralism into the discussion of relativism, which had previously been either ignored or
left in the background. As we have seen, in fact, for the greatest part of its history, the notion of
relativism had been used to refer to problems stemming from within an essentially Christian
cultural framework: either the denial of the existence of a transcendent God (‘immanentism’) or
the affirmation of the impossibility of accessing absolute truth (‘indifferentism’).

The question of the relation between Christianity and other cultural or religious units had
not really been addressed by the encyclical letters or official Church documents employing this
term. With Ratzinger, on the other hand, it is situated at the core of the discussion of relativism,
since he recognizes that the increased occasions for cross-cultural contact provided by the
modern world may have the effect of reinforcing the perception that a conception of ‘absolute
truth’ uncoupled from the mediation of each individual’s specific cultural categories is
unattainable.

The other significant aspect of Ratzinger’s ‘positive’ definition of relativism, then, is that
compared to John Paul II the political dimension is brought much more to the forefront. To be
sure, the substance of Ratzinger’s arguments in this respect is not very different from John Paul
II’s. However, he formulates them much more clearly. In particular, the link between the notion
of relativism and a specific understanding of the concept of democracy becomes the centerpiece
of Ratzinger’s discussion:

Relativism – he writes – appears to be the philosophical foundation of democracy. Democracy is
in fact supposedly built on the basis that no one can presume to know the true way, and it is
enriched by the fact that all roads are mutually recognized as fragments of the effort toward that
which is better. All roads seek something common in dialogue, and they also compete regarding
knowledge that cannot be compatible in one common form … A system of freedom ought to be
essentially a system of positions that are connected with one another because they are relative as
well as being dependent on historical situations open to new developments. Therefore, a liberal
society would be a relativist society. Only with that condition could it continue to be free and open
to the future.\footnote{Ibid., p. 229.}
In this passage, democracy and liberalism are treated as interchangeable, and relativism is posited as the philosophical “foundation” for both. The reasoning adduced is that if “no one can presume to know the true way”, the only way in which human beings can succeed in arriving at publicly binding decisions is through a process of reciprocal confrontation with each other, in which “all roads are mutually recognized as fragments of the effort toward that which is better”. Any appeal to a higher principle of ‘truth’ would presumably destroy this presumption of equality, because it would automatically introduce a discrimination between the intrinsic value of different opinions.

Interestingly, the argument Ratzinger makes in this respect is not that liberal democracy therefore ought to be rejected out of hand. Indeed, he even writes that “in the area of politics, this concept is considerably right. There is no one correct political opinion”. 83 This may seem surprising, since it appears to run counter to the whole tradition within Catholicism asserting that there is an ‘absolute truth’ applicable to the domain of politics. In reality, however, Ratzinger’s claim ultimately functions as a more sophisticated way of establishing the same conclusion that had already been advanced by John Paul II.

The concession is that “in the area of politics … there is no one correct opinion”. This is taken as grounds for accepting the legitimacy of democratic procedures as a method for formulating political decisions. However, Ratzinger also immediately adds that relativism should not for this reason be converted into “something absolute”, because the political domain is merely one sphere of human action amongst others. Alongside and above it there may exist other ‘truths’ which need to be made to bear against the relativism applicable to the political domain. Paradoxically, therefore, Ratzinger is here attempting to use the Christian idea of a hierarchy

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between different spheres of human action to relativize the relativistic conception of democracy itself:

What is relative – he writes – the building up of a liberally ordained coexistence between people, cannot be something absolute. Thinking in this way was precisely the error of Marxism and the political theologies. However, with total relativism, everything in the political area cannot be achieved either. There are injustices that will never turn into just things (such as, for example, killing an innocent person, denying an individual or groups the right to their dignity or to life corresponding to that dignity) while, on the other hand, there are just things that can never be unjust. Therefore, although a certain right to relativism in the social and political area should not be denied, the problem is raised at the moment of setting its limits.

From this passage it is evident that Ratzinger does not deny that there exists an ‘absolute truth’ applicable to the political domain. Indeed, it is precisely for this reason that he claims that the relativistic conception of democracy must itself be relativized: because he assumes that relativism is only part of the truth applicable to the political domain and therefore ought not to be treated as something absolute. Concretely, this becomes a way of posing the question concerning the ‘limits’ to be imposed on the relativistic conception of democracy: a question, for which, as we will see, Catholicism is posited as the only possible answer.

The critique of relativism is therefore ultimately tied to a critique of ‘democratic absolutism’ which poses the conditions for the presentation of Catholic doctrine as the necessary foundation for the ‘limits’ that need to be imposed on the democratic exercise of political power. This theme is however developed at much greater length in the context of Ratzinger’s debate with Habermas than in the rest of the speech I have been analyzing up to this point, which instead moves on to focus primarily on the problem of inter-culturality from a theological point of view. It is therefore to an analysis of that text that I shall now turn.
b) Ratzinger’s debate with Habermas

The title of Ratzinger’s contribution to the debate with Habermas is worth commenting on: ‘The Pre-Political Moral Foundations of the Free State’ indicates that Ratzinger does not intend to situate his contribution at the conceptual level of the political theory of the state, but rather at what he calls the ‘pre-political’ level of the moral foundations for political freedom. This should not, however, be interpreted as a way of suggesting that the religious message of Catholicism has no political significance. On the contrary, it implies a specific way of addressing political issues through the lens of morality, which has the effect of further underscoring the relativization of the political domain, and therefore ultimately subordinating it to the requirements of moral (i.e. religious) truth.

This is also confirmed by the precise definition Ratzinger offers of the domain of the political at the start of the text: “It is the precise task of politics – he writes – to subordinate power to the criterion of law, thereby regulating the meaningful use of power”.

The implicit assumption here, which Ratzinger then goes on to make explicit in the next paragraph, is that power exercised outside the framework of law is “violence”, and therefore that the fundamental problem with which political theory ought to be concerned is that of the way to regulate the exercise of power amongst human beings.

From the start, this makes politics into a matter of imposing ‘limits’. Accordingly, the first question that emerges for Ratzinger from the perspective of political theory is that of the intellectual ‘foundations’ for the limits to be imposed on the exercise of power amongst human beings: “The task of subordinating power to the criterion of law – he writes – prompts a further question: how does law arise, and how ought law to be, in order to serve as a vehicle of justice

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and not simply as the privilege of those who happen to possess the power to make laws? Here we have two questions: the genesis of law and the criteria inherent in law”. 85

The first answer Ratzinger considers to these questions is the idea that laws can be considered legitimate in a democratic context because they are willed by the same people to whom they are supposed to apply. This is essentially the Rousseauian argument for popular sovereignty which, as we have seen, was considered the root cause of all political catastrophes by the whole strand of doctrinal ‘intransigentism’ since the beginning of the 19th century. Instead of dismissing this idea out of hand, however, Ratzinger begins by recognizing that “democracy’s guarantee that all can work together to shape the law and the just distribution of power is the fundamental reason why democracy is the most appropriate of all political models”.

This appears significant, because it implies an explicit endorsement of the democratic form itself, which hadn’t yet been provided in such clear terms by any of Ratzinger’s predecessors. On the other hand, however, Ratzinger also immediately adds that “nevertheless, I believe that one question remains open. Since absolute unanimity among men is a utopian idea, the only instruments whereby a democracy can make decisions are delegation and majority rule … The problem is that even majorities can be blind or unjust. History makes that absolutely clear”. 86

This appears to be a way of saying that, while the Church can in principle accept the legitimacy of democracy as a political form, the democratic principle cannot be considered the only answer to all political problems. By emphasizing the well-known practical limitations to the realization of the Rousseauian ideal, Ratzinger points out that democracy doesn’t completely abolish the exercise of power of man over man. The initial question concerning the ‘limits’ to be

85 Ibid., p. 33.
86 Ibid.
imposed on this exercise of power is therefore shown to re-emerge also within the context of a broadly democratic polity. In other words: democracy is not considered *sufficient* to address the problem of the regulation of political power, and an additional principle is called for in order to justify the limitation of the democratic principle itself.

This is essentially the same problem that Ratzinger had already posed at the end of his 1996 speech before the Congregation for the Doctrine of Faith. In order to understand the way in which he attempts to address it in the context of his debate with Habermas, however, it is necessary to take a step back and consider some of the categories Ratzinger had already introduced in his 1992 article entitled ‘What is Truth? The Significance of Religious and Ethical Values for a Pluralist Society’. The reason is that this article provides the background for the argument Ratzinger defended in the context of his debate with Habermas.

c) Two conceptions of the grounds for democracy

The starting point of this article is a distinction between two competing conceptions of the philosophical ‘foundations’ for the idea of democracy itself: “relativism” and what Ratzinger calls the “metaphysical and Christian thesis”. The former is defined as the idea that the only kinds of ‘truths’ applicable to the political domain are those produced ‘immanently’ by that domain itself. The “metaphysical and Christian thesis”, on the other hand, is assumed to be based on the opposite view: “that truth is not a product of politics (the majority), but is antecedent to political activity and sheds light on it … It is not praxis that creates truth, but truth that creates praxis”\(^87\).

Each of these two alternative philosophical premises is then traced back to the work of a specific author. Interestingly, the author Ratzinger pinpoints to illustrate the ‘relativist’ conception of democracy is the same one I will also be primarily referring to in a later chapter of this dissertation in order to defend this conception: the illustrious Austrian jurist and political theorist, Hans Kelsen.

This is how Kelsen’s views are described by Ratzinger: “For him, the relationship between religion and democracy is only negative, since one particular characteristic of Christianity is that it teaches absolute truths and values, and this is the exact antithesis of the necessary skepticism of a relativistic democracy. Kelsen understands religion as a heteronomy of the person, whereas democracy retains the autonomy of the person. This also means that the core of democracy is freedom, not the good, for that is something which puts freedom at risk”.

The “metaphysical and Christian thesis”, on the other hand, is traced back genealogically to the philosophy of Plato, whom Ratzinger credits with having first asserted that “all sovereignty must be service, i.e. a conscious act whereby one renounces the contemplative height that one has attained and the freedom that this height brings … Anything else, is a mere scuffling with illusions, in a realm of shadows – and that is in fact what most of political activity is”. Such reflections, Ratzinger adds, “bring Plato close to the fundamental biblical idea that truth is not a product of politics”.

This reference to a pre-Christian pagan author in order to illustrate the thesis that Ratzinger will ultimately want to defend against the ‘relativistic’ conception of democracy may appear surprising. However, I have already pointed out above that the Catholic Church’s critique of relativism draws a lot from Plato’s discussion of democracy in the famous Chapter 8 of the

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88 Ibid., pp. 60-61.
89 Ibid., p. 63.
Republic. Through his mention of Plato, Ratzinger is therefore only making explicit a reference that has been essential for the Church’s political doctrine throughout the period we have been considering.

In fact, the critique that Ratzinger then proceeds to advance of the ‘relativistic’ conception of democracy is essentially analogous to that put forwards by Plato in the Republic: that since it undermines the grounds for any moral restraint of the people’s behavior, and in particular of the power they are allowed to exercise over each other, it ultimately sows the seed for the emergence of a form of ‘tyranny’ which knows no external limits and therefore runs against all sense of justice.

The only difference is that, in order to sharpen the thrust of this critique and bring out its contemporary relevance, Ratzinger replaces the notion of ‘tyranny’ with that of ‘totalitarianism’. Accordingly, in the sentence immediately following the description of the relativistic conception of democracy quoted above, Ratzinger adds: “if the relativists genuinely believe this, they are in fact flirting with totalitarianism even though they seek to establish the primacy of freedom, for they make the majority into a kind of divinity against which no further appeal is possible”\textsuperscript{90}.

What we see being reproduced here is therefore the claim that ‘relativism leads to totalitarianism’, which also constituted the core of John Paul II’s critique in the encyclical ‘\textit{Veritatis Splendor’}. However, the explicit connection with Plato enables Ratzinger to further clarify the reasoning which underscores this objection: his point is that a conception of democracy founded on relativism contains no a priori ‘limits’ to the power that the people are allowed to exercise over each other and therefore is always open to the risk of being overthrown from within and converted into a form of tyranny.

\textsuperscript{90} \textit{Ibid.}
Another way in which Ratzinger formulates this argument later in the same text is through the claim that the relativistic conception of democracy is predicated on a conception of freedom which is ultimately ‘empty’, in the sense that it does not contain any necessary reference to a substantive conception of truth or justice. This emptiness is considered problematic because it means that there is nothing within the idea of freedom itself which prevents it from being used in a ‘self-defeating’ manner:

It is not by chance – Ratzinger writes – that those who aim at totalitarian rule begin by introducing an anarchic freedom for individuals and a situation in which each one’s hand is raised against all others: by introducing order into this situation, they are enabled to present themselves as the true saviors of mankind … However, if the individual freedom presented here as the highest goal lacks content, it dissolves into thin air, since individual freedom can only exist when freedoms are correctly ordered. Thus, freedom requires content.91

Here, Ratzinger is clearly referring to the idea also advanced by John Paul II, according to which, from a Christian perspective, freedom can only be considered a “genuine” value if it is linked to the notion of ‘absolute truth’ in such a way that it is ultimately the conformity with God’s transcendent will which defines the content of what it means to be free. In this respect too, however, Ratzinger goes a step further than his predecessor, because he addresses the question of the specific nature of this ‘absolute truth’ which Christians posit as an alternative to relativism. The context in which this question is discussed in most detail is the second part of Ratzinger’s debate with Habermas, to which I shall therefore now return.

d) The defense of the notion of natural law

The centerpiece of Ratzinger’s discussion concerning the nature of ‘absolute truth’ is a defense of the classical notion of ‘natural law’. Ratzinger asserts that, historically, whenever the Church’s claim to proprietorship over ‘absolute truth’ has been challenged, the idea it has always

91 Ibid., p. 54.
fallen back onto in order to ensure at least the possibility of dialogue with rival theories has been that of ‘natural law’. Two examples are cited in particular: “The first was the dissolution of the borders of the European and Christian world that occurred when America was discovered … In this situation – Ratzinger writes – Francisco de Vitoria elaborated the already existing concept of the *ius gentium*, that meant a law antecedent to the forms of Christian law, a law whose task was to regulate the correct mutual relationships of all peoples”\(^{92}\).

The second example Ratzinger mentions concerns the natural law theories developed in the 16\(^{th}\) and 17\(^{th}\) centuries in response to the crisis caused by the schism of Protestantism: “Once again – he writes – it proved necessary to elaborate a common law antecedent to dogma, or at least a legal minimum based no longer on Christian faith, but on nature, on human reason … Hugo Grotius, Samuel von Pufendorf and others developed the idea of natural law as a rational law that transcends confessional boundaries and permits reason to work as the instrument whereby common law may be posited”.\(^ {93}\)

Through these examples, natural law is therefore identified as a sort of ‘bedrock’ Christians can fall back into in order to find common ground with people who don’t share their religious views. In this respect, however, Ratzinger concedes that the specific conception of natural law to which the Catholic Church has traditionally referred “is an instrument which has become blunt”, because the prior notion of ‘nature’ on which this conception was predicated has ceased to be considered acceptable to the modern mentality: “the idea of natural law – he writes – presupposed a conception of ‘nature’ in which nature and reason interlock. The victory of the theory of evolution has meant the end of this view of nature”.\(^ {94}\) His response to this hypothetical

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\(^{94}\) *Ibid.*
objection, however, is not to discard the notion of ‘natural law’ entirely, but rather to look for the elements of it which may still be acceptable for the modern mentality.

In particular, the claim he advances is that although the theory of evolution has rendered obsolete the idea that nature constitutes a rational system as a whole, it has not yet excluded the idea that nature might contain some rational elements within it; most notably: human beings. This is the basis for Ratzinger’s defense of a doctrine of human rights as the last salvageable element of the classical conception of natural law: “By natural law – he writes – on the deepest level and in the modern period was meant rational law. Its last surviving element is human rights. These are incomprehensible without the presupposition that man as such, in virtue of the simple fact that he belongs to the species ‘man’, is a subject of rights”. ⁹⁵

What emerges, therefore, is that the specific conception of ‘absolute truth’ which for Ratzinger constitutes the ‘pre-political moral foundation for the free state’, and which he accordingly wants to oppose to a purely relativistic conception of democracy, ultimately resolves in a notion of ‘human rights’ understood as a form of ‘natural law’. This at the same time confirms the importance that had already been given to this notion by the Church since the immediate aftermath of the second world war and inscribes it in a new conceptual framework. The political function of the notion of human rights becomes to provide a concrete ‘content’ to the conception of freedom on which democracy is predicated, thereby imposing ‘limits’ on the democratic exercise of political power, and therefore preventing it from degenerating into a form of ‘totalitarianism’.

This conception of the relationship between human rights and democracy, in turn, enables Ratzinger to reaffirm the importance of a reference to God within the political domain in the last part of his contribution to the debate with Habermas, by posing the question of the ultimate

⁹⁵ Ibid., p. 39.
‘source’ for the legitimacy of these human rights. Already at the start of this text, Ratzinger had given an indication of his thesis in this respect, since he had written that “contemporary consciousness may perhaps be content to hold that these rights possess a self-evident quality and ask no further questions. But even this self-limiting of questions possesses a philosophical character”. ⁹⁶ In a later text, written just a few years after, when he was already pope, however, Benedict XVI was much more explicit:

The value of human dignity – he wrote – which takes precedence over all political action and decision-making inevitably refers to the idea of a Creator … Only He can establish values that are grounded in the essence of humankind and that are inviolable. ⁹⁷

In the light of this statement, the overarching purpose of Ratzinger’s contribution to the debate with Habermas becomes clear: as a counterpoint to the relativistic conception of democracy, Ratzinger wants to defend an idea of human rights ultimately founded on the authority of the divine Creator. This conception of human rights is not posited by Ratzinger as an alternative to the idea of democracy altogether. On the contrary, for him, the divinely ordained human rights must be understood as a complement to democratic institutions, whose function is to impose ‘limits’ on the democratic exercise of political power and thereby prevent it from undermining itself.

In a sense therefore, God is posited by Ratzinger as the ultimate guarantor of the legitimacy of democracy itself: the only solid grounds on which it can be prevented from degenerating into a form of totalitarianism. It is in this sense that his political theory can be seen as resolving into a new form of political theology: because the ultimate source of the legitimacy of democratic institutions is located in the person of God himself. The implication is that democracy can only be considered legitimate to the extent that it is a Christian democracy.

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⁹⁶ Ibid., p. 34.
SUM UP: SYNTHETIC PRESENTATION OF THE CENTRAL ARGUMENT OF THE CATHOLIC DISCOURSE OF ANTI-RELATIVISM

In the light of the historical reconstruction presented in the previous sections of this chapter, to conclude, I will now attempt to put forwards a synthetic exposition of the central argument I think emerges from the documents that have been examined. Since, as I have pointed out above, all the ensuing chapters of this dissertation will be framed as responses to this argument, such an overall picture will then become the principal point of reference for the discussion to follow.

Taking the body of discourse I have been examining as a whole, I will therefore attempt to extrapolate the key themes and claims that have been progressively consolidated since the first use of the notion of ‘relativism’ in an official document of the Catholic Church, in order to show what is the core of the objection that has been moved against it, the conceptual presuppositions on which it depends, and especially the political function it has been made to serve. Hopefully, this will also allow me to bring out why I think that the Catholic discourse of anti-relativism represents a significant challenge from the point of view of political theory, which is worth taking seriously on its own terms.

The first thing that needs to be reiterated is that from a political point of view this discourse can be read as a critique of democracy. Historically, the Church’s relation with this political form has been profoundly ambivalent, because at least since the French Revolution of 1789 it was perceived as predicated on the principle of popular sovereignty, which was in turn considered incompatible with the idea of the absolute sovereignty of God over man. As this political form became increasingly dominant, however, during the second half of the 19th century, and especially in the aftermath of the second world war, the Church has sought to find
ways of coming to terms with it, carving out a new role for itself within the democratic framework.

The discourse of anti-relativism, which enabled the Catholic Church to present itself as the guardian of the ‘absolute’ moral principles these kinds of regimes supposedly need in order to survive, has been the principal means through which the Church has attempted to do this. Hence, this discourse can be seen as the means through which the Church has converted its historical opposition to democracy into an ‘internal’ critique: instead of focusing on the notion of popular sovereignty, it has increasingly focused on the notion of relativism in order to claim that democracy can be accepted as long as it is made compatible with a recognition of the existence and sovereign authority of God over the political domain.

The core of the argument that has been made in this respect is that a conception of democracy founded on a form of philosophical relativism would ultimately be self-defeating. The reasons that have been advanced to justify this claim can be summed up in two different ways. At root, it seems to me that the argument stems from a concern with the notion of ‘authority’. The assumption on which the argument is predicated is that the unity and stability of the social order depends on the recognition of a common authority, because this is the only way to keep the evil and destructive impulses of humanity in check.

Without such a common authority, it is claimed, human beings would let themselves go to an unfettered pursuit of their basest instincts and desires, and this would call in question the unity and the stability of the social order, ultimately allowing it to fall prey to the logic of the rule of the strongest. This is assumed to apply also and especially to those exercising positions of power within society, because in absence of a religious sanction the exercise of power by man over man is assumed to be able to rely only on brute force. This is assumed to have to be held in
check, in order to prevent the political order from degenerating into tyranny. Hence, the function of the notion of authority is ultimately taken to be that of ‘guiding’ the exercise of power by man over man by imposing ‘limits’ upon it.

The other fundamental assumption that underscores this formulation of the argument is that the principle of authority can only be sustainable on the basis of a recognition of some notion of ‘absolute truth’ applicable to the behavior of human beings. The reason for this is that ‘absolute truth’ is taken to be defined precisely by the fact that it is not accessible to human beings to tamper with: it is something external to them, which must be taken as given. From this it follows that it is only if human beings recognize something of this sort that they may be willing to restrain their behavior on the basis of an external check.

From a Christian perspective it is also worth noting that such a notion of ‘absolute truth’, providing guidance and limits for human behavior, is taken to be comprehensible only in terms of the idea of a transcendent God, governing the universe, who has stipulated a set of commandments for humanity to obey. Hence, in the final analysis, the assumption is that authority can only exist if it is derived from a transcendent source, aware of the interests and desires of humanity and capable of guiding and limiting them for their own good.

From the combination of these two assumptions – that the stability of the social order depends on the recognition of the principle of authority, and that this principle in turn depends on the idea of an ‘absolute truth’ derived from a transcendent source – it follows that the social order can be sustainable only on the basis of a common recognition of a transcendent truth. Any attack on such a notion is accordingly perceived as an attack on the grounds for the unity and stability of the social order itself.
Now, as we have seen, the notion of relativism has historically been defined by the Catholic Church precisely as the negation of the idea that there exists a transcendent truth applicable to human affairs. From the very beginning, it was assumed to derive from the conjunction of the doctrines of ‘immanentalism’ and ‘indifferentism’. The first was assumed to imply the denial of the existence of God; the second that there exists any true way of following his commandments. Hence, together they amount to the negation of the conditions of possibility for the recognition of a common authority capable of restraining human behavior from above.

The key objection that is moved against relativism is therefore that it undermines the conditions for social unity and stability. This can be taken as a way of demonstrating that a conception of democracy founded on relativism would ultimately be self-defeating because it implies that society would necessarily degenerate into chaos, anarchy and ultimately a form of tyranny founded only on the exercise of brute force. In other words, the key claim that is advanced by the Catholic Church through its critique of relativism is that human beings are incapable of establishing the grounds for their own coexistence within a social order ‘autonomously’: the exercise of power by man over man requires ‘guidance’ and the only way to provide this is by subordinating it to a control of a divinely ordained authority.

Another way of formulating the same argument lays more emphasis on a dynamic implicit in the logic of democracy itself. The key contention is that the notion of popular sovereignty as such contains no internal ‘limits’ on the power that can be legitimately exercised by the people over themselves. For this reason it is claimed that, unless it is complemented by the reference to an external criterion of legitimacy, it is vulnerable to the paradox whereby democracy can be overthrown by democratic means.
If for example the majority or perhaps even the whole or a people were to turn against the principle of popular sovereignty itself, there would seem to be no grounds within it to prevent it from destroying itself. For this reason, it is suggested that the principle of popular sovereignty needs to be complemented by the reference to an external criterion of legitimacy in order to be sustainable. In this respect, however, it is further argued that a philosophical outlook predicated on a form of relativism would be incapable of supplying such external ‘limits’ to the principle of popular sovereignty because, as we have seen, relativism is defined precisely in terms of the negation of the possibility of establishing any set of values standing above the immediate interests and desires of the people themselves. Hence, a conception of democracy founded on relativism is taken to be self-defeating because it is supposed to remain vulnerable to the paradox whereby democracy can be overthrown by democratic means.

The way in which the advocates of the Catholic Church have attempted to substantiate this point has historically been through the construction of a chain of implications that leads from the idea of a political order founded exclusively on the unfettered power of the people over themselves to a form of tyranny or oppression, which is supposed to function as a reductio ad absurdum of the attempt to found a political regime independently of the reference to a higher criterion of truth. In the first formulations of this argument, the name that was given to this form of tyranny was that of ‘communism’ or ‘socialism’; however, in the aftermath of the Cold War, the notion that has become more commonly adopted is that of ‘totalitarianism’.

The claim that, if it is not complemented by the reference to a higher criterion of truth, democracy ‘leads to totalitarianism’ has therefore become one of the central components of the contemporary formulations of the Catholic discourse of anti-relativism. The only possible foundation for such an external check on the democratic exercise of political power is further
assumed to be the notion of ‘absolute truth’. In particular, the notion that the Church has historically referred to in order to articulate its conception of the necessary limits that need to be imposed on the exercise of power by man over man is that of a divinely ordained natural law. This is based on the assumption that there are certain principles implicit in the order of things themselves, which prescribe how human beings ought to govern themselves *independently of their will*.

In the analysis conducted above, I have also shown that over the course of the second half of the past century, the traditional Christian conception of natural law was progressively translated into a specific conception of human rights, as the rights that pertain to all human beings in virtue of the special dignity assigned to them by God at the moment of creation. The implication that followed from this was that the notion of democracy was taken to be sustainable on its own terms only if complemented by a notion of human rights, functioning as an external check on the democratic exercise of political power.

Since, however, both the notion of natural law and that of human rights are ultimately assumed to derive their legitimacy from the sovereign will of God, as the creator of the universe, from this it follows further that democracy is considered sustainable only to the extent that the principle of popular sovereignty is complemented by the reference to a religious principle of legitimacy limiting it from outside. This is the way in which the Church has managed to claim that religion is not incompatible with democracy but actually required by it: by suggesting that a transcendent conception of God is the only possible foundation for the absolute limits that need to be imposed on the democratic exercise of political power in order to prevent it from overthrowing itself.
Conceptually, this can be interpreted as a critique of democracy because it effectively implies that the democratic principle of self-government needs to be subordinated to a requirement of consistency with a set of God-given commandments in order to be sustainable on its own terms. From a political point of view, however, this argument is what has enabled the Catholic Church to carve out a role for itself within the democratic framework, by presenting itself as the guarantor of the ‘absolute’ truths these kinds of regimes supposedly need in order to survive.
CHAPTER 2 –

ELEMENTS FOR A ‘PUBLIC’ CRITIQUE OF THE CATHOLIC
DISCOURSE OF ANTI-RELATIVISM

INTRODUCTION

On the basis of the historical reconstruction of the Catholic discourse of anti-relativism carried out in the previous chapter, I will now move on to the task of critique. As has already been announced in the Introduction, I intend to pursue two different lines of critique. In this chapter, I will focus on the way in which the arguments that sustain the Church’s attack on relativism have been formulated, in order to try to bring out some of the elements I find most problematic or unconvincing. In the ensuing two chapters, I will then consider some alternative ways of conceptualizing the relationship between relativism and democracy in order to establish which can be considered most compelling.

I call the specific type of critique I develop in this chapter ‘public’ because it is based on the presupposition that the Church’s attack on relativism is intended as a contribution to an open debate on the relationship between politics and religion in a democratic context. This implies that the arguments on which it relies are not intended merely as ways of reaffirming the convictions of those who already agree with the Church’s position, but strive to actually convince the interlocutors that are willing to take them seriously, independently of their religious views. For the purposes of this discussion, I therefore intend to adopt the position of such a hypothetical interlocutor, in order to evaluate whether the conclusions the Church seeks to substantiate are
indeed made irrefutable by the arguments it adduces, or whether these arguments rely on conceptual operations that appear unwarranted from the point of view of ordinary logic.

The notion of ‘publicity’ that is being referred to here clearly derives from the idea of “public reason” articulated and defended by John Rawls in his book on Political Liberalism. My contention, however, is that such a standard of evaluation, or at least something sufficiently similar to it, is also available from within the Catholic tradition too. As Cardinal Ratzinger pointed out in the context of his debate with Habermas, in order to frame its discussions with the ‘outside’ (i.e. non-Catholic) world, the Catholic Church has historically relied on a notion of lumen naturale, which was understood precisely as referring to a criterion of rationality shared by all human beings, irrespective of their religious beliefs. Since, presumably, the documents I have discussed in the previous chapter are intended as political interventions within a public sphere that is not populated exclusively by Catholics, it doesn’t appear illegitimate to evaluate them from the standpoint of this criterion.

In particular, the analysis that follows will be structured around the discussion of five ‘key terms’ that I think touch upon some of the most critical aspects of the Church’s discourse as a whole: the notion of ‘relativism’, that of ‘absolute truth’, the idea of ‘authority’, that of ‘freedom’ and, finally, the concept of ‘totalitarianism’. In each case, I will begin from an analysis of the specific way in which the Catholic discourse of anti-relativism proves to understand this term, and the function it is made to play within the broader economy of the

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98 Joseph Ratzinger, Values in a Time of Upheaval, p. 37
99 From this point of view, it may be pertinent to point out that although historically encyclical letters have never been considered ‘confidential’ and have always been made readily available to the general public, the first ones amongst those I discussed in the previous chapter were formally addressed ‘To the bishops, arch-bishops and other patriarchs of the Catholic Church’. Over the course of the past century, however, it became common practice to formally address these letters to a wider audience too. Already Leo XIII’s encyclical ‘Humanum Genus’, for example, (which, as we saw, is the first official document of the Catholic Church to explicitly mention the term ‘relativism’) also contains ‘All people of good will’ as an explicit addressee. John Paul II’s encyclical ‘Veritatis Splendor’, on the other hand, doesn’t contain any formal addressee, which presumably means it is addressed to the whole of humanity at large. The pertinence of the points raised in the rest of this chapter is obviously directly proportional to the generality of the audience for which the arguments discussed were intended in the first place.
argument as a whole. On this basis, I will then attempt to bring out some of the hidden assumptions, conceptual slippages or elements of tension on which the argument relies, in order to highlight what I think are the weak points, or at least the elements that a disinterested but rational interlocutor should not feel compelled to accept.

At the same time, this critical analysis will hopefully also allow me to start laying the foundations for the more ‘positive’ conception of the relationship between relativism and democracy that I will try to defend in the last chapter of this dissertation, because in each case I will contrast the Church’s way of understanding the term in question with an alternative view that I find more compelling from a democratic perspective. The authors I will use to begin the construction of this alternative vision are various, coming from different historical backgrounds and intellectual traditions: from Thomas Hobbes to Hannah Arendt and Norberto Bobbio. My contention, however, is that the aspects I will draw from their respective works all converge towards the specific theory of democracy that I will seek to defend in the last chapter of this dissertation, primarily with reference to the works of Hans Kelsen.

THE DEFINITION OF RELATIVISM

a) The confusion between relativism and nihilism

Various aspects of the way in which the Church has defined and employed the notion of ‘relativism’ in the context of the formulation of its critiques are worth pointing out and discussing because they appear problematic. The first is that relativism has always either implicitly or explicitly been treated as a ‘negative’ notion; that is, as the referent to a philosophical position predicated essentially on a negation. Initially, as we have seen, the object assumed to be negated was the existence of God itself, or in any case the possibility for human
beings of knowing anything about him, since relativism was treated as a synonym for ‘naturalism’. Progressively, then, the object of the negation became the idea of absolute truth itself, particularly as applicable to the moral domain. Relativism therefore began to be treated as a synonym for ‘nihilism’.

Various examples to confirm this can be found in the documents I have been quoting from in the previous two chapters. Leo XIII, for instance, defined the core of the relativist doctrine as follows: “They deny that anything has been taught by God; they allow no dogma of religion or truth which cannot be understood by human intelligence, nor any teacher who ought to be believed by reason of his authority … By this means, they reject from the laws and from the commonwealth the wholesome influence of the Catholic religion, and they consequently imagine that states ought to be constituted without any regard for the laws and precepts of the Church”.100

It will be noted that all the key terms in the above definition are essentially ‘negative’, in the sense of being predicated on a negation: relativism “denies”, “allows not”, “rejects” and “imagines that states ought to be constituted without”. This is a recurrent feature of all subsequent definitions that will be employed by later popes in the ensuing years too. In the immediate aftermath of the second world war, for example, Paul VI defined relativism as a doctrine which “overthrows the foundation of all truth and absolute law, both on the level of philosophical speculation and especially of Christian dogma”.101

Cardinal Ratzinger was therefore merely drawing a logical conclusion, almost half a century later, when in a lecture delivered before the ‘Academie des Sciences Morales et Politiques’ he leveled out the conceptual difference between relativism and nihilism by asserting

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100 Leo XIII, ‘Humanum Genus’, §§ 12-13
101 Ibid., §7.
that “the strict relativism expressed in the absolutization of the majority principle is inevitably transformed at some point into nihilism”. Since then, the elision of the conceptual difference between relativism and nihilism has become commonplace in the Church’s official discourse: the two notions are normally treated as if they were interchangeable with one another.

The reason I find this elision problematic is that it effaces the specificity of the concept of relativism itself. To relativize is not the same thing as to negate: the first puts its object into relation with something else, the second annuls it. The Church, however, appears to want to hang on to both meanings at the same time. It needs to hang on to the difference between relativism and nihilism because the position it wants to criticize is not merely the (rather marginal and arguably self-defeating) view that there are no truths, but also the (much more plausible) view that the truths which do exist are relative. On the other hand, however, it also attempts to level out this difference, because most of the arguments it actually put forwards are directed against the former view rather than the latter.

It therefore seem to rely on the implicit assumption that if the idea that there are no truths is unacceptable, then the idea that truths are relative must be unacceptable too. This assumption is justified on the basis of the claim that truth can exist in a full sense only if it is ‘absolute’, because a ‘relative’ truth is not really a truth after all. However, this claim actually begs the fundamental question, because it eliminates the possibility of sustaining a difference between relativism and nihilism by definitional fiat. What is still lacking is an argument for the idea that truths (and especially moral truths) can exist only if they are ‘absolute’.

The consequence is that many of the arguments employed by the Catholic Church against relativism appear to miss their mark. For example, when Leo XIII writes that relativists “reject from the laws and from the commonwealth the wholesome influence of the Catholic religion,

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and consequently imagine that states ought to be constituted without any regard for the laws and precepts of the Church." Few actual relativists (and certainly not the specific version of relativism I will defend in the last chapter of this dissertation) are likely to feel concerned.

What relativism maintains is not that what the Church holds to be ‘true’ is actually ‘false’, but merely that it is ‘relative’. This does not necessarily lead to the idea that the Church ought to be excluded from the possibility of exercising any influence in the political domain, but can rather be interpreted as grounds for maintaining that the exercise of this influence should be made compatible with the fact that there may also exist other conceptions of what truth amounts to in a political society which cannot be excluded either. Instead of negating or excluding, therefore, relativism seeks to reconcile different conceptions of the truth and enable them to coexist with each other peacefully.

The Church, however, systematically fails to take this difference into account, probably because it is much easier to criticize nihilism than relativism, both on philosophical and political grounds. This is a point which had already been advanced, in his characteristically witty manner, by Clifford Geertz in the famous lecture delivered before the American Anthropological Association in 1984 on the topic of ‘Anti-anti-relativism’. Although the context and the domain of application are slightly different, many of the points Geertz raises in that lecture can be applied more or less directly to the Church’s specific version of the discourse of anti-relativism:

What the anti-relativists want us to worry about, and worry about, and worry about, as though our very souls depended on it, is a kind of spiritual entropy, a heat death of the mind, in which everything is as significant, and therefore insignificant, as everything else … As far as what actually goes on in the world, the image of vast numbers of [relativists] running around in so cosmopolitan a frame of mind as to have no views as to what is and isn’t true, or good, or beautiful seems to me largely a fantasy … There may be some genuine nihilists out there, along Rodeo Drive or around Times Square, but I doubt very many have become such as a result of an excessive sensitivity to the claims of other cultures. At least most of the people I meet, read, and read about, and indeed I myself, are all-too-committed to something or other, usually parochial.103

b) The confusion between relativism and absolutism

Beyond the confusion between relativism and nihilism, then, the second feature of the Catholic Church’s definition of the concept of relativism that is worth pointing out and discussing, because it appears somewhat problematic, is the fact that relativism is effectively treated as an ‘absolutist’ position; that is, as a claim which steps outside the relativity it ascribes to all other positions, understanding itself as an ‘absolute truth’. This is implicit already in the fact that relativism has always been treated as a ‘doctrine’ by the Catholic Church. For, according to the Church’s own usage of the term, a doctrine is an articulation of some fundamental ‘dogma’. It was however also made explicit by pope Benedict XVI in the speech he gave at the World Youth Day of 2005, since there he formally defined relativism as a doctrine which “absolutizes what is not absolute but relative”.

On strictly logical grounds, this treatment of relativism as an ‘absolutist’ position appears paradoxical because the notions of the ‘relative’ and the ‘absolute’ are in fact conceptual opposites. It isn’t very surprising, therefore, that such a definition turns out to be self-defeating, for the content of the claim ‘there is no absolute truth’ clearly contradicts a presupposition of the claim itself, if this is posited as an ‘absolute’ truth. Once again, Benedict XVI has been the clearest in formulating this objection: in the same speech where he defined relativism as a way of “absolutizing what is not absolute but relative” he also went on to say that this position is incoherent because it “contains a dogmatism of its own”.

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The very fact that this contradiction is so manifestly apparent, however, provides reason to doubt that anybody could have ever seriously defended such a conception of relativism in the first place. This poses once again, in another way, the question of whether the target that the Church claims to be attacking when it talks about ‘relativism’ is not in the final analysis a straw man. This point too was expressed very pointedly by Clifford Geertz in the lecture on ‘Anti-anti-relativism’:

The notion – he writes – that someone who does not hold your views holds the reciprocal of them, or simply hasn’t got any has, whatever its comforts for those afraid reality is going to go away unless we believe in it very hard, not conduced to much in the way of clarity in the anti-relativist discussion, but merely to far too many people spending far too much time describing at length what it is that they do not maintain than seems in any way profitable.106

As a matter of fact, the vast majority of theorists who have actually defended a conception of relativism have proved to be aware of the contradiction that would emerge in positing it as an ‘absolutist’ position, and have accordingly taken care to specify that this is not the way it should be understood. The first to make this point clearly, for example, was Friedrich Nietzsche in the set of aphorisms and notes posthumously published as The Will to Power. To be sure, the reference to that text may at first appear somewhat confusing in this context, since Nietzsche does not really talk of relativism per se, but nihilism. To treat Nietzsche as a relativist would therefore seem to undermine the very distinction I have insisted on keeping apart above.

In reality, however, Nietzsche establishes a distinction between two kinds of nihilism. The first, which he refers to as “passive nihilism”, is defined as a “decline and recession of the power of the spirit” which shrinks away from the possibility of formulating moral judgments on the basis of the excuse that “there are no absolute moral truths”. “Active nihilism”, on the other hand, is defined as a “sign of strength”, which embraces the relativity of truth and takes this as

grounds for affirming “its own” moral values and perspectives.\textsuperscript{107} For the purposes of this discussion, this latter kind of nihilism can be considered more akin to what I have been calling ‘relativism’, since it is explicitly defined in terms of the concept of relativity, and categorically opposed to the kind of nihilism that simply denies the existence of truth as such.

Concerning this latter kind of nihilism, then, Nietzsche goes on to write that “this may seem illogical … but the nihilist does not believe that one needs to be logical”\textsuperscript{108}. This can be interpreted as a way of responding to the standard objection according to which relativism is self-defeating. The response consists in pointing out that the objection only works on the basis of the presupposition that the relativist claim is posited as an absolute claim to truth in the first place. However, the possibility of assuming such an absolute standpoint is precisely what the relativist is questioning. Thus, from the relativist’s standpoint there is no inconsistency in denying the possibility of making absolute claims to truth, because the claim itself is not meant to be posited as an absolute in the first place.

Another way of putting this is to say that for Nietzsche “active nihilism” is not a ‘doctrine’ but something more akin to an ‘attitude’, expressed by the way one relates to the possibility of formulating moral judgments. In the last chapter of this dissertation, where I will attempt to outline my own conception of the relation between relativism and democracy, I will try to capture this insight by arguing that relativism cannot be understood as a first-order moral judgment, but must rather be thought of as a meta-ethical position implying the adoption of a second-degree perspective on one’s own moral commitments.

While not renouncing to take a stand and formulate moral judgments, therefore, the relativist is conscious that, from a second order perspective, his stand and judgments remain


\textsuperscript{108} \textit{Ibid.}, p. 18.
‘relative’ to the specific cultural and discursive framework from which they emerge. This clarification of the distinction between the first- and second-order ‘levels’ of moral judgment dispels the contradiction that is normally attributed to relativism because it shows that the two aspects assumed to be in conflict with one another are actually situated on entirely different conceptual planes.

c) The binary opposition between ‘absolute’ values an ‘no’ values

The third feature of the way in which the notion of relativism is employed by the Catholic discourse of anti-relativism I intend to comment is its inscription within the terms of a binary opposition with the idea of absolute moral truth. This is a direct result of the conjunction of the fact that relativism is treated both as a ‘negative’ and an ‘absolute’ position: the logical consequence is that ‘truth’ (and in particular moral truth) is assumed to have to be either absolute or non-existent. No intermediate possibility is envisaged, as if these were the only two available options.

This binary is what enables the proponents of the Catholic discourse to move directly from the recognition that (their conception of) relativism is self-defeating to the idea that therefore absolute moral truths must exist. For example, in the previous chapter we have seen that in the article entitled ‘What is Truth? The Significance of Ethical and Religious Values for a Pluralist Society’ Cardinal Ratzinger distinguishes between two different conceptions of democracy: the first, which he identifies as ‘relativist’ is assumed to be based on the idea that there are no moral values applicable to the political domain a priori. The second, on the other hand, which he identifies as the ‘Christian and metaphysical thesis’, is assumed to be based on the idea that there politics is preceded and therefore limited by a set of absolute moral truths.
After having demonstrated to his satisfaction that the ‘relativist’ conception of democracy is self-defeating (because it is incapable of specifying any determinate ‘limits’ to the power that people may legitimately exercise over themselves), Ratzinger jumps to the conclusion that the ‘Christian and metaphysical thesis’ must therefore constitute a necessary condition for the viability of a democratic system. What this binary logic arbitrarily excludes, however, is the possibility that the moral values applicable to the political domain may have an intermediate status: neither ‘non-existent’ nor ‘absolute’.

If, for example, the members of a democratic polity were to stipulate a set of limits to the power they are allowed to exercise over each other through the democratic procedure itself, the situation that would thereby be created would not be entirely devoid of values, because commonly recognized principles would have effectively been stipulated. However, these values would not necessarily have to be thought of as ‘absolute’, because the contracting human beings could remain conscious of their man-made origins and therefore accept to see them as provisional and revisable entities. This is the core of the ‘positivist’ understanding of the nature of the legal order I will attempt to defend in the last chapter of this dissertation.

For the time being, however, the key point I would like to put across is that the binary opposition between the idea that ‘truth’ (and in particular moral truth) is either absolute or non-existent is neither a necessary nor a particularly convincing premise in terms of which to organize a discussion of the relation between relativism and democracy. A good way of putting this point across might be to recall something written by John Dewey in a review essay of a book by the Catholic conservative essayist GK Chesterton, whose arguments are in many ways analogous to the ones underscoring the anti-relativist rhetoric of the Catholic Church.
Reflecting upon his experience of travelling across the United States, Chesterton had written that: “So far as that democracy becomes or remains Catholic and Christian, it will remain democratic. Insofar as it does not, it will become wildly and wickedly anti-democratic … Men will more and more realize that there is no meaning in democracy if there is no meaning in anything; and that there is no meaning in anything if the universe has not a center of significance and authority that is the basis of our rights”\textsuperscript{109}.

In his review essay, Dewey picks up upon this statement and moves against it the same objection I have been attempting to put forwards against the broader tradition of Catholic anti-relativist discourse: “The idea that unless standards and rules are timeless and immutable they are not rules and criteria at all is childish … if there is anything confirmed by observation it is that human beings naturally cherish certain things and relationships, they naturally institute values. Having desires and having to guide themselves by aims and purposes, no other course is possible”\textsuperscript{110}.

On the basis of this observation, Dewey goes on to suggest that the real historically meaningful opposition is not between ‘absolute values’ and ‘no values’, but rather between the idea that values derive from a transcendent source and that they have been made by human beings themselves. Faced with this opposition, Dewey subsequently argues, on pragmatist grounds, that the latter option appears preferable because it enables and encourages human beings to examine their own values critically, and potentially change them in order to adapt them to the context and necessities of the time, instead of assuming that they are fixed and immutable and therefore beyond the reach of our critical powers.

\textsuperscript{110} Ibid., p. 25.
Interestingly, while making this point, Dewey also makes another claim which captures the core of the thesis I will seek to advance in the next section of this chapter: “It would require an extraordinary degree of pessimism – he writes – to assume that vastly improved knowledge of nature, human nature included, cannot be employed or will not be employed to render human relations more human, just and liberal. The notion that such knowledge and such application will increase misunderstanding is a clear case of ‘reversed charge’ for results produced by dogmatic absolutism in appeal to extra-natural authority” 111.

The point I find particularly interesting in this passage is the claim that anti-relativists may be accusing relativism of producing social and political consequences that are in reality the outcome of the continued reference to the idea of ‘absolute truth’. This is the intuition I will attempt to substantiate in the next section of this chapter. Before moving on to that analysis, however, a further feature of the way in which the Catholic discourse of anti-relativism employs the notion of relativism itself is worth pointing out and commenting on.

d) The connection between relativism and indifferentism

In the previous chapter, we have already seen that, since its very first usages in official documents by the Catholic Church, the notion of relativism was conceptually tied to that of ‘indifferentism’. Indeed, what I have attempted to suggest was that, at least initially, relativism was defined in terms of the conjunction between the two capital ‘errors’ of modernity, already condemned for example by Pius IX in his famous ‘Syllabus’: immanentism and indifferentism.

The point I would like to advance in this respect, is that the connection between the notion of relativism and this sort of indifferentism is arbitrary and not really defensible on logical

111 Ibid., p. 29.
grounds. The reason is the same I have been attempting to put across, in different ways, throughout the whole of this section: that relativism does not imply an absence of moral commitments (otherwise there would be nothing left to relativize) but must rather be understood as a more complex attitude which involves taking a second-order perspective on one’s own values and commitments.

The adoption of this second-order perspective does indeed have an effect on the dimension of moral motivation. However, there is no reason to suppose that this effect should run in the direction of a weakening of motivation. On the contrary, by being made conscious that there is an irreducible element of relativity in one’s own moral outlook, the individual is made responsible for his own decisions and actions. The effect of moral relativism on the dimension of motivation for engaging in moral action is therefore to situate it within the framework of the concepts of ‘freedom’ and ‘responsibility’ rather than to annul it entirely.

This is a point which has been formulated in different ways by many of the advocates of moral relativism. The one who has had the most vivid sense of the grave responsibility that is imposed on the individual as soon as he is deprived of the possibility of making reference to ‘absolute’ moral values was however probably Max Weber. In his famous lecture on ‘Science as a Vocation’, for example, the German sociologist and political theorist framed this as a question of moral ‘courage’, in living up to the challenge presented by the modern age:

Today – he wrote – the routines of everyday life challenge religion … One therefore has to choose between the religious dignity which this ethic confers and the dignity of manly conduct which preaches something quite different. According to our ultimate standpoint, the one is the devil and the other the God, and the individual has to decide which is God for him and which is the devil. And so it goes throughout all the orders of life … What is hard for modern man, and especially for the younger generation, is to measure up to this workaday existence. The ubiquitous chase for ‘experience’ stems from this weakness; for it is weakness not to be able to countenance the stern seriousness of our fateful times.\footnote{Max Weber, ‘Science as a Vocation’, in The Vocation Lectures, Hackett, 2004.}
Far from betraying any inclination towards moral ‘apathy’, this passage is drenched in the conviction that the element of moral relativism implicit in the pluralization of value spheres characteristic of modern times imposes upon the individual the difficult task of choosing for himself the ‘God’ he intends to worship; that is, out of metaphor, of deciding without external guidance the specific conception of value he intends to remain faithful to in his actions. For Weber, therefore, weakness of will is by no means the necessary consequence of the relativization of values previously held to be absolute. On the contrary, for him, it is a characteristic of those who fail to live up to the challenge represented by a situation in which individuals are forced to decide for themselves what it is right for them to do.

THE IDEA OF ABSOLUTE MORAL TRUTH

a) The confusion between the utility and the existence of an ‘absolute’ moral truth

In the light of the above discussion, we can now move on to examine the other pole in the binary opposition the Catholic discourse of anti-relativism sets up between the notion of ‘relativism’ and the idea of ‘absolute moral truth’. In this respect too, I will advance a number of inter-related points. The first is that the refutations of relativism provided by the advocates of the Catholic Church do not in and of themselves prove that some kind of ‘absolute truth’ exists or is available to human beings.

These refutations are organized around two parallel claims: the first is that, from a logical point of view, relativism is untenable because the claim ‘there are no absolute truths’ supposedly contradicts itself: I have already dealt with this objection in the previous section of this chapter. The second line of objection, then, is that the adoption of a relativist standpoint necessarily leads to unacceptable political consequences: especially when taken as the philosophical foundation
for democracy, it is supposed to imply a dissolution of the grounds for authority, and ultimately also to pose the conditions for the emergence of some form of totalitarian domination.

Now, the point that I would like to advance in this respect is that even if it were true that relativism led to these adverse political consequences (a claim that I will discuss and confute in more detail in the last section of this chapter), this would still not be sufficient to demonstrate that a set of absolute moral truths exists and is indeed available to human beings. At most, this argument proves that it would be useful, and therefore perhaps desirable, if such absolute moral truths existed and were available to human beings. However, utility is not sufficient to demonstrate existence, and what we desire isn’t necessarily the case.

The implicit assumption on which the Church’s argument seems to rely is that if it can be shown that something is good (and perhaps even necessary) for ensuring peaceful coexistence amongst human beings then it must exist, because the world was created by an infinitely good and omnipotent God and must therefore necessarily contain all that it requires in order to adequately fulfill its purposes. In the Encyclical ‘Immortale Dei’, for example, Leo XIII makes precisely this argument with respect to the notion of authority: since authority is necessary to ensure peaceful coexistence amongst human beings, God must have established the grounds for its institution, because his infinite goodness and omnipotence imply that God must necessarily have made provisions to ensure that everything human beings need to fulfill their purposes is available to them.

The problem with this argument, when applied to the issue of the existence of absolute truth, however, is that it clearly begs the fundamental question: one has to already assume that an absolute truth exists (namely, that an infinitely good and omnipotent God has created the world) in order to prove that absolute moral truths exists. Since the existence of such absolute moral

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113 Cf. Leo XIII ‘Immortale Dei’, §3.
truths is precisely what is called into question by the relativists in the first place, this cannot constitute a cogent argument against them.

To be sure, there is another way in which the Church’s argument might be interpreted, which overcomes this problem. This refers to the long-standing tradition of thought according to which religious belief ought to be fostered and defended independently of its ‘truth’ because it exercises an indispensable civic function. The first author to make this point in modern times was of course Niccolò Machiavelli in his Discourses of the First Decade of Livy. Rousseau also made a similar point, at a more abstract and general level, in his Social Contract. Finally, Tocqueville famously applied it to the United States in his treatise on Democracy in America.

If read in this light, the Church’s critique of relativism could perhaps be interpreted as a way of making an exclusively political point, independent from metaphysical concerns as to whether absolute truth actually exists or not: this point would be that a society founded on relativist premises would be incapable of preserving its unity and especially its freedom, because a reference to some idea of absolute truth is necessary to ensure obedience to authority, which is in turn a necessary condition for social order and indeed for the preservation of freedom. Irrespective of metaphysics, therefore, the claim would be that politics itself requires an orientation to some idea of absolute moral truth.

The problem with this interpretation however, is that it relies on a conception of the relation between politics and metaphysics that the Church has always wanted to reject: as I have attempted to make clear through the analysis conducted in the previous two chapters, part of the purpose of the Church’s discourse of anti-relativism has always been to assert that politics cannot be separated from metaphysics (and therefore implicitly theology), but must rather be subordinated to it. This is the reason why the Church has historically always been extremely
skeptical of the arguments for civic religion advanced by authors such as Machiavelli, Rousseau and Tocqueville: because behind the bracketing of the question of the ‘truth’ of religion it has always perceived the looming threat of atheism.

Indeed, from the internal perspective of faith, the idea that one should believe in God because it is ‘useful’ rather than because it is ‘true’ can only appear blasphemous and absurd. For the Catholic Church it has always been essential that the message of Christ be considered ‘true’. If that assumption could be put aside, then faith itself would seem to lose all its significance. The paradox therefore is that this interpretation of the Church’s critique of relativism as an argument for civic religion ends up relying on what appears as an ‘irreligious conception of religion’ from the perspective of Christianity itself.

*b) The problems raised by the question of concerning the content of ‘absolute’ moral truth*

A further problem that also emerges in connection with the Church’s use of the notion of ‘absolute moral truth’ as an antidote to the supposedly adverse political consequences of relativism is that even if the issue of the existence of absolute moral truth could indeed be bracketed, this would still not be sufficient to establish its content. In other words: even if it could be taken for granted that absolute moral truth exists, the further problem which the Church’s discourse would still seem to ignore is that of its ‘interpretation’. To know that truth exists is not the same thing as to know what it is, nor does the former provide any reason to suppose that the latter will be readily available.

The reason why this problem is never even posed by the Church’s advocates is probably that the Catholic Church understands itself as the ultimate locus of authority in matters of interpretation of faith. In this way, the problem of interpretation is cast aside through an appeal to
the principle of authority. However, from the perspective of the problem under consideration, this clearly begs the fundamental question once again, since the Church’s appeal to authority is itself based on the claim that it has privileged access to truth in the first place.

Once this assumption is put aside, and the fact confronted that there may exist a plurality of different interpretations of ‘absolute’ truth, it emerges that the reference to this notion is not sufficient to avoid any of the adverse political consequences the Catholic discourse ascribes to relativism. On the contrary, the reference to an idea of absolute truth may actually have the effect of **exacerbating** those consequences. This is the point we already encountered above through Dewey’s comment about the “reversed charge”, whereby he pointed out that anti-relativists often accuse their opponents of producing social effects of which the reference to an idea of absolute truth is more likely to be the cause.

The reasoning underscoring this claim is that the correct interpretation of truth may easily turn out to be a contentious matter, and does not necessarily produce agreement. Even between individuals or groups that are equally convinced that an absolute truth *exists*, there may remain irreconcilable disagreements as to what the *content* of this truth amounts to. Thus, the reference to an idea of absolute truth does not necessarily have an aggregating social effect, but may also become the cause of conflict. Moreover, the conflicts that emerge over the correct interpretation of absolute truth are likely to be more acrimonious and divisive than those conducted within a relativist framework, because between two competing conceptions of truth no compromise is possible.
Truth is an all-or-nothing affair: something is either true or false, no intermediate position is possible.\textsuperscript{114} The effect of truth is therefore always to operate a distinction between those who know it and understand it on one hand and those who don’t on the other. Moreover, since the opposite of truth is falsehood, the judgment that somebody lies on the ‘other’ side already implies a condemnation. It would be absurd to try to understand or tolerate error. Therefore, the natural attitude of someone who reasons in terms of truth is to condemn those who think differently and do the utmost to ‘convert’ them. This is amply demonstrated by the history of the Catholic Church itself and has even been codified in a formal principle: \textit{extra ecclesiam nulla salus}.\textsuperscript{115}

From a political point of view, the consequence is that the confrontation between two opposed conceptions of absolute truth is most likely to result in violent conflict, physical force being the last available resort to ‘convert’ the other when no other means of compromise is possible. And it is in this sense that I claim that the reference to an idea of absolute moral truth may actually have the effect of \textit{exacerbating} social conflict rather than overcoming it. In this respect, an interesting author to consider is Thomas Hobbes, whose treatise on the \textit{Leviathan} was written at the height of the so-called ‘wars of religion’ in England.

The reason why this text is particularly relevant for the present discussion is that it is often cited by the critics of relativism as a way of illustrating its nefarious political

\textsuperscript{114} Something may indeed be colloquially said to be ‘partially true’. However, what this usually means is that the object in question is a complex entity, made of a multitude of different components, some of which are true and others false. Every individual unit of judgment nonetheless remains either true or false.

\textsuperscript{115} To be sure, within the context of contemporary political theory, there has been an attempt to reinterpret the concept of truth in a post-metaphysical sense in order to overcome these troubling political implications and make it into the foundation for a more inclusive and pluralist conception of democracy. I will discuss the political theory that stems from this attempt in a later chapter of this dissertation, offering some reasons for finding it unsatisfactory. Independently of that discussion, however, what needs to be made clear in this context is that the conception of absolute truth which the advocates of the Catholic Church have in mind as an antidote to relativism does not belong to this strand of thought. As I have already pointed out, the Church’s conception of truth remains resolutely metaphysical, and anchored in a tradition which categorically opposes it to the dimension of error.
consequences.\footnote{See for example, Leo Strauss, ‘Three Waves of Modernity’, in \textit{Introduction to Political Philosophy: Ten Essays}, Wayne State University Press, 1989.} What I would like to suggest, however, is that this text is more adequately read as an illustration of the nefarious political consequences of organizing politics in terms of the idea of ‘absolute’ (indeed ‘religious’) truth. A brief discussion of it may therefore serve to wrap up the argument just made in a more historically grounded manner.

According to the thinkers that cite the \textit{Leviathan} as a lesson on the political consequences of relativism, what this text would show is that there are only two possible outcomes to a situation in which everyone is their own ultimate judge as to what constitutes right and wrong: either a devastating “war of all against all”, in which all meaningful human pursuits are undermined, or the absolute submission to a sovereign authority founded exclusively on the power of the “sword”. In any case, however, a regime founded on violence.

My contention, however, is that this reading actually misses the fundamental polemical point of Hobbes’ text. The reason is that it remains profoundly a-historical, ignoring the context in which Hobbes was writing and the concrete political problems he was responding to. Once these are taken into account, what emerges is that relativism could not possibly have been the principal object of Hobbes’ concern, simply because there were no ‘relativists’ in 17th century England. On the contrary, what did exist was precisely a deep religious conflict, which at the time was playing a significant role in structuring the bloody civil war between the opposite forces of King and Parliament.\footnote{This religious dimension of the English civil war is often overlooked in contemporary accounts. However, what all of the most prominent historians of this period have insisted on is that this was a fundamental factor in structuring the conflict between King and Parliament at the time, especially because of its popular appeal in mobilizing civic militia against the King’s regular army. In his book on the rise of the idea of popular sovereignty in England and America, for example, Edmund Morgan points out that the supporters of Parliament were all predominantly Anglican and Presbyterian, and that one of the most important causes of concern for them with respect to the reliability of King Charles II was precisely that he was suspected of having secret ties with Catholicism. Cf. Edmund Morgan, \textit{Inventing the People}, Norton, 1989.}

It was to \textit{this} context that Hobbes was responding by attempting to put forwards a temporal justification for sovereign power: by dissociating the grounds for the legitimacy of
sovereignty from religious arguments over the sanction offered by God, his intention was to subordinate the religious dimension to the requirement of political stability, and therefore in a sense to de-politicize religion. This is also made clear in the second part of the *Leviathan*, where Hobbes argues that the sovereign should assume all powers of interpretation and jurisdiction over religious matters: the point is that politics must rule over religion and not vice versa. This is why it is essential that the justification for sovereign authority does not rely on religious premises.

In the light of this interpretation, Hobbes’ famous description of the state of nature as a state of “war of all against all” can be read in a different way. What he is describing is not a situation in which ‘relativism’ prevails (something that would have been entirely foreign to his imagination and also to his concrete political concerns), but rather a situation in which the possibility of making reference to a shared set of criteria for interpreting ‘absolute’ (and in particular ‘religious’) truth has been undermined. Faced with these circumstances, his suggestion seems to be that continuing to structure politics around the idea of truth itself would lead to a “war of all against all”, and it is for this reason that he seems to think it is necessary to subordinate its traditional guardians (i.e. the religious authorities) to the secular arm of the sovereign.

Another way of putting this is that the real target of Hobbes’ critique in the Leviathan is by no means ‘relativism’ but precisely the politics of ‘truth’ which he judged responsible for the ongoing civil war in his country. This is stated almost explicitly by Hobbes himself through the formula he uses to sum up the gist of his political theory: “auctoritas non veritas facit legem”. Here, the opposition that is being established is not between the idea of an absence of truth and good government, but rather between the idea of truth itself and authority. If we wanted to read
Hobbes from the perspective of the contemporary concern with relativism, we would therefore have to conclude that it is precisely the insistence on the need to ground public authority on absolute truth which actually proves to have all the nefarious social consequences that are commonly ascribed to relativism by its critics.

Indeed, the formula “auctoritas non veritas facit legem” is the reason why Hobbes has been widely identified as the founder of the ‘positivist’ conception of law, which, as I will later claim in the last chapter of this dissertation, is an indispensable presupposition of a democratic order. Of course, the passage from Hobbes’ positivism to democracy requires a reinterpretation, and to some extent also a critique, of the specific conception of ‘authority’ employed by the English philosopher in his formula. I will attempt to provide that in a later section of this chapter, focusing specifically on the notion of authority itself. Before we can move on to that discussion, however, more needs to be said concerning the specific notion of ‘truth’ employed by the Catholic Church as a counterpart to relativism.

c) The confusion between the notion of natural law and human rights

When pressed to give at least an indication as to the ‘content’ of the specific conception of absolute moral truth they hold to be necessary to regulate human affairs, the notion that the advocates of the Catholic discourse of anti-relativism most often refer to is that of ‘natural law’. This has been a central element of the Church’s political doctrine at least since the time of Thomas Aquinas; however, it became the object of a renewed emphasis at the end of the XIXth century, and in particular with the papacy of Leo XIII – who, as we have seen, was also responsible for introducing the notion of relativism within the framework of the Church’s official
discourse. From the start, therefore, natural law was posited as the specific ‘antidote’ for the supposedly pernicious political consequences of moral relativism.

While this may not appear to do much in the way of addressing the problems I have already raised above, the reference to the notion of natural law does pose a number of additional complications which are worth briefly commenting upon in this context. The central feature of the neo-thomism that the Church originally sought to oppose to the perceived moral and political dominance of relativism was the assumption that the natural order itself contains a set of absolute normative commandments, willed by God and accessible to human beings through the faculty of reason. Nature was therefore assumed to constitute a rational and meaningful order, consciously designed in the pursuit of specific ends. The implication was that norms are not opposed to facts, but rather derived from them in the first place: this is the essence of the classical Christian doctrine of natural law.

Interestingly, however, over the course of the XXth century, this classical conception was problematized by the Catholic Church itself. The fundamental objection against it was formulated very cogently by Cardinal Ratzinger in the context of his debate with Jurgen Habermas, which I have already mentioned in the previous chapter:

> The idea of natural law – he writes – presupposed a concept of ‘nature’ in which nature and reason interlock. The victory of the theory of evolution has meant the end of this view of nature. According to this theory, which seems to go broadly unchallenged today, nature per se is not rational, although it does contain rational behavior.\(^{118}\)

> In the light of this recognition, the task that is assumed to befall on the Catholic Church is to reformulate the original ‘truth’ contained in the classical notion of natural law in a way that makes it comprehensible and acceptable to the modern mentality, predicated on the assumption that nature is constituted merely by a set of physical phenomena, interacting with each other,

without any overarching purpose. The way in which Ratzinger has attempted to do this is by reformulating the traditional doctrine of natural law in terms of the notion of ‘human rights’. The latter have therefore progressively been posited as the new, more timely, ‘antidote’ to the pernicious political consequences assumed to be tied to relativism.

Once again, the clearest formulation of the argument was provided by Cardinal Ratzinger in the context of his debate with Habermas: “By natural law – he stated – on the deepest level and in the modern period was meant rational law. Its last surviving element is human rights. These are incomprehensible without the presupposition that man as such, in virtue of the simple fact that he belongs to the species ‘man’, is a subject of rights”.

As we have already seen in the previous chapter, the key claim here is that even though the theory of evolution has rendered obsolete the idea that nature constitutes a rational system as a whole, it has not yet excluded the idea that nature might contain some rational elements within it; most notably: human beings. On this basis, Ratzinger suggests that human rights can be considered as the last remaining element of the classical conception of natural law that is still acceptable to the modern mentality.

The implication of this argument is that the classical conception of natural law as a law implicit in the order of nature itself has not really been abandoned by the Catholic Church, but simply restricted to a doctrine of human rights, which are accordingly reinterpreted as a form of natural law in the classical sense. This emerges even more clearly from the Encyclical ‘Pacem in Terris’, which was the first official document in which the Catholic Church explicitly accepted the validity of the notion of human rights:

By the natural law – pope John XXIII wrote – every human being has the right to respect for his person, to his good reputation; the right to freedom in searching for truth and in expressing and communicating his opinions, and in pursuit of art, within the limits laid down by the moral order and the common good … Once this is admitted, it also follows that in human society to one man’s right there corresponds a duty in all other persons: the duty, namely, of acknowledging and

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119 Ibid.
respecting the right in question. For every fundamental human right draws its indestructible moral force from the natural law, which in granting it imposes a corresponding obligation.\footnote{Ibid.}

In this passage, human rights are explicitly treated as a form of natural law, in the classical thomistic sense. My contention, however, is that this way of defining the notion poses a number of conceptual problems, both from the point of view of its internal coherence, and from the point of view of its capacity to respond to the concern raised by Ratzinger, which is the reason why the classical notion of natural law was abandoned in the first place. To illustrate this, it might be useful to start by recalling the conceptual difference that has historically been assumed to exist between the notion of a ‘right’ and that of a ‘law’.

According to the classical tradition of Roman jurisprudence, a ‘right’ (\textit{ius}) is defined essentially as an entitlement: the capacity, or rather the liberty, of doing something. Such a notion does not presuppose any prior authority to be operative and may accordingly be assumed to exist ‘in nature’ even if the latter is not assumed to consist in a rational and meaningful order. A law (\textit{lex}), on the other hand, involves a commandment: it is an obligation to do something and therefore a limitation on one’s freedom. Moreover, contrary to the idea of a right, such a notion presupposes the existence of a prior authority to legitimate it and enforce it, and cannot accordingly exist ‘in nature’ if this is not assumed to be an intrinsically rational and meaningful order.

Traditionally, the Catholic Church had both recognized and upheld this distinction. This is the reason why its political doctrine was formulated in terms of the notion of ‘natural law’ and \textit{not} ‘natural right’: because the point was to reaffirm the importance of obedience to an absolute authority expressed through a set of commandments implicit in the order of nature itself. Indeed, when the notion of natural rights first began to be formulated at the beginning of modernity, and
especially when it took the concrete political form of a series of declarations of human rights, the Church vigorously opposed it. Natural rights and especially human rights were seen (and this not only by their critics) as a threat to the absolute authority of the Catholic Church and its conception of natural law.

Over the course of the XXth century, however, this initial opposition was played down and, as we have seen, the classical doctrine of natural law reformulated as a doctrine of human rights. Effectively, therefore, the notions of ‘natural law’ and ‘natural right’ were conflated with each other. This poses a problem first of all for the internal coherence of the notion of human rights themselves, because the original significance of the notion of a ‘right’ is entirely effaced: intended as a guarantee of freedom, it has been made into a foundation for authority. It is not clear, therefore, what remains of the idea that human rights are entitlements, once these are translated into absolute commandments assumed to be derived from a transcendent source.

More importantly, however, what appears even more problematic is that the original reason why the classical notion of natural law was abandoned in the first place is not really addressed by this translation. By being understood as elements of natural law, human rights are assumed to be intrinsic in the nature of human beings themselves. In this way, nature is still implicitly assumed to constitute a rational and meaningful order: the only difference is that the assumption has been shifted from the natural order as a whole to the specific nature of man in particular. The conception of nature that was taken to be problematic has therefore not been overcome but simply displaced.

Another way of putting this is that the Church’s contemporary emphasis on the notion of ‘human rights’ as an antidote to the supposedly pernicious political consequences of relativism functions merely as a cover for the persistence of the reference to the classical notion of natural
law, which the Church itself has nonetheless already rejected as problematic and unacceptable to
the modern mentality. In the light of this contradiction, it seems unclear, and indeed doubtful,
whether the specific conception of ‘human rights’ as a form of ‘natural law’ is capable of
providing an adequate alternative to the relativism the Church has been seeking to attack.

THE CONCEPT OF AUTHORITY

a) The relationship between the notion of authority and that of truth

The next aspect of the Catholic discourse of anti-relativism I will focus on and examine
critically concerns its use of the concept of ‘authority’. This is closely tied to the Church’s use
and defense of the concept of ‘truth’. Indeed, as I have already pointed out above, the whole
body of Catholic discourse devoted to the critique of relativism can be read as a way of
reaffirming the importance of the concept of authority in the political domain. For this reason, it
is worthwhile to establish precisely what the Church means by this concept and in what respect it
can be criticized.

When the notion of authority is mentioned in the documents where the Church addresses
the issue of relativism, it is usually in connection with the problem of establishing the conditions
for social unity and stability. As we have seen, relativism is assumed to lead to a dissolution of
the grounds for social integration, while the reference to some idea of absolute truth is taken to
be necessary to preserve it. The specific reason why truth is assumed to have this integrating
social function, however, is that it is taken to be the only possible foundation for a system of
authority amongst human beings, and no social order is taken to be possible without the
existence of a unifying authority.
Moreover, since both authority and truth are ultimately assumed to require the sanction of a transcendent God, in the final analysis, the problem of social unity and stability becomes the grounds for a reassertion of the importance of a reference to the religious dimension in the political domain. Religion, authority and truth therefore prove to be inextricably connected with each other, at the heart of the political vision that the Catholic Church seeks to oppose to relativism. It is this tight ‘trinity’ that I shall attempt to penetrate and discuss critically over the course of this section.

A useful starting point might be the typology of different conceptions of authority proposed by Hannah Arendt in the essay entitled precisely ‘What is Authority?’. In that essay, Arendt demonstrates that the specific concept of authority on which the Catholic Church has historically relied draws primarily from a Platonic heritage, according to which the legitimacy of political rule is ultimately based on the access to a privileged domain of ‘truth’.

The metaphors Plato uses to illustrate his conception of the grounds for the legitimacy of rule by the philosopher-kings are for example those of the ‘shepherd’, the ‘physician’ or the ‘helmsman’. In each case, a position of authority is therefore justified with reference to a presupposition that the person in authority has access to some superior knowledge that those subject to his authority cannot as easily obtain. These are also the metaphors that the Church has traditionally used to justify its own position of authority. Thus, its conception of authority proves to depend logically on the assumption that there exists some higher domain of ‘truth’ pertinent to the organization of human affairs, to which the Church is further assumed to have a privileged access.\(^{121}\)

Parallel to this ‘platonic’ conception of authority, Arendt also notes, there exists another conception, which derives from the Roman juridical tradition. This is not based on the idea of

‘truth’, but on the categories of contract law: two individuals can agree to sign a contract whereby one counts as the author of the actions of the other, and the latter can accordingly be said to act with ‘authority’ over the former. This is of course the etymological origin of the term ‘authority’ itself (which is accordingly of Latin heritage, not Greek), and also the specific sense in which Hobbes uses the term in the formula we already encountered above, according to which “auctoritas non veritas facit legem”.

The argument Hobbes uses to justify this proposition in the Leviathan is pertinent in this context because it has to do with the conditions for the establishment and preservation of social unity and stability. Hobbes’ claim is that the passage from the disaggregated state of the “multitude” (in which the “war of all against all” is taken to be inevitable), to the unified state of the “commonwealth” (which is taken to be the condition for peace and order amongst human beings), is possible only if the separate individuals sign a contract with each other whereby they all agree to count as the authors of the actions of a given third party. In this way a common ‘authority’ is created which can keep them all “in awe”, because if anyone were to refuse to obey it, he would effectively be violating a contract with everybody else and thereby incur in the revenge of their several forces, allied with each other.¹²²

From this analysis it accordingly emerges that there also exists two competing conceptions of the grounds for social order and stability, which run parallel to the two conceptions of authority identified and distinguished by Hannah Arendt. The first sees the social order as something inherent in the natural order of things willed by God and therefore ultimately founded on some idea of religious ‘truth’. The latter, on the other hand, sees the social order as something artificial, created by human beings themselves, on the basis of their reciprocal agreements with each other, and therefore independently of any idea of religious ‘truth’.

To some extent, this recognition is already sufficient to de-naturalize the Church’s conception of the grounds for social unity and stability, because it shows that a social order can, at least in principle, be founded on a conception of authority that does not necessarily need to be tied to the notions of religion and truth. This calls into question the holy ‘trinity’ posited by the Church as a condition for social order and stability between authority, religion and truth. Once this ‘trinity’ is called into question, however, the whole edifice of the Church’s argument with respect to the notion of authority also begins to appear doubtful, because one of the fundamental premises on which this argument relies – namely, that the reference to a religious conception of truth is a necessary presupposition of social order and stability – appears unjustified.

b) A democratic theory of authority

To point at Hobbes as a counter-example is however not sufficient to fully question the specific conception of authority on which the Church’s discourse of anti-relativism is predicated. In what follows, I will attempt to go further by questioning also an aspect that the Church’s conception appears to have in common with Hobbes’. This will offer the grounds for advancing what I take to be a properly ‘democratic’ conception of authority out of a more sustained confrontation with the work of Hannah Arendt. The hope is that this will help to lay the grounds for the specific theory of democracy I will then seek to oppose to the Catholic discourse of anti-relativism in the last chapter of this dissertation.

The essential aspect that Hobbes’ conception of authority has in common with the Church’s is the assumption that social unity is only possible through the recognition of a common pole of exteriority, functioning as a sort of ‘unifying pole’ amongst different individuals. In other words, that social unity requires the figure of a tiers totalisateur standing
‘above’ the social order itself, and keeping it together in virtue of the authority exercised over it. This is an assumption which I believe can be questioned, and indeed must be overcome if the concept of democracy is to be taken seriously. To do this, a useful starting point is to examine a little more closely the notion of a ‘social contract’ on which the two notions of authority I have been attempting to contrast are based.

It is by now almost a commonplace that the notion of a social contract has been used over the course of its history to refer to two rather different ideas: on one hand, the idea of a pactum unionis, whereby isolated individuals reciprocally contract with each other to form a social unit in the first place; on the other hand, the idea of a pactum subiectionis whereby an already constituted political entity agrees to submit to the authority of a government. Conceptually, these two notions are entirely distinct and independent from each other; however, the idea that the passage from the isolated state of the “multitude” to the unified state of the “commonwealth” is possible only through a process of submission to a higher authority standing ‘above’ the social order itself, effectively conflates the two.

This is not exclusively a feature of Hobbes’ thought, but also a presupposition of the way in which the Catholic Church has employed the notion of authority in the context of the formulation of its critique of relativism. The reason is that even though, as we have seen, the Church holds the social order to be something ‘natural’, it also believes that its unity can be preserved only by being subordinated to a higher authority assumed to stand ‘above’ the social order itself. The element of commonality between Hobbes’ and the Church’s respective conceptions of authority, can therefore also be understood as the conflation between the two different conceptions of the social contract: social unity is assumed to be possible only through
subjection to a higher authority standing ‘above’ the social order, and therefore the idea of a pactum unionis is effectively subsumed into that of a pactum subiectionis.

What I would like to suggest, however, is that this conflation is neither logically necessary nor argumentatively justified: it is an arbitrary assumption introduced dogmatically for the purposes of justifying a specific political project, but which has no solid argumentative basis. The idea of a pactum unionis constituted horizontally through the reciprocal agreements amongst human beings is sustainable on its own and does not need to be tied to the idea of a pactum subiectionis introducing the vertical dimension of the distinction between rulers and ruled. The former idea can therefore be taken as the foundation for a conception of the social order that is constituted independently of the notion of authority itself; or rather, to put it in a different way, involving a different conception of authority, which does not work ‘top-down’ but ‘bottom-up’.

Such a conception of the grounds for the stability of a social order has been forcefully articulated and defended by Hannah Arendt both in her essay on ‘What is Authority?’ and in the book On Revolution. To discuss her work in a little more detail may therefore help to clarify it further and also pre-emptively respond to some potential objections. In the book On Revolution, Arendt identifies the United States as a concrete example of a society originally constituted through the reciprocal promises and agreements between the constituent members:

It has been said – she writes – that America’s debt to the idea of a social contract is so huge as to defy measurement … Since the colonial covenants had originally been made without any reference to King or Prince, it was as though the Revolution liberated the power of covenant and constitution-making which had shown itself since the earliest days of colonization. The unique and all-decisive distinction between the settlements of North America and all other colonial enterprises was that only the British immigrants had insisted from the start to constitute themselves into ‘civil bodies politick’. These bodies, moreover, were not conceived as governments, strictly speaking; they did not imply the division into rulers and ruled … What prompted the colonists ‘solemnly and mutually in the presence of God and one another to covenant and combine ourselves into a civil body politick … was the simple insight into the elementary structure of joint enterprise as such, the need for ‘the better encouragement of ourselves and others that shall joyne with us in this action’ (as the Mayflower Compact has it).123

To be sure, the historical accuracy of Arendt’s reconstruction of the early colonists’ experience, and especially her account of the reasons for their success, has been called into question. However, that is not what is at stake here. The interesting point Arendt puts forward is of a theoretical nature, and concerns the conceptual separability and independence of the two traditional conceptions of the social contract. The relevance of the above passage is therefore that it shows that the assumption the Catholic discourse of anti-relativism shares with Hobbes’ conception of authority – namely, that social unity is possible only through a process of subjection to a higher authority assumed to stand ‘above’ the social order itself – is not really justified. A stable and unified social order can, at least in principle, be constructed on a different basis: the reciprocal promises and agreements between the individuals concerned.

This conception of a *pactum unionis* can therefore be taken as an alternative vision to the Church’s conception of the grounds for social unity and stability, which is arbitrarily excluded by the Catholic Church because it clearly undermines the premise that the reference to a higher locus of authority standing ‘above’ the social order itself is a necessary condition for social unity and stability. If it is true that human societies can constitute themselves ‘bottom-up’, through the reciprocal promises and agreements amongst their members, then it appear to follow that the Church’s insistence on the idea that a reference to a pole of authority standing ‘above’ the social order is a necessary condition for social unity and stability, is merely a way of covering up the alternatives, perhaps to defend the specific positions of privilege and authority that depend upon it.

To be sure, an objection that might be raised against this alternative conception of the grounds for social unity is that it is not really self-sufficient because the notion of a promise itself requires an external sanction, and can only be considered credible if there already exists a higher
authority to legitimate it. This is a version of the standard objection often moved against all social contract theories, according to which there is an irreducible element of circularity in the idea of founding authority on the reciprocal promises of human beings, because the credibility of promises itself already supposes the existence of a prior authority to legitimate and enforce them in the first place.

This objection would appear to be substantiated by the fact that even the British colonists which Hannah Arendt takes as the paradigmatic example of her conception of a form of authority constituted ‘bottom-up’ felt the need to make reference to the higher authority of God in order to sanction their reciprocal promises to each other: the portion of the text of the Mayflower Compact that Arendt herself cites explicitly mentions that its signatories intended the compact to be signed “in the presence of God”. This would seem to call into question the self-sufficiency of the specific conception of authority Arendt seeks to posit as an alternative to the Christian idea that authority flows top-down from a transcendent source. For, the former would seem to be logically dependent on the latter: reciprocal promises on the commonly recognized authority of God.124

In fact, however, Arendt proves to have a response to this potential objection: “whereas – she writes – the act of subjection accomplished by each individual in isolation stands indeed only ‘in the presence of God’, the act of mutual promise by which people bind themselves together to form a community is by definition enacted ‘in the presence of one another’; it is in principle independent of religious sanction”.125 The key point here seems to rely once again on the distinction between the two kinds of social contract. Arendt is arguing that since the pactum subiectionis effectively deprives one party of all the means of controlling the other, it can only be

124 This is a point made for example by Samuel Moyn in his article on Arendt. Cf. Samuel Moyn, ‘Hannah Arendt on the Secular’, in New German Critique, 2008, 35(3).
125 Hannah Arendt, On Revolution, p. 162.
considered credible and sustainable if there is a higher authority to guarantee it. Because the *pactum unionis* involves reciprocal advantages for both parties, on the other hand, it does not require any higher authority to enforce it.

For the purposes of the present discussion, the relevance of this point is that it shows that human societies can be constituted through a *pactum unionis*, without necessarily presupposing a higher authority to sanction the original pact itself. This confirms the point that I have already made above: that the Church’s claim according to which the reference to a *tiers totalisateur* standing ‘above’ the social order itself is a necessary condition for social unity and stability is unwarranted.

Another objection that might be raised against this reference to Arendt as a way of bringing out the arbitrariness of some of the premises of the Catholic Church’s use of the concept of authority is that in the final chapter of her book *On Revolution* Arendt herself complicates her analysis of the reasons for the success and stability of the social contract model, introducing the idea of a “cult of the founding moment” as a necessary supplement to the idea of an order founded through the reciprocal promises and agreements of its members. This is tied to her idea that in Roman antiquity the concept of authority was not only understood as a contractual relation, but also as a means of preserving and ‘augmenting’ the inherited tradition of the founding moment of the Roman republic itself.

In this way, Arendt concedes, a religious dimension is indeed introduced into her conception of the grounds for the stability of the *pactum unionis*, because the ‘Founding Fathers’ are thereby elevated somewhat above the plane of ordinary human beings, becoming the object of an almost religious reverence. Once again, therefore, it would appear that the model of a society constituted exclusively through the reciprocal promises and agreements of its members is
not sustainable on its own, but requires an additional sanction tied to a different conception of
authority – this time not exercised ‘top-down’, but rather ‘backwards’, through the reference to a
sacralized founding moment.\footnote{Cf. Ibid., pp. 186-199.}

My contention, however, is that this additional conceptual apparatus introduced by
Arendt in the last part of her book On Revolution is not necessary to make the idea of a pactum
unionis sustainable on its own. As Arendt herself points out, its function is primarily to establish
a distinction between a purely ‘democratic’ conception of the grounds for social unity, and a
‘republican’ one.\footnote{Ibid., p. 157.} The reason why she ultimately chooses to weigh down on the side of the
latter is that this is more true to the historical experience of the United States, and therefore may
be considered one of the reasons for the success of the American Revolution in particular. From
a more general perspective, however, there seems to be another way of getting around the
concern that an order founded exclusively on the reciprocal promises and agreements amongst its
members might turn out to be unstable.

This is based on an embracement of the dynamic quality of the idea of a social contract
itself: instead of being understood merely as a ‘starting point’ and then sacralized into to object
of a cult, the social contract can be understood as an iterated practice, constantly renewed
through an ongoing process of negotiation amongst the members of a social order. In this way
social unity would be paradoxically guaranteed precisely by the fact that it can constantly be
called into question, according to a set of procedures defined by the members themselves, but
also always open to being revised.

This appears to be the idea defended by Norberto Bobbio in the writings where he has
described democracy as a form of society founded on the routinization of the idea of the social
contract. In the book on *The Future of Democracy*, for example, Bobbio writes that “the topicality of social contract theories for a theory of democracy stems from the fact that democratic societies can be understood as societies in which the bulk of decisions are arrived at via negotiations which finish in agreements, in other words where the social contract is no longer a rational hypothesis, but a practical instrument of government in everyday use … Proceeding from this premise, society becomes an artificial entity, a joint undertaking the plans for which need to be constantly formulated and reformulated, a project which is never definitive but needs to undergo constant revision”.

If there is anything like a ‘vision’ of human society and the grounds for its unity and stability that I think could be profitably opposed to the conception of the social order implicit in the Church’s use of the notion of authority, it would have to be something akin to the one articulated in this passage. Indeed, it is precisely this intuition – the idea of a society constituted bottom-up, without reference to any higher authority standing ‘above’ the social order itself – that I will attempt to work out more fully in the last chapter of this dissertation, where I will attempt to defend a conception of democracy founded on the idea of legal positivism. For the time being, however, it is necessary to first complete the critique of the Catholic discourse of anti-relativism, by moving on to consider another aspect I announced I would discuss: the way in which it employs the concept of ‘freedom’.

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THE MEANING OF FREEDOM

a) A case of conceptual manipulation

To discuss the use made of the concept of freedom by the Catholic discourse of anti-relativism is interesting because it illustrates a recurrent rhetorical strategy employed by the Church to deal with its intellectual opponents. This strategy consists in appropriating one’s opponent’s terms and redefining them in order to make them express one’s own position, thereby making it more difficult for the opponent to formulate his own. In this way, the outward appearance of a higher ‘synthesis’ that overcomes the initial disagreement is produced; however, in reality, the disagreement is only displaced and made more difficult to perceive.

To be sure, there are some deep theological grounds for such an operation implicit in Catholic doctrine, since the Church has always understood its mission to be that of ‘adapting’ the original message delivered to it by Jesus Christ to the specific conditions of the age, in order to help human beings understand it more fully and thereby move along the path towards final redemption. A certain plasticity in the vocabulary employed by the Catholic Church is therefore a logical consequence of its self-understanding.

A distinction must nonetheless be drawn between such an attempt at linguistic adaptation (which, in the final analysis, is oriented towards the goal of furthering reciprocal understanding) and what I would call a case of conceptual manipulation (which, on the contrary, has the effect of confusing the meaning of terms and therefore of making it more difficult to reach an understanding). This idea that there may exist a ‘manipulative’ use of concepts does not necessarily have to rely on a naturalistic theory of language, according to which terms have a fixed and necessary meaning. It is sufficient to recognize that the terms we use to communicate
have a historical consistency; that is, a set of meanings and connotations that are accumulated over time, and not open to being changed arbitrarily.

The right to ‘define one’s terms’ is therefore not absolute. There is always already a given ‘semantic core’ to the terms we employ, which can certainly be modified and made more complex over time, but cannot be reinvented arbitrarily, unless one’s intention is precisely to create confusion instead of striving towards understanding. The concept of freedom, for example, has historically been understood in the western tradition in connection with the notion of ‘autonomy’; that is, with the idea that a free subject must be able to decide his own actions for himself, without suffering the interference from extraneous forces of whatever kind. Of course, a lot of discussion has gone into defining what counts as a ‘subject’ and an ‘extraneous force’ in the first place. However, this or something close to it has been the inherited semantic core of the concept of freedom in the ‘western’ tradition.

That this semantic core has a substance is proved by the fact that it has an opposite, something it is incompatible with: in the ‘western’ tradition, freedom has historically been understood as the opposite of obedience; that is, of having one’s actions determined by somebody else. One may of course freely decide to obey, but there the element of freedom lies in the fact that the subject chooses to have his actions determined by somebody else. This element of freedom would accordingly be removed the moment the subject ceased to want to obey, and the determination of his actions by somebody else became coercive. This may seem commonsense, but it is worth establishing clearly as background for the following discussion.

Far from being extraneous to this tradition of understanding of the concept of freedom, the Catholic Church has contributed actively to its development. The concept of ‘freedom of will’ on which the Christian faith has always been predicated refers precisely to the idea that the
individual is responsible for choosing his own course of action. According to Christian moral theology, God is assumed to have established the moral law and instilled in man the capacity for knowing it through the faculty of conscience; however, in the final analysis, it is up to the individual to decide whether to conform to it in his actions. This is the basis for the doctrine that man will be judged for his actions and either punished or rewarded accordingly in the afterlife.

The Christian concept of freedom of the will therefore proves to correspond to the capacity for choosing whether to act in conformity with the moral law posited by God or not. The core intuition here is precisely the same one I identified above as corresponding to the ‘semantic core’ of the concept of freedom in the western tradition: to be free means to be able to determine one’s own behavior on one’s own, without interference from ‘external forces’. If God had designed human beings in a way that made them incapable of disobeying the moral law, they couldn’t really be considered free. Moreover, it is essential, from a Christian perspective, that human beings be considered free also when they decide to disobey the moral law, because that is the basis on which they can be held responsible for it and therefore judged in the afterlife.

While the Church has traditionally considered this notion of ‘freedom of the will’ very important at the level of morality, in the sphere of politics it has traditionally not considered freedom to be an equally important value. As we have seen in the first two chapters of this dissertation, up to the second half of the XXth century, political freedom was primarily considered a dangerous idea, destructive of the social order. In the encyclical ‘Quanta Cura’ – promulgated by Pius IX in 1864, and to which the notorious ‘Syllabus of Errors’ was added as an appendix – the following proposition is for example condemned as incompatible with the
Christian faith: “a right resides in the citizens to an absolute liberty, which should be restrained by no authority, whether ecclesiastical or civil”.

In this political sense, freedom is understood essentially as the capacity for human beings to collectively determine the laws to which they are supposed to be subject; that is, in other words, to “create” their own political norms as a political entity. Its opposite is assumed to be the notion of “authority”; that is, the idea that human beings must receive their political norms from a higher source. Thus, the reason why the Church has historically been opposed to the recognition of freedom as a political value proves to be that it has always relied on a conception of society according to which social unity and stability are only possible if all its members are subjected to a higher authority, assumed to be situated ‘above’ the social order itself. I have already discussed this specific conception of authority in the previous section of this chapter; what I would like to point out now, however, is that this conception was traditionally assumed to be opposed to the notion of freedom.

This opposition is also the reason why the historical enemies of the Catholic Church could still unproblematically frame their arguments in terms of the concept of freedom: because the XIXth century debate was organized precisely around this structuring opposition, the Church defending the principle of authority on one hand, and its opponents advocating for freedom on the other. As we have also seen through the analysis conducted in the previous two chapters, however, the rise to prominence of the discourse of anti-relativism (which began in the last decades of the XIXth century) was tied to a reconsideration of the normative significance of the value of political freedom by the Catholic Church. The Vatican progressively came to accept freedom as a political as well as moral value, although it was made clear that this acceptance was conditional on a specific understanding of the meaning of the term.

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129 Pius IX, ‘*Quanta Curam*’, §3.
This operation is most clearly visible in the work of the pope who brought it to completion: John Paul II. A large part of the encyclical ‘Veritatis Splendor’ is devoted to a discussion of the concept of freedom. The argument proceeds by establishing a distinction between two different conceptions of the idea of freedom. What John Paul II calls the ‘relativist’ conception of freedom is defined as the idea that freedom has “no content”. This is supposed to imply that human beings must be allowed to do “whatever they want” in the name of the principle of freedom; an idea which is judged to be “self-defeating” because it establishes no absolute limits to what individuals may legitimately do to each other and therefore runs the risk of “converting freedom into a form of oppression”.

What John Paul II calls the ‘Christian’ conception of freedom, on the other hand, is defined in terms of the precept attributed to Jesus Christ according to which “the truth shall make you free”. The pope explicates this precept is by suggesting that the concept of freedom can only properly be understood by clarifying who is the ‘self’ that is supposed to be ‘self-determined’ according to the principle of autonomy. According to the Christian conception of man, John Paul II adds, human beings were created ‘in the image of God’. This means that God is not taken to be something ‘external’ to man, but rather intrinsically embedded in his own nature.

From this, in turn, John Paul II deduces that when human beings obey the commandments of God they are not really submitting to an ‘extraneous’ authority, but rather complying with the highest part of their own intrinsic nature. Thus, to obey God’s commandments in the form of the moral law is not a form of unfreedom, but the realization of the principle of autonomy itself. Any other mode of behavior would imply being determined by the ‘lower’ parts of our nature, and therefore in a sense not being fully free. In this way, John Paul II effectively manages to overcome the conflict historically posited by the Catholic Church.
between the idea of freedom and that of authority. Obedience and freedom therefore become synonymous in John Paul II’s conception, as is illustrated clearly by the following passage:

The modern concern for the claims of autonomy – the pope writes – has not failed to exercise an influence also in the sphere of Catholic moral theology. While the latter has certainly never attempted to set human freedom against the divine law or to question the existence of an ultimate religious foundation for moral norms, it has, nonetheless, been led to undertake a profound rethinking about the role of reason and of faith in identifying moral norms … The rightful autonomy of the practical reason means that man possesses in himself his own law, received from the Creator. Hence obedience to God is not, as some would believe, a heteronomy, as if the moral life were subject to the will of something all-powerful, absolute, extraneous to man and intolerant of his freedom … Others speak, and rightly so, of theonomy, or participated theonomy, since man's free obedience to God's law effectively implies that human reason and human will participate in God's wisdom and providence.\textsuperscript{130}

While recognizing its astuteness, I nonetheless judge this argument to amount to a form of conceptual manipulation, because it effectively inverts the meaning traditionally ascribed to the concept of freedom. By its logic, to be free ultimately means to obey the will of God, encapsulated in the moral law. Obedience accordingly ceases to be the opposite of freedom and becomes its essential core. On the other hand, doing “whatever one wants” is posited as the opposite of the ‘genuine’ concept of freedom. Thus, what used to be the semantic core of the concept of freedom is now posited as its opposite.

From a strictly theological point of view, this argument appears problematic because it would seem to imply that one cannot be considered ‘genuinely’ free when one does not obey the moral law. This makes it difficult to sustain the doctrine that we will all be judged for our mistakes in the afterlife, since as I have already pointed out above, this doctrine depends upon the assumption that we are personally responsible for our choices, even when we end up doing something wrong.

What I am most interested in pointing out in this context, however, is that the argument also appears problematic from a more broadly political point of view, because it effectively deprives the enemies of the Catholic Church of the terms to formulate their own position. To

\textsuperscript{130} John Paul II, ‘Veritatis Splendor’, §§36-31.
attack the Church’s appeal to the principle of authority in the name of freedom becomes impossible because this opposition itself has been rendered meaningless by the idea that freedom consists in obedience to the higher authority of God. The Church is thereby made able to claim that it recognizes the principle of freedom as a political value too. However, if what one wants to contest is precisely the idea that social order ought to be created through obedience to a higher authority, one is left without terms to formulate one’s own position.

To be sure, John Paul II does offer a term to refer to the view that freedom does not consist in obedience to a higher authority: relativism. As we have seen, however, this term is defined in such a way that it immediately turns out to be self-defeating. What is effectively carved out from the meaning of the concept of freedom is therefore precisely the idea this term had originally been used to advance in the political domain: that human beings ought to be able to take publicly binding decisions collectively, through a process of reciprocal confrontation with each other; that is, in other words, that human beings ought to “create” their own moral values, instead of receiving them from a higher authority.

This was the semantic core of the political concept of freedom, as it was traditionally understood even by the Catholic Church itself, but it is also precisely what has been made impossible to articulate by the Church’s redefinition of it. It is in this sense, therefore, that I consider this redefinition a case of conceptual manipulation: because instead of seeking to further understanding, it confuses the meaning traditionally attached to the term, in order to make it more difficult for the Church’s enemies to formulate their own position.

In this respect, it might be useful to recall a powerful point that was already made, in his characteristically pithy manner, by Isaiah Berlin in his essay on ‘Two Concepts of Liberty’. Although the specific target of his critique was not the Church’s manipulative use of the concept
of freedom in particular, at least one famous line from that essay appears to applicable to it, in the light of what I have attempted to bring out:

Everything is what it is. Liberty is liberty, not equality, or fairness, or justice, or culture, or human happiness, or a quiet conscience … I can, like the Russian critic Belinsky, say that, if others are deprived of it, if my brothers are to remain in squalor, poverty or chains, then I do not want it for myself, I reject it with both hands and infinitely prefer their fate. But nothing is gained by a confusion in terms. To avoid glaring inequality or widespread misery I am ready to sacrifice some or all of my freedom: I may do so willingly and freely, but it is freedom I am giving up for the sake of something else.\footnote{Isaiah Berlin, ‘Two Concepts of Liberty’, in The Proper Study of Mankind, Farar, Straus and Giroux, 1997, pp. 197-198.}

b) The inscription of freedom within a hierarchical structure of value-spheres

A further problem that is also worth commenting on is tied to the idea that freedom requires a ‘content’; that is, that it is not only possible but also necessary to establish \textit{a priori} what concrete kinds of behavior can count as exercises of freedom, and what others cannot. From what I have already established thus far, it should be clear that this is a contradiction in terms: if to be free means to choose for oneself how one will act, then it cannot be possible to determine \textit{a priori} what concrete kinds of behavior count as exercises of freedom, because that would mean that free acts are subordinated to a different logic to that of the autonomous will of the free subject.\footnote{This is a point that has already been raised by numerous commentators of Kant, since his philosophy of freedom seems to run into a similar paradox. On one hand, Kant defines freedom as autonomy; that is, as the capacity of the faculty of the will to set itself its own maxims, without being determined by any ‘external’ impulses. On the other hand, however, he also seeks to establish \textit{a priori} which specific kinds of behavior are compatible with freedom and which aren’t through the mechanism of the categorical imperative. For example, he notoriously claims that lying is always incompatible with autonomy. Hannah Arendt has suggested that this may be because Kant himself was frightened by the radical implications of his definition of freedom, and therefore attempted to ‘tame’ it by giving it a concrete content. For her, however, this is merely a way of “reintroducing obedience through the back door”. From a strictly logical point of view there appears to remain a tension in Kant’s moral philosophy between the intention to ground it on the principle of freedom, and the desire to nonetheless specify a concrete content of the moral law \textit{a priori}. Cf. Hannah Arendt, Responsibility and Judgment, Schocken, 2005, pp. 67-73.}

What I am interested in considering further, however, is the specific argument employed by the Catholic Church to justify this paradoxical idea that freedom must have a ‘content’. This argument is spelled out most clearly by Cardinal Ratzinger in the article entitled ‘What is Truth?’
The Significance of Ethical and Religious Values in a Pluralist Society’. In that context, the future pope addresses the issue head-on by asserting that “if the individual freedom presented here as the highest goal lacks content, it dissolves into thin air, since individual freedom can only exist when freedoms are correctly ordered. Individual freedom needs measure, for otherwise it turns into violence directed against others … Thus, freedom requires contents. We can define it as the safeguarding of human rights, but we can also describe it more broadly as the guarantee that things will go well both with society and with the individual”.

The central claim here seems to be that freedom requires a content because otherwise it runs the risk of posing a threat for other values; in particular the value of peace (the opposite of “violence”) and harmony (the idea that everything should “go well, both with society and the individual”). John Paul II can be interpreted as expressing essentially the same point when he asserts that a relativistic conception of freedom would be “self-defeating”, because this basically means that such a conception of freedom could enter into contradiction with itself, if for example an individual or a group freely decided to forego its own freedom, submitting to the tyranny of somebody else. The overarching assumption accordingly seems to be that all values must be able to be situated within an axiological “order”, regulating their reciprocal relations in a coherent and organized manner.

Such a conception of the relation between value spheres corresponds to the Christian assumption that all value spheres are ultimately derived from the absolute authority of God, who has accordingly established their reciprocal relations in advance. To impose a ‘content’ on the idea of freedom therefore proves to be a way of limiting it from inside, in order to make it compatible with such a conception of the axiological order, and therefore admissible within the overarching framework of Christianity.

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133 Josef Ratzinger, *Values in a Time of Upheaval*, p. 54.
The problem with this assumption, however, is that it is introduced arbitrarily from outside: it does not stem from the ‘internal’ logic of the principle of freedom itself. On the contrary, from this perspective, there seems to be no reason to suppose that freedom should be consistent with other values, such as peace or the idea that everything should “go well both with society and the individual”. At the limit, there is not even any reason to suppose that freedom must be consistent with itself in the sense implied by John Paul II’s critique: if people were to decide to exercise their freedom in a way that prevents them from being free in the future, this would just mean that that specific exercise of their freedom would be their last, but not that it wouldn’t be an exercise of freedom in the first place.

Thus, it is not freedom which ‘requires’ a content, but the Church’s projects of inscribing it within its own hierarchical system of values which introduces this necessity from outside. The paradox involved in the idea that the content of a free action can be determined logically *a priori* therefore proves not to be a consequence of the meaning traditionally ascribed to the concept of freedom itself, but rather the result of the Church’s own contradictory goals with respect to it. Once again, this point can perhaps be made by recalling a passage from Berlin’s essay on the ‘Two Concepts of Freedom’:

> To assume that all values can be graded on one scale, so that it is a mere matter of inspection to determine the highest, seems to me to falsify our knowledge that human goals are many, not all of them commensurable, and in perpetual rivalry with one another … In the end, men choose between ultimate values; they choose as they do because their life and thought are determined by fundamental moral categories and concepts that are, at any rate over large stretches of time and space, and whatever their ultimate origins, a part of their being and thought and sense of their own identity; part of what makes them human.\(^\text{134}\)

This passage is pertinent in the present context because it clearly articulates a conception of ‘value pluralism’ which does not inscribe freedom within an overarching system of values organized by a unitary logic. Conflicts between values are assumed to be possible, and in

principle it is also recognized that freedom can enter into conflict with itself. This possibility, however, appears to be arbitrarily excluded by the Catholic Church in its justification for the claim that freedom ‘requires’ content, since this proves to be based on the assumption that freedom must be inscribed within an overarching “order” of values, that are all reciprocally consistent with each other and hierarchically organized in terms of a unitary logic.

In the last chapter of this dissertation, I will attempt to ground a conception of democracy on similar intellectual premises: my defense of relativism will be based on the assumption that in a democratic society conflicts between values not only can but must be assumed to be possible. I should however make clear right away that in that later discussion I will not accept Berlin’s definition of the concept of freedom as definitive. The reason is that the overarching purpose of Berlin’s argument in his essay on the ‘Two Concepts of Liberty’ was to dissociate the concept of freedom from that of democracy, in the service of a Cold War aim of discrediting the socialist’s claim to be fighting for freedom.

What I will attempt to show, on the other hand, is that the philosophical premises which underscore Berlin’s ‘value pluralism’ can actually function as the foundation for a justification of the democratic principle. This will require a revision of Berlin’s definition of the concept of freedom, intended to show that the democratic principle of self-government can be reconciled with the liberal principle of limited interference, because the idea of freedom as self-determination can be limited by the logic of its own exercise.

For the time being, however, all that I meant to establish through the reference to Berlin is that freedom does not ‘need’ to be made compatible with all other human values according to its own internal logic. Thus, it can afford to be defined purely ‘formally’ in terms of the idea of choosing for oneself one’s own conduct, without any concrete content being specified \textit{a priori}. 
This is the deepest point of contention between the specific conception of freedom advanced by the Catholic Church and the one I will attempt to defend in the last chapter of this dissertation.

THE NOTION OF TOTALITARIANISM

a) Brief genealogy of the political uses of the concept of totalitarianism

The last aspect of the Catholic discourse of anti-relativism I will focus upon and examine critically concerns its use of the notion of ‘totalitarianism’. As I have already pointed out in the previous two chapters of this dissertation, this notion has been employed by the Catholic Church in the context of the formulation of its critique of relativism essentially as a figure of absolute political evil, whose function has been to wrap up the ‘reductio ad absurdum’ of the political consequences assumed to follow from the acceptance of relativism as a philosophical starting point.

To be sure, in the first part of the history of the discourse of anti-relativism, up to and including the beginning of the Cold War, the term that was still primarily used to refer to the ultimate and most threatening political consequence of relativism was not exactly that of ‘totalitarianism’ but rather that of ‘communism’ or ‘socialism’. As I have also already pointed out in the previous chapters, however, the function exercised by these terms was essentially analogous to that exercised by the notion of ‘totalitarianism’ afterwards: taking for granted that they represented political abominations, the Church used them to reduce to absurdity any political doctrine that could be, even remotely, connected to them.

In order to begin unpacking the complex set of assumptions that are made by this association, as well as some of the reasons why it may appear problematic, it is useful to start by briefly recalling the genealogy of the term ‘totalitarianism’ itself. The first recorded usage dates
back to the 1920s, where it was employed by Mussolini in a speech as a way of describing the
difference between the fascist and the liberal conceptions of the state. Initially, therefore, the
term was intended to carry an essentially positive normative valence. In this form, however, the
term did not have much fortune and was eventually dropped even by Mussolini himself before it
could become a central component of fascist discourse.\textsuperscript{135}

Its entry into everyday political language only happened a few decades later, at the
beginning of the Cold War. In this context, the term was employed primarily by the advocates of
the so-called ‘western’ camp to fulfill a very precise ideological function: to discredit Soviet-
style socialism by establishing an equivalence with Italian fascism and especially German
national-socialism. Although the conceptual opposite remained the idea of a liberal society,
therefore, the normative valence of the term was inverted because, in the aftermath of the second
world war, to establish any conceptual link between a political ideology and fascism or Nazism
was tantamount to a categorical denunciation.

Despite the fact that this equation of Soviet-style socialism with Nazi-fascism necessarily
implied a dilution of the meaning attached to the term, it is worth noting that in its Cold War
usage the notion of totalitarianism still retained some concrete political content. While its
positive referent necessarily became more vague, because the many and significant differences
between the Soviet regime in the USSR and the Nazi-fascist regimes in Germany and Italy had to
be effaced, at least it still had a clear opposite: the notion of ‘liberalism’ associated with western
‘democracies’.

The Church’s appropriation of the term, on the other hand, extrapolated the concept of
totalitarianism from its Cold War context and reframed it in terms of a different set of

\textsuperscript{135} For an interesting discussion of the history of the term ‘totalitarianism’ see Bruno Bongiovanni, ‘Totalitarianism: the Word
associations. Liberal democracy ceased to be identified as its conceptual opposite, and totalitarianism was posited as one of the possible consequences of any kind of regime refusing to recognize the absolute truth of the Christian message. In this way, the notion was emptied of all its residual political content: all that remained was the negative normative valence implied by the association with the various kinds of regimes that had been defeated and discredited over the course of the XXth century: fascism, Nazism and Soviet-style socialism.

The end result was that the notion of totalitarianism was effectively made to function as a label for the idea of absolute political evil, devoid of any concrete political content, which is the sense in which the notion has been employed by the Catholic Church in the context of its formulation of the critique of relativism. This is also reflected in the fact that the distinction between totalitarianism and all the other more classical forms of ‘degenerate’ political regimes – such as ‘tyranny’, ‘dictatorship’ and ‘absolute government’ – was progressively leveled out. While this distinction had remained important during the context of the Cold War to distinguish Soviet-style socialism from other kinds of authoritarian governments, in most of the formulations of the Catholic discourse of anti-relativism the notions of ‘totalitarianism’, ‘tyranny’, ‘dictatorship’ and ‘absolute government’ are used almost interchangeably, because they all have the same function: to evoke a vague association with something that must be avoided at all costs.

b) Problems raised by the treatment of totalitarianism as a figure of absolute political evil

If we now move on more directly from the task of genealogy to that of critique, we can note that this use of the notion of totalitarianism as a figure of absolute political evil appears problematic for a number of inter-related reasons. First of all, it effectively functions as a substitute for argumentation; that is, as a rhetorical device that enables the Church to criticize its
opponents without really engaging with their views concretely. For example, when the advocates of the Catholic Church claim that relativism is dangerous because it ‘leads to totalitarianism’ they effectively spare themselves the task of concretely discussing the actual political consequences of relativism, because the negative valence attached to the notion of totalitarianism is already taken for granted, and therefore relativism can be immediately rejected out of hand on the basis of this association.

Moreover, the grounds for the conceptual link that is established between the view that is being criticized and totalitarianism are often very tenuous and vague, as in the idea that relativism is connected to totalitarianism because it implies that it is impossible to specify any \textit{a priori} limits to the exercise of political power. The relationship that is thereby established does not involve any sort of conceptual necessity: at most, it shows that a totalitarian regime \textit{could} in principle emerge out of a situation in which relativism were taken as the foundation for politics. However, this abstract possibility is immediately treated as a necessity, and relativism rejected on those grounds.

What makes this possible is that totalitarianism is inflated into such a threatening menace that anything which could even remotely be found to possibly lead to it, must immediately be treated as if it necessarily implied it. Moreover, since human affairs are always much more complicated than abstract logic, anything could in principle be shown to ‘lead to totalitarianism’. Thus, the procedure proves to be generalizable: any political position \((x)\) can be criticized by pointing out that it \textit{could} lead to totalitarianism. The reason, as we have seen, is that the negative valence of the latter notion is taken for granted and inflated to such an extent that establishing any conceptual link between \(x\) and totalitarianism already counts as a refutation.
In fact, if we step back to examine the arguments employed by the Catholic Church in the past few decades to deal with a variety of other intellectual opponents, it emerges that relativism is not the only notion that has been criticized in this way: secularism, the idea that political legitimacy should not be founded on a transcendent source, and even a restrictive interpretation of the principle of freedom of conscience according to which religious views should not be allowed to be expressed in public, have all been accused of potentially ‘leading to totalitarianism’. Precisely this generalizability of the objection, however, should make us skeptical of it, because it implies that the specificity of the position that is being criticized need not be taken into account.

At a deeper level, then, a further reason why the use of the notion of ‘totalitarianism’ appears problematic is that it implies a moralization of the domain of the political; that is, a reduction of the complex range of problems and issues that emerge in connection with the question of organizing the coexistence amongst human beings to the simplistic binary opposition between the categories of ‘good’ and ‘evil’: totalitarianism is assumed to be a figure of absolute political evil and therefore whatever can be associated to it is also assumed to be evil, while the Catholic Church, simply in virtue of the fact that it claims to be striving against totalitarianism, is assumed to be good.

In the political theory of the XXth century, this tendency towards the application of moral categories to the political domain has preoccupied many authors: on both sides of the political spectrum, from Carl Schmitt to Hannah Arendt, it has been felt to represent a problem because it supposedly runs the risk of effacing the specificity of the domain of the political itself.\(^\text{136}\) This is not, however, the line of thought I intend to pursue in order to criticize the Church’s use of the

concept of totalitarianism. The reason is that I find the normative emphasis on the specificity of the domain of the political too abstract and also based on dubious intellectual incentives: especially in the works of authors such as Carl Schmitt and Hannah Arendt, it seems to me to function essentially as a substitute for the perceived loss of the religious sanction for political action, which ultimately ends up sacralizing (and indeed an aestheticizing) the domain of the political itself.

The conception of the political I have been employing throughout this analysis hopes to be less sanctimonious: it refers to all the set of actions and interactions that have to do with the organization of coexistence amongst human beings. Correspondingly, the reason why I find the application of moral categories to the domain of the political problematic is more simple: that the binary opposition between ‘good’ and ‘evil’ is too coarse a framework to adequately understand the complexity of the problems that emerge in the political domain. The consequence is that those who approach politics from the point of view of morality tend to do a terrible job, even at fulfilling their own specific goals.

A pertinent example may serve to illustrate this point. In the first chapter of this dissertation, we saw that during the period between the two world wars the Catholic Church pursued the strategy of seeking alliances and signing concordats with many of the regimes it would later accuse of totalitarianism: in particular, Fascist Italy and Nazi Germany. The rationale for this policy was that the most dangerous threat confronting all contemporary societies was represented by “atheistic communism”, explicitly identified as an embodiment of “the organized forces of evil” by pope Pius XI in the encyclical ‘Divini Redemptoris’.

Today, of course, the fact that the Vatican initially sided with the forces of fascism and Nazism against liberal democracy and socialism is a source of great embarrassment for the
Catholic Church. My contention, however, is that this strategic mistake was made possible by the fact that the Church reasoned in terms of the simplistic categories of ‘good’ and ‘evil’ and was therefore lead to suppose that no intermediate position between ‘atheistic communism’ and ‘authoritarian fascism’ was possible. Liberal democracy was lumped on the side of communism because the latter was treated as a figure of absolute evil and therefore anything that could be even remotely associated with it was had to be rejected out of hand.

What remained on the other hand, however, was evidently not considered carefully enough, because the Church automatically assumed that whatever was against evil must necessarily be good. But the fact is that politics is far more complex than this simple binary can account for – which is the fundamental reason why I think that the framework of morality is inappropriate for approaching political questions, and often ends up leading to very poor decisions.

c) A more convincing theory of totalitarianism

The embarrassing fact that the Church initially supported some of the political regimes it was later to condemn as ‘totalitarian’ (the break with fascist Italy and Nazi Germany only came comparatively late, in 1931 and 1937 respectively\textsuperscript{137}) can also be used to illustrate another problematic aspect of the way in which the Church has attempted to establish a connection between the notions of relativism and totalitarianism: that any serious attempt to examine the actual historical processes that led to the emergence of totalitarian regimes in these countries immediately reveals a more complex picture.

\textsuperscript{137} Cf. Encyclicals ‘Non abbiamo Bisogno’ and ‘Mitt Brenner Sorge’, both available at http://www.vatican.va/holy_father/pius_xi/encyclicals/index.htm
While most of the authors who have examined the history of so-called ‘totalitarian regimes’ in any degree of detail agree that the progressive undermining of the old certainties on which social integration had traditionally relied was an important enabling factor, nobody has ever even suggested that the transition from this background condition to ‘totalitarianism’ was either necessary or automatic. Other important mediating factors also played a crucial role. In particular, the fact that tends to be systematically obscured by the Church’s advocates was that totalitarian movements mostly stemmed out of a desire to reintroduce absolute certainties in a situation in which they had been undermined.\textsuperscript{138}

This is confirmed empirically by the fact that none of the movements that would later be identified as totalitarian took ‘relativism’ as their philosophical standpoint. On the contrary, they all had pretty solidly anchored conceptions of what ‘truth’ amounted to: for the Soviets, it was the scientific laws of historical development predicting that class struggle would necessarily be radicalized to the point where the capitalist system would ultimately be replaced by a dictatorship of the proletariat; for the Nazis, on the other hand, it was the idea of the superiority of the Aryan race, which was supposed to have to assert itself historically by progressively subduing and eliminating all the inferior peoples.

The reason why this fact tends to be systematically obscured by the advocates of the Catholic Church is that it calls into question the idea that a reference to some notion of ‘absolute truth’ is what is needed in order to avoid totalitarianism. The Nazis and the Soviets had their own notions of what ‘truth’ amounted to, but this did not prevent them from developing into totalitarian movements. On the contrary, it was precisely the attempt to impose this conception of ‘truth’ upon others that ultimately made these movements ‘totalitarian’, in the sense in which the Catholic Church has been employing this term. This appears to shed an eerie light on the

Church’s own claim that what is needed today is to reintroduce the reference to an idea of ‘absolute truth’ as an antidote to relativism.

The last point I made in the previous section can perhaps be clarified with reference to the work of an author who has devoted a large part of his intellectual effort to studying the historical conditions that led to the emergence of totalitarianism from a philosophical point of view: the French philosopher and political theorist Claude Lefort. As we will also see more fully in the last chapter of this dissertation, the starting point of his discussion is the assumption that modernity is characterized by a “dissolution of the markers of certainty”.

On the basis of this assumption, Lefort claims that there are two possible political outcomes from this background philosophical condition. The first is what he refers to as ‘democracy’, defining it as a form of society that embraces the indeterminacy of modernity, institutionalizing it and thereby opening itself up to a constant process of redefinition of its own organizational form. This is what Lefort means to suggest through the idea that democracies leave the place of power “empty”: that the structuring reference to the figure of a King is not replaced with any substantive representation of what society should look like, and therefore all social relations are left open to being constantly redefined by social actors themselves.

Totalitarianism, on the other hand, is understood as a negative reaction against the dissolution of the markers of certainty characteristic of modernity. Perceived as a loss and experienced as a cause of anxiety, the “emptiness” of the place of power is made into something that needs to be overcome. Thus, totalitarian movements attempt to “refill” the place of power with substantive representations of social unity, which provide artificial substitutes for lost certainties. This is what lends them their distinctive violence and capillarity, the idea that all aspects of the social order must be subordinated to a single overarching ideology:
If in effect – Lefort writes – when the reference to an empty place gives way to the unbearable image of a real vacuum … representations which can supply an index of social unity and identity can become invested with a fantastic power. This is a process which appears to have underscored the emergence of both historically known forms of ‘totalitarianism’ … We cannot of course ignore that in one case the image of the people was actualized through a sanctification of the proletariat and in the other through a sanctification of the nation; but, in terms of the question we are posing, the similarity between the two is striking. Both attempted in one way or another, to give power a substantial reality, to bring the principles of Law and Knowledge within its orbit, to deny social division in all its forms and to give society a body once more.

The reason why this theory of totalitarianism appears pertinent in the present context is that it can be read as a way of reiterating the point that, historically, totalitarianism has not emerged out of ‘relativism’, but rather out of the attempt to react against a situation in which “the fundamental markers of certainty had been destroyed”. From the point of view of the Church’s anti-relativist discourse, this is somewhat disquieting because it suggests that there is a structural analogy between the Church’s own political project and the one which underscored the totalitarian adventure during the inter-war years: both, in fact, prove to be guided by the attempt reintroduce a reference to some idea of ‘absolute truth’ in a situation where it had previously been undermined. Perhaps, therefore, it is possible to invert the objection that the Catholic Church moves against relativism, suggesting that, if the terms of the debate are to be accepted, it is actually anti-relativism more than relativism its which has historically proved more likely to ‘lead to totalitarianism’.

This is not, however, a point I care to insist upon very much, precisely because, as I have sought to suggest through the analysis above, I think that the mode of argumentation centered around the question of establishing what ‘leads to totalitarianism’ is neither very useful nor very fair to the positions that are thereby being criticized. The last point I made can therefore perhaps be taken as a way of further illustrating the slipperiness of this mode of argumentation: once one enters into the logic of establishing what ‘leads to totalitarianism’, it may be difficult to avoid
being accused of the same thing oneself. Perhaps, therefore, it would be better to avoid entering into this logic in the first place.
CHAPTER 3 –

RATIONALISM: BETWEEN RELATIVISM AND RELIGION

INTRODUCTION

The purpose of this chapter is to examine what I think would be likely to be the ‘dominant’ response within the field of contemporary political theory to the challenge raised by the Catholic discourse of anti-relativism discussed in the previous chapters. This response relies on the opposition of a substantive conception of ‘rationality’ to the above idea of ‘religion’ as the source of absolute moral values. Its distinctive feature is therefore that it agrees with the anti-relativist political theologians that if democracy were effectively predicated on a form of philosophical relativism it would indeed be self-defeating. However, it contests that democracy must necessarily draw its substantive moral values from religion. On the contrary, it suggests that democracy can succeed in grounding its own conception of moral values autonomously with the aid of the faculty of reason. For this reason, I will be referring to this specific conception of democracy as a form of philosophical ‘rationalism’.

The dominant strand of such ‘rationalism’ within the field of contemporary political theory identifies itself more specifically as a form of ‘neo-Kantian constructivism’. This is meant to imply that the substantive conception of moral truth is substituted by a metaphysically less onerous procedure for the construction of presumptively rational outcomes. Moral values therefore cease to be seen as reified essences, assumed to exist in a transcendent and objective domain, and begin to appear as autonomously imposed constraints on the way collective plans
for action are formulated. The function of such theories of normativity remains however invariant, because they are explicitly posited as ‘substitutes’ for a theologico-political conception of the adequate moral values for democratic societies.

The two exemplary authors I will be focusing on in particular to examine this specific form of ‘neo-Kantian constructivism’ are: Jurgen Habermas and John Rawls. Amongst the most influential political theorists over the past half-century, they both claim direct lineage from Kant’s moral and political philosophy. Habermas attempted to re-conceptualize the Kantian idea of a procedure for moral deliberation in terms of a criterion of inter-subjectivity that posits as presumptively rational the outcome of a communicative process that approximates the conditions of an ‘ideal speech situation’. Rawls, on the other hand, used the artifice of an ‘original position’ to model the conditions under which a set of presumptively rational agents could reach an agreement over a set of determinate principles of justice applicable to democratic societies.

In this way, both Habermas and Rawls attempted to provide rational justifications for substantive conceptions of democracy, which can be read as containing responses to the Catholic anti-relativist discourse. For, both attempted to rationally deduce a set of moral values that could serve as effective ‘limits’ to the power that democratic citizens can legitimately exercise over themselves, without necessarily making reference to a transcendent conception of God. My argument, however, will be that, despite their valiant attempts, both Habermas and Rawls ultimately fail to establish the their substantive conceptions of democracy in a purely autonomous way.

The basic reason is analogous, even if the consequences are different. It is a version of the objection that had already been raised by GWF Hegel against Kant’s attempt to ground a his moral philosophy exclusively on the necessary presuppositions of reason itself. Namely, that
reason only stipulates a purely ‘formal’ set of criteria concerning the relations amongst propositions; and it is impossible to deduce anything ‘substantive’ from something merely formal. In order to justify a determinate conception of moral values, rationalists working in the lineage of Kant are therefore forced to import their substantive normative commitments from “outside” the domain of reason itself. This ultimately undermines the claim to autonomy of their conceptions of normativity.

The specific source from which these substantive normative commitments are actually derived may vary; and this corresponds to the difference in outcome between Habermas’ and Rawls’ respective theories. My claim is that, on one hand, Habermas draws the basic moral intuitions that enable his theory to function from the dialectical relationship he sets up between reason and faith. In the final analysis, this means that his conception of communicative rationality remains parasitic on the persistence of an element of political theology within society. On the other hand, Rawls draws his substantive normative commitments from the inscription of his theory of justice as fairness within the context of a particular “political culture” that is assumed to already imply the recognition of the constitutive values of liberal democracy. The implication is that Rawls’ political liberalism ultimately falls back on a form of cultural relativism, which must confess its incapacity of persuading anybody who does not already fall within its own domain of cultural reference.

The overall impression is therefore that the attempt to escape the binary opposition between relativism and religion through a reference to a neo-Kantian conception of rationality ultimately proves to be a dead-end. Since reason must necessarily draw its substantive normative commitments from “outside”, it can either reaffirm its dependence on a form of political theology (in which case the claim to autonomy is undermined); or rely on the assumption of a
shared set of cultural premises to start with (in which case it is the claim to absolute universality that is necessarily compromised).

Over the course of the following chapter, I will attempt to spell out these two alternatives in more detail by focusing on Habermas’ and Rawls’ writings more closely. My approach is therefore simultaneously descriptive and critical. On one hand, I want to reconstruct their respective theories in order to provide an account of what is likely to be the dominant response in the field of contemporary political theory to the Catholic anti-relativist discourse in the previous chapters. On the other hand, I also want to criticize Habermas and Rawls in order to expose some of the limits of the attempt to ground a substantive conception of democracy exclusively on a neo-Kantian conception of rationality.

JURGEN HABERMAS: BEYOND METAPHYSICS BUT THIS SIDE OF RELATIVISM

In order to outline and discuss Habermas’ theory of democracy, I will be focusing in particular on the text of his contribution to the debate with Ratzinger. The reason is that this is the text in which the specific issues I am concerned with are discussed most directly. Because of the synoptic and highly condensed nature of the text, however, in order to provide an adequate explication, it will be necessary at various junctures to refer also to a number of other texts, in which Habermas takes himself to have established the background theoretical premises for the theses he advanced in this debate. In a sense, therefore, this text will serve as a sort of ‘guiding thread’ for a discussion of Habermas’ political theory as a whole.

The starting point is a statement of the overall objective of his political theory: Habermas asserts that what he wants to provide is a “non-religious and post-metaphysical justification of
the normative bases of the democratic constitutional state”139. All the terms of this sentence are important because it already delineates a specific conception of the intellectual horizon in which Habermas situates his own position. The first thing we can note is that the notions of “metaphysics” and “religion” are associated with each other: Habermas immediately wants to mark his distance from both because he identifies them as traditional (i.e. ‘pre-modern’) grounds of justification. On the other hand, Habermas also insists that he wants to provide a “normative” justification for the democratic constitutional state. This is his way of marking his distance also from those strands of ‘modern’ political theory that refuse to adopt an explicitly normative perspective. In particular: the relativistic attitude of positivist social science and so-called ‘post-modern’ philosophy.

Thus, we can see that, from the start, Habermas carves out the theoretical space for his own conception of constitutional democracy by opposition to the two key terms that have been structuring this dissertation so far: on one hand, there is ‘religion’ (which is lumped together with all forms of traditional metaphysics); and on the other hand there is ‘relativism’ (which is seen as the necessary theoretical outcome of any attempt to relinquish the normative perspective). Habermas’ political theory is presented as an attempt to break out of this binary opposition and provide an alternative to both.

While the reasons for Habermas’ attempt to overcome ‘metaphysics’ are reasonably well-known (not least because they have been one of the hallmarks of modern political theory since Kant140), in the light of the objectives of this dissertation, it may be worthwhile to spell out some

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140 In a key essay entitled ‘Metaphysics after Kant’, included in the edited volume entitled Post-metaphysical Thinking, Habermas makes clear that by ‘metaphysics’ he means something analogous to what Kant himself already meant. That is, basically, the assumption that the objective world is to be conceived as a domain of external and independently existing objects, and that the purpose of knowledge is to make our subjective representations ‘correspond’ to the way these objects really are. Situating himself in a long lineage of thought that goes from Kant to Heidegger, passing through Hegel and Nietzsche, Habermas rejects this traditional conception of metaphysics, because he thinks it assigns knowledge the impossible task of “stepping outside itself” in
of the reasons for his opposition to ‘relativism’. Basically, Habermas sees ‘relativism’ as one of the possible outcomes of the critique of metaphysics itself: freed from the anchoring of an external reality, a number of modern and so-called ‘post-modern’ thinkers have been led to call into question the idea that there could ever exist an ‘objective’ and rationally justifiable set of moral values. In his book on *The Philosophical Discourse of Modernity*, however, Habermas argues that this philosophical position is ultimately untenable. The reason, as he puts it, is that “the totalization of the critique of reason is ultimately self-referential”, in the sense that it undercuts its own grounds of validity, because it calls into question the very standpoint from which it can be asserted that ‘there is no objective reality’.

Habermas’ specific name for this kind of fallacy is “performative contradiction”, and much of his critical effort in *The Philosophical Discourse of Modernity* consists in showing how various prominent advocates of the so-called ‘post-modern’ form of relativism – from Nietzsche to Foucault – fall into it. Various examples of Habermas’ specific use of the concept of ‘relativism’ could be extrapolated from his analysis of these authors. For the purposes of illustration, however, I prefer to single out a more abstract passage, which is worth quoting at length because it also lays out the basic conceptual opposition I have been trying to reconstruct as a way of situating Habermas’ theoretical endeavor between metaphysics (here referred to as ‘objectivism’) and relativism:

> The question of how objective knowledge is possible – Habermas writes – has been answered by some theorists in an objectivistic [i.e. metaphysical] and by others in a relativistic sense. Members of the first group reckon on an independent reality, towards which our interpretations finally converge, in the sense intended by a correspondence theory of truth … On the other hand, the relativists hold a socialization theory of truth. They are of the opinion that every possible description only mirrors a particular construction of reality that inheres grammatically in one of various linguistic world-views. There are no standards of rationality that point beyond the local commitments of the various universes of discourse … Both these positions are however confronted with insurmountable difficulties. The objectivists are faced with the problem of having order to establish its conformity with objective reality, thereby ultimately forcing it to relinquish itself. Cf. Jurgen Habermas, ‘Metaphysics after Kant’, in *Post-Metaphysical Thinking*, MIT Press, 1994, pp. 10-27.

to take up a standpoint between language and reality in order to defend their thesis; but they can only argue for such a null-context from within the context of the language they themselves use. On the other hand, the relativistic thesis, which concedes a perspectival right to every linguistically constituted view of the world also cannot be put forth without performative contradiction, because the totalization of the critique of universalist reason is ultimately self-referential … So, whoever absolutizes one of the two aspects of the linguistic medium of reason, be it its universality or its particularity, gets caught in aporias.142

What emerges from this passage is that Habermas employs the notion of ‘relativism’ essentially in the same way as advocates of the Catholic discourse of anti-relativism. That is, treating it as an inherently self-defeating position that no actual thinker could ever coherently want to adopt. In this respect, it is interesting to point out that, like Ratzinger, Habermas paradoxically employs the concept of the “absolutization” in his definition of relativism. This could offer grounds for applying to Habermas the same critique of the standard anti-relativist arguments I developed in the previous chapter. However, I am not interested in pursuing that line of critique again in this chapter.

The purpose of this discussion of Habermas’ concept of relativism was merely to show how Habermas’ theoretical endeavor can be inscribed within the terms of the overarching conceptual opposition – between relativism and religion – that is at the heart of this dissertation. What I want to discuss now is whether Habermas’ succeeds in establishing such a ‘middle course’ between these two poles, by providing a fully autonomous justification for a set of substantive moral values capable of limiting the democratic exercise of political power. It is therefore to an analysis of his attempt to do so that I shall now turn.

a) Communicative rationality and constitutional democracy

It is well-known that Habermas grounds his justification for constitutional democracy on a communicative conception of rationality that postulates as presumptively rational the outcome

142 Habermas, Post-Metaphysical Thinking, p. 135.
of an ideally expanded discursive procedure oriented towards the achievement of a consensus and guided only by what Habermas calls “the unforced force of the better argument”.\footnote{Cf. Jurgen Habermas, Between Facts and Norms, MIT Press, 1996, pp. 3-6.} Prima facie, this conception of rationality appears attractive to him because it overcomes the metaphysical horizon of the opposition between subject and object by situating itself in the domain of “inter-subjectivity”.

Of course, by itself, this is not sufficient to demonstrate that focusing on the dimension of communication will enable Habermas to deduce a substantive conception of moral values applicable to democratic societies. That is a further task which Habermas tries to accomplish through what he calls a “universal pragmatics” of communicative action. The principal objective of this endeavor is to demonstrate that the competent use of language necessarily contains a number of “counter-factual normative presuppositions” which justify treating as rational the hypothetical outcome of an idealized discourse procedure oriented to understanding and guided only by the force of better arguments.\footnote{Cf. Jurgen Habermas, The Theory of Communicative Action, Beacon Press, 1981.}

In his debate with Ratzinger, Habermas makes reference to this idea when he writes that: “In my view, ‘weak’ suppositions about the normative constitution of socio-cultural forms of life suffice to defend a non-decisionist concept of law both against the contextualism of a non-defeatist conception of reason and against legal positivism”\footnote{Jurgen Habermas and Joseph Ratzinger, Dialectics of Secularization, p. 25.}. The fact that this deduction is entirely based on a “semi-transcendental” analysis of the necessary presuppositions of an everyday practice we all routinely engage in is what is further supposed to grant it its fully “post-metaphysical” status.\footnote{The methodological focus on necessary presuppositions is of course directly inspired by Kant. However, Habermas specifies that his mode of analysis can only be considered “semi-transcendental” because he does not examine the necessary presuppositions of experience itself, but rather of an empirical practice – language – which takes place in the phenomenal world. It is not a necessary feature of this world that language should be used within it, and in this sense Habermas emphasizes that it is
Despite the importance of this aspect of Habermas’ thought for the overall structure of his theoretical edifice, in this context I will not be able to enter into a detailed discussion of Habermas’ theory of communicative action. Let me only note in passing that Habermas himself has reformulated his argument multiple times in response to various criticisms, but that even with the most recent version there have remained doubts about his capacity to fully extricate himself from a relapse into metaphysics.

Allen Wood, for example, has pointed out that Habermas’ argument seems to rely on the hypostatization of a specific use of language – the use of language oriented towards reciprocal understanding – which is not necessarily presupposed by all other competent uses.\textsuperscript{147} Jonathan Culler, on the other hand, has suggested that Habermas’ formulation of the supposed counterfactual normative presuppositions of communicative action relies on certain categories – such as those of ‘reference’ and ‘validity’ – which only emerged historically after the use of language itself. This makes it difficult to understand how they could be necessarily presupposed by all competent uses as such.\textsuperscript{148} Finally, Bernard Flynn has suggested that Habermas’ theory of language still relies on a “representative” conception, according to which the meaning of individual speech acts can only be established in terms of validity with respect to three ‘external’ worlds: the objective domain of facts, the inter-subjective domain of norms, and the subjective domain of interiority. This seems to reintroduce the essential categories of metaphysics precisely at the heart of a theory of language that was supposed to be the means to overcome it.\textsuperscript{149}

Since however my primary interest in this context is not to establish whether Habermas succeeds in entirely extricating his justification of constitutional democracy from the categories

of metaphysics as such, but rather more precisely from the dimension of religion, I am willing to leave these questions open for the time being, without entering into the possible replies that could be offered from a Habermasian point of view. Assuming, for the sake of argument, that Habermas does indeed succeed in establishing that the hypothetical outcome of an idealized discursive procedure can enjoy the presumption of rationality in a post-metaphysical context, I will focus instead on the way in which he attempts to concretely operationalize this criterion of rationality.

This is the question that Habermas addresses in *Between Facts and Norms*. In the context of his debate with Ratzinger, Habermas explicitly makes reference to this text, summarizing its central thesis as follows: “The explanation consists in the demonstration that (a) to the extent that the legislative process satisfies the conditions for an inclusive and discursive formation of opinion and will, it establishes the assumption that the results will be rationally acceptable; and that (b) the legal institutionalization of this kind of democratic legislation demands that the basic liberal and political rights be granted simultaneously”\(^{150}\).

The key point that emerges from this quote is that the concrete operationalization of the principle of communicative rationality is supposed to occur through the medium of law. More specifically, what is established is a two-fold relation between an inclusive deliberative process approximating the conditions of an ideal speech situation and the dimension of positive law: on one hand, the purpose of the collective deliberative process becomes that of reaching a consensus over the possible content of a positively binding law for all parties involved; on the other hand, the institutionalization of this collective deliberative process already supposes the universal recognition of certain fundamental rights which make it possible in the first place (such as freedom of speech and information, but also, more fundamentally, access to education and

material conditions that enable substantive participation in the collective deliberative process as free and equal citizens).

On this basis, Habermas maintains that the concrete operationalization of his criterion of communicative rationality takes the form of a substantive theory of constitutional democracy. For, the inclusive deliberative process of opinion and will formation can be seen as an instantiation of the democratic principle of collective self-government. But, at the same time, the institutionalization of this principle proves to be conceptually “co-original” with the recognition of certain constitutionally guaranteed fundamental rights. Thus, democracy and a form of constitutionalism establishing definite limits to the exercise of political power are ultimately shown to be conceptually inseparable from each other.

**b) Habermas’ response to Ratzinger’s political theology**

On the basis of this conception of the “co-originality” of fundamental rights and democratic self-government, in the text of his contribution to their debate, Habermas outlines his response to Ratzinger’s political theology. The gist of his argument is that, if it is understood as the concrete operationalization of the principle of communicative rationality, democracy does not necessarily need to draw its substantive moral values from outside. For, the commitment to a substantive set of fundamental rights can be deduced *immanently* from the necessary juridical presuppositions of the institutionalization of the democratic deliberative process. In other words: the co-originality of popular sovereignty and fundamental rights means that there is no need for a religious foundation of the substantive normative commitments of a constitutional democracy.

From this it follows that Habermas’ conception of constitutional democracy is not vulnerable to the objection raised by Ratzinger according to which ‘democracy can be
overthrown by democratic means’. For, if the deliberative process were to decide to violate any of the normative principles enshrined in the constitutionally guaranteed fundamental rights, it would effectively be undermining its own conditions of legitimacy. Thus, it would logically cease to be identifiable as a democratic process in the first place. Of course, this is not something that can be categorically excluded as a matter of fact. However, the key point that Habermas takes himself to have established, contra Ratzinger, is that his conception of democracy contains within itself a criterion for establishing limits to the legitimate exercise of democratic power. Whatever transgresses these limits can be coherently criticized as anti-democratic, even if it apparently corresponds to the popular will.

Habermas’ way of formulating this response is in terms of an indirect critique of the whole lineage of thought that is based on the assumption of an opposition between the democratic principle of popular sovereignty and the liberal principle of fundamental rights: “A constituted (not merely constitutionally tamed) state authority – he writes – is governed in its innermost core by the rule of law, so that political power is totally permeated by the law. The positivism with regard to the will of the state that dominated German political theories from Laband and Jellinek to Carl Schmitt still left a loophole for an ‘ethical’ substance of ‘the state’ or a ‘political sphere’ not dominated by the law. But in the constitutional state there is no ruling authority derived from something antecedent to the law … Before the age of constitutions, the prince was completely sovereign, but the transition has left no gap that an equally sovereign people would need to fill”.151

What this passage brings to light is that Ratzinger’s thought (like the broader strand of Catholic anti-relativist discourse I discussed in the previous chapters) still has at least one key element in common with the sort of political theology articulated by Carl Schmitt. Namely, that

151 Ibid., pp. 26-27
the democratic exercise of the popular will is assumed to conceptually precede the dimension of constitutional law. This implies that if the constitutionally guaranteed fundamental rights are to function as a way of limiting the expression of the constituent power, they must necessarily rely on an independent foundation – which is of course the open door for the reintroduction of a reference to the transcendent will of God as a complement to that of the people.

Habermas’ conception of the “co-originality” of fundamental rights and popular sovereignty, on the other hand, is meant precisely to contest this order of priority. For him, the constitution cannot be reduced to the “domestication of an already existing state authority”\textsuperscript{152}, but must rather be seen as the condition of possibility for the formulation and expression of the democratic will in the first place. It is this relationship of reciprocal interdependence which eliminates the need for a transcendent foundation of fundamental rights in the first place, thereby undercutting the grounds for all forms of political theology.

As far as I can see, on its own terms, this argument appears convincing. Therefore, up to this point, Habermas appears to have gained the upper hand in his confrontation with Ratzinger. However, this is by no means the end of the matter. What still remains to be established is whether the concrete operationalization of the principle of communicative rationality does not need to rely on some sort of reference to religion for other reasons than for the conceptual foundation of the notion of fundamental rights. In other words, the question that still remains open is whether Habermas is not able to exclude political theology from his justification of a substantive conception of constitutional democracy only at the cost of reintroducing it in another aspect of his theoretical system. This is the question that organizes the entire second part of his contribution to the debate with Ratzinger and, as we will see, it is at this stage that his position may begin to lose some of the ground that it initially appears to have gained.

\textsuperscript{152} Ibid., p. 27
c) The question of motivation

The way in which Habermas formulates this additional concern over the ‘autonomy’ of his theory of constitutional democracy is in terms of the problem of motivation. This is a problem which – as Habermas himself points out – had already been raised in connection with the issue of the role of religion in modern democratic states by the famous German jurist, Ernst Bockenforde. His point was that constitutional democratic states presuppose a very high degree of commitment on the part of their citizens, because these are called upon to behave not merely as ‘objects’ of positive law, but also as ‘subjects’ actively involved in the process of formulating it in the first place. This generates a problem, for him, because constitutional democratic states do not dispose of any adequate means for guaranteeing that citizens will indeed supply the required level of participation\textsuperscript{153}.

Bockenforde takes for granted that such states cannot use the medium of law to enforce participation, because that would be contrary to the spirit of democratic autonomy. For this reason, he suggests that such states must necessarily “rely on normative presuppositions that they cannot themselves guarantee”, implicitly assuming that the only available source for such motivation, after the demise of the idea of the nation, must be some form of religious commitment\textsuperscript{154}. The emphasis on the problem of motivation therefore proves to be another way of introducing a dimension of political theology within the theory of constitutional democracy, without necessarily positing God as the conceptual foundation for fundamental rights.

In his contribution to the debate with Ratzinger, Habermas takes this challenge very seriously because he recognizes that it touches upon a fundamental aspect of his theory of


\textsuperscript{154} \textit{Ibid.}, p. 112.
legitimacy, connected to the Kantian lineage in which it is inscribed. This is a problem which Habermas had already faced in a number of writings previous to his debate with Ratzinger, without ever managing to arrive at a satisfactory solution. It is therefore worth to briefly digress to consider at least one of these writings, because this will serve to further clarify the way in which the question of motivation raises a significant problem for his theory of constitutional democracy.

In particular, the text I would like to discuss in this context is the commentary Habermas wrote to a remark made by Max Horkheimer in one of his posthumously published notes, according to which “to seek to salvage an unconditional meaning without God is a futile undertaking”\(^{155}\). The reason is that Habermas’ interpretation of this remark takes it to be making essentially the same point that Ratzinger also defended during his debate with Habermas. The latter’s critical appreciation of it can therefore be seen as a sort of prologue to the attempt to respond to Ratzinger in that debate.

Basically, Habermas takes Horkheimer to argue that reason is not sufficient to provide a normatively acceptable limit to the political exercise of power by man over man. On the contrary, the worry is taken to be that if it is unchecked by something else, reason can be put in the service of an intensification of power itself – as Horkheimer notoriously argues was the case with “totalitarianism”, but also increasingly in what he calls the “fully administered society”. The only thing which is assumed to be able to provide a check against this progressive expansion of the domain of oppression is the horizon disclosed from the perspective of an ‘absolute

exteriority’. In the final analysis, for Habermas, this boils down to a “surprisingly traditional” conception of morality, founded on an hypothesis of transcendence\(^\text{156}\).

The only substantive difference Habermas sees between this theoretical orientation and that defended by Ratzinger is that Horkheimer’s conception of morality is ultimately founded on a *negative* theology, which deciphers in the limits of our conceptual self-understanding the indication of a domain that dialectically exceeds it. Instead of the Christian God with his positive commandments, therefore, Horkheimer ends up postulating an empty figure of the divine that only shows the contingency and arbitrariness of the existing configuration of power. The fundamental structure of his theory, however, remains essentially analogous to that of classical political theology, because this particular conception of the divine is posited as the only antidote against the possible excesses that can result from a purely immanent justification of political power.

Analogously to the way he is later going to respond to Ratzinger, in his commentary on Horkheimer, Habermas insists on the fact that the founder of the Frankfurt school appears a little “too quick” to suppose that reason itself is incapable of establishing the normative limits for the legitimate exercise of political power. The reason Habermas adduces is that Horkheimer considers reason only from the point of view of “instrumental rationality”. If he had also considered the rational aspect implicit in communicative action, Habermas suggests, Horkheimer could have reached a different conclusion. This offers the occasion for Habermas to return once more to a discussion of the fundamental principles of his theory of communicative rationality.

This aspect of the criticism directed against Horkheimer’s pessimism concerning the potentialities of reason is however not the principal one I intended to bring up in this context. What appears to be more relevant to the present discussion is that, after having outlined his

theory of communicative rationality, in the last paragraph of the same text, Habermas adds a highly significant remark, which appears to cast doubt on the confidence with which he has just dismissed the Horkheimer’s “relapse” into a form of political theology. The passage is worth quoting in full because of its apparent dissonance with the tone of the rest of the text:

Post-metaphysical thought differs from religion in that it recovers the meaning of the unconditional without recourse to God or an Absolute … The significance of unconditionality is not, however, to be confused with an unconditional meaning that offers consolation. On the premises of post-metaphysical thought philosophy cannot provide a substitute for the consolation whereby religion invests unavoidable suffering and unrecompensed injustice, the contingencies of need, loneliness, sickness and death with new significance and teaches us to bear them … Even today, philosophy can only explicate the moral point of view from which we can judge something impartially as just or unjust. To this extent, communicative reason is by no means indifferent to morality or immorality. However, it is altogether a different matter to provide a motivating response to the question of why we should follow our moral insights or why we should be moral at all. In this respect, it may perhaps be said that to seek to salvage an unconditional meaning without God is a futile undertaking\textsuperscript{157}.

What Habermas seems to be recognizing here is something fundamental concerning all the theories of normativity that emerge out of the lineage stemming from Kant. Namely, that because they are based on a transcendental analysis of the necessary presuppositions of morality itself, all they can do is “explicate” the moral point of view; that is, make explicit what it implicitly already presupposes. This remains categorically distinct from a theory providing \textit{motivating reasons} for engaging in moral conduct in the first place.

Kant himself ultimately resolved this problem by supposing that the motivating power of morality is a “fact of reason” (the supposition being that, faced with a correct representation of what rational behavior would amount to, rational agents could not but be compelled to act in conformity with it\textsuperscript{158}). Habermas, however, is psychologically to well-informed to be able to accept this idea. The problem of motivation therefore remains as a significant \textit{lacuna} in his theory of the normative grounds underscoring constitutional democracy.

\textsuperscript{157} \textit{Ibid.}, p. 108.
This is why Habermas’ discussion of Horkheimer’s remark ends on a profoundly ambiguous note: Habermas concedes that “In this respect [i.e. with respect to the problem of motivation] it may perhaps be said that to seek to salvage an unconditional meaning without God is a futile undertaking”. Here it appears that, at least at this stage in the development of his thought, like Bockenforde, Habermas is only able to think of something of the order of the theological as a motivating ground for engaging in moral behavior in the first place. This would imply that the concrete operationalization of his theory of communicative rationality does not, in the final analysis, fully emancipate itself from the reliance on a religious ground of authority.

d) The idea of a post-secular society

In the context of his debate with Ratzinger, Habermas proves less willing to concede defeat. He therefore tries to develop a further argumentative response to the theological objection based on the problem of motivation. In order to do so, however, he first reformulates this objection in terms of an empirical argument concerning contemporary democratic societies. This is based on the recognition that, contrary to all expectations, the political significance of religion does not appear to be declining. Even in what are generally supposed to be the most ‘advanced’ democratic societies, all indicators of the political incidence of religion suggest that its significance is either stable or indeed increasing.\textsuperscript{159} Drawing on a large body of sociological literature, Habermas refers to this fact using the category of a ‘post-secular’ society.

The reason this recognition is connected with the theological objection based on the problem of motivation is that Habermas reads it as evidence of the fact that constitutional democracies may be incapable of autonomously supplying the grounds of political motivation

\textsuperscript{159} In particular, the evidence cited by Habermas comes from Peter Berger, \textit{The Desecularization of the world}, Eedermans, 1999.
they require. The traditional doctrine of secularization, he assumes, was predicated on the supposition that modernity would gradually provide adequate substitutes for the social functions traditionally exercised by religion. However, the fact that religion persists as a significant factor of political mobilization within the context of contemporary democratic societies suggests that this is not the case. The sociological notion of a ‘post-secular’ society is therefore made to stand in as an empirical expression of the conceptual and political problems raised by the problem of motivation for Habermas’ theory of constitutional democracy.

The part of his contribution to the debate with Ratzinger where Habermas discusses this notion of a ‘post-secular’ society is accordingly also the point at which his position relative to his opponent appears to be at its weakest. For, Habermas is forced to concede that: “The expression ‘post-secular society’ does more than give public recognition to religious fellowship in view of the functional contribution they make to the reproduction of motivations and attitudes that are societally desirable. The public awareness of a post-secular society also reflects a normative insight that has political consequences for the political dealings of unbelieving with believing citizens … In the post-secular society there is an increasing consensus that certain phases of the modernization of the public consciousness involve the assimilation and the reflexive transformation of both religious and secular mentalities”\textsuperscript{160}.

It would be too early, however, to conclude on this basis that Habermas gives in completely to the force of the arguments raised in defense of this form of political theology. For, as I already mentioned above, the point of his reformulation of the objection from motivation in terms of the notion of a ‘post-secular’ society is precisely to provide a more adequate response to it. The way in which Habermas attempts to do this is already alluded to in the last sentence of the passage just quoted. After having reformulated the problem of motivation as an empirical

\textsuperscript{160} Jurgen Habermas and Joseph Ratzinger, \textit{Dialectics of Secularization}, p. 47.
problem concerning the persistence of religion in contemporary societies, Habermas confronts it by attempting to inscribe it in a wider developmental process.

This takes the form of an excursus into the history of the process of rationalization that provides the basis for Habermas’ concluding remarks on the necessity of reformulating the traditional doctrine of secularization. It is therefore to an analysis of this part of Habermas’ text that we first have to attend, before being able to pass a definitive judgment on the extent to which he succeeds in providing a fully ‘autonomous’ justification for his substantive conception of constitutional democracy.

e) The history of reason as a process of secularization

The excursus on the history of reason that Habermas introduces towards the end of his contribution to the debate with Ratzinger is the part of the text that appears least ‘Kantian’ and more ‘Hegelian’ in both style and content. Habermas drops the transcendental mode of reasoning and purports to develop an actual history of the process of rationalization that recalls the notion of a universal ‘philosophy of history’\textsuperscript{161}. The key thesis advanced in this respect is that “when reason reflects on its deepest foundations, it discovers that it owes its origin to something else”\textsuperscript{162}.

Once again, the point Habermas is making here can only be fully understood in the light of some of the earlier texts that provide the theoretical background to his contribution to the debate with Ratzinger. Specifically, in both \textit{Culture and the Evolution of Society} and the \textit{Theory

\textsuperscript{161} To be sure, in the more detailed exposition of this argument that Habermas offers in ‘Culture and the Evolution of Society’ and in the ‘Theory of Communicative Action’, this history is presented as a transcendental reconstruction of the necessary presuppositions for hanging on to a normative conception of rationality. In this sense it could be read as claiming the same ontological status as the ‘Idea for a Universal History from a Cosmopolitan Perspective’ developed by Kant. However, this is not how the argument is presented in the debate with Ratzinger; and in any case this difference does not affect the substance of the argument I want to make. Cf. Jurgen Habermas, \textit{The Theory of Communicative Action}, Vol. 1., Beacon Press, 1981, p. 77.

\textsuperscript{162} Jurgen Habermas and Joseph Ratzinger, \textit{Dialectics of Secularization}, p. 40.
of Communicative Action, Habermas explicitly attempted to develop a philosophical reconstruction of the history of reason that is essential to understand his more recent writings on the relationship between constitutional democracy and political theology.

This account is based on an idealized decomposition of the history of the evolution of human societies in three distinct stages or epochs: an ‘archaic’ or ‘primitive’ stage in which human societies were primarily integrated by the “spellbinding authority of myth”; a ‘metaphysical’ or ‘theological’ stage in which the locus of ultimate authority is progressively identified with “a transcendent conception of the divine”; and finally the ‘modern’ or ‘post-metaphysical’ age in which the burden of social stabilization has to be progressively taken over by the structures of communicative rationality.\(^\text{163}\)

The underlying logic which is assumed to unite these three stages and operate the transitions between them is a gradual process that Habermas calls the “linguistification of the sacred”. During the initial, ‘archaic’ stage, Habermas supposes that the spellbinding authority of myth made the basic organizational form of society impermeable to reflexive thematization and therefore “sacred” in the sense of being beyond the possibility of linguistic thematization. With the transition to the so-called ‘metaphysical’ or ‘theological’ age, the ultimate grounds for the natural and social orders were for the first time made accessible to reflexive criticism by being located in an objectified transcendent realm.

Thus, in his idealized reconstruction, Habermas supposes that the history of reason begins concomitantly with that of religion, because it is the latter which first establishes the necessary distance between human beings and their collectively held beliefs, enabling them to reflect

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\(^{163}\) This three-fold decomposition of the evolution of human societies has been relatively common in recent histories of the development of world religions. Its basic features can be traced back to Karl Jasper’s idea of a double break at the beginning of the so-called ‘Axial’ and ‘modern’ ages. A similar structure can also be identified in Marcel Gauchet’s more recent treatise on The Disenchantment of the World. A Political history of Religion, Princeton University Press, 1997.
critically upon themselves. At the same time, however, Habermas also supposes that this self-reflexive critical power disclosed by religion ultimately turns back on religion itself, calling into question the “sacred” and ritual elements still implicit in the supposition of a transcendent locus of authority. This is how the transition to the so-called ‘modern’ age is supposed to be operated: by communicative action progressively “taking over” the stabilizing social functions previously exercised by religion.

In this sense, the relationship Habermas sets up between communicative rationality and religion proves to be more complicated than a simple one-sided opposition, and indeed distinctively dialectical. On one hand, religion is assumed to pose the conditions for the emergence of rationality in the first place. On the other hand, the further development of this critical faculty is assumed to tend progressively towards the overcoming of religion itself.\[164\]

On the basis of this specific conception of the relationship between reason and religion, in his debate with Ratzinger, Habermas is then able to return to the empirical fact of the persistence of religion as a political factor in contemporary democratic societies. For, the way in which the recognition of the “post-secular” nature of contemporary societies can now be integrated within the framework of his theory is through the supposition that the world-historical process of “linguistification of the sacred” has not yet been fully accomplished.

Habermas concedes that in some of his early texts, such as the ‘Theory of Communicative Action’, he may have given the impression of assuming that the transition to a post-metaphysical age was already essentially complete, and in this sense problematically relied on a traditional version of the doctrine of secularization. However, in the context of his debate...
with Ratzinger, he makes clear that the contemporary persistence of religion as a political factor in modernity can be read as evidence of the fact that religious traditions still contain valuable normative resources that have not yet been fully ‘linguistified’ in terms of communicative rationality.

This recognition provides the occasion for a reformulation of the doctrine of secularization not simply as a descriptive notion, but as an explicitly normative project of “translation” of the residual resources of meaning and motivation that remain present in the surviving religious traditions. It is this reformulation which provides the core of Habermas’ response to the theological objection based on the problem of motivation, which Habermas had reformulated as an empirical objection in terms of the concept of a ‘post-secular’ society. Put in simple terms, Habermas’ point is that precisely because religion persists as a significant factor of political motivation in contemporary democratic societies, secularization ought to be reconceived as a normative project aiming to accomplish the world-historical process of rationalization of the theological grounds of legitimacy in terms of communicative rationality.

f) The reaffirmation of a secularist stance

Habermas’ way of dealing with the issue of ‘post-secularism’ in contemporary democratic societies (including but not only in his contribution to the debate with Ratzinger165) has been widely interpreted as involving a significant “revision”, and even an “inversion”, of his previous secularist stance.166 This has tended to generate some disappointment on the part of some commentators who had seen in the early Habermas a valiant champion of the

165 A useful collection of most of these writings has recently been published in English under the title Between Naturalism and Religion, Polity Press, 2008.
Enlightenment conception of rationality as a “unfinished project”, but now feel that in old age he may have ended up conceding “too much” to the claims of organized religion.\textsuperscript{167}

What I would like to suggest, however, is that the extent of the rupture between Habermas’ early and later writings on the topic of religion is in fact far less than what these commentators seem to suppose. Although Habermas himself may have contributed to the confusion through the appropriation of the concept of a ‘post-secular’ society, it is important to point out that in his writings this notion is used only to refer to an empirical situation of fact, not a normative project. The principal difference between the early ‘secularist’ and the later ‘post-secular’ writings accordingly concerns only the sociological assessment of the given empirical situation, not the normative core of the theory.

Faced with an overwhelming body of empirical evidence, Habermas has conceded that the transition from the ‘theological’ to the ‘post-metaphysical’ age may not yet have been fully accomplished as a matter of fact. However, this does not alter (but on the contrary only works to reinforce) the overarching normative thrust of the theory: for Habermas, given the present empirical situation, the ever more urgent task becomes that of \textit{carrying out} the secularizing process of rationalization of the yet untapped normative resources that remain present within the surviving religious traditions.

This is made clear by the emphasis Habermas has laid on the concept of “translation” of religious contents into communicatively rational terms in all of his most recent writings on the topic of religion. In the final part of his debate with Ratzinger, Habermas gives a concrete example of the specific kind of operation he has in mind when he refers to this idea of the public sphere as a “cooperative process of translation” of religious values into communicatively rational

terms: “One such translation that salvages the substance of a term without emptying it through a process of deflation and exhaustion – he writes – is the translation of the concept of ‘man in the image of God’ into that of the identical dignity of all men that deserves unconditional respect. This goes beyond the borders of one particular religious fellowship and makes the substance of biblical concepts accessible to a general public … Thus, when we see how the religious shell is stripped of potentially significant concepts in a manner that promotes secularization, we can give Bockenforde’s theory a harmless meaning”

The metaphor of extracting the ‘rational core’ from the ‘mystical shell’ of religion is of course of Hegelian origin. This shows in yet another way that the overall normative thrust of Habermas’ conception of constitutional democracy has not changed with respect to the earlier ‘secularist’ texts. Paradoxically, religion is accepted in the public sphere only because it had previously already been recognized that its critical appreciation can play a dialectical role in its own overcoming. The goal remains that of a “linguistification of the sacred”, and the residual elements of religion that persist in the context of modern constitutional democracies are dealt with by being fed into what is effectively a ‘machine’ for collective translation, supposed to result into communicatively rational outcomes.

g) Is communicative rationality truly autonomous?

If the thesis that I attempted to establish in the previous section can be accepted – namely, that Habermas’ later ‘post-secular’ writings do not amount to a significant revision of his earlier ‘secularist’ stance, but rather to a clarification and re-statement of the normative orientations that were implicit from the start – then it may perhaps be possible to judge whether

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168 Jürgen Habermas and Joseph Ratzinger, *Dialectics of Secularization*, p. 45.
Habermas succeeds in establishing the full autonomy of his deliberative conception of democracy from religion on the basis of a consideration of these writings in particular. In other words, what I am proposing is that far from representing an ‘inversion’, Habermas’ most recent writings on the topic of religion actually shed light on the ‘truth’ of the relationship between his conception of constitutional democracy and political theology as a whole.

From this point of view, what has been established is that Habermas’ conception of communicative rationality functions essentially as a ‘machine’ which converts, or rather “translates” privately held beliefs and opinions into publicly rational principles, communicatively acceptable to all. As a procedure, rationality is therefore conceived essentially as a ‘filter’ which only allows a certain kind of content to count as grounds of justification for collectively binding norms. Those that don’t pass the test of public redeemability, and cannot be adequately translated, must be discarded.

What I want to emphasize in particular at this stage, however, is that the actual contents that are to be put through this procedural test must come from ‘outside’. The machine cannot generate its own input: it can only establish which kinds of contents are fit for being adequately processed. Thus, it must necessarily presuppose that there exists an external source supplying it with the raw materials it needs in order to function. This appears to compromise the claim to autonomy of Habermas’ conception of communicative rationality, on which his entire theory of constitutional democracy is founded.

The point will perhaps become clearer if we finally return to compare it with the objection raised by Hegel against Kant’s attempt to ground a system of morality exclusively on the necessary presuppositions of reason. Of course, Kant’s criterion of rationality is slightly different from Habermas’: not redeemability in the context of an idealized communicative
process, but universalizability without logical contradiction. However, the overall structure of the argument is essentially analogous: Kant provides a formal procedure for establishing which maxims of the will may be considered rational, which is functionally equivalent to Habermas’ procedure for evaluating the communicative rationality of privately held beliefs. In both cases, the procedure itself is not assumed to be the generating source of the substantive content it is supposed to process. In §135 of his ‘Philosophy of Right’ Hegel famously objects against Kant that:

> From this point of view, no immanent theory of duties is possible. One may indeed bring in material *from outside* and hereby arrive at particular duties, but it is impossible to make the transition to particular duties from the above determination of a duty as absence of contradiction or formal correspondence with itself … A contradiction must be a contradiction with something, that is, with a content that is already fundamentally present as an established principle. Only to a principle of this kind does an action stand in a relation of agreement or contradiction. But is a duty is to be willed merely as a duty and not because of its content, it is a merely formal identity which excludes any determinate content.\(^{169}\)

On the basis of what has been said so far, it is not difficult to imagine a possible alteration of this passage that would make it into a cogent critique of Habermas’ conception of communicative rationality. The key point would be that public redeemability in the context of an idealized discursive procedure must be redeemability of *something*, but this *thing* cannot be generated by the procedure itself. Therefore: “one may indeed bring in material from outside, but it is impossible to make the transition to particular duties from the above determination of duty merely as public redeemability in an idealized discursive procedure”. Just as Hegel’s critique was intended to show how the autonomy of Kant’s conception of reason was ultimately forced to rely on an element of heteronomy, this reformulation of his objection also seems to undermine Habermas’ claim concerning the autonomy of his conception of communicative rationality.

What appears even more striking, however, is that because of the particular way in which Habermas sets up his philosophical history of reason, and also his conception of the public

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sphere as a cooperative process of “translation”, the only possible source that is available within his system for the substantive contents that communicative rationality requires to function are the religious traditions from which it is constantly trying to extricate itself. This is due to the fact that, as we have seen, both his ‘philosophy of history’ and his conception of the public sphere as a cooperative process of translation are ultimately constructed in terms of a binary opposition between reason and religion. The implication is that the only available pole of exteriority to reason itself turns out to be religion.

This emerges for example in Habermas’ characterization of his revised conception of secularization as a “two-fold and complementary learning process”. The basic categories of actors involved are two: religious and secular citizens; while the basic raw material on which they are assumed to work cooperatively is only one: the residual religious views that remain present in society because they have not yet been fully ‘translated’ into communicatively rational terms. This suggests that Habermas’ conception of the public sphere as a “cooperative translation process” actually requires the existence of religious views and citizens in society in order to become operative in the first place. For, if such residual elements could not always be presupposed, the ‘machine’ would have nothing to work with. In other words, a ‘post-secular’ society is not merely an accidental empirical situation in which Habermas’ theory of constitutional democracy contingently happens to be situated, but a conceptually necessary presupposition of the theory itself.

But perhaps this is not yet the last word on the matter. For, after all, the continued dependence of reason on religion was only established because Habermas inscribes his conception of rationality within a binary opposition with the concept of religion. If this binary were to be somehow overcome, then perhaps the autonomy of the former with respect to the
latter could still be established. This is what I shall now move on to consider, through an analysis of Rawls’ conception of ‘political liberalism’. As I already announced from the start, however, my claim will be that, in Rawls, reason only manages to relinquish its dependence from religion by falling back on a form of ‘cultural relativism’. In the end, this will lead to the suggestion that the turn towards neo-Kantian rationalism ultimately fails to establish the sought-for intermediate position between religion and relativism.

JOHN RAWLS: THE POLITICAL CONCEPTION OF JUSTICE AS PUBLIC REASON

Like Habermas’, John Rawls’ political theory developed over a long period of time and comprises a large body of writings. In order to attempt an overall interpretation, I will adopt a similar approach to that employed for discussing Habermas in the previous sections: using Rawls’ most recent writings as a key for reading the earlier ones, rather than vice versa. The reason is that, since the first publication of A Theory of Justice in 1971, Rawls provided various reformulations of his arguments in response to the criticisms advanced by commentators. While these revisions never involved relinquishing or overturning any of his key intuitions, they address more explicitly some of the central questions of this dissertation, as well as providing a clearer and more satisfactory exposition of the main argument. I will accordingly be focusing primarily on the set of lectures published as Political Liberalism, and implicitly proposing to read A Theory of Justice through the lens of this later text.

The key objective of Rawls’ political theory, as it is formulated at the beginning of Political Liberalism, is to provide a “political conception of justice appropriate for democratic societies”. 170 This is an important formulation, which is worth spelling out in detail. Rawls starts

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from the assumption that liberal-democratic societies are characterized by a commitment to the fundamental values of freedom and equality. No society can possibly claim to be democratic if it doesn’t in some way set itself the objective of realizing these values. At the same time, however, Rawls also recognizes that there may be many specific ways of giving a concrete political form to these values. For this reason, he understands the task of political theory as that of trying to work out the most appropriate way of establishing “fair terms of social cooperation” for a group of citizens that regard each other reciprocally as free and equal.

This is what underscores the idea of a “political conception justice appropriate for democratic societies”. As he puts it himself:

The course of democratic thought over the past two centuries or so makes plain that there is at present no agreement on the way the basic institutions of a constitutional democracy should be arranged if they are to satisfy fair terms of social cooperation between citizens regarded as free and equal … Justice as fairness [i.e. the specific conception of justice that Rawls has attempted to elaborate since ‘A Theory of Justice’] tries to adjudicate between these contending traditions by proposing two principles of justice to serve as guidelines for how basic institutions are to realize the values of liberty and equality … What must be shown is that a certain arrangement of basic political and social institutions is more appropriate for realizing the values of liberty and equality when citizens are so conceived.171

From the above passage it emerges that Rawls’ entire theoretical endeavor can be read, at least implicitly, as an attempt to provide a response to the objection raised by the contemporary form of anti-relativist political theology. For, although he doesn’t mention the concept of relativism itself, his goal is precisely to formulate a set of substantive normative principles that can serve as guidance, and therefore implicitly also as a limit, for the democratic exercise of political power. Against the idea that democracy is in principle compatible with any concrete form of politics, Rawls wants to show that there is a determinate content to the idea of democracy itself, and therefore that this political form does not need to rely on any ‘external’ set of principles or doctrines in order to remain viable on its own terms.

171 Ibid., pp. 4-5,
The grounds on which Rawls announces he is going to attempt to establish this conclusion are those of a kind of rationality that should in principle be accessible to all the citizens of a democratic society. This already introduces the key feature of what he is later going to formally define as “public reason”; that is, the idea that the laws and institutions of a democratic society can only be considered legitimate to the extent that they can be universally accepted by a set of rational citizens who regard each other as free and equal.

Although the specific lecture from *Political Liberalism* that discusses this concept of “public reason” in detail tends to portray it primarily as a procedural conception, thereby establishing some similarities with Habermas’ conception of communicative rationality, one important difference between Habermas and Rawls is that the latter also engages directly in the exercise of trying to provide a justification for a substantive conception of political justice. His argument is therefore not exclusively transcendental (or “semi-transcendental”) but rather “constructivist”, in the sense that he seeks to use the formal criteria of “public reason” to work out some concrete principles of justice that should accordingly result as rationally legitimate from the point of view of liberal democracy.

*a) The idea of an overlapping consensus*

The specific criterion Rawls posits for an argument to be in conformity with the principles of “public reason” is that the formulation of this argument must depend only on principles and information available universally to a set of citizens who regard each other as free and equal. The most important implication with respect to the set of issues under consideration in this dissertation is spelled out by Rawls himself in one of the lectures from *Political Liberalism*: “This means that in discussing constitutional essentials and matters of basic justice we are not to
appeal to comprehensive religious and philosophical doctrines; that is, to what we as individuals or members of associations regard as the whole truth”\textsuperscript{172}.

The above statement shows that a central concern of Rawls’ later work is the relationship between his political conception of justice as fairness and what he has called the “comprehensive religious and philosophical doctrines” that the citizens of a liberal democracy might entertain. In order to provide a fuller picture of the overarching stakes of this text, it is therefore necessary to examine this aspect of Rawls’ thought in some detail, also because it is around this point that the key difference between his early and later writings revolves.

In the introduction to \textit{Political Liberalism}, Rawls summarizes what he took to have been his intention in writing \textit{A Theory of Justice} by saying that he wanted to develop an alternative to ‘utilitarianism’ – the moral theory which he took to be dominant in the English-speaking philosophical world at the time. Although he did not use this precise vocabulary at the time, he underlines that “once the question is raised, it is clear, I think, that the text regards justice as fairness and utilitarianism as comprehensive, or at least partially comprehensive doctrines”\textsuperscript{173}.

According to the definition already implicit in the previous quotation, this means that, in its first formulation, Rawls thought that his theory covered what individuals or members of associations ought to regard as “the whole truth” in matters pertaining to morality. The logical consequence was therefore that Rawls’ first formulation of his theory of justice was, at least implicitly, regarded as an \textit{alternative} to all other religious and philosophical comprehensive doctrines. For, as Rawls also puts it in the introduction to \textit{Political Liberalism}: “An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse

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\item[Ibid., pp. 224-225.]
\item[Ibid., p. xviii.]
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this conception on the basis of what I now call a comprehensive philosophical doctrine. They accept, as rooted in this doctrine, its two principles of justice”.¹⁷⁴

Another way of putting this – although once again Rawls did not dwell on it in *A Theory of Justice* – is that this text was implicitly predicated on a theory of secularization, according to which justice as fairness was ultimately supposed to ‘replace’ all alternative religious and philosophical comprehensive doctrines. In *Political Liberalism* Rawls claims that, in the light of further reflection, he came to regard this as a problem for his theory of justice. The reason he adduces is that the idea of justice as fairness was originally meant to embody a liberal principle of toleration. For him, this implies that if it were ever to be applied concretely, the likely consequence would be that it would encourage the proliferation of a plurality of basic religious and philosophical views. This is what Rawls calls “the fact of reasonable pluralism”.

Since for him the way in which any conception of justice is to be applied to the real world must be an essential component of the theory itself¹⁷⁵, this “fact of reasonable pluralism” proves to be a problem because it implies that in its first formulation justice as fairness ran the risk of undermining its own conditions of applicability. While on one hand it presupposed that all citizens of a liberal democracy must accept it as a comprehensive doctrine articulating the “whole truth” in matters pertaining to morality; on the other hand, the logic of its own concrete application provided grounds to believe that it would lead to the proliferation of a plurality of comprehensive doctrines at the level of individual belief.

The way in which Rawls attempted to deal with this problem in *Political Liberalism* was through a clarification of the difference between what he calls a “comprehensive doctrine” and a “political conception of justice”. As he puts it himself: “The distinction between a political

¹⁷⁴ Ibid.
conception of justice and other moral conceptions is a matter of *scope*; that is, the range of subjects to which a conception applies … A moral conception is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship, family and associational relationships, and much else that is to inform our conduct, and at the limit to our life as a whole … While a political conception is of course a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social and economic institutions. In particular, it applies to what I shall call the ‘basic structure’ of society, which for our present purposes I take to be a modern constitutional democracy”\(^{176}\).

On the basis of this fundamental distinction, Rawls proceeds to reformulate the relationship between his political conception of justice and the plurality of religious and non-religious comprehensive doctrines he has assumed must necessarily exist in a democratic society by introducing the notion of an “overlapping consensus”. The key idea is that justice as fairness is not to be understood as a “comprehensive doctrine” any more, but rather as a conception of justice applicable only to the domain of “the political”. At the same time, however, Rawls also insists that this revised conception of justice as fairness as a “political” conception must still be capable of being upheld from within the various “comprehensive doctrines” that are likely to exist in a democratic society. Thus, justice as fairness effectively restricts its domain of application, but hopes thereby to become at least in principle compatible with a plurality of religious and non-religious “comprehensive doctrines”.

A key point to make clear at this stage is that this notion of an “overlapping consensus” is not understood as a ‘common denominator’ between all the reasonable comprehensive doctrines, constructed merely by extrapolating what they turn out to have in common. Rawls insists that the

political conception of justice as fairness must still retain a “free-standing” justification, given by the fact of being constructed in conformity with the principles of public reason. Indeed, the hope is that precisely because it is constructed in conformity with the criteria of public reason it can coherently be affirmed from within every reasonable comprehensive doctrine, without coming into conflict with the principles that regulate other domains of life.

The way Rawls formulates this is in terms of the idea of a “module”, which is capable of being justified independently but also of being coherently inserted within the context of a plurality of reasonable comprehensive doctrines:

I assume all citizens to affirm a comprehensive doctrine to which the political conception they accept is in some way related, But a distinguishing feature of a political conception is that it is presented as a free-standing view, and exposed apart from and without any reference to such wider background. To use a current phrase, the political conception is a module, an essential constituent part that fits into and can be supported by various reasonable comprehensive doctrines that endure in a society regulated by it. This means that it can be presented without saying, or knowing, or hazarding a conjecture about, what such doctrines it may belong to or be supported by.\textsuperscript{177}

From this passage, it becomes clear that Rawls’ revised version of justice as fairness ceases to either implicitly or explicitly presuppose a doctrine of secularization. On the contrary, it is predicated on the assumption that a plurality of different religious views will continue to exist in the context of a liberal democratic society. The key point, however, is that these various religious and non-religious comprehensive doctrines are assumed to be made capable of coexisting with each other within the framework of a liberal democracy by developing an independent justification for the institutions and principles of political justice appropriate for such a society which can be affirmed by each precisely because it does not rely on any one in particular. The presupposition of the ‘autonomy’ of a political conception of justice derived in conformity with the principles of public reason is therefore maintained, and even made more central to the theory as a whole. However, what is relinquished is the idea that this autonomy

\textsuperscript{177} Ibid., pp. 12-13.
must also require opposition, or even mutual exclusiveness, with religious or non-religious comprehensive doctrines.

b) The argument from the original position

After having clarified the formal relationship between Rawls’ political conception of justice and the set of comprehensive doctrines in which it is supposed to be inscribed, we can finally move on to consider the actual substance of his conception of justice as fairness, and especially the way in which he attempts to justify it in conformity with the principles of public reason. As is well-known, the fundamental conceptual artifice Rawls uses to operate this deduction is the idea of an “original position” – which he presents as a specific way of applying the principles of a neo-Kantian constructivism to political theory. The reason, as he explains, is that the “original position” can be understood as a way of imagining an ideal procedure, characterized by a specific set of constraints, which are structured in such a way as to establish the presumption that the outcome will be rationally legitimate.

As I already pointed out above, this characterization establishes an analogy between the notion of an original position and Habermas’ idea of communicative rationality, since both of these concepts are understood as procedural devices for obtaining presumptively rational outcomes. The difference, however, is that while the notion of communicative rationality is organized around the structural presuppositions of an ideal speech situation, the notion of an original position attempts to ensure the fairness of its outcome by imposing a set of constrains on the information that is assumed to be available to the parties deliberating on the principles of justice within it.
This is the idea that Rawls tries to express through the notion of a “veil of ignorance”: that the parties in the original position are assumed not to be able to dispose of any information that may potentially distort their judgment in morally significant ways. In particular, Rawls mentions the following restrictions as constitutive of what he calls an original position: “One of our considered convictions, I assume, is this: the fact that we occupy a particular social position is not a good reason for us to propose, or expect others to accept, a conception of justice that favors those in this position. Similarly, the fact that we affirm a particular religious, philosophical or moral comprehensive doctrine with its associated conception of the good is not a good reason for us to propose a conception of justice that favors those of that persuasion. To model this conviction in the original position, the parties are not allowed to know the social position of those they represent, or their particular comprehensive doctrines. The same is extended to information about people’s race and ethnic group, sex and gender, and their various native endowments such as strength and intelligence … We express these limits on information figuratively by saying that the parties are behind a veil of ignorance”.

Given these specific constraints, Rawls claims that the concrete principles of justice that could be agreed to by the parties of an original position representing the citizens of a liberal democracy can be considered to provide the substantive content for a specific conception of justice adequate for such a society, because the notion of an original position already contains encoded within it all the morally significant criteria that should make its outcome legitimate from the point of view of public reason. In this light, Rawls makes the further substantive claim that the parties to such an original position would rationally come to an agreement over the two following fundamental principles:

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178 Ibid., pp. 24-25.
(a) Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.\(^{179}\)

Since these are also the basic principles that were identified in *A Theory of Justice* as constitutive of justice as fairness, Rawls concludes that the same conception can also count as an adequate content for a political conception appropriate to a liberal democratic society according to the specifications made in *Political Liberalism*. It is these two principles that are therefore suggested as candidates for the “overlapping consensus” of reasonable comprehensive doctrines. Implicitly, this also means that the same two principles would be upheld by Rawls in response to the contemporary form of anti-relativist political theology. His point would be that there are limits to what a democratic people may be allowed to legitimately do to itself, corresponding precisely to the substantive principles of justice he has attempted to work out both in *A Theory of Justice* and *Political Liberalism*. Presumably, a society that would violate these principles would cease to be democratically legitimate, even if this were perceived as the will of the people themselves.

c) The question of metaphysical presuppositions

Although a number of objections have been raised concerning the ‘internal logic’ of Rawls’ argument (that is, essentially, whether the parties in the original position would indeed come to an agreement precisely on the two principles of justice he specifies\(^{180}\)), the specific line of questioning that appears more relevant to the concerns of this chapter concerns its


‘metaphysical presuppositions’. In other words, what I would like to consider at this stage is whether Rawls actually succeeds in providing a justification for his political conception of justice that remains absolutely “free-standing” from the wider metaphysical views of the citizens it is supposed to be adopted by.

From this point of view, a recurrent objection which has been formulated for example by Michael Sandel in his book *Liberalism and the Limits of Justice* concerns the specific conception of the person on which Rawls’ argument appears to be predicated. In particular, Sandel objects that this conception is metaphysically too “thin”, because it apparently supposes that individuals could somehow deliberate about a set of substantive principles of justice without either knowing their particular position in society or their most deeply held religious and cosmological views – as if there were some sort of “rational core” to personhood that could be abstracted from these additional and merely contingent features.181

Using many of what later came to be identified as standard ‘communitarian’ arguments, Sandel further objects that if Rawls had reflected more carefully on the metaphysical presuppositions of personhood, he would have realized that the individual is always, necessarily, embedded in a set of social relations and pre-reflective world-views. His contention is that this would have forced Rawls to relinquish his argument from the original position because he would have accordingly realized that the idea of human subjects deliberating on the principles of justice without knowing who they are, socially, or what they aspire to, personally, is a “metaphysical impossibility”.182

Formulated in this way, however, Sandel’s objection appears relatively weak, because he seems to overlook the key fact that Rawls never supposed that the original position could

182 Ibid., p. 53.
describe an actual deliberative process. Even in the first formulation of *A Theory of Justice*, he makes clear that it is only supposed to function as a “mental experiment”, in which certain concrete (and perhaps also necessary) features of reality are abstracted from in order to obtain a purely normative conception of justice. In *Political Liberalism*, this aspect is further elaborated upon by suggesting that the original position must be understood as a “device of representation” – which means that the parties involved consciously abstract from information they may have as a matter of fact for the purpose of playing a specific role, rather like judges are supposed to do in a court of law or actors in a play-house.

Seen from this perspective, there does not seem to be any “metaphysical impossibility” with the idea of a hypothetical original position, as Rawls himself proceeds to make explicit in *Political Liberalism* when he writes that: “The veil of ignorance, to take one prominent feature of that position, has no specific metaphysical implications concerning the nature of the self; it does not imply that the self is ontologically prior to the facts about persons that the parties are excluded from knowing. We can, as it were, enter the original position at any time, simply by reasoning from principles of justice in accordance with the enumerated restrictions of information. When, in this way, we simulate being in the original position, our reasoning no more commits us to a particular metaphysical doctrine about the nature of the self than our acting a part in a play, say Macbeth of Lady Macbeth, commits us to thinking that we are really a king or queen engaged in a desperate struggle for political power”.

Despite the cogency of this response to Sandel’s version of the objection, my contention is that, if it is viewed from the perspective of a purely constructivist account of political justice, the question of the metaphysical presuppositions of Rawls’ argument from the original position remains problematic. The reason is the obverse of the one indicated by Sandel: far from being

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183 John Rawls, *Political Liberalism*, p. 27.
too “thin”, my contention is that the conception of the person presupposed by Rawls is too “thick”, in the sense that it already presupposes too much of the specific conception of political justice it seeks to defend.

Let us recall, in fact, that Rawls says he wants to develop a political conception of justice appropriate for democratic societies. This means that he presupposes that the parties in the original position must already know that the citizens they represent are committed to the values of liberty and equality. It is only on the basis of this presupposition that Rawls can suggest that such parties would rationally agree to the substantive principles he lays out as constitutive of justice as fairness. From the perspective of a purely constructivist theory, this may appear as a way of presupposing too much because the substantive values of liberty and equality are already taken for granted at the start, and therefore not justified in a constructivist way by the theory itself.

Once again, this can be seen as a version of Hegel’s fundamental objection to Kant’s moral philosophy, because the point is that Rawls is drawing the actual moral values that give substance to his conception of justice “from outside”. The procedure of construction specified by the original position only serves to give a more determinate formulation of the principles of liberty and equality. However, the procedure itself is not assumed to be capable of justifying those principles themselves. Thus, the principles of liberty and equality must necessarily be assumed to have been justified independently. This may be the ‘back door’ through which the previously expelled comprehensive doctrines may ultimately have to be reincorporated. For, on what does their justification rely if not on a wider set of metaphysical presuppositions?

To be sure, Rawls may perhaps be defended from this version of the objection too. However, this would seem to carry his theory in an unexpected direction, which does not seem to
have been clearly thematized even by Rawls himself. For, my contention will be that *Political Liberalism* can escape the charge of circularity only by falling back on a distinctively culturalist, and therefore implicitly relativist, point of departure. Let me explain what I mean.

*d) The notion of reflective equilibrium*

In the formulation of his theory provided in his later writings, Rawls makes much clearer than he had in *A Theory of Justice* that he understands his political conception of justice as fairness to be rooted within the context of a particular “political culture”. This is emphasized repeatedly throughout the text of *Political Liberalism*. In the first substantive chapter, for example, Rawls writes that:

As a device of representation, the idea of the original position serves as a means of public reflection and self-clarification. It helps us work out what we now think, once we are able to take a clear and uncluttered view of what justice requires when society is conceived as a scheme of cooperation between free and equal citizens … This enables us to establish greater coherence among all our judgments; and with this deeper self-understanding we can attain a wider agreement among one another”\(^{184}\).

The crucial implication is spelled out even more clearly in one of the later chapters on the idea of constructivism itself: “To conclude – Rawls writes – not everything is constructed. We must have some material, as it were, from which to begin … Since justification is addressed to others, it proceeds from what is, or can be, held in common; and so we begin from shared fundamental idea implicit in the public political culture, in the hope of developing from them a political conception that can gain free and reasoned agreement in judgment, this agreement being stable in virtue of its gaining the support of an overlapping consensus of reasonable

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comprehensive doctrines. These conditions suffice for a reasonable political conception of justice”\textsuperscript{185}.

What Rawls appears to be explicitly conceding here is that the constitutive principles of liberty and equality are assumed to derive their legitimacy from a “political culture” that remains external to his theory, and therefore that they are not rationally “constructed” by it in his sense. The reason why this is not taken to constitute a problem is that – at least in \textit{Political Liberalism} – Rawls had been clear from the start that what he wanted to provide was a political conception of justice appropriate for democratic societies, not an \textit{ex nihilo} justification of democracy itself. The way he expresses this is by saying that what he has sought to provide from the start was a political conception of justice in “reflective equilibrium” with our given political culture.\textsuperscript{186}

This can perhaps be interpreted as a way of endorsing the suggestion already made by Hegel himself in his commentary on Kant that the only way to overcome the “empty formalism” of a purely procedural conception of rationality would be to root it in the “ethical life” (\textit{Sittlichkeit}) of the society to which it is supposed to apply. Indeed, Rawls himself seems to recognize this in the section of \textit{Political Liberalism} in which he explicitly considers Hegel’s criticisms to the classical social contract tradition. Although the issues at stake in this section are slightly different, Rawls proves to be sensitive to Hegel’s points because he writes that: “For Hegel, the doctrine of the social contract was an illegitimate and uncritical extension of ideas at home in and limited to (what he called) civil society … I have attempted to reply to this criticism by [clarifying that justice as fairness is rooted in a particular conception of the political culture of democratic societies] … While this may appear to be a concession, it nevertheless is not: the

\textsuperscript{185} \textit{Ibid.}, pp. 101-104.

\textsuperscript{186} In one of the first programmatic statements made at the start of \textit{Political Liberalism}, for example, Rawls had written that “We start by looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles. We hope to formulate these ideas and principles clearly enough to be combined into a political conception of justice congenial to our most firmly held convictions. We express this by saying that a political conception of justice, to be acceptable, must accord with our considered convictions, at all levels of generality, in what I have called ‘reflective equilibrium’”. \textit{Ibid.}, p. 8.
original position can still be characterized so that it establishes a fair agreement situation between free and equal moral persons, and one in which they can reach a rational agreement. This characterization depends on conceiving free and equal moral persons in a certain way”.

To be sure, showing that Rawls consciously agrees to pursue this ‘Hegelian’ route at this juncture is not sufficient to show that his conception of political liberalism must ultimately fall back on a form of cultural relativism. For, in Hegel, the notion of “ethical life” is inscribed within the context of a philosophy of history, conceived as the rational unfolding of the process by which the “Absolute” become conscious of itself, which endows it with a universal significance. Since however Rawls gives no indication of being willing to endorse such a metaphysically loaded concept of history and the “Absolute”, his own conception of the “public culture” in which justice as fairness is inscribed is left hanging as culturally specific, and therefore inevitably ‘relativist’ from the point of view of its relation with the outside.

In other words, since Rawls concedes that his conception of political justice is ultimately deduced from values that belong to a particular “political culture”, the applicability of his theory remains limited to the domain of recognition of that culture itself. Faced with an individual, or a group of individuals, not belonging to this specific cultural horizon, Rawls would have very little to say to them: his theory loses all its persuasive power. And, it is in this sense, that I claim that it ultimately boils down to a form of cultural relativism.

e) Excursus on the notion of reasonability

The above contention can perhaps be illustrated more clearly through an analysis of the role played by the concept of ‘reasonability’ within Rawls’ theory of political liberalism. This is

\[187\] Ibid., p. 286.
a concept that has already emerged here and there in the above discussion but is now worth submitting to a more systematic discussion. As we have seen, for example, Rawls says that his initial intention to revise the first formulation of his theory of justice was motivated by the recognition of what he calls “the fact of reasonable pluralism”. Accordingly the aim of *Political Liberalism* can be summarized as that of presenting justice as fairness as a possible candidate for an overlapping consensus amongst a plurality of “reasonable” comprehensive doctrines. But what does Rawls mean by “reasonable” in the first place?

A clear definition is provided in the Introduction to the paperback edition of *Political Liberalism*: “Citizens are reasonable, Rawls writes, when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of social cooperation (defined by principles and ideals) and they agree to act on these terms, even at the cost of their own interests in particular situations, provided that others also accept those terms. For these terms to be fair terms, citizens offering them must reasonably think that those citizens to whom such terms are offered might also reasonably accept them”\(^{188}\).

Apart from the rather awkward fact that the concept of ‘reasonable’ is present on both sides of this definition, what Rawls is getting at seems to be transparent: for him, reasonable people are those who already accept the constitutive democratic principles of freedom and equality, and who are prepared to work out the concrete political meaning of these principles (i.e. a political conception of justice) making proposals that they think everyone could reciprocally accept – that is abide to as long as everybody else does so to. The principles of freedom, equality and reciprocity are therefore constitutive of reasonability as well as of democracy itself.

This implies that when Rawls speaks of a plurality of “reasonable” comprehensive doctrines he is already restricting the field to a set of individuals and social groups that recognize

the validity of the constitutive principles of democracy. Thus, the political conception of justice 
that is to function as an overlapping consensus between this plurality of “reasonable” 
comprehensive doctrines can already rely on a set of common values on which there is assumed 
to be consensus, despite the differences that might exist between reasonable comprehensive 
doctrines on other matters. In this sense, the introduction of the concept of ‘reasonability’ can be 
seen as just another way of emphasizing that Rawls’ political conception of justice is constructed 
in the basis of the assumption of a shared “political culture”, over which there is no 
disagreement.

This recognition poses the problem of how Rawls’ political conception of justice can 
come to terms with those who are not part of the shared political culture in the first place. Or, to 
put it in other terms: how does justice as fairness deal with those comprehensive doctrines that 
are not “reasonable” to begin with? This is evidently not a question that Rawls himself is 
comfortable discussing, since it is only addressed indirectly in a few side remarks and footnotes 
in Political Liberalism. However, what emerges clearly even on the basis of these scant remarks 
is that, because of the specific way in which he has set up his revised version of the justification 
for justice as fairness, there is very little that Rawls could say to people endorsing such 
comprehensive doctrines.

In the first introduction he wrote for the hardback edition of Political Liberalism, for 
example, Rawls concedes that: “Of course a society may also contain unreasonable and 
irrational, and even mad, comprehensive doctrines”. However, his only comment in this respect 
is that: “In their case the problem is to contain them so that they do not undermine the unity and 
justice of a society”\(^\text{189}\). Similarly, in a footnote he adds in one of the later substantive chapters, 
Rawls writes: “That there are doctrines that reject one or more democratic freedoms is itself a

\(^{189}\) Ibid., pp. xviii-xix.
permanent fact of life, or seems so. This gives us the practical task of containing them – like war and disease – so that they do not overthrow political justice”\textsuperscript{190}.

These are troubling passages. From the point of view of a constructivist conception of political justice, they amount to a confession of the impotence of public reason to provide a universally acceptable justification for justice as fairness. For, the fact that Rawls drops the language of rational persuasion and adopts the medicalizing discourse of “madness” and even the explicitly belligerent one of “war” clearly shows that his conception of public reason can have nothing whatsoever to say to anybody who falls outside its cultural domain of reference. This amounts to another way of conceding that the applicability of Rawls’ conception of justice is necessarily ‘relative’ to the specific political culture it is embedded in.

One could quibble over the precise weight to be attributed to this concept of ‘reasonability’ – in particular over the extent to which Rawls wants to import any of the everyday colloquial meaning of the term into his technical definition. However, in the light of the reconstruction given above, there can be no doubt as to its indispensability for Rawls’ argumentative strategy as a whole. Moreover, what also emerges is that far from representing a betrayal of the spirit of Rawls’ philosophy, to describe Rawls’ overall position as ‘relativist’ amounts to a highly charitable reading, since it is clear that under his definition many of the most important world religions and comprehensive doctrines would necessarily have to be considered “unreasonable” (because they are not necessarily designed to be compatible with the democratic values of freedom and equality).

Indeed, if what Rawls writes literally were to be taken seriously, it would seem to involve not only the surprisingly intolerant suggestion that liberal democracies must necessarily be at “war” with societies that do not recognize their constitutive principles of freedom and equality,

\textsuperscript{190} Ibid., p. 64.
but also the distinctively illiberal idea that those elements within society that are not judged sufficiently committed to the values of liberal democracy should be paternalistically treated as “diseased” or “mad”, and perhaps also enclosed away from others, depending on how one interprets the idea of “containment”. Since, however, it is clear that these suggestions run counter to the overall spirit of Rawls’ theoretical endeavor, I am willing to interpret them charitably as emphatic illustrations of the limits of public reason in coming to terms with those who do not share its cultural premises. This is the perspective from which I am claiming that Rawls’ political liberalism is ultimately predicated on a form of cultural relativism.

f) Varieties of relativism: Rorty on Rawls

If the above considerations still do not suffice to dispel the impression that the interpretation of Rawls as a cultural relativist amounts to a betrayal of the underlying spirit of his theory, it may perhaps be worth considering that an essentially analogous interpretation was provided by one of his most illustrious friends and colleagues, Richard Rorty. In this section I therefore propose to analyze Rorty’s reading of Rawls both as a way of further substantiating what I have already attempted to establish above, and as a way of bringing out some of the limits of Rawls’ specific conception of relativism. This will provide the grounds for the transition to the next chapter of this dissertation, in which I attempt to work out a more defensible conception of democracy, predicated on a different kind of relativism.

Rorty’s discussion of Rawls occurs in the context of an article entitled ‘The Priority of Democracy to Philosophy’, in which the author seeks to demonstrate that a political conception of democracy does not need to rely on any philosophical (i.e. metaphysical) presuppositions, but
can afford to be grounded on the “cultural ethos” of a given society. From this perspective, Rorty interprets Rawls’s later writings as making precisely this point:

Rawls thinks that ‘philosophy as the search for truth about an independent metaphysical and moral order cannot … provide a workable and shared basis for a political conception of justice in a democratic society’. So, he suggests that we confine ourselves to collecting ‘such settled convictions as the belief in religious toleration and the rejection of slavery’ and then try to organize the basic intuitive ideas and principles implicit in these convictions into a coherent conception of justice’. This attitude is thoroughly historicist and anti-universalist.

On the basis of this specific reading of Rawls as an “anti-universalist”, Rorty is able to enlist his support for his own ‘pragmatist’ conception of democracy – according to which this political form is the expression of a specific “cultural ethos” that developed in the so-called ‘Western’ tradition, and assumed its distinctively liberal form in the United States. The only difference being, according to Rorty, that Rawls is not as willing as he is to recognize explicitly that this way of “remaining on the surface, philosophically speaking” implies a form of “ethnocentrism”, and therefore, in the final analysis also a form of “cultural relativism”.

In another passage from the same article, for example, Rorty writes: “Reading ‘A Theory of Justice’ as political rather than metaphysical, one can see that when Rawls says that … ‘we should not attempt to give form to our life by first looking to the good independently defined’ he is not basing this ‘should’ on a claim about the nature of things in themselves. ‘Should’ is not to be glossed by ‘because of the intrinsic nature of morality’ … but by something like ‘because we – we modern inheritors of the traditions of religious tolerance and constitutional government – put liberty ahead of perfection. This willingness to invoke what we do raises, as I have said, the specters of ethnocentrism and relativism”.

It is important to point out that these last two terms are not assumed by Rorty to have a negative connotation. He takes them to amount to a positive description of Rawls’ conception of

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192 Ibid., p. 180.
193 Ibid., p. 186.
democracy from a philosophical point of view. Indeed, when he then goes on to explain what lies behind his use of the substantive pronoun ‘we’, Rorty is even prepared to candidly assert that it refers to a culturally highly specific form of “post-modernist bourgeois liberalism”\(^\text{194}\).

With the intention of describing his own cultural horizon in terms of the same label, in another article included in the same collection of essays, Rorty draws a further distinction which recalls some of the terms I have been using to outline my argument. He describes “Kantians” as “people who think there are such things as intrinsic human dignity, intrinsic human rights and an ahistorical distinction between the demands of morality and those of prudence”. In contrast, “Hegelians” are assumed to believe “that there is no human dignity that is not derivative from a specific community, and no appeal beyond the relative merits of various actual or proposed communities to impartial criteria which will help us weigh those merits”\(^\text{195}\).

In terms of this distinction, Rorty stakes out his position as follows: “I shall call the Hegelian attempt to defend the institutions and practices of the rich North Atlantic democracies without using transcultural and ahistorical buttresses ‘post-modernist bourgeois liberalism’ … I call it ‘bourgeois’ to emphasize that most of the people I am talking about would have no quarrel with the Marxist claim that a lot of those institutions and practices are possible and justifiable only in certain historical and especially economic conditions … I use ‘post-modernist’ in the sense given to this term by Jean-Francois Lyotard, who says that the post-modern attitude is that of the distrust of meta-narratives, narratives which describe or predict the activities of such entities as the noumenal self, or the Absolute Spirit, or the Proletariat … I hope thereby to

\(^{194}\) Ibid., p. 198. 
suggest how such liberals might convince our society that loyalty to itself is morality enough, and that such loyalty no longer needs an ahistorical backup.”

Despite the highly stylized (and in my opinion also textually dubious) reading of both Kant and Hegel, this passage appears to contain a more or less accurate representation of what I have also argued Rawls’ political liberalism amounts to. It is in this sense – the sense in which Rorty claims that Rawls’ theory overlaps with his own – that I think Rawls is a cultural relativist. At the same time, I also think that reflecting more closely on the above passage may help bring out some of the limits of the specific kind of relativism implicit in both Rawls’ and Rorty’s conceptions of democracy.

These limits basically all have to do with the highly simplistic and deeply impoverished conception of “political culture” which the two authors seem to be working with. The impression is that this is treated as if this were some sort of monolithic reservoir of ideas, from which specific attitudes and principles could be unproblematically inferred, almost by way of deduction. In reality, ‘cultures’ are much more elusive entities, whose external borders are constantly shifting, and whose internal topography always involves unresolved areas of tension and contradiction. The moment a specific ‘culture’ can be crystallized in a coherent set of substantive values and principles it is already dead – in the sense opposite to that in which Hegel says that “ethical life” is always a “living reality”.

This is reflected in the rather awkward impression that results from Rorty’s attempt to explain what lies behind his (and Rawls’) substantive use of the first person plural ‘we’. I am not aware whether Rawls himself would agree to self-describe as a “post-modernist bourgeois liberal”. However, what is clear is that many of the subjects Rorty would have to include in his “American liberal Utopia” would not. This brings us back to the problem of the way in which

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196 Ibid., pp. 198-199.
such an ethnocentric conception of relativism would deal with those assumed to fall outside its cultural domain of reference.

As usual, Rorty appears less inhibited than Rawls in drawing out the full implications of their common positions and at one point of his article on ‘The Priority of Democracy to Philosophy’ he explicitly writes that: “We heirs of the Enlightenment think of enemies of liberal democracy like Nietzsche or Loyola as, to use Rawls’ word, ‘mad’. We do so because there is no way to see them as fellow citizens of our constitutional democracy, people whose life plans might, given ingenuity and good will, be fitted in with those of other citizens … They are not crazy because they have mistaken the ahistorical nature of human beings. They are crazy because the limits of sanity are set by what we can take seriously. This in turn is determined by our historical situation … And if this short way of dealing with Nietzsche or Loyola seems shockingly ethnocentric, it is because the philosophical tradition has accustomed us to the idea that anybody who is willing to listen to reason – to hear out all the arguments – can be brought around to the truth”\(^{197}\).

Once again, what we see emerging here are the troubling discourses of ‘enmity’ and ‘madness’ at the heart of a theory of liberalism that is supposed to be based on ‘Contingency, Irony and Solidarity’\(^{198}\). This suggests that perhaps the specific version of cultural relativism on which both Rawls’ and Rorty’s respective conceptions of liberal democracy are predicated is the underlying source of the problem. For, while based on a recognition of irreconcilability amongst cultures, the idea itself of cultural relativism seems to presuppose a form of substantive homogeneity within cultural groups. If this supposition proves to be contrary to fact, such

\(^{197}\) Ibid., pp. 187-188.
theories accordingly seem to get entangled into all the problems encountered by political theories predicated on a form of ‘thick’ cultural homogeneity – from Rousseau to Carl Schmitt.

Taking for granted that this is not the direction either Rawls or Rorty ultimately want to be taking, in the following chapter, I will therefore attempt to put forwards a more defensible conception of democracy, based on a different kind of relativism. Instead of relying on an explicitly anti-philosophical form of cultural ethnocentrism (what Rorty calls “remaining on the surface, philosophically speaking”), I will attempt to reconceptualize the relationship between philosophy and democracy itself, trying to show that an avowedly philosophical conception of relativism can function as an adequate foundation for a conception of democracy that does not get entangled into the various problems Rawls and Rorty have been shown to encounter.

For the time being, the provisional conclusion reached in this chapter is that the reference to a neo-Kantian conception of rationality proves to be incapable to establish the sought-for intermediary position between relativism and religion. Through a comparative analysis of Habermas’ and Rawls’ respective political theories, I have attempted to show that the attempt to ground a substantive conception of democracy with reference to a de-transcendentalized conception of rationality as procedure must necessarily re-import its substantive contents “from outside”. Depending on the actual source from which these contents are drawn, it therefore falls back either on an implicit reliance on the persistence of religious forms of authority within society or a normatively unsatisfactory form of cultural relativism.
CHAPTER 4 –

DEFENSE OF A RELATIVIST CONCEPTION OF DEMOCRACY

INTRODUCTION

In this chapter, I will attempt to put forwards a different response to the Catholic discourse of anti-relativism, which I find more compelling than the ‘rationalist’ one examined in the previous chapter. Instead of substituting the religious conception of ‘absolute’ truth with a different set of values supposedly derived from the category of rationality itself, this response questions the assumption that a conception of democracy predicated on a form of philosophical relativism must necessarily be self-defeating. On this basis, I try to show that it is possible to devise a conception of democracy that includes relativism as an integral component but is not vulnerable to the objections moved the Catholic Church, because it is politically sustainable on its own, without needing to rely on any ‘external’ or ‘transcendent’ (i.e. religious) source of legitimacy.

The primary inspiration for the construction of such a theory of democracy will come from the work of the great Austrian jurist and political theorist, Hans Kelsen. This chapter will not, however, consist exclusively in an interpretation of his work. First of all, Kelsen himself never addressed the question of the relationship between his theory of democracy and the Catholic discourse of anti-relativism. Secondly, even on its own terms, I will find that there are some aspects of Kelsen’s overall theory that need to be either modified or complemented in order to arrive at a fully convincing response to this body of discourse. The best way to
formulate the relationship between Kelsen’s thought and mine is therefore to say that I will be ‘using’ some of the categories and insights from Kelsen’s thought in order to develop a self-standing theory of democracy, which I consider more adequate for responding to the Catholic discourse of anti-relativism.

This implies that the primary criterion by which I expect this theory to be judged is not whether it faithfully reflects what Kelsen ‘really’ thought, but whether it constitutes an adequate basis for a compelling response to the Catholic discourse of anti-relativism. At the same time, however, a secondary purpose of this chapter is also to bring out the intrinsic interest and pertinence of Kelsen’s work to the set of questions under consideration. This is something worth doing because, especially in the Anglo-Saxon world, Kelsen is still read predominantly as a theorist of law, while his writings on democracy and political theory remain relatively unknown (indeed, one of the principal texts I will be relying on for the purposes of this analysis – his treatise on the Essence and Value of Democracy – has not even been published in English yet). For this reason, in what follows, I will attempt to clearly demarcate the aspects of my theory that are drawn directly from what Kelsen has written, and those in which my thought departs from his or attempts to carry it further in a direction he did not explore.

The exposition will proceed through a discussion of what I take to be the three essential ‘pillars’ of Kelsen’s theory of democracy: an idea of popular sovereignty, realized through a deliberative process oriented towards the formulation of reciprocally acceptable ‘compromises’ between the parties involved; a theory of constitutionalism, posited as the necessary institutional framework for instituting the democratic process of deliberation in the first place; and finally a form of philosophical relativism, understood as the specific kind of civic ‘ethos’ required for democratic institutions to function properly. In each case, I will first examine how Kelsen
himself understood the concept in question and then attempt to mold it into a broader theory of democracy, capable of withstanding the objections of the Catholic Church by responding to potential objections and extending or modifying Kelsen’s views where it is deemed necessary.

In the last part of the chapter, I will then proceed to show how the overall theory of democracy that emerges from this set of conceptual operations can be considered an adequate basis for providing a compelling response to the Catholic discourse of anti-relativism.

POPULAR SOVEREIGNTY

a) The identity between the subject and the object of the juridical order

The first ‘pillar’ of the theory of democracy I will attempt to develop over the course of this chapter is the notion of popular sovereignty. This is obviously a complex and contested notion, which has been at the heart of democratic theory at least since the beginning of the modern age. In his book on the *Essence and Value of Democracy*, Kelsen suggests that the best way to understand it is in terms of an identity between the subject and the object of the juridical order: “Theoretically – he writes – democracy is a political or social form in which the will of society or, less figuratively, the juridical order is generated by its subjects, the People. Democracy means that the leader and those who are led, the subject and the object of the juridical order, are identical. In this sense, it means the rule of the People over itself.”

Two aspects of this specific definition of popular sovereignty are particularly worth pointing out, because they already prefigure two of the most distinctive aspects of Kelsen’s theory of democracy as a whole. First of all, the notion of the people is given a purely juridical

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definition: it is not supposed to be some sort of pre-existent entity standing above the legal order and determining it from outside through a series of acts of will. Rather, the so-called ‘will’ of the people is said to be a figurative way of referring to the content of the juridical order, and the people itself the set of individuals to whom this legal order is supposed to apply. Thus, popular sovereignty effectively boils down to the requirement that the content of the legal order be determined by the set of individuals to whom it is supposed to apply:

From a concrete point of view – Kelsen writes – there is nothing more problematic than this unity which goes by the name, the People. Sociologically, it is riddled with national, religious, and economic differences and thus represents more a bundle of groups than a coherent, homogeneous mass. Here, one can speak of unity only in a normative sense … At bottom, only a juristic fact is capable of circumscribing the unity of the People with some accuracy, namely: the unity of the state’s legal order whose norms govern the behavior of its subjects. A multiplicity of human actions is unified as the content of the norms making up the order.²⁰⁰

This juridical definition the ‘people’ is significant because it inscribes one of the essential features of Kelsen’s theory of democracy at its very core: the inextricable interconnection with the idea of the rule of law. On one hand, the principal political subject of democracy – this idea of the people – is said to be created through the law. On the other hand, the key political activity this subject is assumed to engage in is that of further determining the content of the legal order itself. Thus, popular sovereignty and the rule of law enter into a reciprocal relation with each other, whereby each ends up constituting the other’s foundation.

The reason why this does not amount to a vicious circle is given by the second distinctive feature of Kelsen’s conception of popular sovereignty: its developmental, diachronic character. Kelsen does not assume that the identity between the subject and the object of the juridical order can ever be realized in an instant. It rather takes the form of a process oriented towards the ever-greater approximation of this abstract ideal. This is made clear by what Kelsen writes about the role of leadership in a democratic context.

²⁰⁰ Ibid., pp. 13-14 [15].
Theoretically, he concedes, democracy ought to be a leaderless society. However, in practice, he claims a measure of such leadership is inevitable, because the set of individuals who actually participate in the making of commonly binding norms can never fully correspond to the set of individuals who are subject to such norms: at the minimum, minors and other individuals who are not capable of exercising political rights must be excluded from them; moreover, in reality, the ‘gap’ between the people as the subject and the object of the juridical order is likely to be even larger, because not everybody who actually has political rights may want to exercise them to the same degree.

The distinctive aspect of a democratic order is therefore said to be that, by making the identity between these two aspects of the people into one of its organizing principles, it initiates a developmental logic whereby the set of individuals who both can and actually do exercise political rights is constantly expanded, which in turn means that the ‘gap’ between the people as the subject and as the object of the juridical order is constantly, if asymptotically, reduced:

Real democracy – Kelsen writes – is marked by a constant upward flow that moves from the community of subjects to the leadership positions. This highly characteristic movement clearly differentiates real democracy from autocracy, where the possibility of upward mobility is nonexistent or at least very limited. Instead, one is trapped in a relatively static power relation. In comparison, the specifically democratic method for the selection of leaders represents a significant expansion of the pool upon which this process is able to draw; in other words, it expands the number of individuals competing for the leadership position.201

Together with the inextricable interconnection with the rule of law, this diachronic, developmental character of popular sovereignty defines the specificity of Kelsen’s theory of democracy, and will be one of the principal features I will refer back to in order to advance a response to the Catholic discourse of anti-relativism. Before we can address that issue, however, it will be necessary to elaborate further on how these two fundamental intuitions play out in Kelsen’s work and can be integrated into a broader theory of democracy, which I will attempt to

201 Ibid., pp. 81-82 [88].
outline in more detail over the course of this chapter. In particular, the first issue that will be addressed is the specific way in which the identity between the subject and the object of the juridical order can be (at least tendentially) realized; that is: how the people can collectively determine the content of the juridical order.

b) A conception of deliberation oriented towards the formation of ‘compromise’ solutions

In his book on the *Essence and Value of Democracy*, Kelsen makes clear that his theory of popular sovereignty as the identity between the subject and the object of the juridical order is ultimately intended to translate into a deliberative theory of democracy. That is: a theory according to which the self-government of the people is realized through a communicative process whereby individuals exchange arguments and ideas for the purpose of reaching an agreement over collectively binding norms. This is not, of course, an original aspect of Kelsen’s theory of democracy. On the contrary, it has been the essence of all theories of parliamentary democracy, at least since the end of the 18th century. Burke arguably develops a theory of this sort in his famous address to the electors of Bristol, and Mill also undoubtedly does so in his *Considerations on Representative Government*. Within the field of contemporary political theory, however, the most well-known version of this idea is probably the one developed by Jurgen Habermas in his various writings on democracy, which were already considered in some detail in the previous chapter of this dissertation.

With respect to all these competing versions of the theory of deliberation, Kelsen’s nonetheless displays at least two distinctive feature, which are ultimately also the reasons I consider it more compelling as a basis for a response to the Catholic discourse of anti-relativism. First of all, there is no supposition in Kelsen’s work that the outcome of democratic deliberation
can be considered ‘rational’ or somehow approximating a normative idea of ‘truth’. As we have seen in the previous chapter, this is an essential presupposition of Habermas’ theory of deliberation, and also a constitutive element of both Burke’s and Mill’s. The argument on which they all rely, in one form or another, is that through the disinterested exchange of arguments, oriented exclusively towards the achievement of a consensus, the views that either misrepresent or misunderstand the ‘true’ interest of the people can progressively be filtered out, thereby approximating a more satisfactory conception of what Rousseau would have called the “general will”.

Kelsen, on the other hand, is well aware that this idea of a “general will” standing above the particular interests of all the individuals concerned, but also at the same time somehow subsuming them all, is an ideological construction. This should already be evident from what we have said above concerning his conception of the people. However, Kelsen makes it even clearer in the following statement: “At best – he writes – depicting the state as a tool for the common interests of a unified community confuses the ought with the is, the ideal with reality. As a rule, however, it is simply an attempt to idealize, or rather justify, reality for political reasons. Incidentally, the ideal notion of a common interest, which stands above and apart from group interests and, hence, “above partisanship,” proves to be a metaphysical – or, better, meta-political – illusion.”

The reason why Kelsen thinks that a communicative process of deliberation can be the means through which the democratic idea of an identity between the subject and the object of the juridical order is put in practice is therefore not that such a process somehow discovers or results in the production of a ‘rational’ conception of the “general will”, but rather simply that the outcome of such a process has been formulated or at least agreed to by the parties concerned. In

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202 Ibid., p. 21 [21-22].
other words: because it approximates an idea of ‘freedom’ as collective self-government and not (necessarily) an idea of ‘truth’ or ‘rationality’. This implies that Kelsen does not assume there can be any ‘objective’ or ‘meta-social’ guarantees of the correctness of this outcome: the only reason why it is considered legitimate is that it is what the parties have agreed to in a deliberative process where each was given a chance to articulate and defend their own views and interests.

Another way of putting this point is that Kelsen’s conception of democratic deliberation is not assigned any specific ‘epistemic’ value. Truth and freedom are assumed to be wholly independent of each other, and democratic deliberation is only assumed to be capable of striving for the former, not necessarily the latter:

If the specifically dialectical process within parliament has a deeper meaning – Kelsen writes – then surely it must be that the opposition of the thesis and antithesis of political interests somehow results in a synthesis. Here, however, this can only refer to a compromise, and not – as those who confuse parliamentarism’s reality with its ideology allege – a ‘higher’ absolute truth or an absolute value standing above group interests.203

An important implication which follows from this is that the legitimacy of the outcome of Kelsen’s conception of deliberation must necessarily be considered contingent upon its continued conformity with the views and interests from which it has emerged. If the underlying constellation of views and interests were to change, the outcome of a previous deliberative procedure could not continue to be considered democratically legitimate from this point of view. A further process of deliberation, resulting in a different outcome, would have to be initiated. Thus, Kelsen’s conception of deliberation ultimately translates into an “ongoing process” which constantly strives to find an equilibrium between the conflicting views and interests within a given social order. This confirms its inscription within a temporality of constant self-transformation, which I have already identified above as one of its essential features.204

203 Ibid., p. 54 [58].
204 To be sure, this kind of temporality could also be said to be a feature of Habermas’ conception of deliberation, and to some extent even Mill’s, since neither thinks that a complete consensus could ever be definitively reached by the parties to the
The second distinctive feature of Kelsen’s conception of deliberation, which in my opinion makes it more compelling than those put forwards by authors such as Burke, Mill and Habermas, is that it is not predicated on an idea of ‘consensus’, but rather on the notion of ‘compromise’ as its operative goal. This follows from the fact that Kelsen assumes that the best way to institutionalize the democratic idea of popular sovereignty is through an application of the majority principle.

Abstractly, Kelsen recognizes, the idea of an identity between the subject and the object of the juridical order would appear to imply the principle of unanimity as a decision-making procedure. Once popular sovereignty is understood as a dynamic, developmental process, however, Kelsen claims that the majority principle is actually the best way to approximate the ideal, because it maximizes the number of individuals who can be considered free within a given social order at any specific moment in time. The principle of unanimity, on the other hand, effectively means that a small minority can block a proposed change in the content of the juridical order, and hence that this can conflict with the will of more individuals than it agrees with.

The idea that the democratic process of deliberation ought to be oriented towards the formation of ‘compromise’ solutions, rather than the achievement of a complete ‘consensus’, is deliberative process. In this sense, their theories prove to incorporate an element of fallibility, which implies that all decisions taken must be considered provisional and subject to further review. There remains, however, a fundamental difference between this idea of fallibility and Kelsen’s conception of the contingency of democratic decisions. The former remains oriented towards an idealized conception of ‘truth’ or ‘rationality’, even if these are understood as practically unreachable. This implies that the perpetual process of revision of the legal order assumes a teleological structure, oriented towards a goal which exceeds it. Kelsen’s theory of deliberation, on the other hand, is not oriented towards any context-transcending goal. For this reason, it can be understood as an open-ended process which depends exclusively on the constellation of views and interests that are present within the given social order.

205 “Here – Kelsen writes – an absolute majority does in fact constitute the upper limit. Anything less would mean that the will of the state could from its very inception conflict with more wills than it agrees with. Anything more would make it possible for a minority, rather than the majority, to determine the will of the state by preventing an alteration of that will.” Ibid., p. 9 [10].
in turn deduced from this defense of the majority principle as the most adequate way of institutionalizing the aspiration towards an identity between the subject and the object of the juridical order. The reason is that Kelsen takes for granted that most contemporary societies are characterized by multiple and overlapping layers of division and internal conflict. This implies that putting together an absolute majority in order to pass collectively binding legislation necessarily requires a process of negotiation and ‘compromise’ between conflicting social views and interests.

Moreover, Kelsen also adds that the proper application of the majority principle supposes that the will of the minority is taken into account too, because if this were not the case, the minority would be effectively excluded from government, and therefore the majority deprived of its very character and democratic legitimacy:

That possibility – Kelsen writes – is precisely what provides the minority with the means for gaining influence upon the decisions of the majority … After all, the entire parliamentary process, whose dialectical procedures are based on speech and counterspeech, argument and counterargument, aims for the achievement of compromise. Herein lies the actual significance of the majority principle within a real democracy and, hence, the reason why the former is more aptly described as a majority-minority principle. By dividing the entire body of subjects into essentially two large groups, this principle has already furnished the possibility for compromise in government, since the final integration into a majority, as well as a minority, itself necessitates compromise.206

To be sure, standard theories of deliberative democracy such as the ones I mentioned above are not predicated on a rejection of the majority principles itself. However, from their perspective, the majority principle can only be seen as a ‘second-best’ alternative, whenever full ‘consensus’ has not (yet) been reached.207 In Kelsen’s theory, on the other hand, the majority principle is presented as intrinsically democratic and the process of deliberation oriented towards the formation of compromise solution as a practical political consequence of its institutionalization.

206 Ibid., p. 9 [10].
The first implication that follows from this is that concrete social interests cease to have to be excluded from the domain of democratic deliberation. Habermas, for example, assumes that the outcome of a democratic process of deliberation can be considered legitimate only to the extent that participants abstract from their ‘illocutionary’ goals, and adopted a purely communicative attitude oriented towards the achievement of a mutual understanding. On the contrary, for Kelsen, interests both must and ought to constitute the very substance of democratic deliberation itself.

The conceptual gain that is obtained in this way is however not merely descriptive, but also distinctively normative. In order to explain why this is the case, it might be useful to start by recalling that although the notion of ‘compromise’ has today fallen in disrepute (as an adjective, for example, it is used primarily as a way of shedding doubt on a person’s moral integrity) historically it has been subjected to a different kind of judgment by an illustrious tradition of thought, which has always perceived it as the distinctive mark of a specific kind of political virtue.

In Aristotle’s Ethics, for example, the idea of a resultant between two opposed vectors is made into the basis for a theory of the ‘right’ middle course. The capacity of establishing where this equilibrium lies is considered one of the most important virtues of the prudent man, and therefore by implication of the good politician. From the point of view of the set of questions under consideration in this dissertation, this appears particularly interesting because it represents a theory of ‘right’ that is not based on the idea of a conformity with an abstract and context-transcending criterion, but rather results exclusively from the interplay of forces within the social world.

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208 Cf. Ibid., pp. 17-28.
The idea that ‘compromise’ represents something bad, on the other hand, can be traced back to an essentially Platonic heritage, according to which the good is an abstract Idea standing above or outside the social world, and in which material things can ‘participate’ to a greater or lesser degree. From this perspective, the bad is understood as a lack of participation in the Idea of the good, and therefore ‘compromise’ can only appear as something bad. This basic intuition was then incorporated into the framework of Christian moral theology, which has always understood God as the embodiment of the idea of the good, and evil as the consequence of a ‘fall’ from the original state of communion with him.

Due to the enormous influence exercised on the further development of western thought by this fusion of Platonic and Christian principles, the idea that ‘purity’ or ‘integrity’ constitutes the basis for morality has remained one of its most enduring features. Alongside this tradition, however, it is possible to discern another lineage which has preserved the idea that ‘compromise’ might be the basis for a specific kind of political virtue, in the works of authors who have been most deeply concerned with concrete political problems.

In Machiavelli’s *Prince*, for example, ‘virtue’ is assumed to consist precisely in the capacity to balance conflicting principles and interests, according to the requirements of the situation. Moreover, in the *Discourses* Machiavelli famously suggests that the basis for Rome’s freedom during the republican period lay in the constant clash between the interests of the patricians and the plebeians: by the descriptions he offers, this can in no way be understood as a deliberative process oriented towards the achievement of a ‘consensus’, but rather appears as

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209 In Chapter 18, for example, Machiavelli famously states that the prince must be able to behave both like a fox (that is, with cunning) and like a lion (with force) “as circumstances or changes in Fortune require”. Cf. Niccolò Machiavelli, ‘The Prince’, Ch. 18, in *Selected Political Writings*, Hackett, 1994, pp. 54-55. This is one of the aspects of the book that has most maddened both Christians and abstract normative theorists for centuries: the absence of a clear and coherent set of ‘rules’ to be obeyed by princes in all possible circumstances.
a rocambolesque process of negotiation between conflicting parties, which could only issue in
the formation of ‘compromise’ solutions. 210

Of course, Machiavelli’s account of these, often violent, conflicts cannot be taken to offer
a perfect description of the way in which Kelsen must have imagined the idea of a democratic
deliberative process either, not least because Machiavelli’s conception of republicanism is not
yet inscribed within a modern conception of the rule of law, such as we understand it today (and
about which more will have to be said in the ensuing section of this chapter). However, the
underlying normative intuition which underscores Machiavelli’s appraisal of the conditions for
the preservation of freedom in Rome appears to be essentially analogous to the one on which
Kelsen’s theory of democracy is predicated: that a conflictual process oriented towards the
formation of ‘compromise’ solutions can be posited as the appropriate means for realizing an
idea of freedom as collective self-government.

Finally, in this respect it is perhaps also worth pointing out that, historically, the English
term ‘compromise’ was not always assumed to refer exclusively to a moral defect. In the second
half of the nineteenth century in Great Britain – at the height of the prestige of the notion of
parliamentarism – it still carried a double connotation. In the novels of Benjamin Disraeli, for
example, it is generally used to refer to the successful outcome of a process of political
negotiation, and is accordingly tied to the idea of a ‘manly’ virtue which competent politicians

210 “I maintain – Machiavelli writes – that those who criticize the clashes between the nobility and the populace attack what was
the primary factor making for Rome’s continuing freedom. They pay more attention to the shouts and cries that rise from such
conflicts than to the good effects that derive from them. They do not take into account the fact that there are two distinct points of
view in every republic: that of the populace and that of the elite. All the laws made in order to foster liberty result from the
tensions between them, as one can easily see was the case in the history of Rome”. Niccolò Machiavelli, ‘Discourses on the First
Decade of Livy’, Bk. 1, Ch. 5, in Selected Political Writings, p. 94.
must be able to display in order to achieve socially desirable outcomes, through the parliamentary procedure.\textsuperscript{211}

On the basis of this analysis, the conceptual operation Kelsen can be interpreted as carrying out through his recalibration of the theory of democratic deliberation is a recovery of the illustrious tradition of thought which has historically perceived ‘compromise’ as the distinctive mark of a specific kind of political virtue, and at the same time its democratization. For, the original aspect of Kelsen’s theory of ‘compromise’, from the point of view of the history just recounted, is that in his work this notion is disassociated from the idea of the virtuous politician as somebody standing above and beyond the rest of the populace, and converted into a feature of the political regime as a whole, which all citizens contribute in fulfilling by taking part in the deliberative process itself.

In this way, Kelsen’s conception of popular sovereignty is able to disarticulate itself from the idea of a context-transcending criterion of ‘rightness’, while at the same time providing a rich and compelling theory of the normative basis for the legitimacy of the outcome of democratic deliberation.

\textsuperscript{211} Consider for example the following passage from the Disraeli’s political bildungsroman \textit{Sybil – Or the Two Nations}: “Sybil – he writes – whose mind had been nurtured with great thoughts, and with whom success or failure alike partook of the heroic, who had hoped for triumph, but who was prepared for sacrifice, found to her surprise that great thoughts have very little to do with the business of the world; that human affairs, even in an age of revolution, are the subject of compromise; and that the essence of compromise is littleness … She thought that the People, calm and collected, conscious at last of their strength and confident in their holy cause, had but to express their pure and noble convictions by the delegates of their choice, and that an antique and decrepit authority must bow before the irresistible influence of their moral power … Sybil looked towards Westminster, to those proud and passionate halls where assembles the Parliament of England; that rapacious, violent, and haughty body, that had brought kings and prelates to the block; spoiled churches and then seized the sacred manors for their personal prey; invested their own possessions with infinite privileges, and then mortgaged for their state and empire the labour of countless generations. Could the voice of solace sound from such a quarter? … Yes! there was one voice that had sounded in that proud Parliament, that free from the slang of faction, had dared to express immortal truths: the voice of a noble, who without being a demagogue, had upheld the popular cause; had pronounced his conviction that the rights of labour were as sacred as those of property; that if a difference were to be established, the interests of the living wealth ought to be preferred; who had declared that the social happiness of the millions should be the first object of a statesman, and that if that were not achieved, thrones and dominions, the pomp and power of courts and empires, were alike worthless. With a heart not without emotion; with a kindling cheek, and eyes suffused with tears, Sybil read the speech of Egremont. She ceased; still holding the paper with one hand, she laid on it the other with tenderness, and looked up to breathe as it were for relief. Before her stood the orator himself.” Full text available at \url{http://www.gutenberg.org/files/3760/3760-h/3760-h.htm}. 
c) Two practical applications

In order to sum up the distinctive features of Kelsen’s conception of popular sovereignty, and begin to bring out why I consider it a more adequate basis for responding to the Catholic discourse of anti-relativism, it might be useful at this stage to consider a couple of practical applications. I will first consider its bearing on the specific political problem Kelsen himself was concerned with at the time he began to develop his theory of democracy, and then move on to examine its applicability to one of the key contemporary concerns that underscores this dissertation: the relationship between democratic deliberation and religious views.

The first few paragraphs of Kelsen’s treatise on the *Essence and Value of Democracy* give a clear indication as to what was the principal political problem he was concerned to address: “Today – he writes – it is not only the dictatorship of the proletariat, theoretically justified by a neo-communist doctrine and practically realized by the Bolshevik Party in Russia, that threatens democracy. The tremendous pressure exerted by this proletarian movement on the thinking and politics of Europe has also resulted in an anti-democratic response on the part of the bourgeoisie. This response finds its theoretic as well as practical expression in Italian Fascism. Hence, just as it was previously confronted with monarchic autocracy, democracy today is faced with challenges from party dictatorships on both the Left and the Right.”

Although he was not a Marxist himself, this passage clearly shows that Kelsen understood the principal political problem of his time in terms of the conflict of interests between two opposing social classes: the proletariat and the bourgeoisie. Precisely because of its irreconcilable nature, Kelsen can be interpreted as suggesting that the only way in which such a

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conflict could have been resolved, while maintain a measure of self-government for all the parties involved, was through an exercise of the parliamentary procedure; that is: through a deliberative process amongst representatives of the conflicting social interests, oriented towards the formation of a ‘compromise’ solution.

The idea that such a deliberative process could have resulted in the achievement of a ‘consensus’ approximating the abstract idea of a “general will” was discarded by Kelsen because he was aware that what was at stake was a conflict of concrete social interests, in which the idea itself of a “general will” transcending the divisions amongst the opposed classes was being called into question. Instead, he supposed that the virtue of the parliamentary procedure lay precisely in the fact that it would have resulted in the formulation of a ‘compromise’ solution, involving real sacrifices on both sides, but preserving a measure of collective self-government for both.

Of course, as everybody knows, this is not how things turned out in the end. At least in the part of the world from which Kelsen was writing, one side ended up imposing its will through means that, as should already be clear from what has been said up to this point (but will also be justified more fully in what follows), are radically opposed to what Kelsen envisaged as proper democratic procedure. What is striking, however, is that the way in which the democratic order was finally restored throughout Europe in the aftermath of the second world war was precisely through the implementation of what can be understood as a ‘compromise’ solution between the contending classes.

Many historians have already pointed out that the characteristically European conception of the welfare state emerged as the outcome of a balancing of interests on both sides: on one hand, the proletariat accepted the fundamental principles of the capitalist economy, in exchange for a measure of social and economic security; on the other hand, the bourgeoisie accepted a
certain measure of redistribution of income in exchange for a guarantee of the material foundations for its social pre-eminence.\textsuperscript{213} To be sure, this historic compromise did not fully satisfy any of the previously contending parties. For this reason, social conflict has remained a distinctive feature of all existing democratic regimes based on the welfare state.

However, for better or for worse, this historic compromise is what has enabled liberal-democratic regimes to survive in all the countries of Europe that have adopted something of the sort since the end of the second world war. In this sense, the welfare state can be considered one of the historically most important achievements of democratic parliamentaryism: a paradigmatic example of what Kelsen meant through the idea that the conditions for collective freedom can be secured through a deliberative process oriented towards the formation of ‘compromise’ solutions.

The fact that the institutions of the welfare state have been undergoing a constant process of erosion over the past few decades can accordingly be considered one of the principal underlying reasons for the renewed sense of political crisis associated with the notion of democracy in recent times. This is not, however, a line of analysis I intend to pursue further in this context. Instead, in order to demonstrate the continued pertinence of Kelsen’s conception of popular sovereignty to the present historical circumstances, I will attempt to relate it to a different issue he did not consider directly: that of the way in which a plurality of conflicting religious views can be reconciled within a democratic context.

My contention is that, although Kelsen did not address this specific problem directly, his conception of popular sovereignty as an inclusive process of deliberation oriented towards the formation of ‘compromise’ solutions can be fruitfully applied to it. The key conceptual operation this requires is to treat conflicting religious views in the same way in which Kelsen supposes a

\textsuperscript{213} On this point, see for example Perry Andreson, \textit{The New Old World}, Verso, 2009, pp. 4-7.
democratic order should treat conflicting social interests. That is: making them into the object of the deliberative process itself. In this way, the primacy of the democratic idea of collective self-government can be upheld, without necessarily excluding any religious citizens from the possibility of playing a part within it.

Of course, as many contemporary critics of the idea of deliberation have been keen to point out, this application of the deliberative ideal to the problem of inter-faith relations runs into problems if it is assumed that this process should aim for the achievement of a rational ‘consensus’ between the parties involved. For, the idea of rationality that is implicitly being referred to by such theories might be incompatible with certain forms of religiosity in the first place. Therefore, such a conception of deliberation necessarily requires the exclusion of certain kinds of arguments, if not from the ‘informal’ deliberative process which takes place in the wider public sphere, at least from the formal parliamentary process itself.

If, however, the deliberative process is merely understood as aiming to produce a ‘compromise’ solution, for the purpose of putting together a workable majority, this problem is overcome because the only thing that matters is that the decision which is finally taken should reflect the underlying balance of forces between the individuals to whom it is supposed to apply. This means that in a situation where the overwhelming majority of the population is religiously-minded, the political outcomes which emerge from the democratic process are likely to reflect that. In a situation in which nobody were religious, on the other hand, there would be no reason to include religious considerations in the deliberative process at all. In the majority of really existing countries, however, the democratically legitimate outcome is most likely to be somewhere in between these two poles.

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A specific example may serve to illustrate this point. One of the issues over which the conflict between ‘religious’ and ‘secular’ citizens has most prominently come to the fore in contemporary polities is that over the legality of abortion. On one hand, most religiously-minded citizens assume that human life starts at the moment of conception, from which it follows that abortion is morally equivalent to murder and should not be legally permitted. On the other hand, many secular citizens assume that legal personhood requires a richer conception of subjectivity than mere biological life, and on this basis they claim that while the mother is certainly the bearer of a right to the self-determination over her body, the child cannot be said to have rights until he or she has reached a certain developmental stage after conception.

Applying his own theory of democracy to this conundrum, Habermas has suggested that the way in which these conflicts ought to be resolved in a democratic society is through a communicative process of deliberation, whereby the parties involved reciprocally try to extract that ‘rational’ element from each other’s views, striving for a ‘consensus’ over the normatively acceptable decision to take. While I agree with the underlying spirit of this idea – which is that the parties to the conflict should attempt to resolve it within the framework of established democratic procedures – I find Habermas’ concrete proposal totally unconvincing as a way of addressing the specific problem at hand. The reason is that the respective premises on which the conflicting views are based are so fundamentally opposed to one another that it seems impossible that they could ever reach a ‘consensus’ over when legal personhood really ought to begin. Trying to persuade each other of the rationality of their respective views, the most likely outcome is that the conflicting parties are only going to succeed in further entrenching their disagreements.
As an alternative, I therefore submit that the only way to arrive at democratically legitimate decisions over the question of the legality of abortion is to submit it to a parliamentary procedure regulated by the mechanism of majority rule. Of course, from a purely formal point of view, this is precisely what is supposed to have happened in most existing parliamentary democracies. In practice, this has resulted in the formation in a number of ‘compromise’ solutions which reflect the underlying balance of forces at play: usually, the practice of abortion has been legalized, but certain ‘limits’, which may be more or less stringent, have been set on the conditions under which it may be legally practiced.\(^{216}\)

What I would like to suggest, however, is that if that they have indeed emerged out of a parliamentary procedure regulated by the majority principle, such ‘compromises’ ought not only be considered legally valid, but also *democratically legitimate* for the society to whom they apply. This, of course, does not mean that they approximate some abstract idea of ‘rightness’ or ‘rationality’: the only reason why they can be considered democratically legitimate is that they have emerged from a parliamentary process of deliberation which has resulted in the formation of a ‘compromise’ solution. The implication is therefore that if the underlying constellation of views and interests were to change, the established law should always be open to being renegotiated and amended according to the same parliamentary process that has posited it in the first place.

This ‘solution’ to the problem of the legal regulation of abortion in democratic societies might perhaps be considered unsatisfactory, because it doesn’t imply any determinate policy, and may therefore potentially end up conceding ‘too much’ to the views of either side. However, the

\(^{216}\) The rule that abortion can only be legally practiced within the first three months of pregnancy (potentially extendible to five when either the health of the mother or other practical constraints are at stake) which is applied in most European countries is for example clearly arbitrary from the perspective of both secular and religiously-minded citizens. There is no ‘rational’ basis for fixing the limit at three months in particular, or any other date for that matter. Precisely for this reason, however, such rules can be seen as the outcome of a ‘compromise’ between the conflicting views that are present within European societies.
reason I find it compelling is precisely that it does not pre-judge the outcome in advance, but leaves it up to the reciprocal negotiations and interactions between the parties involved. If anyone were to feel that the agreement thereby established failed to reflect a satisfactory ‘compromise’ between the existing views and interests within society, then they should try to change that through the same parliamentary process that passed it in the first place. If enough people agree, and if they are sufficiently organized, they might succeed in obtaining at least part of what they want. That is all the democratic notion of popular sovereignty can contribute to this debate.

CONSTITUTIONALISM

a) The legal order as a hierarchical system of norms that regulates its own production

The second ‘pillar’ of the overall theory of democracy I will attempt to extrapolate from Kelsen as a response to the Catholic discourse of anti-relativism is the idea of constitutionalism. This can be defined as the idea according to which the process by which legal norms are created ought to be itself subjected to the control of legal norms, so that the legal order does not function simply as a mechanism through which human beings exercise power over each other arbitrarily, but rather as a mechanism for controlling and limiting the exercise of this power in the first place.\(^\text{217}\)

\(^{217}\) A formula that is often invoked in this connection is that constitutionalism replaces the ‘rule of men’ with the ‘rule of laws’. While certainly capturing the essential spirit of the idea of constitutionalism, I think this formula is too imprecise to serve as an adequate definition. First of all, it does not take into account the fact that forms of ‘rule’ (i.e., power) are not exercised by human beings over each other only through the formal mechanism of the juridical order, but also in a manifold of other ways that are not captured by the notion of constitutionalism. Secondly, and most importantly, from the perspective of the positivistic theory of constitutionalism I will attempt to develop in this section, the ‘rule of laws’ cannot be really said to replace the ‘rule of men’, because laws are assumed to be made by men in the first place. This implies they can only at most function as a mechanism for controlling or limiting that power.
This idea of constitutionalism analytically implies the notion of a ‘hierarchy of norms’ according to which certain norms are deemed of a ‘higher’ status than others and therefore treated as criteria for the latter’s legitimacy. The standard way in which this idea has been understood in the tradition of western political thought is in terms of the notion of ‘natural law’. In the work of John Locke, for example (widely identified as one of the founders of the modern idea of constitutionalism\(^\text{218}\)) the idea that the legislative body ought to be subordinated to a higher criterion of legitimacy is deduced from the assumption that there exist certain ‘absolute’ normative principles implicit in the nature of the universe as such, which the legislative body cannot violate without overstepping the grounds for its own legitimacy.

Such a theory of natural law implicitly presupposes the idea of a divine lawgiver who has inscribed these principles in the ontological texture of reality itself, presumably at the moment of creation. In this sense, it can also be considered the conceptual basis for the Catholic Church’s objection to relativism in democracy. From this point of view, the idea of a ‘higher’ order of laws is treated as an ‘external’ check on the power that the people may legitimately exercise over themselves, traceable to an independent criterion of legitimacy. As such, it ultimately amounts to a call to subordinate the power of the people over themselves to a ‘higher’, presumably religious, authority.\(^\text{219}\)

What I would like to demonstrate in this section, however, is that it is possible to understand the notion of a hierarchy of norms also in a different way, which does not depend on


\(^{219}\) Because he was not a Catholic, Locke assumed that in situations of conflict over the grounds for legitimacy itself, human beings must appeal directly to God himself. In practice, what this meant for him is that they would have to fight it out in war under the assumption that God would only allow the righteous party to prevail. This is what “appealing to heaven” effectively means in the *Second Treatise* on government. The Catholic Church, on the other hand, has historically always attempted to posit itself as the legitimate interpreter of God’s will, and therefore as the ultimate ground of all political authority amongst human beings. The underlying conception of natural law which underscores these different views is nonetheless essentially the same. Hence, Locke can be taken to illustrate the specific conception of constitutionalism which the Church is implicitly relying on in its critique of the theories of democracy that portray it as based on a form of philosophical relativism.
a theory of natural law, and is therefore consistent both with the conception of popular sovereignty I have attempted to outline in the previous section of this chapter and with the conception of relativism I will defend in the next. Once again, the work of Hans Kelsen will be used as the basis for developing such a theory, although in this respect I will also be led to depart from what he actually says in some important respects.

A useful starting point for this discussion is the distinction introduced by Kelsen between two different ways of understanding the hierarchy of norms. What Kelsen calls ‘nomo-static’ systems are assumed to be ones in which lower norms are deduced *logically* from higher ones, rather like conclusions or implications are deduced from given premises. From this point of view, lower norms therefore essentially amount to ‘specifications’ of higher ones. What Kelsen calls ‘nomo-dynamic’ systems, on the other hand, are assumed to be ones in which higher norms only serve to determine the *procedures* by which lower norms can be created, without there being any logical relationship between their respective contents.\(^{220}\)

In terms of this distinction, most classical theories of constitutionalism based on the notion of natural law can be said to understand the hierarchy of norms in a ‘nomo-static’ sense. In Locke’s theory, for example, the function of positive legislation is to establish a known standard of judgment by which natural laws can be juridically enforced.\(^{221}\) This means that the content of positive laws cannot contradict that of the natural ones. My contention, however, is that if the hierarchy of norms is understood in a ‘nomo-dynamic’ sense, it is possible to reconcile the idea of constitutional government with the specific conception of popular sovereignty defended in the previous section of this chapter.


The key proposition is that higher norms need to be understood as the set of legal procedures required to institute a democratic process of deliberation for creating lowers norms. This means that the specific conception of deliberation discussed in the previous section of this chapter cannot take place in a ‘state of nature’, but requires being inscribed within the framework of a set of established legal norms that serve to simultaneously institute and define the procedures by which it can legitimately take place.

Of course, for this to remain consistent with the requirement that the subject and the object of the juridical order coincide, these higher norms must not be assumed to stem from ‘nature’ or any other ‘external’ criterion of legitimacy, but rather from a democratic process of deliberation as well. Thus, the decomposition of the juridical order into a hierarchy of different levels of norms, must correspond to a decomposition of the deliberative process too, whereby different procedures regulate the mechanisms for creating different orders of legislation.

The way in which such a vertical decomposition of the deliberative process can be sustained is through the introduction of increasingly stringent political requirements for creating or changing higher orders of legislation. This is what Kelsen refers to as the concept of the ‘rigidity’ of norms, positing its variation as an essential feature of the constitutional order as soon as this is detached from any necessary relation to a theory of natural law. In other words, Kelsen’s point is that from a ‘nomo-dynamic’ perspective the ‘qualitative’ differentiation between different ‘levels’ of legislation can be replaced by a ‘quantitative’ criterion, applying to the procedures by which different levels of legislation are created or modified.

In practice, the way this is usually achieved by most democratic constitutions is through the introduction of super-majoritarian requirements for changing ‘higher’ orders of legislation. However, many other legal tools are also available for varying the relative ‘rigidity’ of different

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orders of legislation: requiring direct popular approval through referenda, increasing the number of representative bodies that need to agree to a proposed change, or even simply setting longer time constraints for the legislative process itself. All these have the effect of increasing the political burden of passing certain kinds of legislation, and therefore may serve to sustain a vertical distinction between different ‘orders’ of legislation, without appealing to any intrinsic quality of the norms themselves.

At the summit of this conception of the hierarchy of norms Kelsen posits the constitution, which is understood as the fundamental norm which establishes the procedures by which all other norms can be legitimately created and therefore, from a purely positivistic perspective, as the most ‘rigid’ legal norm within the juridical order as a whole. Thus understood, Kelsen claims that the constitution need not necessarily be seen as an ‘external’ limit on the power that the people may legitimately exercise over themselves, but can also be seen as a condition for the exercise of this power in the first place. This is the basis for the key argument I will seek to advance to the Catholic discourse of anti-relativism: that by being understood as defining the set of procedures required to institute a democratic process of deliberation in the first place, the constitution ceases to have to rely on an ‘external’ criterion of legitimacy, and can therefore be assumed to limit the democratic exercise of political power ‘internally’, through the logic of its own exercise.

To be sure, an objection that is likely to be raised against this conception of the relationship between democracy and constitutionalism is that, precisely because it is based on the assumption that a democratic process of deliberation can only be fully legitimate if it is legally instituted, it cannot at the same time maintain that the constitution itself can be created through a
fully democratic procedure, because prior to the positing of this basic norm democratic procedures couldn’t by definition have been legally instituted. In this sense, although not necessarily based on a theory of natural law, the constitution would still appear to remain as an irreducible locus of ‘exteriority’ with respect to the democratic process itself, compromising the aspiration towards the identity between the subject and the object of the juridical order.\footnote{This is, for example, the core of the objection that has been moved by Andreas Kalyvas against Kelsen’s theory of democracy in his article entitled ‘The basic norm and democracy in Hans Kelsen’s legal and political theory’, \textit{Philosophy Social Criticism}, 2006, 32. Historically, however, it can be seen as a version of the famous ‘paradox’ of democratic constitutionalism already pointed out by Emmanuel de Sieyès in his essay on What is the Third Estate, where he argues that the constituent power must necessarily always remain in a ‘state of nature’, because its function is to establish the foundation for a legal order in the first place. Cf. Emmanuel de Sieyès, \textit{Political Writings}, Hackett, 2003.}

In response to this objection, I submit that it misses the most interesting implication that follows from the conception of the constitutional order as a \textit{dynamic} system of norms. The reason is that it is implicitly based on the presupposition that the process by which the constitution is created is ultimately reducible to an original founding ‘moment’. That is not necessarily the case: coherently with the idea that the hierarchy of norms is given substance by the variable degree of ‘rigidity’ of the procedures for changing them, a constitution can contain provisions for its own modification. Once such an amendment procedure is in place, the process by which the constitution is created need not be restricted to an original founding ‘moment’, but can be understood as an ongoing procedure, whereby the constitution effectively “regulates the mechanism for its own production”.\footnote{Cf., Hans Kelsen, \textit{General Theory of Law and State}, p. 124.}

The potential \textit{regressum ad infinitum} in the search for the grounds of constitutional legitimacy can therefore be avoided by refusing to look for these grounds in the original founding ‘moment’, but rather in the ensuing political process by which a constitution can recursively establish the conditions for its own legality by defining the legal procedures for its own modification. In other words: the so-called ‘paradox’ of constitutional foundations is
overcome by conceiving the foundation not simply as an instantaneous decision taken *before* the constitution came into effect, but rather as a *continuous process* that is set in place by the constitutional order itself. This is consistent with Kelsen’s broader idea that democracy should not be understood as set of discrete acts of will by a pre-existent people standing above and outside the legal order itself, but rather inscribed within the temporality of a constant becoming in which popular sovereignty and the rule of law enter into a reciprocal relation of mutual presupposition.

Admittedly, from a purely historiographical perspective, there must of course be a ‘moment’ in which a constitution displaying such an immanently developmental character is posited in the first place. However, the whole point of Kelsen’s theory of the constitutional order as a *dynamic* system of norms that “regulates the mechanism for its own production” seems to be to de-emphasize the normative significance of this original founding moment, locating the grounds for the legitimacy of the constitutional order in the ensuing political process instead. This can be considered a satisfactory solution to the objection under consideration to the extent that all the provisions of the constitutions are assumed to be realistically subject to a process of perpetual scrutiny by the people to whom they are supposed to apply.

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225 Even in situations where such a self-justification of the constitutional order appears far-fetched, however, it may be possible to patch over the ‘blind spot’ in the mechanism by which a constitutional order can establish the conditions for its own legitimacy in a different way. This is not an argument advanced explicitly by Hans Kelsen himself in his juridical writings, but it nonetheless appears consistent with the general logic of his thought, and can therefore perhaps be regarded as a useful complement to it. The key idea is to discriminate between different ways in which the original constitutional document is first posited by employing the criteria posited by this document itself, even if they are not (yet) legally binding until the moment in which the constitution formally comes into effect. In other words: to posit the constituted legal procedures as the criterion for the legitimacy of the constituent process itself. Presumably, if a constitution is supposed to establish a democratic political order, it will define a varying set of procedures for creating different ‘levels’ of legislation democratically, including a specific procedure for amending the constitution itself. Since, by definition, this procedure will have to be the most ‘rigid’ within the legal order as a whole, it will necessarily have to translate in practice into a complex deliberative process oriented towards the formation of a very large compromise within the existing population. On the basis of this assumption, the idea is that such a hypothetical deliberative process can be used to *retroactively* establish the conditions of legitimacy of the process by which the constitution was created in the first place.

Of course, from a purely juridical point of view, such a hypothetical retroactive application of the constitutional order to the process of its own creation cannot be considered binding on the individuals drafting the original constitutional document itself. However, from the point of view of its legitimacy, there is clearly a significant political difference between a constitution that is produced in conformity with the same procedures it establishes, and one that wouldn’t be considered legal if it were proposed as
b) The separation of powers

A further distinctive feature of the specific conception of constitutionalism I am attempting to defend as inextricably intertwined with the idea of popular sovereignty outlined in the previous section of this chapter is the notion of the separation of powers. This follows logically from what has been said above, because the idea of a hierarchy of norms based on variable degrees of ‘rigidity’ can only be rendered effective (and therefore, from Kelsen’s perspective, also legally valid) if there exists a power separate from the legislative body, whose function is to evaluate its output and potentially strike down legislation that is not deemed coherent with the higher norms that are supposed to regulate the mechanism for its own production. Without such a legally constituted power, higher norms could at most be considered morally binding ‘guidelines’ for the legislative process, but not legally binding norms in Kelsen’s sense.\footnote{On this distinction see Hans Kelsen, \textit{General Theory of Law and State}, pp. 15-21.}

In practice, the way in which this requirement is usually fulfilled by existing democratic constitutions is through the creation of a constitutional court empowered to evaluate the legality of proposed legislation, either before it comes into effect or afterwards when concrete issues of constitutionality are raised. In principle, however, it is also possible for the executive power to exercise this function by refusing to execute laws it considers unconstitutional, or to combine the two mechanisms, as long as the either the judiciary or the executive (or both) are sufficiently...

\footnote{a potential amendment of itself. By extending the recursive logic of the constitutional order as a dynamic system of norms that regulates the mechanism for its own production into a hypothetical retroactive domain, it is therefore possible to close the circle of constitutional legitimacy onto itself, leaving out any ‘raw’ or ‘unmediated’ exercise of power that is not either legally or politically controlled by a juridical criterion of legitimacy.}
independent from the legislative branch of government to be able to function as effective ‘checks’ upon it.

To be sure, Kelsen points out that the idea of ‘independence’ referred to here should not be understood as implying a strict separation of powers along functional lines. The idea that the judiciary and the executive branches of government function as a check on the legislative power supposes they have a role in the legislative process in the first place. Correspondingly, in order to avoid these branches assuming the mantle of absolute sovereignty it is necessary that the legislative branch should retain a certain measure of control over the functions exercise by these powers too. For this reason, Kelsen ultimately suggests that the notion of the separation of powers can be more properly understood as based on a “division” of prerogatives, whereby each branch of government exercises a measure of the others’ functions, so that they ultimately end up controlling each other reciprocally.227

What is taken to preserve their respective independence, despite this functional overlap, is the fact that the procedure by which the membership of each is defined is different, but most importantly subtracted from the direct control of any of the other branches of government. In practice, the way this is done in most democratic constitutions is by combining criteria of direct popular election with mechanisms of self-selection. In addition, however, it is also possible to give each branch of government some measure of control over the membership of the others, as long as they are adequately balanced, so as to enhance their reciprocally controlling function.

On the basis of what has been said so far, such a conception of the separation (or “division”) of powers clearly appears as an integral component of the notion of constitutionalism I have attempted to defend above. What still needs to be established is its relation with the

227 Cf. Ibid., pp. 269-273.
democratic principle of popular sovereignty, in order to confirm the idea that there exists a necessary inter-relationship between these two principles also in this respect. The argument Kelsen himself advances on this point is, however, uncharacteristically weak and ambivalent:

The principle of a separation of powers – he writes – understood literally or interpreted as a principle of division of powers, is not essentially democratic … If a separation of the legislative function from the law-applying functions, or a control of the legislative organs by the law-applying organs, and especially if control of the legislative and administrative functions by the courts is provided for by the constitution of a democracy, this can be explained only by historical reasons, not justified by specifically democratic elements.228

What I would like to try to substantiate in the remaining part of this sub-section is that this conclusion does not necessarily follow from Kelsen’s theory of democracy (or at least from the specific interpretation I have been advancing in order to put forwards a response to the Catholic discourse of anti-relativism). On the contrary, my claim is that, on the basis of what has been said so far, it is possible to give a distinctively ‘democratic’ justification for the principle of the separation of powers, and therefore to reclaim it as an essential element of a democratic constitution.

I draw the core intuition for substantiating this claim from the reading that has been offered of the principle of ‘checks and balances’ inscribed in the American constitution by Bruce Ackerman.229 Ultimately, however, I will also suggest that this idea is consistent with the broader spirit of Kelsen’s theory of democracy, as well as what he says specifically about the role of political representation and leadership within it. Although strictly speaking this intellectual operation amounts to a ‘revision’ of what Kelsen has actually written, from a conceptual point of view it can therefore also be seen as an ‘extension’ of ideas that are already implicit in his thought.

228 Ibid., p. 282.
The starting point is the idea that the separate branches of government can be seen as competing representative bodies of the abstract idea of the ‘people’, created according to different principles and procedures of representation. As a very rough approximation, it could perhaps be said that parliament represents the people in its internal ideological and partisan divisions; the executive represents their unified capacity for action; and the judiciary their faculty of judgment, understood as a strive for coherence with themselves. Neither of these different forms of representation can be considered exhaustive or even sufficient on their own. However, the wager is that out of the reciprocal clash and interaction between them, a more accurate representation of the way in which the people intend to govern themselves can emerge, than if only one such logic were implemented.

From a philosophical point of view, the idea that underscores this wager is that introducing additional layers of ‘mediation’ does not represent a way of moving away from the object that is sought, but rather a way of obtaining a more refined and sophisticated conception of it. In principle, therefore, the logic that underscores this conception of the separation of powers can be replicated and extended, multiplying the representative organs that are put into competition with each other in order to obtain a more refined and sophisticated conception of the “general will” out of the interaction between them. Concrete examples of the way this is done by existing democratic constitutions is through the principles of federalism and bicameralism.

Although Kelsen himself does not develop this idea in his writings on the constitutional order, I think it is consistent with an important aspect of his theory of democracy, which has not been mentioned up to this point: his critique of the principle of political representation. In his treatise on the Essence and Value of Democracy, for example, Kelsen claims that the idea that an elected body of representatives can somehow ‘stand in’ for a larger body of citizens is an
“illusion” which has done more harm than good to the cause of parliamentary democracy, because it has provided easy fodder for attack by its critics. This does not mean that Kelsen is opposed to the principle of representation itself; however, he claims that it should be seen as another ‘compromise’ with respect to the abstract idea of a full identity between the subject and the object of the juridical order:

Here – he writes – freedom as self-determination allies itself with the essential desire for a division of labor and social differentiation, a tendency that contradicts the basic, primitive character of the democratic idea of freedom … Parliamentarism thus represents a compromise between the democratic demand for freedom and the division of labor, which is the necessary basis for all progress in social technique.

Carrying this argument a step further (not necessarily in the direction that Kelsen himself intended, but nonetheless in a way that is consistent with the underlying ‘spirit’ of his overall theory of democracy) it could perhaps be suggested that precisely because it is an “illusion” to believe that any single elected body of representatives can ever ‘stand in’ for a wider body of citizens, it is necessary to create a plurality of representative bodies reciprocally checking and controlling each other, according to the logic of the separation of powers outlined above, in order to obtain a more satisfactory conception of what the people as a whole actually want.

In other words, what I am trying to suggest is that Kelsen’s critique of representation could be made into the foundation for two opposite conclusions: the one that Kelsen himself appears to draw explicitly in his writings is that a theory of democracy should renounce the notion of representation entirely; the one I am attempting to reclaim as more compelling and consistent with the underlying ‘spirit’ of Kelsen’s theory of democracy, on the other hand, is that some form of democratic representation can be approximated more fully through the institution of a plurality of representative bodies reciprocally checking and controlling each other, according to the logic of the separation of powers outlined above.

230 Cf. Hans Kelsen, Essence and Value of Democracy, p. 29 [30].
231 Ibid., p. 28 [29].
The specific aspect of Kelsen’s broader theory of democracy I particularly have in mind when I say that such an interpretation of the democratic foundation for the principle of the separation of powers is consistent with its underlying ‘spirit’ is something Kelsen mentions in the context of his discussion of the role of leadership in a democratic framework. Alongside the claim that democracy is characterized by a constant turnover between different leaders which in the long run expands the pool of individuals concretely exercising it, Kelsen also makes another interesting point which appears perfectly in line with the argument I have been attempting to advance: that democracy compensates for the impossibility of abolishing the dimension of leadership entirely by multiplying the number of leaders, and putting them into a relation of reciprocal competition with each other:

It is not the lack – he writes – but the abundance of leaders that in reality differentiates democracy from autocracy. This means that the creation of many leaders becomes the central problem for real democracy, which in contrast to its ideology is not a leaderless society.\(^{232}\)

Indeed, in the context of the same discussion, Kelsen even relates this point to the principle of the institutional separation of powers: “Of course – he adds – the idea of leadership becomes obscured by the fact that the executive must be thought of as subordinate to a parliament with several hundred members; the power to rule shifts from a single leader to a multitude of persons, among whom the function of leadership, that is, of the creation of the ruling will, is divided.”\(^{233}\) Although (or perhaps precisely because) this appears to contradict what Kelsen would later write on the relationship between democracy and the principle of the separation of powers in his *General Theory of Law and State*, it may be taken to offer a strong basis for the specific conception of this relationship I have been attempting to defend in this section.


\(^{233}\) *Ibid.*
c) The notion of human rights

The last aspect of the specific conception of constitutionalism I will attempt to defend as an integral component of the overarching theory of democracy I intend to oppose to the Catholic discourse of anti-relativism is the notion of human rights. This is the aspect in which I will be led to depart most substantially from Kelsen’s own views concerning the nature of the juridical order because, strictly speaking, his theory leaves no room for any notion of human rights at all. Since for him the juridical order is constituted exclusively by a hierarchical system of norms, it can at most make room for a notion of subjective rights as the negative ‘inverse’ of the duties created by ordinary legislation. From the perspective of such a theory, however, the standard notion of human rights as inalienable entitlements that constitute the foundation for the legitimacy of the legal order as a whole can only be perceived as an unacceptable element of ‘nomo-staticity’, ultimately amounting to a version of the classical theory of natural law.

What I would like to suggest, on the other hand, is that it is possible to include the recognition for a substantive conception of human rights within the overarching idea of constitutionalism developed above, without thereby necessarily compromising the ‘immanence’ of the foundations for its legitimacy, and therefore the independence from any notion of natural law. The inspiration for this important revision of Kelsen’s theory derives from the seminal theory of human rights proposed by the French philosopher and political theorist Claude Lefort. Although this author emerges from a very different intellectual background from Kelsen, and his work concerned with a rather different set of issues, in what follows we will have more occasion to see that their respective theories of democracy display a number of striking similarities and convergences, which suggest they can be fruitfully used to reciprocally complement each other.
The starting point for Lefort’s discussion of the notion of human rights is an examination of the specific nature of this ‘human being’ that is posited as their juridical subject. As I already pointed out both in chapter 1, the Catholic Church maintains that the distinctive feature of human beings as such is that they have supposedly been created ‘in the image of God’. This is the basis for its assimilation of the notion of human rights to a broader theory of natural law, according to which God has endowed human beings with certain inalienable entitlements at the moment of creation. Lefort, on the other hand, maintains that such a conception of idea of humanity underscoring the notion of human rights is ultimately untenable: because the idea of such rights has emerged historically from a series of concrete declarations, he claims the essential feature of the notion of humanity on which they are predicated can only be this act of declaration itself.

In other words, for Lefort, humanity can only be understood as a process of self-declaration, and for this reason he claims that the essence of human rights “is to be declared”. From this, in turn, he deduces that human rights cannot be understood as a closed list of inalienable entitlements, but must rather be thought of as an active political principle which establishes the contingency and therefore the insufficiency of all previously established forms of legislation. This is why Lefort also writes that: “their formulation contains the demand for their reformulation”.

In sum, therefore, it appears that Lefort relies on what has normally been considered the principal weakness of the notion of human rights – that is, the indeterminacy of the conception of ‘humanity’ on which they are predicated – in order to claim that their ultimate effect is to deprive the legal order of any stable and dependable political foundation, thereby opening it up to a constant process of revision and negotiation:

\[\text{235} \text{ Ibid., p. 258.}\]
The rights of man – he writes – reduce right to a basis which, despite its name, is without shape, is given as interior to itself and, for this reason, eludes all power which would claim to take hold of it whether religious or mythical, monarchical or popular. Consequently, these rights go beyond any particular formulation which has been given of them; and this means that their formulation contains the demand for their reformulation … From the legal recognition of strikes or trade unions, to rights relative to work or to social security, there has developed on the basis of the rights of man a whole history that transgressed the boundaries within which the state claimed to define itself, a history that remains open.\textsuperscript{336}

This conception of the notion of human rights is clearly compatible with the most important aspect I have sought to extrapolate from Kelsen’s theory of constitutionalism; that is, the idea of the juridical order as a dynamic system of norms that regulates the mechanism for its own production, from which it follows that the function of higher norms is to establish the condition for the creation of lower ones. It also does not represent a compromise with respect to its legal positivism, since human rights are not understood as principles of natural law, but as integral components of the positive legal order, whose “essence is to be declared”. The key element it adds is nonetheless a degree of nómo-staticity, inasmuch as human rights are not treated merely as procedural rules for establishing further legislation, but as substantive principles affecting the content of the kind of legislation that can be passed in conformity with them.

Including such a conception of human rights within the framework of a broadly Kelsenian conception of the constitutional order therefore involves relinquishing the assumption that ‘higher’ norms only serve to determine the abstract legal procedures by which lower norms can be created. However, none of the other features of this theory which have proved attractive from the point of view of advancing a response to the Catholic discourse of anti-relativism need to be relinquished. Most importantly: human rights do not necessarily have to be seen as amounting to or relying on an ‘external’ criterion of legitimacy, limiting the democratic exercise of political power from outside.

\textsuperscript{336} Ibid., pp. 258-259.
On the contrary, from the perspective of this theory, human rights can be seen as legal tools (or ‘weapons’) that a democratic society may decide to include within its constitutional order for the purpose of both entrenching and accelerating its constant process of self-transformation on the basis of established right but within an overarching framework of indeterminacy.

PHILOSOPHICAL RELATIVISM

The third and final ‘pillar’ of the specific theory of democracy I intend to oppose to the Catholic discourse of anti-relativism is a political defense of the notion of relativism itself. In this section, I will first attempt to provide a clear definition of the way the notion of relativism will be understood for the purposes of this discussion, and then attempt to show why this conception of relativism can be considered an integral component of the broader theory of democracy I have been attempting to develop. Hopefully, this will allow me to address some of the criticisms I raised in Ch. 2 to the way in which the Catholic Church has employed the concept of relativism, while at the same time completing the characterization of the specific theory of democracy I intend to oppose to it.

Once again, the starting point for this discussion will be an analysis of Kelsen’s views on the matter. In this respect, however, I will claim that it is necessary to complement what Kelsen says explicitly with a good deal of additional interpretive work in order to arrive at a theory that can compellingly be opposed to the Catholic discourse of anti-relativism. In particular, while accepting the gist of his conception of relativism itself, I will reject the theory Kelsen provides concerning the relationship between this conception of relativism and his broader theory of democracy, ultimately replacing it with a different one constructed by extrapolating from his own
views and complementing them with some additional conceptual categories and insights drawn from elsewhere.

a) The definition of relativism

As a first approximation, Kelsen’s conception of relativism can be described as a form of *radical pluralism*. The adjective is necessary to distinguish it from the Rawlsian conception of ‘reasonable’ pluralism, which constitutes the intellectual foundation for his theory of political liberalism. The key difference is that Kelsen’s pluralism is not restricted to a certain domain of values, and is therefore inconsistent with the idea that consensus can be built by focusing on what all individuals must necessarily share – whether this be some abstract idea of ‘reason’ or a set of substantive moral values. For him, there is no set of views or values which all individuals must necessarily share because the value-spheres which exist are irreducibly plural. This means that in situations of conflict it is impossible to discriminate between them, because there is no one sphere that incorporates or underlies them all.

The consequence is that value judgments are always ‘relative’ to the specific set of values that are being employed as a criterion, and therefore that it is impossible to formulate any ‘absolute’ moral truths, because the detached standpoint from which such truths would have to be enunciated is unavailable. This is how Kelsen himself formulates the point at the beginning of an essay entitled ‘What is Justice?’:

> The problem of values – he writes – is in the first place the problem of the conflict of values, and this problem cannot be solved by means of rational cognition. The answer to these questions is itself a judgment of value, determined by emotional factors, and therefore subjective in character, valid only for the judging subject, and therefore relative only.237

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A number of important corollaries follow directly from this definition, and are worth highlighting in the light of the previous discussion of the concept of relativism carried out in Ch. 2. First of all, Kelsen’s conception of relativism must be distinguished from a form of moral ‘nihilism’, because it does not imply the negation of the existence of moral values as such, but rather their relativization. In other words: the claim that the existing value-spheres are necessarily ‘relative’ to each other because in situations of conflict it is impossible to adjudicate between them in an ‘absolute’ manner is different from the idea that there are no moral values at all, because it is predicated on the possibility of making moral judgments in the first place.

Secondly, Kelsen’s relativism must also be distinguished from a form moral ‘absolutism’, because it is not predicated on the statement of some ‘absolute’ moral truth. On the contrary, the essential claim is precisely that the removed standpoint from which such a truth would have to be enunciated in the first place is unavailable: all judgments of value are necessarily made from within a given context and therefore remain inescapably ‘relative’ to it. Kelsen makes this very clear through the following statement: “The absolute in general, and absolute values in particular, are beyond human reason, for which only a conditional, and in this sense relative, solution to the problem of justice, as the problem of justification of human behavior, is possible”.

In Ch. 2 I have suggested that one way of making these two ideas compatible with each other, which removes the potential contradiction involved in absolutely denying the existence of absolute moral truths, is to read them as a second-order meta-ethical claims rather than a first-order moral judgments. From this perspective, therefore, Kelsen should not be read as making a judgment of value when he asserts that all judgments of value are necessarily ‘relative’, but rather as stepping back from his own ethical commitments to recognize that they are merely one of a plurality of possible ways of structuring one’s own relation to the world. In this sense, his

238 Ibid., p. 10.
conception of relativism can be assumed to be predicated on a distinction between two different ‘levels’ of moral judgment: the first-order level of moral engagement and the second-order level of reflexive speculation over the conditions for one’s engagement in the first place.

This distinction is not incompatible with the claim that a removed standpoint from which ‘absolute’ moral truths could be enunciated is unavailable, because the reflexive relativization of one’s own ethical commitments can be carried out from within one’s own relative standpoint. Thus, Kelsen’s relativism effectively steers a middle course between nihilism and absolutism, because while recognizing the existence of moral values, he also recognizes that it is impossible to stand above one’s own specific ethical commitments and adjudicate situations of conflict in an ‘absolute’ manner.

The direct consequence of this ‘middle course’ is that Kelsen’s conception of relativism does not (or in any case is not bound to) lead to a form of ‘moral apathy’. On the contrary, the consciousness that one’s value judgments are always relative to the specific set of values one has chosen to employ to formulate them implies that the subject must take responsibility for his choices and actions. In the end therefore, this consciousness has the effect of situating moral action within the framework of the nexus between ‘freedom’ and ‘responsibility’ rather than sapping the motivation to engage in it in the first place. Kelsen makes this point very clearly at the end of essay on ‘What is Justice?’:

What then – he asks – is the moral of this relativistic philosophy of justice? Has it any moral at all? Is relativism not amoral, or even immoral, as it is sometimes maintained? On the contrary! The view that moral principles constitute only relative values does not mean that they constitute no values at all; it means that there is not one moral system, but that there are several different ones and that consequently a choice must be made amongst them. Thus, relativism imposes upon the individual the difficult task of deciding for himself what is right and wrong. This, of course, implies a very serious responsibility, the most serious responsibility a man can assume. If men are too weak to bear this responsibility, they shift it to an authority above them, to the government and in the last instance to God. Then they have no choice. It is easier to obey a command issued by a superior than to be morally one’s own master. The fear of personal responsibility is one of the strongest motives of the passionate resistance against relativism. Relativism is rejected and – what
is worse – misinterpreted not because it morally requires too little, but because it requires too much.239

In the previous discussion of the question of ‘moral apathy’ contained in Ch. 2 of this dissertation, I had already made a very similar point with reference to the work of Max Weber. This shows that, both from the point of view of its moral consequences and its philosophical premises, Kelsen’s conception of relativism displays a significant degree of overlap with Weber’s notion of a “polytheism of values”. Indeed, what these two positions appear to have in common is precisely the rejection of the core idea that the catholic Church has always sought to defend through its critique of relativism: that there exists a single overarching structure, encompassing all possible value commitments, and therefore capable of adjudicating between them in situations of conflict.

In this sense, Weber’s “polytheism of values” can be treated as a form of ‘moral relativism’ both from the point of view of the Catholic Church’s discourse of anti-relativism and from the point of view of Kelsen’s theory of justice. Something similar could perhaps also be said of Isaiah Berlin’s notion of “value pluralism”, which we have also already encountered in Ch. 2 of this dissertation. What has hopefully already emerged from the analysis conducted in the previous sections of this chapter, however, is that the underlying political purpose of Kelsen’s conception of relativism is very different from Berlin’s. While the latter sought to establish the irreducibility of a conflict between liberalism and democracy, Kelsen’s relativism functions as the foundation for a political theory that seeks to establish the inseparability of liberalism from democracy.

Before moving on to discuss the way in which Kelsen’s philosophical relativism is related to his broader theory of democracy, however, it might be useful to point out another

important aspect, which may help to preempt a potential objection: although not restricted in its applicability to the domain of values, Kelsen’s conception of relativism is predicated on a rigid distinction between the domain of ‘facts’ and ‘values’. This means that even though he thinks it is impossible to adjudicate between conflicting values in an ‘absolute’ manner, he does think that such discriminations are possible between different statements of fact. In other words: for him, there is an objective ‘reality’ within which we co-exist and with which we must come to terms; however, his point is that such a reality does not contain any answers to our pressing moral dilemmas.

This is made clear by Kelsen’s discussion of a concrete example of a conflict of values he thinks cannot be resolved by means of rational cognition: after having suggested that if a man had been made a slave or a prisoner in a Nazi concentration camp without any possibility of escape, the question of whether suicide would be justified in such a situation depends on whether one chooses to privilege freedom or survival, he writes that “only a subjective answer to this question is possible … no objective statement, valid for everybody, as for instance the statement that heat expands metallic bodies.”\(^{240}\) Later Kelsen also adds that: “The latter is a judgment about reality, verifiable by experiment, not a judgment of value, which defies such verification.”\(^{241}\)

This shows that for Kelsen objectivity as such is not impossible. However, it must be restricted to the domain of facts: no objective science of moral values is possible. This specification may serve to preempt a potential objection based on the argument advanced by Hannah Arendt in her essay on ‘Truth and Politics’, which contends that a shared conception of the factual reality within which political action is to be situated is an indispensable precondition for politics itself, because if the facts themselves are in question there can be no shared ‘world’

\(^{240}\) *Ibid.* , p. 5.  
within which politics is to take place.\textsuperscript{242} Because of its restriction to the domain of values, Kelsen’s conception of relativism proves to be invulnerable to this objection.

To be sure, if the philosophical premises underscoring Kelsen’s relativism were pushed far enough, the idea itself that such a clear distinction can be drawn between the domain of facts and values would perhaps have to be qualified too. Instead of falling back on some crude form of philosophical positivism with respect to the domain of facts, the outcome could be the recognition that there is a politics also to the way factual reality itself is apprehended, and therefore that while remaining qualitatively different from each other neither statements of fact nor judgments of value can ever lay claim to ‘absolute’ truth. This is what appears to be implicit in Kelsen’s claim that statements of fact are only verifiable “by experiment”, and therefore always susceptible of being falsified.

In any case, the conclusion still stands that Kelsen’s conception of relativism is not vulnerable to the Arendtian objection, because it is predicated on a clear distinction between the domain of facts and values. This means that it does not undermine the conditions for a shared ‘worldliness’ amongst human beings, but merely complicates those conditions in a way that makes politics both necessary and interesting.

\textit{b) The relationship between relativism and democracy}

In the light of the above definition of the notion of relativism I want to reclaim as an integral component of the theory of democracy I intend to oppose to the Catholic discourse of anti-relativism, I will now move on to discuss the specific relationship that obtains between them. As I already pointed out above, the discussion will proceed by first examining the way in

which Kelsen attempts to relate his conception of relativism to his theory of democracy. Finding the argument problematic in some crucial respects, I will then attempt to correct it by extrapolating from Kelsen’s views a different theory, based on a number of insights and conceptual categories drawn from elsewhere.

The reader should perhaps also be warned that in this section I will be led to enter into a greater degree of detail in a discussion of Kelsen’s specific views than before (also including some consideration of the secondary literature on this topic). The reason is that this section touches upon what is likely to be considered the most contentious aspect of the overall theory of democracy I am attempting to put forwards in this chapter, as well as the key stepping stone of the response I will later seek to advance against the Catholic discourse of anti-relativism. In order to bring out what is most interesting and compelling from Kelsen’s writings, but also the way in which the theory I seek to defend differs from the one he articulates explicitly, it will therefore be necessary to proceed carefully and systematically.

The central idea Kelsen puts forwards in most of the writings where he addresses the issue of the relationship between relativism and democracy is that an allegiance to the fundamental principles of democracy is a logical consequence of the adoption of a relativist standpoint in philosophy. In other words: that if you are a relativist in your philosophy, then you must be a democrat in your politics in order to be consistent with yourself. The argument is formulated in the following terms in the last chapter of the book on the Essence and Value of Democracy, entitled ‘Democracy and World-Views’:

He who in his desires and actions is able to lay claim to divine inspiration or otherworldly enlightenment may well be right to be deaf to the voices of his fellows. He may be right to force his will as the will of the absolute Good upon a world of disbelievers and blind men. This is how the slogan of the divine-right theory of Christian monarchies came to be “authority, not majority”. This slogan, however, has become a target for everything that aims for intellectual freedom, for a science that is free from mysticism and dogma and instead grounded in human reason and doubtful criticism, and – politically – for democracy. He who only relies on earthly truth and only
allows human knowledge to direct social policy can justify coercion in no other way than with the assent of at least the majority of those who are supposed to benefit from the coercive order. 243

As it is formulated in this passage, the argument substantiating Kelsen’s conception of the relationship between relativism and democracy appears to rely on two parallel counterfactual claims. The first is that if there existed an ‘absolute truth’ applicable to the domain of politics, then it would make no sense to require that publicly binding decisions be taken through the exercise of the majority principle. For, there is no reason to suppose that the majority would be the most qualified organ to discover and apply such an ‘absolute truth’. On the contrary, it would make more sense to entrust the responsibility for making publicly binding decisions to those who had demonstrated a superior competence in accessing the domain of truth. Thus, Kelsen suggests that philosophical absolutism essentially implies a political view based on the principle of authority, understood in a Platonic sense as relying on the criterion of competence.

The other counterfactual claim on which Kelsen’s argument relies, then, is that if one starts from the premise that there are no ‘absolute truths’ applicable to politics, one is left without any possible justification for authority except the principle of consent, and therefore the only way in which publicly binding decisions can be made is if at least the majority agrees to them. In other words: Kelsen’s idea seems to be that, deprived of the reference to some transcendent locus of ‘truth’, human beings have no option but to take publicly binding decisions through a process of reciprocal confrontation with each other, that can only end in a compromise solution based on the exercise of the majority principle. In this sense, he claims that philosophical relativism essentially implies a commitment to democracy.

In addition to this abstract counterfactual formulation, in the last chapter of his treatise on the Essence and Value of Democracy, Kelsen also provides a more concrete illustration of this

243 Hans Kelsen, Essence and Value of Democracy, p. 150.
last claim through an exegesis of a passage from the *New Testament*. His reading of this passage was later to become one of the most (in)famous aspects of his political theory as a whole, attracting the attention of the most disparate commentators. In order to fully appreciate the stakes of Kelsen’s argument it is therefore worthwhile to consider it in some detail.

The passage in question is from John, Chapter 18, where the circumstances of Jesus’ trial are recounted. The facts are simple: Jesus is said to have been brought before Pontius Pilate with the accusation of claiming to be the king of the Jews. Upon interrogation, Jesus asserts that he has come onto this earth “to bear witness to the Truth”. In response, Pilate asks, rhetorically: “What is Truth?” and immediately decides to allow the crowd that has gathered around the scene to make the final judgment over Jesus’ case. Notoriously, this crowd chooses to have Jesus crucified instead of Barabbas, who, as John puts it at the end of the chapter “was a known criminal”.

The commentary Kelsen appends to this short parable, after describing it as “one of the most sublime pieces of world literature … which has grown, without intending it, into a tragic symbol of the antagonism between absolutism and relativism”, is the following: “For those who believe in the Son of God and king of the Jews as witness to the absolute truth, this plebiscite is certainly a strong argument against democracy. And this argument, political scientists must accept. But only under one condition: that they are as sure of their political truth, to be enforced if necessary with blood and tears, as was of his truth, the Son of God”.

What Kelsen seems to be suggesting here is the same point we already encountered above: that an allegiance to the democratic principle of majority rule is the logical consequence of finding oneself in the philosophical quandary implied by Pilate’s question. Not knowing what truth amounts to, Pilate is assumed to have behaved like a true democrat, because he refused to

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244 Ibid., p. 152.
impose his will upon others and preferred to defer to the will of the majority. If he had been as
certain as the Son of God to be in possession of the absolute truth, Kelsen concedes, it would
have made no sense for Pilate to behave as he did. However, as soon as that certainty is called
into question, his behavior begins to appear more reasonable.

Despite its elegance, it is perhaps unsurprising that this argument by Kelsen has been
severely criticized by almost all its commentators, because, as I have already suggested above, it
seems to be open to a relatively obvious set of objections. The root of the problem is that Kelsen
seems to posit both of the counterfactual claims that underscore his argument as ‘absolute’
logical truths. This implies that they have to hold under all possible circumstances. However, it
appears easy to think of possible counterexamples.

On one hand, there does not seem to be any logical impossibility in the idea of a
philosophical absolutist (in Kelsen’s sense) also defending a conception of democracy. If, for
example, someone thought that the absolute political truths willed by God corresponded to the
founding principles of democracy (as the Catholic Church seems to have come close to
suggesting in the aftermath of the Second Vatican Council) then one could coherently both
believe in absolute truth as democracy.

On the other hand, there doesn’t seem to be any logical necessity for a philosophical
relativist to be a democrat. One could, for example, coherently believe that there are no
‘absolute’ moral truths and take this as grounds to suggest that political order must be established
on the basis of the principle of the rule of the strongest. This is a point that was already raised
against Kelsen in the 1920s by Otto Kircheimer: “When there isn’t any shared value amongst human beings – he wrote – it is not at all evident why it should be the majority that decides”.  

The most powerful illustration of both these objections against Kelsen’s argument – that philosophical absolutism does not necessarily lead to political authoritarianism, and that philosophical relativism does not necessarily lead to democracy – is nonetheless the one provided by Gustavo Zagrebelsky in his book-length study of the competing interpretations of the Biblical passage employed by Kelsen to substantiate his argument. This discussion ultimately seeks to suggest that, if the passage in question is read closely enough, it ultimately ends up suggesting the opposite of what Kelsen seeks to extract from it. 

First of all, Zagrebelsky points out that in the parable of Jesus’ trial, a belief in the idea of truth does not appear to be incompatible with compliance to democratic procedures. The bearer of the idea of truth in this context is Jesus himself and, Zagrebelsky suggests, he is the only character in the story that appears to behave coherently with what Kelsen himself would identify as good democratic behavior: he is the only one who really listens to what others have to say and finally willingly agrees to submit to the decision of the majority. Thus, a commitment to the idea of truth does not necessarily appear to lead to a desire to impose it on others: if one agrees to relate to one’s truth with modesty and to others with compassion, one can believe in truth and behave as a good democrat.

On the other hand, Zagrebelsky also claims that Pilate’s behavior in the parable shows that relativism does not necessarily lead to democracy. He accepts that Pilate’s question indicates his adoption of an essentially relativist standpoint; however, he claims that the behavior which results from this is not really democratic in Kelsen’s sense, but rather cynical and opportunistic:

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Pilate’s main concern is not to give Jesus a fair trial by submitting his fate to the will of the majority, but rather to court the favor of the Synedrium of high priests who had accused Jesus in the first place and keep the people happy by giving them an opportunity to vent their aggressive impulses. This is evident also in the fact that the way in which the decision is ultimately reached does not really correspond to an exercise of the majority principle in Kelsen’s sense – that is, a juridically structured procedure presupposing the recognition of certain fundamental rights for the minority – but rather resembles more closely a populistic kind of mob rule, which is at the antipodes of Kelsen’s conception of democracy.

If the matter were to be left at what Kelsen says explicitly, therefore, it would seem that the grounds for the connection between his philosophical relativism and his theory of democracy are pretty weak indeed. What I would like to suggest in the remaining part of this section, however, is that there may be a different way of establishing this connection, which overcomes the problems identified above.

This alternative reading is based on the conviction that there is a true and important intuition underlying Kelsen’s argument concerning the relationship between relativism and democracy, but that this intuition is falsified by the specific way in which Kelsen tries to formulate it. In order to bring it out in a more convincing way, it will therefore be necessary to extrapolate from what Kelsen says explicitly and complement it with some additional conceptual categories that he does not dwell on himself but are nonetheless implicit in his thought.

The stepping stone for this additional work of interpretation is the fact that in some formulations of his argument (especially, though not exclusively, those contained in his later works) Kelsen appears to drop the formal language of logical implication and to speak of the
relationship between relativism and democracy in terms of categories such as “analogy”, “conformity” and especially “affinity”. At the beginning of an article entitled ‘Foundations of Democracy’, published in 1955 for the American journal *Ethics*, for example, Kelsen writes the following:

Since the time Aristotle presented his *Politics* as the second part of a treatise whose first part was his *Ethics*, it has become customary to assume that political theory and that part of philosophy we call ‘ethics’ are in close connection. But there also exists a certain affinity, less generally recognized, between the theory of politics and other parts of philosophy, such as epistemology and the theory of values … It is just within epistemology and the theory of values that the antagonism between philosophical absolutism and relativism has its seat, which – as I shall try to show – is analogous to the antagonism between autocracy and democracy, as they represent political absolutism on one hand and political relativism on the other, respectively.”  

Later in the same text, Kelsen also adds that: “Because it is the same human being who tries to interpret his relations to his fellow-men as well as his relation to the world at large, we may assume that a definite political creed is coordinated with a definite view of the world. But just because it is within the soul of the empirical human being and not within a sphere of pure reason that politics and philosophy originate, we must not expect that a definite political view will always and everywhere be combined with the philosophical system which corresponds to it … It would be a great mistake to ignore the very effective forces of the human mind which may abolish this connection and prevent political attitudes from associating with the corresponding philosophical views and vice versa. The human mind is not completely dominated by reason and hence not always logical”.

Taken together, these two passages seem to suggest that, at least in his later works, Kelsen was trying to think of the relation between relativism and democracy in different terms from those of reciprocal logical implication. Indeed, he even recognizes that it is in principle possible for them not to be tied together “always and everywhere”, as the criticisms I mentioned

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above clearly bring out. However, he insists on suggesting that this does not imply the absence of any relationship whatsoever: two entities may still “correspond” to each other, and therefore tend to emerge in conjunction, even if they do not reciprocally imply each other.

This may be difficult for a contemporary audience to understand, since we are used to thinking that a relationship is either logically water-tight or it is no relationship at all. However, what Kelsen seems to be trying to suggest is that there can be something in between the absence of a relation and a relation that must hold in all possible cases: this is the idea he attempts to capture through the suggestion that there exists an “affinity” between his conception of relativism and his theory of democracy. Of course, for this suggestion to be able to function as a meaningful alternative to the idea of a logical relationship, it is necessary for Kelsen to specify its content: what does it mean to say that there is a relationship of “affinity” between relativism and democracy?

Although Kelsen does not really address this question in his text, my contention is that it is possible to supply this missing explanation by complementing what he says with a few additional conceptual categories that are not spelled out as explicitly but can nonetheless be assumed to be latent in his thought. A useful starting point for doing this is the use made of the category of “elective affinity” by another author who was for a time contemporary with Kelsen and always remained an important source of inspiration for him: Max Weber. As is well-known, the central thesis advanced by the latter in his classic text on *The Protestant Ethic and the Spirit of Capitalism* is that the kind of relationship which exists between these two ideal-typical sociological constructs is one of “elective affinity”.²⁴⁹

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Weber’s purpose in employing this category was explicitly that of overcoming the determinism which characterizes both ‘materialist’ and ‘idealist’ philosophies of history. His point therefore seems to be that Protestantism and capitalism are not always and necessarily conjoined: in principle, it would be possible to think of a society infused with the protestant ethic that would not be capitalist, or a capitalist society that would not be protestant. However, historically, the two have emerged in conjunction with one another because they exercise a reciprocally stabilizing function: it is easier to be a good capitalist if you are a Protestant and vice versa.

The idea of \textit{reciprocal stabilization} therefore seems to be the core of Weber’s concept of “elective affinity”: two entities are assumed to display this kind of relationship if they tend to emerge in conjunction with one another because they exercise a reciprocally stabilizing function, even if they are in principle separable. This is also consistent with the previous etymology of the expression, which originally derives from the vocabulary of alchemy, where it was used to refer to the idea that different substances tend to attract each other and form a bond when they come into contact, and was then notoriously employed by Goethe as the basis for a general theory of affective relations amongst human beings, emphasizing in particular the element of reciprocal selection and ‘choice’ implicit in the supposition that affinity is always in some sense ‘elective’.

On the basis of this analysis it is possible to return to Kelsen’s discussion of the relationship between relativism and democracy in order to suggest that the idea that there exists a relationship of “affinity” between them can perhaps be interpreted along Weberian lines as a way of claiming that the two exercise a reciprocally stabilizing function: like the Protestant ethic and capitalism, or two substances that are prone to react with one another, they tend to form a bond because they reciprocally complement each other’s features. While this certainly goes some way
towards explaining what Kelsen might have meant when he asserted that there exists a relationship of “affinity” between relativism and democracy, it is however not sufficient as a complete explanation, because what still needs to be explained is why relativism and democracy would exercise this reciprocally stabilizing function.

This too is not really discussed in Kelsen’s text; however, a possible explanation that is consistent with other things he does mention might be provided by introducing the category of a civic ‘ethos’ within the framework of his discussion. This category refers to the long-standing idea in the history of western political theory that the formal political institutions of a given society can only function properly if the citizens who are supposed to make them function are infused by a specific set of cultural dispositions and ideal orientations. In the republican tradition of thought, for example, it is widely assumed that republican institutions can only function properly if its citizens display a certain kind of “virtue” which disposes them to act in the interest of collective freedom and the common good.

On the other hand, it is also assumed that the experience of participating in the duty of collective self-government through republican institutions tends to dispose individuals to be more sensitive to the claims of the common good and therefore to develop the required political virtues through practice. This is a point made in one way or another by Machiavelli, Montesquieu, Rousseau and Tocqueville. Translated into the language I was employing above, it could therefore be taken as grounds to suggest that republican institutions and republican virtues are assumed to exercise a reciprocally stabilizing function: in principle, they can exist without each other, but they both require each other to function properly. This seems to be the core idea underlying the notion of a civic ‘ethos’.
If, then, this idea of a civic ‘ethos’ is further applied to Kelsen’s discussion of the relationship between relativism and democracy, it could be used to suggest that the reason why the two exercise a reciprocally stabilizing function on each other is that relativism constitutes the appropriate civic ‘ethos’ of democracy. In other words: just like republican theorists think that a commitment to the idea of the common good is a necessary virtue which citizens must display for republican institutions to work properly, Kelsen can be interpreted as implying that democratic institutions require a different kind of virtue from their citizens: the virtue that Kelsen refers to as the adoption of a relativist standpoint with respect to one’s own views and those of others.  

The implication of this interpretation would of course be that Kelsen’s theory of democracy could not be considered – as many of his commentators have taken for granted – purely ‘formal’ or ‘procedural’. On the contrary, the formal procedures described in the previous section of this chapter would appear merely as one component of a much broader theory of democracy, also including a specifically relativist ‘ethos’ as its necessary complement. Another way of putting this is that Kelsen’s theory of democracy wouldn’t simply be a theory of ‘government’ in the strictly institutional sense, but rather the theory of a specific kind of ‘society’ in a much broader sense, which also includes a specific kind of human being as its necessary substrate.

Evidence for this can be found in at least one passage from Kelsen’s writings on democracy. In the article on the ‘Foundations of Democracy’ Kelsen includes a section on the

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250 In his text on the ‘Foundations of Democracy’ Kelsen sums up the specific kind of attitude that results from the adoption of such a ‘relativist’ standpoint by quoting a line from Schumpeter: “To realize the relative validity of one’s convictions and yet to stand for them unflinchingly is what distinguishes the civilized man from the barbarian”. Ibid., p. 4. To be sure, the overall political orientation of Kelsen’s theory of democracy is profoundly different from Schumpeter’s. However, in this respect, the two authors seem to agree at least on the specific kind of civic ‘ethos’ that is required of citizens for democratic institutions to function properly. Incidentally, this quotation also confirms the point I made earlier, that Kelsen’s conception of relativism is predicated on a distinction between two different ‘levels’ of moral judgment: as a committed actor the relativist is capable of making specific moral judgments; however, the distinguishing feature is that the relativist is also capable of stepping back from his commitments, and recognizing their relativity from a second-order perspective, without necessarily abandoning them for that reason.
specific ‘type of personality’ that democracy both supposes and tends to produce. In this section, he writes the following: “The personality whose desire for freedom is modified by the feeling of equality recognizes itself in the other. It represents the altruistic type, whose tendency towards aggression is diverted from its original direction against others and is thus manifested in the tendency towards self-criticism … This is, of course, just the intellectual situation of a relativistic philosophy.”

To be sure, this claim that relativism constitutes the necessary ‘personality type’ of democracy might be thought to beg at least part of the question: why, it might be asked, is this the case? This time, however, the answer seems to be available directly in Kelsen’s text. In a later section of the same article Kelsen makes the following point:

That value judgments have only relative validity – one of the basic principles of philosophical relativism – implies that opposite value judgments are neither logically nor morally excluded. One of the fundamental principles of democracy is that everybody has to respect the political opinion of everybody else, since all are equal and free. Tolerance, minority rights, freedom of speech and of thought, so characteristic of democracy, have no place within a political system based on the belief in absolute values. This belief irresistibly leads – as it has always led – to a situation in which the one who assumes to possess the secret of the absolute good claims to have the right to impose his opinion as well as his will upon the other who, if they do not agree, are in error.

At first sight, this may seem like a reiteration of the same claim we considered above, according to which relativism implies a commitment to democracy. Upon closer inspection, however, that proves not to be the case: as we have seen, with respect to human personality traits, Kelsen has already established that “the human mind is not always dominated by reason and hence not always logical”. Thus, this later formulation of the argument is compatible with the recognition that there may exist some philosophical relativists who do not display the relevant personality type.

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The key point, however, is that, as a general tendency, the adoption of a relativist
standpoint disposes individuals to be more tolerant of the opinions of others, and therefore more
willing to listen and submit to the will of the majority. These are of course precisely the ‘virtues’
that are required of democratic citizens; hence, it appears that the adoption of a relativist
standpoint can at least be said to ‘dispose’ individuals to be good democrats, even if it does not
necessarily ‘imply’ a commitment to democracy. On the other hand, the conviction that one is in
possession of absolute truth would appear to dispose individuals to want to impose their will on
those who disagree, even if it does not necessarily ‘imply’ such an attitude.

The reasoning underlying these claim is straightforward but persuasive: if one thinks that
one’s views are relative, this means that one must be conscious of the fact that one’s opinions
might not look as persuasive from a different perspective as one’s own. This makes it at least
prima facie reasonable to listen to the opinions of others and attempt to come to terms with them.
On the other hand, if one thinks he has the truth, it appears to be less important to allow everyone
to express their opinion, because what is the point of listening to errors?

Indeed, this interpretation of relativism as the necessary civic ‘ethos’ of democracy, and
of philosophical absolutism as the ‘ethos’ of authoritarianism has already been put forwards by
other commentators of Kelsen too. In an interesting recent article on Kelsen’s theory of
democracy, for example, Federico Lijoi has suggested that it would be a mistake to read Kelsen’s
theory as purely ‘formal’ or ‘procedural’ and explicitly identified relativism as the ethical
“supplement” that democracies require to function properly. To be sure, Lijoi does not enter
into as much detail into the analysis of Kelsen’s text, so his claim ends up appearing somewhat
arbitrary. What I have attempted to do in this section can therefore be read as a way of
substantiating the intuition contained in Lijoi’s article more rigorously.

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c) Relativism as a specific kind of democratic ‘ethos’

The conception I have sought to advance in the previous section of the relationship between relativism and democracy may perhaps be thought to pose a problem from the point of view of another position I have also taken in the course of this dissertation. In Ch. 3 I have criticized Rawls’ theory of political liberalism for grounding its conception of justice on a specific kind of ‘political culture’ which Rawls ultimately describes as amounting to a commitment to the substantive values of freedom and equality. My contention was that this feature of his theory is what leads him to make a set of troubling remarks concerning the way in which democratic societies ought to relate to individuals who do not share in the required form of ‘political culture’: that they should either be “cured” or “contained”, “like war or disease”.254

Now, since it turns out that the theory of democracy I intend to put forwards as a response to the Catholic discourse of anti-relativism is predicated on the idea of a civic ‘ethos’ required for its institutions to function properly, it will be necessary to clarify why I do not think this theory is vulnerable to the same objection. This will require explaining first of all what I take to be the relevant difference between Rawls’ conception of democratic ‘political culture’ and the specific kind of civic ‘ethos’ I have posited as an integral component of the theory of democracy extrapolated from Kelsen’s work; and secondly the reasons why I find this latter theory more compelling as the basis for a response to the Catholic discourse of anti-relativism than Rawls’.

The first thing that is worth noting in this respect is that, although I have claimed that Rawls’ political liberalism is ultimately predicated on a form of cultural relativism, this does not constitute the content of the specific conception of ‘political culture’ on which his theory of

democracy is based. Cultural relativism is rather a consequence that stems from the fact that Rawls restricts the domain of application of his theory to the set of individuals he describes as ‘reasonable’, in the sense that they are already committed to the substantive values of freedom and equality. The content of the specific conception of ‘political culture’ on which his theory of democracy is based therefore proves to be this commitment to the substantive values of freedom and equality.

The kind of philosophical relativism I have attempted to defend as the appropriate civic ‘ethos’ for a democratic society, on the other hand, does not suppose a commitment to any substantive set of moral values. As I have defined it, it only implies that adoption of a second-order perspective with respect to the substantive moral commitments one does have, which reveals their contingency and arbitrariness, in the sense of a lack of ‘absolute’ foundations. For this reason, this kind of civic ‘ethos’ is compatible with a much broader range of first-order substantive moral commitments. This is the core of the difference between my conception of relativism as the required civic ‘ethos’ of democracy and Rawls’ conception of democratic ‘political culture’.

To be sure, this difference might not be thought to dispel the original objection entirely, since the assumption remains that democracy presupposes a specific kind of ‘cultural’ or ‘ethical’ orientation, which presumably means that not all individuals necessarily share in it, thereby raising the question of the way in which a democratic society ought to deal with those individuals who do not, as a matter of fact. At the limit, it might even be asked whether it is appropriate for a theory of democracy to be predicated on a specific ‘cultural’ or ‘ethical’ orientation, since this seems to imply that certain individuals might fail to be considered ‘fit’ or
at least ‘ready’ for democracy: something which would appear to contradict its inclusive and egalitarian spirit.

My response to this objection is three-fold. First of all, I submit that it would not only be historically disingenuous but also politically counter-productive to deny that the commitment to democracy is predicated on a specific kind of ‘cultural’ or ‘ethical’ orientation. As I have attempted to make clear already in the first introductory chapter of this dissertation, historically the idea that democracy constitutes a normatively appealing political regime is relatively recent. It would simply make no historical sense whatsoever to claim that the people who have defended different kinds of political arrangements for centuries were simply ‘wrong’ because we have now discovered that democracy is the ‘best’ form of political regime. The criteria of judgment are different and therefore such kinds of trans-historical or trans-cultural judgments are simply not applicable.

Moreover, to assume that democracy could be posited as an ‘absolute’ normative value in this way would lead to the paradoxical conclusion that people ought to be democratic even if they do not even know what it means and therefore do not really want to. What kind of democracy could even conceivably be possible in such circumstances? This is not to say that such people wouldn’t be ‘fit’ or ‘ready’ for democracy, but simply that the question over whether they ought to be democratic doesn’t apply, since democracy presupposes by definition a population that wants to govern itself in the first place.

Of course, recognizing that democracy necessarily presupposes a specific kind of ‘cultural’ or ‘ethical’ orientation begs the question of what the specific content of such an orientation ought to be. This brings me to the second aspect of the response to the objection under consideration, whereby I submit that the form of philosophical relativism I have attempted
to defend above constitutes a more compelling conception of the specific kind of civic ‘ethos’ presupposed by democracy than Rawls’ notion of ‘political culture. The reason for this is that, as I have already pointed out above, since the notion of relativism does not imply the commitment to any substantive set of moral values, it is compatible with a wider degree of pluralism than Rawls’ conception of ‘political culture’.

Another way of framing this point is to say that because it only requires individuals to adopt a second-order perspective with respect to their substantive moral views, whatever these might be, philosophical relativism constitutes a thinner conception of required civic ‘ethos’ of democracy compared to Rawls’ idea of a democratic ‘political culture’ based on the commitment to the substantive moral values of freedom and equality. This implies that, even though some ‘cultural’ or ‘ethical’ orientations are still considered incompatible with democracy, the range and number of such orientations is comparatively much less.

From this perspective, therefore, the contribution that the specific theory of democracy I am attempting to put forwards can be assumed to make to the thorny debate on the relationship between democracy and its cultural preconditions is therefore of a quantitative order: while recognizing that it would be impossible to include everybody, because some form of ‘cultural’ or ‘ethical’ orientation is necessarily presupposed, it nonetheless attempts to maximize the range of different orientations that can be included within a democratic context by minimizing the requirement of a commitment to any substantive set of moral values. This is the key reason why I consider the idea of relativism as the required civic ‘ethos’ of democracy more compelling than Rawls’ conception of a democratic ‘political culture’.

Finally, the third point that I think can be raised to highlight the difference between the specific theory I have been attempting to advance and Rawls’ is that the way in which a
democratic society ought to relate to individuals within it who do not share in the required kind of ‘cultural’ or ‘ethical’ orientation can be understood in a more compelling way than Rawls appears to do in his own writings. As I have already pointed out above, Rawls appears to two troubling registers of discourse whenever he addresses this issue: that of medicine (when he says that such individuals ought to be “cured”) and that of war (when he says they ought to be treated like “enemies” of the state). Neither of these two registers appears compatible with the underlying spirit of his theory of democracy, which is supposed to be predicated on an elaboration of the commitment to the values of freedom and equality.

To be sure, a more charitable reading could perhaps suggest that what Rawls meant to say, despite the infelicities of the actual terms he uses to express himself, is that individuals who do not share in the specific kind of ‘political culture’ presupposed by democracy ought to be ‘educated’ into it. On the face of it, this appears as a much more attractive option, and it should indeed be noted that it is also the way Kelsen suggests that the required kind of ‘personality type’ presupposed by democracy ought to be fostered by it: “The demagogic assumption that all citizens are equally capable of performing any particular political function – he writes – must be converted into the project of making all citizens capable of performing these functions … In practice, therefore, civic education becomes one of democracy’s principal demands.”

While certainly not intending to deny the importance of civic education for the good functioning of a democratic regime, my contention is that the appeal to this notion is not an adequate way to resolve the specific problem under consideration. The reason is that ‘education’ is necessarily predicated on an authoritarian relationship, which is in contradiction with the underlying spirit of both Rawls’ and Kelsen’s theories of democracy, just like the medicalizing and belligerent registers of discourses mentioned above. This is recognized by Kelsen himself in

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255 Hans Kelsen, Essence and Value of Democracy, p. 84 [91].
the ensuing sentence of the same text: “All education – he concedes – is based on the relationship between teacher and student, an intellectual form of the leader-follower relation, and therefore essentially authoritarian in character”.

While a certain measure of such authoritarian control may be acceptable from a democratic point of view for children (or adults who voluntarily choose to undergo such a process) it cannot be an adequate way of resolving the political problem posed by the presence of individuals who do not display the required form of ‘political culture’ within a democratic context. For, who would decide who needs to undergo such a process? And, most importantly, who could be considered judge over whether an individual displays the required form of cultural orientation to a satisfactory degree? These questions are intended to bring out the lingering element of political violence that is implicit in the seemingly benign proposal that the required kind of civic ‘ethos’ can be consciously implanted in individuals through a process of (re)education.

The alternative I propose, as a revision of both Rawls’ and Kelsen’s respective views, is that a democratic society can only rely on the implicit transformative effect that the practice of concrete participation in the democratic process of collective self-government itself can have on the ‘cultural’ and ‘ethical’ orientation of the individuals involved. The implicit assumption being that participating in the process of negotiating one’s own views and interests with those of others for the purpose of reaching reciprocally acceptable ‘compromises’ is bound to dispose individuals to adopt a reflexive attitude with respect to their own views and interests over time, thereby initiating a sort of ‘virtuous circle’ whereby democratic participation itself produces the kind of ‘cultural’ or ‘ethical’ orientation it depends upon.

\[256\] Ibid.
In practice, this means that a democratic society must allow all individuals to participate within the democratic process of collective self-government, irrespective of their ‘cultural’ or ‘ethical’ orientations, hoping that this participation itself will over time foster the required kind of civic ‘ethos’ amongst them. Whether this will actually happen as a matter of fact is not something that can be known (let alone enforced) in advance. However, my contention is that the survival of democratic institutions in the long run depends upon it. This conforms a point that I have already raised at several junctures above: that the internal coherence and attractiveness of the specific conception of democracy I have been attempting to outline in the course of this chapter cannot be properly understood from a static point of view, but only emerges if it is apprehended dynamically, in conformity with its own internal logic of immanent development.

EXCURSUS ON THE QUESTION OF THE FOUNDATION FOR THE LEGITIMACY OF DEMOCRACY

Before moving on to show how the overall theory of democracy I have attempted to outline in this chapter may constitute the basis for a compelling response to the Catholic discourse of anti-relativism, I will discuss one further question concerning the conceptual foundation for its legitimacy. Although not strictly required from the point of view of the argument I will advance in the next section of this chapter, this discussion is nonetheless important to complete the characterization of this theory of democracy, because it will clarify the specific kind of normativity to which it lays claim.

One way to formulate the problem is in terms of following question: why should anyone accept this theory of democracy as a normatively compelling ground for political legitimacy in the first place? – where the ‘why’ is obviously not understood in a ‘causal’ sense, but rather as a
request for ‘reasons’ in the way to a normative justification. Although clearly fundamental, this is not an easy question to answer, precisely because democracy has been presented as a principle of political justification in itself. Asking for the foundation of its legitimacy therefore ultimately leads to an inquiry over the ‘first principles’ of political legitimacy as such. The difficulties are further augmented by the fact that since the specific theory of democracy I have proposed is predicated on a form of philosophical relativism as its necessary civic ‘ethos’, it cannot fall back on some conception of ‘absolute’ truth as the foundation for its legitimacy.

One is therefore tempted to dodge this question by saying that not everything in politics is susceptible to a complete justification. Since the logic of justification that is implicitly Being appealed to by the idea of a ‘foundation’ is deductive, its ‘first principles’ must necessarily remain outside the system of justification itself. This implies that at some point there must necessarily be an element of arbitrariness in the position one decides to adopt over political matters. Of course, this does not mean that all the reasons one can give in political argumentation are equally arbitrary. However, the criterion by which they can be judged is ultimately only one of internal coherence, complemented perhaps by a measure of ‘depth’ and ‘richness’ of the arguments that have been developed on the basis of the initial premises.

This is not a difficulty which I think can ever be completely overcome. However, in this section, I will nonetheless consider two potential ways of grounding the normativity of the overall theory of democracy I have attempted to extrapolate from Kelsen’s work. Neither of these will serve to provide an ‘absolute’ justification, but the hope is that they may serve to deepen and therefore enrich the normative grounds for it, thereby providing at least some ‘reasons’ for defending it, even if the implication of what has been said is that this theory will ultimately have to be judged on its own terms, as a self-sufficient whole.
a) Freedom as the foundation for democracy

When Kelsen himself addressed the question of the foundation for the legitimacy of his own theory of democracy he gave an unequivocal answer. In an article explicitly entitled ‘Foundations of Democracy’, which he wrote almost thirty years after his treatise on the *Essence and Value of Democracy* for the purpose of popularizing and defending his political theory before an American audience, he stated that: “The essence of the political phenomenon designated by this term [i.e. democracy] is the participation of the governed in government, the principle of freedom in the sense of self-determination; and this is the meaning with which the term has been taken over by the political theory of western civilization.”

It is worth going over the argument Kelsen develops in this context in some detail because this may serve to further tie together many of the elements of the specific theory of democracy I have been attempting to develop in this chapter, as well as making some headway towards its normative justification. The starting point is that in its most “abstract” and “general” sense the concept of freedom has a purely ‘negative’ meaning, which signifies the rejection of all forms of power or coercion exercised by human beings over each other. Since, however, for Kelsen a social order can only exist on the basis of a set of collectively binding norms, he suggests that this original idea of freedom must undergo a series of “metamorphoses” in its meaning in order to become the foundation for a meaningful conception of democracy.

The first such “metamorphosis” he mentions is the transformation from the purely ‘negative’ idea of the rejection of heteronomy into the ‘positive’ idea of collective self-government. This “metamorphosis” can be considered the first step in a logical deduction of the

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idea of democracy from the “abstract” idea of freedom, which proceeds through a series of increasingly concrete ‘determinations’. For Kelsen, this step is the one that was already taken by Jean-Jacques Rousseau in his treatise on the Social Contract; for, the way he interprets the passage from ‘natural’ to ‘political’ freedom in this text is precisely in terms of the idea that if individuals cannot continue to live in the pure independence of the hypothetical state of nature, they can only be free in the sense that they are the authors of the laws to which they submit.259

While of course of capital importance for the development of the idea of democracy, this first “metamorphosis” in the idea of freedom is not considered sufficient to arrive at its full ‘determination’. The reason is that in Rousseau the notion of autonomy remains tied to the principle of unanimity as a criterion for making legitimate laws. Although the majority principle is ultimately accepted for practical purposes, and in matters of ordinary legislation, Rousseau still thought that the original contract ought to be agreed to by all individuals concerned. As we have already seen, Kelsen thinks that this idea of an original founding ‘moment’ is an abstraction. In practice, for him, all political decisions are taken within the frame of a temporal continuum; and, from this point of view, he claims that the majority principle must be considered a more adequate approximation to the idea of freedom as self-government, because it maximizes the number of individuals that can be considered free at any given moment in time:

The original creation of the social order — he writes — does not occur in the reality of our social experience. The individual is always born into an already established social order and normally also into a pre-existent state in the creation of which he did not participate. Only the change, the development, of this order is therefore practically in question. In this respect, the principle of a simple, not a qualified, majority constitutes the relatively greatest approximation to the idea of freedom. According to this principle, among the subjects of the social order the number of those who approve the order will always be larger than the number of those who disapprove but remain bound by it.

This derivation of the majority principle from the practical requirements of the concrete ‘determination’ of the idea of freedom can be understood as a further “metamorphosis” in its

259 Cf. Ibid., p. 20.
meaning: from the idea that being free means submitting only to laws that one has contributed in creating, it must be converted into the idea of being a member of a polity whose laws are created according to the majority principle. In turn, from this derivation of the majority principle itself, Kelsen deduces two further distinctive features of the specific theory of democracy I have attempted to outline above: first of all, the idea that democracy can only be realized within the framework of a constitutional order based on the principle of the hierarchy of norms; and secondly also the idea of a deliberative procedure oriented towards the formation of ‘compromise’ solutions.

The argument with respect to each reiterates points Kelsen had already advanced in his treatise on the *Essence and Value of Democracy*, although the formulation is slightly different. First, he says that the proper application of the majority principle supposes the existence of a minority. From this he deduces that it implies the recognition of certain “fundamental rights” guaranteeing its existence and capacity to make its voice heard politically. Since, from the perspective of his own conception of the constitutional order, such “fundamental rights” can only be understood as ‘higher’ orders of legislation that are not susceptible to being changed through ordinary procedures, Kelsen ultimately reaches the conclusion that the proper application of the majority principle itself supposes its inscription within a broader constitutional structure based on the idea of a hierarchy of norms.\(^{260}\)

Furthermore, since the only way to reconcile the idea of a hierarchy of norms with the democratic principle of collective self-government is assumed to be a variation in the degree of ‘rigidity’ of the different levels of norms, on this basis Kelsen also reaches the conclusion that the proper application of the majority principle itself implies that whenever the most important constitutional issues are stake, a simple majority vote cannot be sufficient to guarantee full

democratic legitimacy. In practice, what will be required is a wider deliberative process aimed
towards the formation of ‘compromise’ solution amongst a consistent part of the social interests
to whom the decisions are supposed to apply. This can be understood as a derivation of the idea
of a deliberative process oriented towards the formation of ‘compromise’ solutions from the
logic implied by the concrete ‘determination’ of the idea of freedom itself.

In this sense, the article on the ‘Foundations of Democracy’ does not really add any
significant ‘new’ elements to Kelsen’s theory of democracy. Its significance from the point of
view of the question under consideration here nonetheless lies in the fact that it brings out in a
much clearer way that the foundation for Kelsen’s theory of democracy is taken to be the concept
of freedom itself, since all the most important features of this theory are here presented as
derivations from the process of concrete ‘determination’ of this concept. Reduced to a logical
formula, the normative argument Kelsen provides for his theory of democracy could therefore be
summarized as follows: if you believe in the value of freedom, then you ought to find the theory
of democracy that has been deduced from it normatively compelling.

This formulation clearly shows that Kelsen’s argument does not amount to an ‘absolute’
justification for his theory of democracy, since the original commitment to the value of freedom
can only be assumed as a hypothetical, and not justified by the theory itself. This is also
conformed by the fact that in the same essay Kelsen also inscribes his theory of democracy
within a broader typology of political regimes, which opposes it to the notion of ‘autocracy’,
understood as a political order founded on the principle of authority.

This notion of a typology of political regimes stems from a long and illustrious tradition
within the history of western political thought. Indeed, most of the earliest texts within this
history – from Aristotle and even, to some extent, Plato – took it as the distinctive task of
political theory to construct such a typology. From the perspective of the normative bent which
the discipline has assumed in our time, this way of approaching political theory must nonetheless
appear somewhat puzzling, since it implies that one doesn’t necessarily have to say which kind
of regime is ‘absolutely’ superior to all others, accepting the idea that different regimes may
appear more compelling from different points of view, depending on the specific criterion that is
used to evaluate them.

In this sense, there may be said to be an element of philosophical relativism built into the
idea of a typology of political regimes itself. A normative political theorist is nonetheless likely
to object that Kelsen (just like most other thinkers within this tradition before him) was not really
‘neutral’ between the various different kinds of political regimes he identified. Even just on the
basis of the space and attention he dedicates to discussing it relative to autocracy, it is clear that
Kelsen was an ardent supporter of democracy. This raises the question of the basis for this
preference in the first place.

Although, as I have already attempted to make clear above, I do not think it will ever be
possible to arrive at an ‘absolute’ justification coherently with the principles on which this theory
is based, in what follows I will consider an additional line of justification, which does not stem
directly from Kelsen’s work, but I think can nonetheless be aggregated to it as a complement, to
further ‘deepen’ the body of reasons that can be adduced in support for it. This argument stems
from the work of Claude Lefort: an author whose work, as I have already pointed out above,
displays a number of interesting convergences and complementarities with Kelsen’s, even if they
emerge from very different cultural and intellectual backgrounds.
b) Democracy as the institutionalization of the absence of certainties

The specific theory of democracy that is developed by Lefort in his several writings on this topic is based on the premise that the modern age is characterized by a “dissolution of the markers of certainty”. This idea is expounded through a comparison with what Lefort takes to be the distinctive feature of the previous ancien regime. Drawing in part on the well-known theory advanced by Ernst Kantorowicz in his book on The King’s Two Bodies, Lefort contends that at this time the social order was assumed to be literally incorporated in the King’s body. This meant that through his simple bodily presence the King offered both a foundation and a guarantee for the three key domains of political endeavor: Power, Law and Knowledge.

When the structuring reference to the King’s body was removed, therefore, Lefort contends that these three domains of endeavor lost their ultimate foundation and were thereby delivered to a perpetual process of search for their own grounds and conflict amongst each other, within an overarching framework of indeterminacy: “When the place previously occupied by the King’s body is left empty – Lefort writes – there can be no possible conjunction between Power, Law and Knowledge, and their foundations cannot possibly be enunciated. The being of the social vanishes or, more accurately, presents itself in the shape of an endless series of questions (witness the incessant, shifting debates between ideologies). The ultimate markers of certainty are destroyed, and at the same time there is born a new awareness of the unknown element in history, of the gestation of humanity in all the variety of its figures.”

Although posited as a concrete historical condition rather than an abstract philosophical outlook, this conception of the “dissolution of the markers of certainty” displays a significant degree of overlap with Kelsen’s conception of relativism. Neither is predicated on the

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262 Ibid., p. 228.
assumption that individuals cease to be able to make any value judgments at all; however, both
imply that such value judgments lose their ‘ultimate’ foundation, and therefore that in situations
of conflict it is impossible to adjudicate between them in an ‘absolute’ way. In other words: both
imply the fragmentation of the Christian hypothesis according which all existing value spheres
are organized in a coherent and stable hierarchy culminating in the idea of God himself.

Faced which such a background philosophical condition, Lefort suggests that modern
societies can establish the legitimacy of their political regimes in one of two ways. In chapter 2 I
have already pointed out that his theory of totalitarianism understands it essentially as the
attempt to ‘refill’ the place of power previously occupied by the King with a substantive
representation of the grounds for the people’s unity. What interests me more in this context,
however, is that Kelsen understands democracy essentially as the outcome of the attempt to
preserve the ‘emptyness’ of the place of power, by inscribing the constant search for an ultimate
foundation into the organizational structure of the political order itself:

I have for a long time – Lefort writes – concentrated upon this peculiarity of modern democracy:
of all the regimes of which we know, it is the only one to have represented power in such a way as
to show that power is an empty place … It does so by virtue of a discourse which reveals that
power belongs to no one; that those who exercise power do not possess it; that they do not, indeed,
embody it; that the exercise of power requires a periodic and repeated contest; that the authority of
those vested with power is created and re-created as a result of the manifestation of the will of the
people … If we wished to pursue this argument, we would have to examine in detail the processes
which regulate the establishment of democratic power. It is enough to recall that this requires an
institutionalization of conflict and a quasi-dissolution of social relations at the very moment of the
manifestation of the will of the people.

This passage clearly shows that, just like there is a significant degree of overlap between
Lefort’s idea of a “dissolution of the markers of certainty” and Kelsen’s conception of relativism,
there is also a great deal of affinity between their respective conceptions of democracy. Indeed,
Lefort’s idea that democracy is predicated on an “institutionalization of conflict”, which implies
that the social order needs to be constantly “created and recreated” out of the interactions and

263 Cf. Ibid., pp. 233.
264 Ibid., pp. 224-226.
negotiations between the parties involved, could be taken as an adequate summary of the gist of Kelsen’s theory of democracy as well. The principal difference between them appears to be that Kelsen has devoted a much greater degree of thought and attention to the actual juridical structure such a regime effectively implies than Lefort. Otherwise, however, their theories seem to be organized around the same fundamental principles.

On the basis of this analogy, it could therefore perhaps be suggested that Kelsen’s theory of democracy can be understood as an attempt to institutionalize the absence of certainties implicit in his conception of relativism, by inscribing the idea of a perpetual ‘search’ for the foundations of its own legitimacy into its organizing structure itself. Paradoxically, this could be taken to mean that the absence of ultimate foundations itself functions as the foundation for the legitimacy of the democratic regime – a point Lefort comes close to making when he asserts that “modern democracy invites us to replace the notion of a regime governed by a legitimate power, with the notion of a regime founded upon the legitimacy of a debate as to what is legitimate and what is illegitimate, a debate which is necessarily without any guarantor and without any end.”

Although certainly fancy and attractive, it is important to point out that this conception of the grounds for the legitimacy of a democratic regime does not amount to an ‘absolute’ justification either. The reason is that it does not (and cannot) contain any justification for the decision to ‘institutionalize’ the absence of certainties in the first place. At most, if one accepts Lefort’s analysis, this can be seen as a way of being coherent with the background philosophical condition of modernity, instead of denying it or attempting to cover it up. However, since this background is assumed to be an empirical aspect of the modern age, there is no necessary normativity in it.

As Lefort himself has vividly pointed out, the recognition of the fact that modernity

265 Ibid., p. 39.
emerges out of a process whereby the place of power has been left empty could also be carried in a very different direction: this is the basis for his theory of totalitarianism as stemming from the attempt to refill it. The decision to preserve this original emptiness, by inscribing it in the organizational structure of society’s institutions, must therefore be assumed to correspond to the ineliminable element of arbitrariness which must necessarily remain in all justifications of democracy, at least if one is to remain consistent with the assumption that the possibility of making reference to an idea of ‘absolute’ moral truth has been undermined.

RESPONSE TO THE CATHOLIC DISCOURSE OF ANTI-RELATIVISM

Weaving together the various strings of analysis that have been pursued over the course of this chapter, in this final section I will attempt to show how the overall theory of democracy I have attempted to put forwards can be used as the basis for a compelling response to the Catholic discourse of anti-relativism. As I already states above, the key contention is that this conception of democracy, which includes a form of philosophical relativism as one of its essential ‘pillars’, is politically sustainable on its own terms, without needing to rely on any ‘external’ or ‘transcendent’ (i.e. religious) sources of legitimacy. This shows that it is at least conceptually possible to advance a theory of democracy predicated on a form of philosophical relativism which is not self-defeating in the way the Catholic Church contends.

The most important feature which explains this sustainability is the fact that in this theory the relationship between popular sovereignty and philosophical relativism is mediated by a third ‘pillar’, which is the notion of constitutionalism. As I have attempted to bring out through the analysis conducted above, this is an essential feature of a conception of democracy founded on the idea that popular sovereignty can only be realized through a deliberative process oriented
towards the formation of ‘compromise’ solutions, because the constitutional order is what defines the formal procedures by which such a process can be instituted in the first place.

In most of the formulations of its critique, however, the Catholic Church does not take this essential feature of modern democracy into account. The implicit assumption is usually that the notion of popular sovereignty can be reduced to the Rousseauian idea of an unmediated expression of will by a pre-existent body standing outside the juridical order, called the ‘people’. The Church’s objection against relativism in democracy therefore effectively boils down to a version of the paradox already pointed out by Rousseau himself, according to which the (popular) sovereign cannot bind itself.

From the perspective of the theory I have attempted to advance, this appears to be a simplistic way of apprehending modern democracy, because once the metaphysical idea of the people is decomposed into a deliberative process oriented towards the formation of ‘compromise’ solutions, and its necessary ‘internal’ relationship with a constitutional order is brought out, the Rousseauian paradox is effectively overcome by the idea that popular sovereignty is limited ‘internally’, by the logic of its own exercise. In other words: the very rules and institutions that are necessary to make the democratic process of collective deliberation possible in the first place also at the same time function as effective ‘limits’ upon it.

From this point of view, all the distinctive features of the notion of constitutionalism I have mentioned above prove to be of capital importance. First of all, the notion of a hierarchy of norms implies that there are always concrete legal limits to what the people can legitimately decide: as I stated above, popular sovereignty is not exercised in a ‘state of nature’, but within the framework of a set of established legal norms which necessarily also function as limits on what the outcome of the process can be. If, for example, the people were to want to change an
important aspect of the constitutional order, they would have to do it in conformity with the procedures stipulated by the constitution itself.

Since, as I have stated above, in a democratic context the notion of a hierarchy of norms can only be sustained by varying the degree of ‘rigidity’ of the different levels of norms, this implies that increasingly onerous political requirements would have to be fulfilled for changing aspects of the constitution considered more fundamental to its political nature. At the limit, it is even possible to ‘entrench’ certain principles within the constitutional order itself, by failing to specify any legal procedures for changing them at all. What this effectively means is that those principles can only be changed through a revolution that overthrows the constitution itself. The fulfillment of such increasingly onerous political requirements is what constitutes the real political ‘limit’ on what the people can legitimately do to themselves.

The notion of the separation of powers, then, provides an additional layer of ‘mediation, and therefore self-control, on the exercise of popular sovereignty. The reason is that, in the way I have interpreted it, this notion implies that the people can never be fully or even adequately represented by a single body. Its will can only be assumed to emerge from the interplay and interaction between a plurality of bodies, created according to different principles and procedures of representation. This implies that the people can only reach and implement a definitive decision if there is an agreement between a multitude of constituted powers, which are designed to have conflicting interests amongst each other. This obviously poses another significant ‘limit’ on what the people can legitimately do to themselves, especially if what is at stake is an alteration of the constitutional order itself.

Finally, the notion of human rights introduces some substantive principles of justice within the juridical structure of the constitutional order, whose function is to simultaneously
entrench and accelerate the constant movement of self-transformation of the juridical order. This can be interpreted as a further ‘check’ on the power of the people over themselves, because it implies a fluidification of all power relations, which prevents any specific decision from crystallizing into a definitive outcome.

The most important point to bring out with respect to this various means of self-limitation of the people’s power over themselves, however, is that they can all be understood as integral components of the theory of democracy itself, inasmuch as they are seen as necessary for fulfilling the democratic idea of collective self-government in the first place. This means that constitutionalism does not have to be seen as an ‘external’ check on the power of the people over themselves, traceable to an independent source of legitimacy, but can rather be seen as an intrinsic feature of its concrete determination.

Obscuring this connection appears to be the core of the Church’s conceptual operation: by separating the idea of popular sovereignty from that of constitutionalism, they seek to present the faith in a transcendent God as the only possible foundation for the limits that the democratic idea of popular sovereignty requires. In this way, they try to posit themselves as the guardians for the sustainability of democracy. However, once the foundation for the legitimacy of constitutionalism has been shown to be traceable to the necessary conditions for instituting a democratic process in the first place, this conceptual operation is revealed as unwarranted, or at least unnecessary.

It is simply not true that democracy ‘needs’ to make reference to a transcendent criterion of legitimacy in order to be sustainable on its own terms: the theory I have attempted to put forwards shows that democracy can contain within itself all the necessary resources for establishing a stable political regime. From this perspective, therefore, the project of
complementing democracy with an additional criterion of legitimacy drawn from ‘outside’ appears to be motivated by a different intention than the one the Church actually declares: some sort of mistrust for the idea of democracy itself, which is however not substantiated by the theory I have proposed, and therefore shouldn’t necessarily be accepted by it.

To be sure, a potential objection that could be raised against the argument I have advanced is that, precisely because all the various ‘limits’ to the power of the people I have mentioned are assumed to be self-imposed, in principle it is possible that they could all be overcome. If, for example, a sufficiently large consensus were to exist in a democratic society such as the one I have proposed, the constitution itself could potentially be changed, and therefore neither the hierarchy of norms, nor the separation of powers, nor the notion of human rights could count as effective ‘limits’ on the power of the people over themselves. In such a situation, the scenario threateningly envisaged by the Catholic Church could still potentially come true: democracy could be overthrown by democratic means.

My response to this objection is that it is political disingenuous. Implicitly, it relies on the suggestion that if the limits to the democratic exercise of political power are not ‘absolute’ they are no limits at all. However, that appears to beg the fundamental question. Specifically, what is not clear is the additional political effect that could be obtained by complementing the theory of democracy I have proposed with a set of ‘absolute’ moral values assumed to derive from a transcendent source.

The example which obviously hovers in the background of this discussion is that of the rise to power of National-Socialism in Germany, which presumably happened through formally legal means. My contention, however, is that the bearing of this example on the present
discussion is grossly misconceived, and needs to be set straight. I shall therefore devote the remaining part of this section to a discussion of this point. First of all, it should be noted that the way Hitler actually came to power in Germany was not by regular election, but through an exercise of Article 48 of the Weimar constitution, which allowed the president to suspend certain basic rights within the constitution and assume full sovereign power himself in order to deal with specific cases of emergency: elections only happened after Hitler had been nominated in this way, and with the emergency provision still in place.

Whatever this might mean concerning the legitimacy of Hitler’s rise to power, from a purely juridical point of view, it means that it is inaccurate to say that Hitler came to power ‘legally’, because the principle of legality itself had effectively been suspended by the exercise of article 48 of the Weimar constitution. The specific kind of juridical situation that had thereby been created has been more accurately described as a situation of ‘indeterminacy’ between legality and factuality, corresponding to the legal paradox of a juridical order suspending its own application. To say that Hitler came to power ‘legally’, on the other hand, obscures the abnormality of this juridical situation, suggesting that it occurred through the exercise of ‘normal’ legal procedures.²⁶⁶

What is even more important, however, is that from the perspective of the theory of constitutionalism I have attempted to put forwards above, article 48 of the Weimar constitution represented a clear violation of the principle of the separation of powers, because it effectively meant that the president could at his discretion exercise an unlimited power of sovereignty in the name of the people. Coupled with the fact that the Weimar Republic didn’t really have a ‘rigid’ constitution, since there was no constitutional court empowered with the faculty of reviewing the constitutionality of proposed measures (which is another essential feature of the notion of

constitutionalism I have attempted to outline above), this could be used to argue that, strictly speaking, the Weimar Republic was not a constitutional democracy in the sense in which I have defended it.267

Another key point that needs to be brought out in this respect is that it is not clear what difference the Catholic Church supposes complementing the Weimar constitution with a reference to a set of ‘absolute’ moral values assumed to be derived from a ‘transcendent’ source could have made to the actual political outcome. As we have seen in the historical analysis carried out in chapter 1, as a matter of fact, the Catholic Church itself remained very ambivalent with respect to National-Socialism for some time even after it had come to power, since it was perceived as a potential bulwark against the greater threat of communist revolution. But even assuming that a reference to some criterion of natural law based on the Christian faith had been inscribed in the Weimar constitution, can it really be thought that this would have been sufficient to prevent Hitler from coming to power?

If such provisions had been susceptible to article 48, then they couldn’t have made any difference at all; but even if they hadn’t, doesn’t it appear more likely that Hitler would have come to power anyway, either flouting them explicitly or working around them in some other way? Nor can it be claimed that if Hitler himself (or at least the majority of the German population at the time) had been good Christians this couldn’t have happened, since Hitler clearly wasn’t a democrat (or, for that matter, a relativist) either. If the majority of the German population had been in favor of democracy, then there wouldn’t have been any problem in the

267 This issue was in fact discussed by Kelsen himself in the context of a debate he had with Carl Schmitt precisely over article 48 of the Weimar constitution. While the latter defended this article because he thought it inscribed a principle of ‘absolute sovereignty’ within it, Kelsen claimed that it represented a sort of ‘black hole’ within the overall constitutional structure of the constitutional order. All they could both agree on, from their respective political positions, is that the Weimar constitution represented some sort of chimeric fusion of the opposed political principles of the bourgeois Rechtstaat and the theologico-political notion of ‘absolute sovereignty’. For a full account of this debate see John E. Finn, Constitutions in Crisis: Political Violence and the Rule of Law, Oxford University Press, 1991, pp. 172-178.
first place, so it is not clear what imagining different hypothetical situations with different value and preference sets is supposed to achieve.

Finally, a further point that should also be raised in this connection is that if we consider the actual political situation that is confronted by contemporary democracies, the prospect of a National-Socialist or any other kind of ‘totalitarian’ movement posing any real threat to the survival of democratic regimes appears pretty remote indeed. The Catholic Church insistently reminds us of this threat only because this is instrumental for presenting itself as the ‘guardian’ or even the ‘savior’ of democracy. In fact, however, the real problems confronted by contemporary political regimes are of a wholly different nature.

On one hand, in a country such as the United States the constitutional system of ‘checks and balances’ appears to constitute such an effective limit on the power exercised by the people over themselves that it appears to be very difficult to pass any significant legislation at all: even a president elected with a landslide victory at the polls such as Barack Obama has been accused of failing to transform the country in the way he had promised. This shows the inanity of the supposition that constitutional limitations cannot be considered effective ‘limits’ on the power of the people over themselves if they are not understood as ‘absolute’.

On the other hand, in many countries of Western Europe or Latin America, the principal political threat for democracy appears to be presented by ‘populist’ leaders taking control of democratic institutions from within and exploiting them for their personal advantage. In such circumstances, the conflict between the established guarantees of constitutionality and the pressure for the transformation of such institutions assumes the center-stage in democratic politics. This confirms that constitutional guarantees are of capital importance for making sure that the political order remains on a democratic track.
The Kelsenian concept of the ‘rigidity’ of norms appears to be the most adequate category for negotiating these conflicting pressures, because it effectively means that a democratic regime can rely on a whole range of legal tools for avoiding the Scylla of excessive sclerosis and the Charybdis of erosion of democratic procedures from within. Precisely this range of available options is what is obscured by the assumption that the limits imposed on the democratic exercise of political power are either ‘absolute’ or they are no limits at all.

It is true that the concept of legal ‘rigidity’ can never provide any ‘absolute’ guarantees that democracy will not be overthrown by democratic means. At the limit, it is always possible that the constitutional order itself is overthrown by a revolution. However, the fact that the specific theory of democracy I have sought to advance does not exclude this possibility (as a last resort) appears more like an advantage than a weakness. After all, staging a revolution is not easy, because it requires by definition to confront the whole repressive apparatus of the state. In a hypothetical situation where enough political momentum and organization were available to achieve this, how could any theory of democracy oppose it? Since democracy is based on the idea of an identity between the subject and the object of the juridical order, it would be absurd to want to hang on to it as an idea even against such a manifest expression of the people’s will.

Ultimately, this is just another way of recognizing the contingency of this kind of political regime, which must necessarily presuppose the support of the people to whom it is supposed to apply, precisely because it has rejected the idea of any other principle of authority or legitimacy acting as a guardian to what the people want.
CONCLUSION –

By way of conclusion, in this chapter I will attempt to evaluate the bearing of the analysis conducted up to this point on the three conceptual ‘issues’ identified in the introduction as constituting the principal theoretical stakes of this discussion: the issue of post-secularism, the question of the absolute, and the self-sufficiency of democracy as a political form.

With respect to the issue of post-secularism, the first conclusion that can be drawn is that the recognition of the empirical persistence of religion as a political factor in contemporary societies should not necessarily lead us to question the secularity of the foundations for the legitimacy of democratic regimes. The specific conception of democracy I have attempted to put forwards on the basis of a discussion of Kelsen’s work appears as an adequate way of addressing this issue, because it is explicitly predicated on the assumption of a radical pluralism amongst existing world-views, and attempts to find a way of enabling them to coexist with each other within the framework of a set of institutions organized around the democratic principle of collective self-government.

The key idea is that individuals and groups entertaining different (and perhaps even irreconcilable) world-views ought to engage in a process of negotiation with each other oriented towards the formulation of reciprocally acceptable compromises for regulating their coexistence. Such a process of negotiation supposes the existence of an enforceable set of norms defining and instituting the set of procedures by which the negotiation is to take place. However, it is crucial that these norms too be available for participants to renegotiate, according to increasingly stringent criteria defined by higher norms. Hence, in the final analysis, this conception of
democracy can be understood as a recursive process whereby the legal order regulates the mechanism for its own production on the basis of the interactions and negotiations amongst the very subjects to whom it is supposed to apply.

From the perspective of the contemporary debate on the notion of post-secularism, this conception of democracy might perhaps be interpreted as reducing to a ‘modus vivendi’ rather than a fully normative theory. Such an interpretation would however be inaccurate, because it does not take into account the fact that it is not merely intended to establish the conditions for peaceful coexistence amongst radically different individuals and social groups, but also to do so compatibly with the requirements imposed by an idea of freedom understood as collective self-determination.

To be sure, when Kelsen first began to develop this idea during the inter-war years of the past century it was not primarily intended as a way of dealing with the issue of religious pluralism. The most immediate problem he was concerned with was the radical confrontation between two conflicting ideologies, which threatened to undermine the viability of liberal-democratic regimes: revolutionary socialism on one hand and reactionary authoritarianism on the other. However, what I am trying to suggest is that his conception of democracy can also be considered adequate for addressing the contemporary issue of post-secularism, precisely because it implies that religious world-views must be taken as equivalent to all other personal or political preferences within society.

Just like one’s political commitments and other life-style choices, one’s religious views affect the way in which one would like the polity to be organized. However, this offers no reason to inscribe those views within the organizational structure of a democratic regime. On the contrary, the democratic principle of equality requires all individuals to work through the

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existing institutional structure to advance their specific agenda, just as they would with any other set of values or preferences. This implies that they must seek to find a compromise that is acceptable for all the other members of the polity too. If they are sufficiently numerous and organized they might get much of what they want, but this is not something that can be enshrined in the rules definitively or a priori.

The suggestion that religious world-views be treated like all other kinds of personal or political preferences also enables me to clarify in what sense the foundation for the legitimacy of the theory of democracy I have attempted to put forwards can be considered ‘secular’. The key point is that the legitimacy of democratic institutions is not derived from the religious views of any of the parties involved, but rather from the conditions required for all these participants to negotiate their preferences with each other on a plane of equality. Hence, democratic secularism does not consist in a fully-formed set of substantive values from which the legitimacy of political institutions is deduced, but rather in the attempt to abstract as much as possible from religious world-views in order to enable a greater number to take part in the democratic process of collective self-government.

The way in which I have attempted to formulate this point is by suggesting that the proper functioning of democratic institutions supposes a civic ‘ethos’ characterized by a form of philosophical relativism, which disposes individuals to adopt a reflexive attitude with respect to their religious world-views and therefore to try to come to terms with each other within a spirit of reciprocal compromise. Hence, the substantive content of this conception of secularism proves to be this ‘ethos’ of relativism that implies taking a distance from one’s religious views, instead of imposing an alternative set of values, presumably derived from an autonomous conception of reason.
To this, it might be objected that such an ‘ethos’ is itself incompatible with certain ways of experiencing and expressing one’s own religiosity, and hence not really ‘neutral’ amongst all possible religious world-views. If for example one’s own religion were to require living in a society organized around its own principles (as Catholicism arguably does), the conception of secularism as an ‘ethos’ of relativism would seem to be incapable of accepting it on an equal plane with all others. This seems to involve a contradiction with the spirit of egalitarian inclusiveness that animates it.

The way in which this objection is often formulated is in terms of the claim that secularism (and therefore from this perspective implicitly also relativism) constitutes or at least implies a specific religious orientation in itself, which should be treated as equivalent to all others. On this basis, it is suggested that a political order based on these presuppositions ultimately involves the same degree of violence or exclusion as a political order based on any other set of religious premises.

The response I have attempted to put forwards to this objection consists in pointing out that it tends to obscure a meaningful political difference. The conception of secularism I am attempting to defend does not seek to impose any specific religious orientation. All that it requires is for citizens to adopt a reflexive attitude with respect to the religious views they already entertain, or choose to entertain, which disposes them to try to reach practical compromises with others. Hence, it is compatible with a plurality of different religious views.

Indeed, the most adequate way of understanding this conception of secularism is perhaps as an attempt to expand as much as possible the range of possible religious views that can be accepted within it. What it requires is therefore calculated to be the minimum for enabling democratic institutions to function properly. While this still implies the exclusion of some
religious views, the advantage with respect to the inscription of religious principles within the organizing structure of a political order is that it enables a greater number to coexist peacefully with each other within a democratic context.\textsuperscript{269}

This quantitative logic is also the principal reason why I have suggested that this conception of democracy is more adequate than John Rawls’ for dealing with the issue of the contemporary persistence of religion as a political factor. While the basic idea on which they rely is ultimately pretty similar – that publicly binding legislation ought to be formulated on the basis of principles that can be accepted by as many parties as possible, independently of their religious views – the key difference lies in the fact that Rawls’ political liberalism is predicated on the assumption of a ‘thick’ conception of “political culture” that sets a relatively high bar for participating in the democratic process.

According to his theory, all citizens of a democratic polity are required to be “reasonable” in the sense that they recognize and abide by the substantive principles of freedom and equality from which Rawls’ political conception of justice is deduced. The ‘ethos’ of relativism I have attempted to defend, on the other hand, does not require the recognition of any substantive principles of justice, but simply the adoption of a reflexive attitude with respect to the values and commitments one already entertains. This amounts to a ‘thinner’ requirement that sets a lower bar for participation and can accordingly be considered compatible with a greater degree of pluralism.

\textsuperscript{269} In this connection it is perhaps also worth pointing out that the equation of the notions of secularism and relativism with that of religion does not only misunderstand the meaning attached to those terms within the context of the theory I have proposed, but also seriously impoverishes the notion of religion itself. The reason is that all the aspects of religious belief that appear most important for believers themselves are thereby expunged from its definition. Thus understood, for example, neither secularism nor relativism attempt to give ‘meaning’ to individual life, or to mediate its relationship with death. They simply stipulate a set of conditions under which individuals can coexist peacefully with each other \textit{in this world}. To equate this with religion, simply because it involves some matter of fact assumptions reduces religion to the intellectualistic idea of a system of beliefs relying on some unproblematized assumptions. By this criterion, \textit{all} systems of belief appear as ‘religious’, and the notion itself accordingly loses all specificity.
The way in which this idea can be made to bear on the issue from which the debate over the notion of post-secularism originally emerged – that is, the recognition of the empirical persistence of religion as a political factor in contemporary societies – is in terms of the claim that this persistence can be made compatible with the survival of democratic regimes on condition that the various existing religious groups adopt a reflexive attitude with respect to their religious views that relativizes them and disposes them to try to find reciprocally acceptable compromises with members of other religious groups for the purpose of coexisting peacefully with each other.

As I have attempted to demonstrate through the analysis conducted in the first chapter of this dissertation, this is not impossible even for a religion like Catholicism, because historically there have existed various strands within it that can be interpreted as attempting to move in this direction. The Second Vatican Council represented an important moment of crystallization of these various tendencies. However, as we have also seen, it is the reaction against the council, expressed particularly in terms of a recovery of the discourse of anti-relativism, that is currently dominant within the Catholic Church. The suggestion I am seeking to advance is therefore that relativism is not necessarily incompatible with Catholicism, but rather represents the necessary work that Catholics must do on their own religious views in order to be able to coexist peacefully within others within a democratic context.

The second issue mentioned in the introduction as constituting one of the key theoretical stakes of this dissertation concerns the notion of the ‘absolute’. What was immediately noted in this respect is that the issue originally stems from the attempt at a substitution: taking for granted that a transcendent conception of God has become incapable of providing an adequate
foundation for the legitimacy of political regimes, political theory has been looking for a viable conception of the ‘absolute’ to replace it.

Indeed, the notion of popular sovereignty itself was shown to have originally been conceptualized as a substitute for the divine right of monarchs, through the identification of a substantive conception of the ‘people’ as a replacement for the idea of a transcendent conception of ‘God’ at the summit of a deductive chain of legitimacy. This is precisely the conception of democracy that the Catholic Church has always objected against, on the basis of the claim that the ‘people’ is not a viable substitute for ‘God’, because there is no guarantee that what it wants is necessarily ‘good’, and therefore that such a conception of popular sovereignty will not convert itself into a brutal form of oppression.

The way in which the Catholic Church has often framed this objection, especially in the democratic age, is in terms of a critique of democratic ‘absolutism’, intended to reassert the importance of imposing ‘limits’ on the power that the people may legitimately exercise over themselves. In reality, however, this argument was never intended to function as a critique of absolutism as such, because the claim is that democracy needs to be complemented by the reference to a different conception of the absolute – the idea of absolute moral truth, derived from a transcendent source – as a foundation for the limits to be imposed on the democratic exercise of political power. Hence, the Catholic Church proves to be still working within the terms of the logic of the absolute: the disagreement only really concerns the specific entity this attribute is attached to.

One of the problems I have identified with this argument is that the idea of absolute moral truth does not really admit of being returned to for reasons of expediency. Either it exists or it doesn’t; and the fact that it may be useful to believe that it does, doesn’t really have any
bearing on the question at all, nor would it bring us any closer to knowing what its content is, even if we were to assume that it existed. For this reason, conflicts over the notion of absolute moral truth, often appear to be far more intractable than those fought amongst individuals or groups that recognize the relativity of their own respective positions. This suggests that complementing democracy with the reference to an idea of absolute moral truth would not only represent a compromise with respect to the freedom of the parties concerned, but also put at risk the central value of peace that the political order is supposed to preserve.

What I have been calling the ‘rationalist’ strand of contemporary political theory has attempted to circumvent the Church’s objection against a ‘voluntarist’ conception of popular sovereignty without compromising on its anti-relativism by positing a substantive conception of ‘reason’ as the foundation for the limits to be imposed on the democratic exercise of political power. This can be read (and is indeed sometimes explicitly framed) as a way of positing that category of ‘rationality’ as a substitute for the discredited conceptions of the ‘absolute’.

The objection I have moved against this strategy, however, is that the category of rationality is incapable of adequately fulfilling this role, because it only stipulates a purely formal set of requirements concerning the relations amongst propositions, and it is impossible to deduce anything substantive from something merely formal. The theorists who rely on this strategy are therefore forced to import the substantive content of their normative theories from ‘outside’ the domain of reason itself, thereby compromising its claim to autonomy.

Jurgen Habermas ultimately inscribes his conception of communicative rationality within the terms of a dialectical relation with religious faith that makes it fall back on a parasitical relationship with political theology. John Rawls, on the other hand, deduces the substantive content of his conception of justice from a reified conception of “political culture” which is
never itself problematized and therefore makes his theory vulnerable to the objection moved by Ratzinger according to which many contemporary democratic theories have a tendency to “treat something relative as if it were an absolute”.

On the basis of this analysis I have therefore sought to suggest that perhaps the best way of addressing the problems posed by the notion of the ‘absolute’ is to reject the logic of substitution itself: instead of seeking to find a viable replacement for the transcendent conception of God as the ultimate ‘source’ of political legitimacy, it may be more compelling to try to construct a political order independently of any notion of the ‘absolute’. This requires a transformation in the way political legitimacy is supposed to function, and the specific theory of democracy I have attempted to put forwards can be seen as a potential way of doing it.

The key conceptual operation on which it is based lies in a redefinition of the temporal frame within which democracy is supposed to be inscribed. As Hannah Arendt clearly shows in her treatise *On Revolution*, the conceptual need for a notion of the ‘absolute’ stems from the assumption that revolutions constitute moments of ‘new beginning’ within the temporal structure of legitimacy. This supposes that time itself can be interrupted, and therefore poses the question of the ‘foundation’ for whatever happens afterwards. It having been excluded, *ex hypothesi*, that it is possible to rely on anything that happened before, some conception of the ‘absolute’ therefore becomes necessary.

What I have attempted to suggest, on the other hand, is that this idea of a ‘new beginning’ within the temporal structure of legitimacy is an abstraction. In reality, politics is always situated within the frame of a temporal *continuum*, which implies that political legitimacy is always created out of conditions that pre-exist it. From a philosophical point of view, this can be seen as a shift from the conception of temporality implied by the Christian idea of creation *ex nihilo*, to a
something that is closer to the phenomenological experience of time as an ‘always-already’. Once this difference in registers of temporality is taken into account, it emerges that the Christian idea of creation *ex nihilo* actually creates the very need for the notion of the ‘absolute’ it then attempts to satisfy. From the perspective of the phenomenological conception of temporality as an ‘always-already’, on the other hand, this need simply doesn’t emerge.

Of course, historically, it is undeniable that there are moments of constitutional break, which pose difficult questions for the legitimacy of the constitutional order that follows. However, the point that I have sought to suggest, drawing on Kelsen’s conception of the constitutional order as a dynamic system of norms, is that these difficulties can be overcome by refusing to look for the grounds of the normativity of the constitutional order in the original ‘moment’ of break itself. Instead, the normativity of a democratic constitution can be assumed to be established *diachronically*, out of the process whereby this order “regulates the mechanism for its own production”. Or, to put it in other terms: *recursively*, out of the same political process that is created by the constitution itself.

From a philosophical point of view, this can be seen as the juridical translation of the temporal category of the ‘always already’, which overcomes the need for an ‘absolute’. It is in this sense that I think the specific theory of democracy I have attempted to put forwards can be considered properly ‘post-foundational’: because it refuses to ground political legitimacy on any conception of the absolute that precedes the political order, but rather extracts it immanently from the workings of the system itself. This inscribes the political order within a framework of indeterminacy which implies that just as there is no stable ‘foundation’ for political legitimacy, there can be no overarching ‘*telos*’ for political action either.²⁷⁰

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²⁷⁰ This aspect of Kelsen’s theory of democracy marks another fundamental difference with Habermas’. For, while the latter also attempts to infer the grounds of political legitimacy immanently from the workings of the political order itself, his conception of
The way this intuition plays out concretely in the overall theory of democracy I have proposed is not in terms of a *negation* of all the traditional figures of the ‘absolute’, but rather their *relativization* with respect to each other. Belief in God – just as any other kind of religious or ideological commitment – is not expunged but rather converted into a resource for the democratic process of deliberation, by requiring citizens to adopt a reflexive attitude with respect to it, that is supposed to dispose them to try to come to terms with each other for the purpose of coexisting peacefully within a democratic context.

Similarly, the substantive notion of the ‘people’ upon which the first theories of popular sovereignty were predicated is not entirely abandoned, but rather understood as a juridical category defining the set of individuals to whom a legal order is supposed to apply. From this perspective, the notion of popular sovereignty is therefore given a purely formal significance as the idea that the ‘subject’ and the ‘object’ of the juridical order (that is, respectively: those who make it and those to whom it applies) either coincide or tend towards that.

The concrete political content of this idea is supplied by the set of interactions and negotiations through which the citizens of a democratic order collectively determine the norms regulating their coexistence, in conformity with the procedural norms that have already been established. Hence, in the final analysis, the notion of popular sovereignty is decomposed in the set of procedures that institute the deliberative process through which the identity between the subject and the object of the juridical order is approximated.

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*communicative rationality* implies that democratic deliberation must be understood as a process oriented towards the achievement of a consensus approximating the conditions of an ‘ideal speech situation’. Hence, democratic deliberation ultimately assumes a teleological character, defined by the attempt to fulfill a goal that transcends it. In Kelsen’s conception, on the other hand, deliberation is oriented merely towards the achievement of a reciprocally acceptable ‘compromise’, and there is no expectation that the outcome can be considered ‘rational’ from a context-transcending point of view. This implies that there is no outside criterion to establish the legitimacy of the outcome of democratic deliberation, and therefore no overarching ‘*telos*’ around which it is organized.
Finally, within the framework of the overarching theoretical system I have attempted to put forwards, also the category of rationality is preserved and incorporated, without being made into an ‘absolute’ foundation for everything else. The fact that I have sought to distinguish it from the contemporary strand of ‘rationalism’ within political theory does not mean that this theory rejects the category of rationality as such, falling back into a form of irrationalism or anti-rationalism. Rather, this category is assigned a specific place within this system as the necessary tool for extracting the formal institutional framework of democracy from the requirement of constructing a political order out of the reciprocal interactions and negotiations amongst the parties involved.

In this sense, it is a tool that is available and must be employed by the parties themselves in their deliberations and is accordingly susceptible of being employed for a variety of different purposes, but cannot be considered the conceptual foundation for the system as a whole, because it depends on a set of values and principles that it cannot itself create. Rather than a ‘source’ of legitimacy, it functions as a ‘means’ for working out the way in which individuals entertaining radically different values and preferences can coexist with each other within a framework of collective self-government.

The last issue that was mentioned in the introduction as constituting one of the key theoretical stakes of this dissertation concerns the self-sufficiency of democracy as a political form. Since this is the key stepping-stone for the objection moved by the Catholic Church against relativism in democracy, it is an issue that has already been discussed at length in the previous chapter. In this respect it will therefore only be necessary to summarize the main lines of the principal argument I have sought to advance.
The objection, as it will be recalled, is that a conception of democracy founded on a form of philosophical relativism would ultimately be self-defeating because the principle of popular sovereignty contains no internal ‘limits’ on the power that the people can legitimately exercise over themselves. This implies that if the majority or perhaps even the totality of a people were to turn against the democratic principle itself, democracy could effectively be overthrown by democratic means. For this reason, it is suggested that the democratic principle needs to be complemented by an additional set of principles, drawn from ‘outside’ the framework of democracy itself, in order to be made viable on its own terms.

This ‘need’ is precisely what gives substance to the idea that democracy is not a self-sufficient form of government on its own. Moreover, since the only possible foundation for the set of ‘external’ principles required to make democracy sustainable is assumed to have to consist, in the final analysis, in a transcendent conception of God, the argument concerning the self-sufficiency of democracy ultimately translates into an argument for subordinating the democratic principle of popular sovereignty to a requirement of consistency with a ‘religious’ criterion of legitimacy. It is in this sense that I have suggested it amounts to a form of political theology.

The conceptual strategy I have employed to rebut it consists in the reconstruction of an alternative theory of democracy that is not vulnerable to the same objection. Extrapolating from the work of Hans Kelsen, I have attempted to put forwards a theory that is based on three key ‘pillars’: an idea of popular sovereignty as the identity between the subject and the object of the juridical order, realized politically through an inclusive deliberative process oriented towards the formation of ‘compromise’ solutions between the parties involved; a conception of constitutionalism as the requirement that the process by which legally binding norms are created be itself legally regulated, fulfilled through the idea of a dynamic system of norms that “regulates
the mechanism for its own production”; and a conception of relativism as the adoption of a second-order perspective with respect to one’s substantive moral commitments, which brings out their relativity with respect to the specific value-spheres out of which they emerge, and is posited as the specific kind of civic ‘ethos’ presupposed by democratic institutions.

The key contention is that a theory of democracy based on these three ‘pillars’ is politically sustainable on its own terms, without needing to rely on any ‘external’, or ‘transcendent’ (i.e. ‘religious’) criterion of legitimacy. The essential reason for this is that constitutionalism is not assumed to be a separate principle superimposed on the democratic principle of popular sovereignty from outside, but rather the necessary legal means for instituting a deliberative process oriented towards the formation of ‘compromise’ solutions in the first place. This implies that in the theory I have proposed popular sovereignty is limited ‘internally’, by the logic of its own exercise: the same procedures and principles that make it possible to approximate the idea of an identity between the subject and the object of the juridical order also at the same time function as limits or ‘checks’ on what the people can legitimately do to themselves.

Hence, it is not so easy for a democratic order of this sort to overthrow itself democratically. In the hypothetical situation in which a majority of the people were to turn against the democratic principle itself, there would be an effective ‘limit’ preventing it from overthrowing itself: the constitutional principles that enshrine the democratic order and make it possible in the first place. Of course, according to the idea of legal ‘rigidity’ that sustains the hierarchy of norms, these constitutional principles could themselves also be overturned, if a sufficiently large measure of political support were available. However, the point is that increasingly stringent requirements would have to be met for changing principles considered
more fundamental for the political nature of the order itself. Hence, it is not true that democracy
is not capable of establishing politically effective limits to its own exercise of political power:
the interest in Kelsen’s concept of legal ‘rigidity’ lies precisely in the fact that it implies that
constitutional checks can be politically effective, even if they are not philosophically ‘absolute’.

At the limit, certain principles can be entrenched in the constitution by failing to specify
any legal means for changing them. This effectively means that changing them requires staging a
revolution to overthrow the constitution itself. To assume that this does not constitute an
effective limit against the unbridled power of the people over themselves is either politically
naïve or purposely disingenuous, because by definition revolutions have to face a very concrete
‘limit’ to the possibility of taking place: the full repressive apparatus of the state. Moreover, what
I have sought to suggest in this respect is that the fact that the theory I have proposed does not
exclude this possibility (as a last resort) is not a weakness but rather a strength, because it
amounts to a recognition of the contingent and non-absolute nature of democracy itself.

After all, what point would there be in sticking to a theory of democracy even if enough
people were against it that a revolution were possible? That would require a degree of coercion
that is certainly incompatible with the democratic principle itself: since democracy is based on
the principle of collective self-government, it supposes a society of democrats.
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