

## **Public Reason: A Stranger in Non-Liberal and Religious Societies?**

### *Abstract*

The article contributes to the discussion of political reasoning in general, and public reason in particular, analysed from the vantage point of comparative political theory. It aims to bring out the complexity and diversity of actual political reasoning, and it serves as a corrective to some over-simplified discussions of public reason, by defenders and critics alike. I argue that the notion of public reason can be extended to and is operative in non-liberal and religious societies, with the acknowledgment that it needs to undergo a methodological metamorphosis in the process. This requires what I call *multiple justificatory strategy*, which allows the use of different justifications in order to respond to the plurality existing in society. However, there are certain qualifications in the use of multiple justifications. I argue that this leads to two important conclusions, (a) that the functioning of an inclusive notion of public reason requires the strategy of multiple justifications, and (b) it contests the inclusivists' argument of the end or superfluity of public reason.

**Keywords:** Non-liberal and religious societies, public reason; multiple justifications; Rawls; Muslim-majority societies.

### **Introduction**

There is an extensive literature on the notion of public reason following John Rawls's theorisation and articulation of the notion. Rawls essentially considers it a principle of liberal democratic societies. Other scholars further expounded and developed the notion from different perspectives, but still studied in the context of liberal democratic societies. Hardly any theoretical elaborations have been made about the potential of the notion of public reason as a response to the religious diversity in non-liberal and religious societies, that is, whether in such societies religious reasons are offered and advanced without any filters in the process of law making.<sup>1</sup> Rawls's wide view of public reason allows the inclusion of religious arguments in public justification. Some liberal thinkers have put forward an inclusivist notion of public reason to suggest, on the one hand, that public reason liberalism faces a number of challenges and, on the other hand, that religious arguments in some circumstances will enter the process

of public justification.<sup>2</sup> Here I will argue that public reason can be a useful notion in non-liberal and religious societies to understand the complexity of legitimacy and justification based on various religious and non-religious grounds.<sup>3</sup>

The paper is divided into four sections. Section I gives an explanation of what we mean by non-liberal and religious societies. What are the main features that are most prominent in these kinds of societies, for example, in terms of religion, political legitimacy, justification of the law, etc.? In section II, I will be arguing that Rawls's notion of public reason can be extended to and seems to operate in non-liberal and religious societies. However, it will become methodologically different in the process of its widening and application in these societies and become less Rawlsian. In section III, based on the previous section's argument, it will be argued that a wide notion of public reason requires a strategy of justification that allows religious arguments to enter based on certain conditions. I will introduce a notion, what I call *multiple justificatory strategy*, which argues that a polity is legitimately permitted to use different justifications in order to reflect the plurality in society and for the sake of stability. In section IV, it is argued that in non-liberal and religious societies, the methodological metamorphosis of public reason will produce two important conclusions. On the one hand, the functioning of the wide notion of public reason requires the strategy of multiple justifications and, on the other, this strategy will argue against the inclusivists' argument of the end of public reason.<sup>4</sup>

## **I. The idea of non-liberal societies**

In discussing the idea of public reason in non-liberal societies, we should first have a clear view of the main characteristics of non-liberal societies and the features that distinguish them from other political forms and structures. By non-liberal societies, I will refer mainly, but not exclusively, to Muslim-majority societies and to religious societies in a broader sense.<sup>5</sup> However, this should not be generalised and, for that reason, I will point out the differences that exist among them and the commonalities that exist between them and other religious societies that might be considered as liberal, such as Israel. There are at least four main variables or criteria on the basis of which we can discuss the idea of non-liberal societies. They are political legitimacy, religious authority, the value of toleration and public deliberation. I will suggest the following four propositions to identify the nature and meaning of non-liberal societies:

1. Non-liberal states are legitimate, if they meet the political conditions that they are either governed by democratic procedures or, minimally, committed to the soft transfer of political power.
2. Religious authority or establishment is an important feature in these societies, but that is not to say that religion is specific only to non-liberal societies. There are liberal states that have, more or less, religious societies such as the US, Poland, Ireland, etc.
3. Toleration in non-liberal societies is not institutionalised by the state. The state's approach towards diverse religions in society is, in some cases, based on the favouritism of the majority religion and the recognition of other religious minorities. However, their religious rights are not always protected by the law.
4. Although in such societies a full democratic process for public scrutiny and critical discussion cannot be established, a space for public deliberation is, to some extent, available in which citizens can debate and contribute to the making of the laws and public policies.

*Table 1. Comparison between non-liberal forms of polity and other forms of polity based on four variables, intended to show that non-liberal polities are distinct from and not similar to authoritarian, theocratic and totalitarian regimes.*

	Non-liberal	Authoritarian	Theocratic	Totalitarian
Political legitimacy	Yes	No?	No?	No
Religious authority/establishment	Religious influence and authority	Vested interest political gains	Yes - religious state	Vested interest political gains
Toleration	Practised but not institutionalised	No	No	No
Public deliberation	Yes	No	No	No

### *1. Political Legitimacy*

There are different grounds according to which certain practices, institutions and political arrangements are considered legitimate. A regime is believed to be politically legitimate if it practises a democratic rule of governance that allows free democratic participation, guarantees democratically justified use of coercive power as well as procedures for public accountability and guarantees an extensive set of freedoms and autonomies for citizens (the autonomy to choose or not to choose any religion and to have legal and institutional protections not to have one's labour power cheaply exploited in the job market). However, a regime could be said to be legitimate by virtue of it is securing political stability or, in Hobbesian terms, when it secures order, protection, safety, trust, and the conditions of cooperation.<sup>6</sup> In this sense, stability will become an important political value that contributes to the question of political legitimacy and generates citizens' obligation to obey the law. So, in the context of non-liberal and religious societies, these can be claimed to have legitimacy if they guarantee stability together with toleration of minorities and other values discussed below. Authoritarian and theocratic regimes might be legitimate or illegitimate depending on the extent which stability and other values are protected. Although an authoritarian regime might be illegitimate because of its inability to generate stability, it doesn't follow that all its laws are illegitimate and that its subjects are not obliged to obey them – say, for example, a morally justified law punishing rapists and murderers.<sup>7</sup> However, the question of legitimacy in a totalitarian political arrangement is not a valid question since it creates terror and not stability.<sup>8</sup>

In contrast to the above mentioned political arrangements, non-liberal societies can also be called religious societies, whether or not the state is secular or non-secular, though it has to be noted that they are not understood to be synonymous. It is always an uneasy task to ascribe these descriptions when religion enjoys a special status within the society and the state is engaged in some sort of flirtation with the religious establishment or prepared to grant religion a bigger role in the political process. Some of these proclaimed secular states, like democratic Senegal, India and Turkey have, to a large extent, religious societies and in other non-secular states like Indonesia, Israel, Tunisia and Egypt, religion is largely manifest either in their politics or as part of their social and cultural composition. The study of public reason, its role and function will be different in these religious, democratic or nondemocratic societies compared to that in established liberal democracies. I will confine the discussion of non-liberal or religious societies to Muslim-majority societies for two reasons: one is methodological and the other is normative. First, the argument requires that it is more specific and focused and for that reason needs to be narrowed down in terms of scope and applicability. The main interest

of this article is to investigate public reason in Muslim-majority societies, though some research has been done in other non-liberal, specifically, Confucian contexts (Kim 2015; 2016). More importantly, the normative reason behind confining the scope of the argument to Muslim-majority societies is to construct, from a comparativist political perspective, a notion of public reason that aims to reinterpret such political values as public justification, legitimacy and deliberation in light of religious and cultural values. This might eventually impact the main liberal premises of public reason.

The governments of non-liberal and religious societies will be considered legitimate if their constitutions, laws and institutions acquire authority by virtue of having the right to rule and the right to be obeyed by citizens. The non-liberal states' right or authority to rule is originated in their having an effective political authority and are justified in exerting political power, and this leads to the obligations of citizens towards one another to obey the law.<sup>9</sup> However, since these societies are not perfectly just and the democratic systems established in some of them do not treat minority groups and different religions on equal terms, these political obligations, sometimes, can be questioned. In this paper, I will not attempt to provide a philosophical foundation nor will I articulate a conceptual definition of political legitimacy in non-liberal and religious societies. Instead, I will give a sketchy outline of political legitimacy that takes account of the political and cultural contexts in which the question of legitimacy is studied.<sup>10</sup> Political legitimacy requires that an institution or the state does not become dysfunctional by not protecting individuals' and group's rights and putting certain groups at a disadvantaged position compared to others. The legitimacy of non-liberal polities does not hinge upon the principle of liberal legitimacy. The political legitimacy in such religious heterogeneous societies is based on a minimalist understanding and is based on practising toleration towards religions. It will become clear in the course of the argument which of these societies, based on this understanding, will be considered legitimate. The fact that they have religious establishments or incorporate religion in their constitutions does not make them illegitimate. The justifications offered in these kinds of polity may, in some circumstances, appeal to religious arguments in political discussions and deliberations. The only condition that would make such polities illegitimate is when they enact religious laws and impose them on all citizens and violate toleration, freedom of religion and the right to have no religion.

## *2. Religious authority and establishment*

The question of establishment in Muslim-majority societies is not grounded in the same process of establishment of Church as in Western states. The church in Europe, historically, has been, prior to disestablishment, a strong religious institution and establishment existing alongside, influencing and guiding the state. Church establishment, in its various forms, still exists in some liberal democratic states such as in England, Scotland, Norway and Denmark. On the other hand, the establishment in Muslim-majority societies is represented in the Sharia and the legal and constitutional recognition of Islam as the official religion of the state. However, not all Muslim-majority states have the same relation with the Sharia nor do they implement it in the same way. The distance between the state and Sharia has been unspecified and varied. In almost all Arab states, the sharia has been stipulated as *a* or *the* source of legislation and they have established a single state religion. However, some of these states like Tunisia, Morocco and Egypt, despite pressures from religious institutions and authority, such as Egypt's Azhar institute, have not always legislated by appeal to religious reasons but, in most cases, appeal to secular reasons (more on this later). The same can be said about Israel which has a strong establishment and single state religion. Indonesia and India, on the other hand, due to their constitutional recognition of a plurality of religions and no state religion, are seen on the path of non-establishment.<sup>11</sup> The relation between religion and public legislation has been undefined and some of them have endeavoured to reconcile the religious law with the civil law, and the religious law mainly applied to issues of family law. This can be contrasted with an authoritarian or theocratic state, where the latter is explicitly a religious state and the former has a vested interest in religious authority by using religion, at times of political crisis, for example, to give legitimacy to its authoritarian power. It is here we understand that authoritarian states legitimise their political power through the back door of religion and religious authority.

The question of religious authority and the impact of religion on state legislation and politics in these societies may vary from one to another according to its religious, ethnic, social and cultural constructions. There are other factors that determine religious involvement in politics and, therefore, the relationship between religion and the state, such as the political ideology of the state, the extent of democratisation and the right of religious freedom, the model of state secularisation and the extent of religious legislation that the state has implemented. It is argued that the more pluralistic the society is in terms of the multiplicity of religions, ethnicities and cultures, the more the rights to religious freedom are protected and the more tolerant it is. Looking at Malaysia which has a diversity of religious and ethnic minorities and Tunisia with

less diversity, we notice that Malaysia scores on Fox's dataset (2008) better than Tunisia in terms of religious freedom. It fares even better than Turkey which is a secular state modelled on the French *laïcité* of strict separation between religion and the state.<sup>12</sup> The model of state secularisation has an impact on the state's capacity to secure religious freedom. Compare two Muslim-majority societies which have secular states like Turkey and Senegal which is also modelled on the French *laïcité*, but has adopted a tolerant approach towards its minority religions and the Sufi order within Muslims.<sup>13</sup> In terms of religious freedom, Senegal has high freedom while Turkey has low freedom which is the same as in Egypt, Tunisia and Indonesia.<sup>14</sup> The difference in the state's accommodation of minority religions and its tolerant approach towards all religions are clearly demonstrated by different variables on the same dataset. It is interesting to know that there is a big difference between Senegal and Turkey in terms of the measure of regulation and restrictions on majority religion or all religions.<sup>15</sup> Although both secular states score similarly low in terms of religious legislation and both are characterised by the disestablishment of Islam, it has to be noted that the current Islamic-minded party (AKP) governing Turkey has pushed for legislation favouring increasing Islamisation of society, thereby rocking the foundations of the Turkish secular state.

### *3. Toleration*

As it is argued in the preceding section, the relationship between religion or religious authority and the state, in most non-liberal and religious societies, varies according to different factors. A significant social and political value closely associated with the discussion of religion and religious freedom is toleration, especially in highly pluralised societies. What distinguishes these societies from otherwise liberal societies is that even with the secularisation of some of the states in the global South, this has not necessarily led to the institutionalisation of toleration in non-liberal and religious societies (see Table 1). Toleration as a practice and value is solidly rooted in these societies, since it runs through a long tradition of non-liberal and non-Western social and political life. It is necessary to understand what notion of toleration is characteristic of these societies and in what sense is it not institutionalised? Evidently, a comprehensive account of toleration goes beyond the scope of this paper.

The fact that some of these non-liberal societies are religiously and culturally pluralistic suggests that tolerance as a societal principle and value is widely recognised within society which is represented by the coexistence of diverse religions. Tolerance here is rendered as a

social value that is practised by individuals in their relations with one another and living with this plurality of religions and cultures as part of the actual social structure.<sup>16</sup> The value and practice of toleration exists in major traditions of religious thought. For instance, it played a major role in the Confucian and medieval Islamic thought in maintaining the religious and cultural heterogeneity of these societies and helped create a framework of coexistence. The notion of toleration that runs as a common thread through these religious traditions is an epistemological one that is based on the argument from scepticism. Philosophers like Al-Farabi and Averroes, who embraced a kind of philosophical scepticism argued that religion might not have the exclusive access to truth, but philosophers are the ones who are capable of knowing the truth through demonstrative reasoning or syllogisms.<sup>17</sup> This quest for finding another discipline besides religion that belongs to the realm of truth — in this case, philosophy — amounts to a project of scepticism that leaves space for tolerating other worldviews, religions and conceptions of the good. The scepticism argument for toleration should not be understood as relativism, but as an argument for the existence of other possible religions and ways of life that are worthy and hence need to be tolerated.<sup>18</sup> In the case of Al Farabi, he clearly acknowledges that excellence or perfection is not confined to one's own religion: 'It is possible that excellent nations and excellent cities exist whose religions differ, although they have as their goal one and the same felicity and the very same aims.'<sup>19</sup> In Confucian thought, there are considerable passages that discourage intolerance even though Confucianism, as Chan argues, can be seen as a perfectionist political doctrine as it takes the task of the state to be the promotion of morality and virtue. Nevertheless, it does not promote punishment or coercive intolerance, but rather ritual religious teaching which helps cure the soul (Chan, 2014, p. 146).

However, this societal attitude with regard to the cultural and religious pluralisms has not in all these societies evolved into an institutionalised practice of toleration.<sup>20</sup> Toleration, in this case, results from the long history of coexistence of different religions and cultures, the adherents of which have lived side by side for centuries. Although this natural toleration has existed, a respect or recognition conception of toleration towards other religions, in this case minority religions, has not enjoyed full legal protection. The existence of the freedom of religious exercise clauses in most of these constitutions has not led to state enforcement against intolerant practices of religions.

It is noted that there are different degrees of toleration even between secular states, depending on the normative principles governing their secularisms, whether they are understood as the respect and recognition of all religions without discrimination and the openness towards



religious reasons or as the strict separation of religion and the state and hostility towards religion. If toleration can be measured on the basis of religious discrimination against minority religions, it is interesting to note that in a secular state like Turkey the state is very intolerant of other minority groups and religions as there is no constitutional recognition of them. Notably, Turkey scores 25/90 (where lower is less discrimination),<sup>21</sup> higher even than both Morocco (20/90) and Tunisia (23/90), a country that was ruled by an authoritarian regime until 2011.<sup>22</sup>

What makes toleration a crucial feature of non-liberal and religious societies is the stability and coexistence of cultural and religious pluralisms. The principles of an inclusive notion of public reason will be crucial to this very question of stability.<sup>23</sup> It will be shown how this particular notion in these societies, where tolerance is practiced underpins a non-conflictual relation between religion and the state.

#### *4. Civil rights and political participation*

The question of toleration, discussed in the previous section, which comprises the issues of non-discriminatory policies against ethnic and religious minorities, protection of religious freedom and social stability based on non-persecution of all religions requires the protection of political rights and the provision of certain measures that would allow citizens to participate in public deliberation with regard to law making. In non-liberal and religious societies, the degree of political rights and opportunities for political participation will vary from one society to another and this variation exists even between Muslim-majority societies. These societies enjoy some political rights but they do not guarantee all political rights required by justice. However, the existence of these limited political rights is what distinguishes these non-liberal societies from other theocratic and authoritarian states that do not guarantee any of these rights. Some of these non-liberal and religious societies are democratic and some others are not democratic but fall somewhere between a restricted democracy or an autocracy and a monarchical system, like Egypt and Morocco. However, what is common to all these non-liberal societies, democratic or not, is that religion is a central part of political life and it is about 'public' religion, especially in Muslim-majority societies.

The main argument is that the relation between religion and the state in non-liberal and religious societies, whether their states are secular or non-secular, is more of cohabitation and negotiation. The more the state promotes the inclusion of religious arguments in political deliberation, the more the state maintains religious pluralism by giving justifications based on

religious and nonreligious reasons. The inclusion of religious arguments in the public deliberation on law making and the state's use of coercive power affirms a positive relationship between the state and religion and, more importantly, it does not alienate religious citizens from the political process. Citizens, religious and nonreligious, would feel alienated if their particular arguments which they sincerely hold are excluded from the process of justification. The provision and guarantee of political rights and participation to all religious and nonreligious citizens in a way that religious arguments can contribute to the advancement of social stability will strengthen the process of democratisation. The alienation, antagonism and suppression of religion and religious freedom by the state in non-liberal and religious societies that have religious diversity is counterproductive and leads to social unrest and brings about a less democratic and more authoritarian state.

To support this argument, I will refer to Fox's Religion and State dataset to show the *correlation* between a number of Muslim-majority societies with regard to the relation that the state has with religion and the level of political rights, participation and democracy that the state can guarantee. Two groups of states are taken as examples of Muslim-majority societies with two different approaches to religion and, therefore, two different relationships between religion and the state. The first group is Indonesia, Senegal and India.<sup>24</sup> Indonesia which is a non-secular state has the largest Muslim population in the world, and its constitution officially recognises a diversity of religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. It has a functioning system of democratic government that includes certain or limited guarantees of political rights, participation and the protection of religious freedom.<sup>25</sup> According to Fox's dataset, Government Regulation of Religion Index (GRI), Indonesia scores 6.5/10 (where lower is less regulation), which seems to imply more regulation. However, when it is measured according to the religion and state score from 0-100 (in which lower means less interaction and greater separation of religion and state), it scores 46.27/100 as shown in (Table 2). Due to the country's high diversity of religions, the constitution of Indonesia did not establish an Islamic state or sharia law. At the same time, it did not adopt a separationist view of religion and the state as it understood religion to be an important part of the public and political life of citizens. Senegal, with a Muslim majority and a secular constitution and state, is on the lowest index of government regulation of religion and scores the greatest separation between religion and state. All three countries, in the first group, Indonesia, Senegal and India have low or moderate government regulation of religion with the protection of religious freedom. They do not have an antagonistic relation with religion and they all give a public role

to religion. All three have democratic governments and they all score high on guaranteeing political rights and freedoms (see Table 2).

Table 2: Comparison of two groups of Muslim majority societies (with the exception of India) to show the relationship between the state's approach towards religion and the amount of rights and freedoms guaranteed.

	Group 1			Group 2		
	Indonesia	Senegal	India	Egypt	Morocco	Tunisia
GRI	6.5/10	0/10	5.8/10	8.3/10	6/10	6.2/10
Religion and state score	46.27/100	6.61/100	31.34/100	56.9/100	36.49/100	44.65/100
Does the government generally respect the right to freedom of religion?	Mostly	Yes	Mostly	No	No	No
Freedom of expression and belief score	11/16	14/16	13/16	5/16	8/16	4/16
Associational and organisational rights score	9/12	10/12	10/12	2/12	6/12	2/12
Political rights scale	2/7	3/7	2/7	6/7	5/7	7/7
Political pluralism and participation	13/16	14/16	11/16	4/16	7/16	3/16

The second group contains another three Muslim-majority societies: Egypt, Morocco and Tunisia.<sup>26</sup> When this group of countries is compared to the first group, it will be clear that the level of the state regulation of religion, persecution of minority religions and restrictions on majority and minority religions are all very high. These states do not protect religious freedom, adopting an antagonistic approach towards religions and controlling both majority and minority religions. There are, of course, variations even within this group, for example, Morocco appears to be having less regulation than the other two in the group, but this does not identify whether the regulation is meant to control or support. In fact, Morocco alongside Egypt and Tunisia is among the highest scores (6+) in Fox's dataset for active state religion: *control over support*

(Fox, 2008, p. 225). All three states in group 2 have poor records, as shown in (Table 2), in terms of political rights and freedoms. This shows that the states in this group have controlled religion with no protection of religious freedom and this controlling power has led to undemocratic governments and the creation of authoritarian states curbing all kinds of freedom.

## **II. Religious arguments in public reason and a contentious case of public justification**

How do we understand public reason in non-liberal and religious societies? Each of these societies has a different method in excluding religious arguments from and including them in the law and the justifications given for a particular law. In contrast to theocratic regimes, the states in these non-liberal and religious societies do not always try to provide religious reasons to justify the laws or to codify the law in accordance with religious law. The religious arguments provided, especially by the societies that possess democratic governments and guarantee religious freedom, have contributed to their social stability and the recognition of minority religions.

The wide view of public reason that Rawls introduced in what he called “the proviso” is a qualified permission for religious reasons to be included in the political discussion. The proviso suggested by Rawls is that “reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons — and not reasons given solely by comprehensive doctrines — are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.” (1999, p. 152). Rawls’s argument is conditional on the kinds of reason that will be subsequently provided for public justification and the process of justification does not require political reasons to be provided all along the way. The wide view of public reason allows religious reasons not at the end stage of justification, for instance, at the stage of making laws or public policies in the parliament, but at the early stages of public discussions, e.g., in town halls or public squares or the media. This two-stage process starting from public discussion to justification makes it imperative that religious reasons go through a process of transformation from moral or religious reasons to political reasons to be eligible for public justification. It is important for Rawls and many other scholars that the justification given for a law or policy is in terms of political reasons and not religious reasons (Rawls, 1999, p. 153; Macedo, 1997; Audi, 2000). The outcome here is comparatively of less significance. What if the law brings an egalitarian or just outcome and the only *available* reasons for the justification of the law was in terms of religious reasons that others would find unreasonable to reject or reasonable to

accept? Should these reasons be rejected or allowed? I argue that in order to answer the question, a different notion and strategy need to be developed that have the potential to allow religious reasons in the process of justification. The public justification demand posed by Rawls and public reason liberals would restrict their access. I will argue, based on discussing the example below, that in non-liberal and religious societies the access of religious reasons to the process of justification could lead to just laws. The strategy of justification I develop here will, therefore, be different from Rawls's and the inclusivists' positions.

The question that was posed above is different from the concern raised by the inclusivists in their objection to public reason liberalism or the exclusivists in two respects. First, what the inclusivists in liberal political theory are arguing for is the claim that religious arguments should not be excluded from political arguments and justifications, precisely for the reason that many religious citizens would oppose unjust and inegalitarian measures or policies, such as slavery, torture and cuts to social services.<sup>27</sup> Since religious arguments can have this role, they should not be excluded from politics and some inclusivist scholars have made a stronger claim that "a citizen is morally permitted to support (or oppose) a coercive law even if he has only a religious rationale for that law" (Eberle, 2002, p.10). The difference here between the question raised above and the concern of the inclusivists is about the political actor who provides the justification. For the inclusivists, the main actor is the citizen as to whether she is morally required to present political and nonreligious reasons in public justification. The political actor in the question raised here is the state, whether the law passed by the state and justified by appeal to religious arguments could be reasonably accepted by *most* citizens, not each and every citizen. The claim about political actor is to clarify that it is the state which makes laws and, in the following example on polygamy which will be discussed below, it is the state which makes the legislation. However, the state, ideally, represents citizens and the legislation is made by the parliament as a representative body. Although the political actor here is specified as the state, it is individual citizens who are the subject of the legislation and are the agents who express their consent or rejection of it. This, as it becomes clear, does not centre on Rawls's demand for the duty of civility according to which citizens have to give reasons to one another that they would reasonably accept and which could not include religious reasons as justifications, although his proviso extenuated this demand. I concentrate here on the state-citizen relationship more than on the citizen-citizen relationship.

Second, the crucial difference is the context. The question raised above is dealing exclusively with non-liberal and religious societies, where the state justifies a law in terms of a religious

argument based on reasons that appeal to the majority of citizens. However, the object of concern for the inclusivists is the liberal secular state, where religion still has a significant appeal within a large section of the society, but the use of state power is bound by democratic legitimacy with a commitment to the protection of individual and political liberties and the recognition of moral pluralism.

The moral and political validity of the claim that religious arguments form part of the justification in non-liberal and religious societies is based on the argument, presented in the previous section, that accepting religion in the public space and giving recognition to religious arguments, in religiously pluralistic societies, for justifying the laws will lead to a more democratic and less authoritarian government. This has been shown by giving the example of two groups of Muslim majority states with different attitudes towards religion that determines the level of democratization, political rights and protection of religious freedom. The first group guarantees religious freedom based on a recognition view and allows greater religious arguments in the political life accommodative of their religious plurality as compared to the second group.

Here, I will offer an example to support the argument that if the only available argument for justifying a law, that is just and promotes equality, was in terms of a religious argument then it is acceptable from the standpoint of the inclusive notion of public reason to provide such an argument provided that it produced a progressive law.<sup>28</sup>

The example concerns the law on polygamy in Muslim-majority societies. Tunisia is the only country among Muslim-majority states which rules polygamy illegal based on a religious foundation, namely on an interpretation of the Quran to prohibit such a practice.<sup>29</sup> This prohibition is:

based on the standard Modernist reasoning that since the Quran requires that justice be done among wives and also warns at the same time that it is impossible to do justice among co-wives, this amounts to a prohibition. It has been further argued that polygamy is at best only a permitted matter, not obligatory, and, according to a fundamental principle of classical Islamic law, the political authority has the right either to ban a permissible thing or to make it obligatory in accordance with the need of a given situation.<sup>30</sup>

The law passed to ban the practice of polygamy is, therefore, justified in terms of a religious reason and not a public political reason. However, the law in itself brings about a progressive outcome and it aims to rectify gender inequality within society. The question is: should this justification be rejected by citizens, that is, mainly by nonreligious citizens, because it is based on a religious argument? While the appeal to religious reasons to justify the ban in a Muslim majority society will not go against the normative commitments of devout Muslims, especially the traditional Muslims, the appeal to secular or public reasons might raise objections from a large section of society.<sup>31</sup> However, Mohammad Fadel, for instance, has argued that the Tunisian legislation violates public reason because the justification given is religious and not “rooted in public reason, for example, that it is harmful to women or children” (Fadel 2007, p. 11).

The reason that the justification might not be acceptable for exclusivist public reason is that it is the state that provides a religious argument to justify the law. For them it is acceptable if citizens, particularly religious citizens, were providing this religious argument to support such a law. However, exclusivists would not find this sufficient; they would ask religious citizens to translate these religious reasons into secular reasons (Habermas 2006) or present, at a later stage, political reasons that such comprehensive doctrines could possibly support (Rawls 1999).

The nonreligious citizens would support the law on the prohibition of polygamy as it satisfies their demands for a progressive law, but they would not accept the justification given for this law. On the other hand, religious citizens would accept the reason given in support of the law because it is grounded in a theological text and, therefore, they would support the law. This seems to be a case of ‘overlapping consensus’, as religious and nonreligious citizens would support the same law for different reasons. However, the justification given by public officials and the state for the law does not satisfy public reason, as Fadel argues, as it is not grounded in political and nonreligious reasons. Hence, a conflict arises, namely, between a case of overlapping consensus – that religious and nonreligious citizens can find reasons to support the law – and the demands of public reason,<sup>32</sup> as the justification given by the state is not rooted in political and nonreligious arguments. Would the nonreligious citizens give weight to the justification since the outcome promotes justice and equality? In this particular case, *public* justification and reason seem to be doing no work and they have less significance, at least for some citizens, compared to the outcome of the process of justification. To be clear, it is not argued that public reason and justification is not important in this case: in fact, they are



extremely important for religious citizens who support the law precisely because the reasons given are thought to be religious reasons. However, the public justification given has, possibly, less weight for secular citizens since the law, which will eventually be enforced, coheres with their moral worldviews and political ambitions. Another point that needs to be made clear to dispel ambiguity is that the view adopted here is not a consequentialist one. I am not arguing that nothing is important but the consequences. I argue that it is important to look at the outcome in the socio-political contexts of non-liberal societies which, in this case, is the law that is supported or rejected according to different arguments. The law as the outcome of this public political deliberation should be given a weight no less than the arguments leading to it.

If the argument above shows that nonreligious citizens would support the law, it would appear that they would support it because a) it is a progressive law; b) they understand that it is not always possible for the law to be justified in terms of nonreligious reasons. A possible objection that might be raised against this argument could be stated as follows: if the justification of the law prohibiting polygamy is based on a religious argument, namely, on Islamic reasoning and not on public reason – that is to say, based on the welfare of women and doing justice to children – there will still be religious citizens who would oppose the law, as they believe it does not reflect the true teachings of their religion and they would find the justification of the law in complete contradiction to these teachings. This is a case of conflicting religious interpretations and those who object to the law essentially oppose justice and gender equality. For that reason, their argument is refuted and discarded from the process of justification on the basis that their claims have no moral weight against the rest of the society. This case of conflicting religious interpretations could justifiably serve against advancing a religious reason that only appeals to a section of conservative-minded (salafist) Muslims who not only stand against the substantive content of the law, but also undermine the cohesiveness and stability of society. Their particular religious interpretation and reason would estrange other religious citizens, who in this case will be the majority, and should not be advanced as it goes against the spirit of practical reasoning and political argumentation. This point will be argued within the justificatory strategy proposed here to have a normative significance. However, if the exclusivist strategy is employed instead to solve this tension by appeal to strictly public and nonreligious reasons, the problem we will be facing is that religious citizens, to a large extent, will not endorse these reasons as unconvincing and un compelling and morally antagonistic. To the extent that reasons play an important role in the process of justification, the strategy proposed here does not frame its core argument on a consequentialist intuition.<sup>33</sup>

### III. The process of justification: multiple or singular?

According to the reading proposed here for public reason, it should not cause concern when a religious argument is given to justify a law provided that it demonstrates 1) that the law is endorsed by religious and nonreligious citizens; 2) that the law has a progressive nature and promotes justice and equality; 3) that religious citizens do not advance a particular religious reason, based on a particular interpretation of the faith, that both religious and nonreligious citizens could not endorse; 4) that the state should refrain from using religious arguments that are deemed to destabilise the moral and religious pluralism of society and violate individual freedoms. The inclusion of religious arguments in the process of justification does not mean that religious arguments are *tout court* the only viable options in non-liberal and religious societies. Such arguments should be viewed as simply one way of justification among others. It follows that public reason in these societies does not disappear but is operationalised when it is conceived as the *strategy of multiple justifications*.<sup>34</sup>

These normative criteria are introduced to assure that a religious reason can actually justify legitimate laws and the rationale is that without these criteria, non-liberal states would not be able to guarantee stability. One of the reasons that members of non-liberal and religious societies would accept such normative criteria is that they have no interest in spoiling the moral and religious plurality of their societies and consider toleration as an important value. Furthermore, civil society in these non-liberal societies would exert pressure on the state to adopt these criteria. In the above example, the Tunisian state could not advance a religious reason that is based on a conservative and particularistic interpretation of the faith that would lead to not being endorsed by nonreligious and a large segment of religious citizens. Hence, the state has the duty to refrain from supporting religious arguments and reasons that jeopardize the political legitimacy of the state and undermine the value of toleration. The justification for these four normative criteria is grounded in the fact that they are realistic and that non-liberal societies have an interest in endorsing them. In non-liberal societies, most religious citizens, who do not find democracy inconsistent with their values, would endorse the progressive nature of the law as they do not want a particularistic and religious – conservative argument to be advanced and eventually win the support of the state.

In the preceding section, I argued that religious arguments are, in certain circumstances, part of public justification and I demonstrated that they can produce progressive laws. This section will try to prove that religious arguments are not always appealed to in non-liberal and religious

societies to justify the laws, rather, in most cases, nonreligious and secular reasons are provided to justify the laws. I contend that public reason in these societies will still have a place, but should be understood as an inclusive notion that employs multiple justifications.

Regarding the plurality of justifications and, hence, religious arguments in the process of justification and the use of public reason in non-liberal and religious societies, there are two claims that can be made: a factual and a normative claim. The factual claim is that religion and religious arguments in most of these non-liberal and religious societies do not only form the socio-cultural context, but also they enter state legislation and the process of justification of some laws. This claim is based on the fact that most of the constitutions and laws of these countries have explicit references to religion or give status to religious jurisdictions or authorities. The normative claim, however, is that despite these references to and the status of religion, these states do not always appeal to religious reasons because of their contentious nature and unfair consequences. Instead, in most cases, they use nonreligious public reasons to justify the laws and policies in order to avoid the charges of sectarianism and religious discrimination and to generate political stability.<sup>35</sup> This latter claim asserts that the process of justification in non-liberal and religious societies follows multiple lines of justification including religious ones and that this notion implies a moral and political duty on states to support those justifications that lead to non-sectarian, non-discriminatory and just laws. In some instances, the reasons that were appealed to by some of the non-liberal states to justify religious discrimination and restrictions on religious freedom were not religious reasons. The Egyptian state, for example, in its discriminatory laws against the Copts and Baha'is did not appeal to the majority religion's authority or Islamic law. Instead, it appealed to secular nonreligious conceptions, such as 'public order', to restrict or ban the religious practices of minority religions.<sup>36</sup>

The strategy of multiple justifications in non-liberal and religious societies, such as Muslim majority societies that are not ruled by theocratic regimes, functions on the basis that while secular and nonreligious reasons and arguments form part of the justification of decisions and laws, religious arguments also play a role in justifying certain laws that pertain to family jurisdiction. However, the caveat is that even at the level of family jurisdiction, not all religious arguments can produce laws that will generate social justice. These particular areas of concern should be limited by other nonreligious arguments that address questions of justice and equality.

The historical precedent of using mixed justifications for laws can be found in polities that were under the rule of the Ottoman Empire. If we wished to consider the mixed or multiple justifications as the processes that are grounded on the appeal to various juridical codes, a clear historical example of this is nineteenth century Egypt, a period when it was ruled by the Ottomans and European colonial powers. Because of the diverse religious, cultural and demographic components of the countries which were subject to the empire – such that in some places, non-Muslims were the majority of the population, a system of diverse jurisdictions applied to these diverse peoples. While , courts applied to Muslim populations alongside customary laws that had mainly applied to rural populations, the *millet* system and court applied to various non-Muslim sects and religious groups, mainly, Christians and Jews.<sup>37</sup> In Egypt, for example, the European powers introduced Mixed courts which had jurisdiction over European residents and administered their civil affairs and relations with the Egyptian population.<sup>38</sup> The existence of these different courts and systems for managing religious plurality was, undoubtedly, discriminatory and unequal by the modern standards of equal recognition of different religions. However, what is interesting here in studying the Ottoman system of religious diversity is that the process of legislation was not based on the appeal to a single and universal process of justification. They, instead, were justified according to different religious reasons as well as nonreligious reasons. Thus, in the metropole of the Islamic Ottoman empire and its peripheries such as Egypt, sharia courts were not the only juridical foundation according to which all laws were justified. Sharia courts were set to resolve issues related to religious and family matters. In all other matters, different nonreligious justifications were used and civil codes – derived from European legal codes – were applied in the Mixed and National courts in Egypt.<sup>39</sup>

The reliance on different justifications and courts allowed religious reasons to be part of the public domain and thus, the distinction between religion and politics is less clear in Muslim-majority societies. However, the strategy of multiple justifications does not attempt to build or solidify the project of the separation of judicial spheres as, for instance, between the jurisdiction in family matters and the jurisdiction in other civil matters. In the legal foundations of most Muslim-majority societies, the law in personal matters such as in marriage, inheritance, divorce, etc., is often conflated with individuals' religious identity and thus sharia has become part of what is regarded as the law of personal status. Against this backdrop, the strategy proposed here does not attempt to valorise the division between public and personal laws in which sharia covers the latter and becomes part of the legislation of the citizens' personal

matters. The strategy of multiple justifications then tries to transcend this division and it emphasises that religious reasons might be able to play a part in the justification of particular laws, reasons that might not be publicly objectionable. These religious reasons will not be publicly objectionable if they satisfy the four conditions set out at the beginning of this section.

The objection that could be put to the multiple justificatory strategy is that it is too permissive as it always allows religious reasons to enter the process of justification thereby changing the methodology of public reason. However, in non-liberal and religious societies the methodology of public reason will inevitably change. Religious arguments will not only be presented in support of reasons that are deemed to be public: they will be part of the process of justification as the inclusive notion of public reason tries to emphasise. In response to the former objection, the multiple justificatory strategy will not allow religious reasons to always enter the process of justification, but only when they satisfy the conditions set out above.

#### **IV. The strategy of multiple justifications and broadening public reason**

If the inclusive notion of public reason is read as flexible enough to allow different reasons to enter public justification, the strategy of multiple justifications seems to be crucial in non-liberal and religious societies, especially in the religiously pluralistic ones, to maintain stability. Some examples of these societies have been provided above to show the role of religion in public and political life. Equally, it has been demonstrated that the most stable of these societies are those which give religion a public role and, in some cases, allow religious arguments to be publicly used in justifying the laws. The strategy of multiple justifications aims, therefore, to respond to and address the deficiencies that exist in the theory of public reason liberalism and the theory that declares the end of public reason. The “multiple justifications strategy” does embody a distinctive model of public reason essentially because it is a strategy in non-liberal and religious societies and it is distinct in two ways. First, it is different from public reason liberals (or what some call it the standard view) in that it permits religious arguments alongside nonreligious arguments in the process of public justification and not only at the level of citizens’ discussion. Second, it is distinct from the inclusivists’ view in that it does not permit religious arguments without qualifications. It permits religious arguments only if it leads to progressive laws and policies. The argument presented up to this point has been in support of an inclusive notion of public reason that sees religious reasons, in some circumstances, to be part of the justification of laws that promote justice and equality. The strategy of multiple justifications then addresses this need and its appeal lies in its potential to construct an

equilibrium between different reasons and arguments that compete to offer justifications. In non-liberal and religious societies, in particular, this strategy helps create a degree of balance between religious and nonreligious citizens' views in terms of the arguments they present against or in support of the laws.

The secular constitution of India, for example, has not prevented the state giving a prominent public role to religion and building its principle of secularism on a model that is adaptive to religious arguments. A strict line, therefore, has not been drawn between religion and the public: religion is not depublicized (Bhargava, 2011, p.104).<sup>40</sup> The working model of the strategy of multiple justifications in the Indian model of accommodating religion in public and political life, seems to be crucially important for the preservation of peace between diverse religious communities (see Bhargava, *ibid*). Considering the multifaith reality of India, the presence of religiosity in public life and its significance in the life of individuals and society, the secularism of the state is defined by this omnipresence of religion and religiosity. Not only rituals and ceremonials but also individuals' moral and ethical principles define what religion is. However, the term 'secular state' does not appear in the Indian constitution and the state-religion relationship is not based on any principle of neutrality. Despite granting and securing religious freedom to all adherents of different religions, the state has reserved the right to interfere in religious matters. Article 25 of the constitution on religious freedom allows the state to intervene in religious matters in the interest of social reform.<sup>41</sup> It states that this article should not prevent 'the state from making any law providing for social welfare and reform.'<sup>42</sup> The fact that the state engages with religion and perceives it as integral to both individuals and communities, by making the financial support of educational institutions based on religion or language a constitutional right runs counter to the secular model of excluding religion from the public. The principle that the state should refrain from giving, as Smith argues, "financial aid and other forms of patronage to religion finds no support in Hindu, Buddhist, or Islamic traditions" (Smith, 1999, p.183). From the perspective of the strategy of multiple justifications, the Indian constitution accommodates diverse religious and nonreligious arguments and grants them free space in the public. Even though the constitution does not establish an official religion nor does it recognise a certain religion as the majority's religion, it does not, at the same time, adopt an exclusivist notion of public reason.

This strategy is also a response to the theory that declares the end of public reason.<sup>43</sup> It is not argued here that this strategy ends the point and purpose of public reason, it only broadens its scope and argues that religious reasons are not sufficient on their own. There is, thus, a need

for public reason in non-liberal and religious societies. The example of the Indonesian constitution attests to how this Muslim-majority society could not exclude religious or nonreligious public arguments from the legislative and decision making processes. In the constitution, the two sides of the argument were presented. On the one hand, religion was not excluded from public life and certain areas of legislation and, on the other, the constitution framers appealed to a nonreligious secular principle to justify the founding of a non-religious state. In the 1945 constitution, the new Indonesian state adopted what is known as the *Pancasila*, the five founding principles of the state: belief in God, justice and humanity, unity of Indonesia, democracy guided by the inner wisdom of deliberation and, finally, the realization of social justice.<sup>44</sup> These principles give a clear indication of how the state tries to negotiate its relation with religion and adopt a strategy in which both religious and nonreligious arguments can play a role in the justification of the laws.<sup>45</sup>

However, which one has the priority over the other when it comes to making the laws? When and how should the religious argument be employed? And should, the religious or non-religious be taken as the essential argument for making or justifying the laws? The suggested answer based on the argument advanced above is that non-religious arguments should be the essential principle in any law-making processes. The founding principles, such as justice (freedom and equality), democracy, protection of human rights and toleration should take priority over any other arguments that contradict these principles. Religious arguments cannot be employed if they deem to violate these principles and they can only be offered if they support laws that advance these values. Religious arguments cannot be taken as essential unless the state in question is a theocracy that does not recognise any but the religious laws. To make my point even clearer, religious arguments are only useful in the justification processes for granting the actual acceptance of the law and consequently assuring stability.

In the multiracial and multifaith context of Indonesia –where Muslims dominate as the largest majority – these questions have been settled by prioritising non-religious reasons and arguments over religious ones. In the run up to independence, the Islamists wanted the independent Indonesia to be an Islamic state and some of them wanted sharia to be included in the constitution and to be applied to Muslims. However, the founders of the new state saw that an Islamic state was untenable with Indonesia’s level of plurality and so decided not to include sharia in the 1945 constitution, as this would have alienated other religions.<sup>46</sup> The founders of the new state chose, instead, to appeal to non-religious or public reasons, outlined in the five principles as the foundations of the state. This is an appeal to a notion of public reason, aligned

with the strategy of multiple justifications, which allows religious arguments and reasons to play a part in public justification. They offered compromises to the Islamists by including the belief in God in the constitution. However, they did not succumb to the pressure to establish a religious state and, instead, appealed to the values of democracy and social justice. The reliance on this qualified inclusive notion of public reason and an accommodationist approach towards religion has created a marked difference, as argued in the first section, between a religious society like Indonesia and other religious societies, like Egypt, in terms of the political stability and democratic rule that each could achieve.



## Notes

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- <sup>1</sup> Some exceptions are the works by Sungmoon Kim, who argues for public reason perfectionism as opposed to public reason liberalism. He considers it exclusively in a Confucian context and, hence, puts forward public reason Confucianism as one of its variations. See, e.g., Kim (2015; 2016).
- <sup>2</sup> Liberal inclusivists have raised several objections against public reason liberalism or excusivists, see, e.g., Vallier and D'Agostino (2013); Eberle (2002); Eberle and Cuneo (2015); Gaus (2012); Gaus and Vallier (2009); March (2013). On the other side, Macedo (1997); Schwartzman (2004); Quong (2011); Audi (2000) defend public reason liberalism and the exclusion of religious reasons from public justification.
- <sup>3</sup> I shall make it clear, right at the outset, that the main aim of this paper is not to write a critique of public reason theorists nor is it a survey of public reason theories. I will attempt to reconstruct, in a preliminary way, an account of public reason that is specific to the non-liberal and religious context.
- <sup>4</sup> The closest notion to the notion of multiple justificatory strategy is legal pluralism. A system that adopts legal pluralism is to employ within its legislative body different legal sources which different religious or cultural groups can appeal to in adjudicating social, family and civil matters. However, the notion of multiple justificatory strategy is different in an important sense, namely that it concerns itself with the different justifications that the political system offers in support of a law or public policy. In contrast to the thesis of legal pluralism, it does not hold the position that every religious or cultural citizen or group should be able to appeal to a law, that is, originated in their own faith or doctrine. It also focuses on the idea that in non-liberal and religious societies, nonreligious reasons alongside religious reasons could be advanced to justify a law. It will become clear later in the argument that what kind of religious arguments can be advanced and how the possible implications for individuals' exclusion can be prevented. On legal pluralism, see Menski (2006, 82-129).
- <sup>5</sup> I should mention here as an obvious connection Rawls's 'decent non-liberal societies.' Despite this affinity, there is a clear distinction between Rawls's ideal type and mine in that while Rawls's model belongs to his ideal theory and he offers an imagined society, 'Kazanistan,' I deal with non-liberal and religious societies as real and not imaginary societies and, therefore, my criteria will be different from Rawls's in identifying these types of societies.
- <sup>6</sup> See Williams (2005, 3) for putting it in this way.
- <sup>7</sup> See Simmons (1999, 770).

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<sup>8</sup> In a theocratic regime like Saudi Arabia political legitimacy cannot be established, because of the absence of the political values of toleration towards minority religions and cultures, public deliberation and accountability, and because of the imposition of a religious authority above all other legislations. But, it might be argued that political legitimacy in a theocratic regime like Iran can be established since after the Iranian revolution in 1979, people voted through a referendum for an Islamic republic. However, its legitimacy fades away when it starts to eliminate political dissent, impose a single religious authority and a politics of intolerance.

<sup>9</sup> See Buchanan (2002) where he argues that the notion of political authority includes both the right to be obeyed and the justification for wielding political power.

<sup>10</sup> See, e.g., Horton (2012).

<sup>11</sup> Bader (2007, 54) makes helpful distinctions between strong establishment and weak establishment and the resultant distinctions between disestablishment and non-establishment and their various meanings in different socio-historical contexts.

<sup>12</sup> See ARDA website on the link below for these figures: <http://www.thearda.com/internationalData/MultiCompare4.asp?c=73,%20225,%20197,%20108,%20139,%20109,%20226,%20113> See also Fox (2008).

<sup>13</sup> It is noted on Fox's dataset that Senegal scores zero out of ten for government regulation of religion index (lower is less regulation), while Turkey scores 5.1 out of ten. See also Stepan (2011) for a detailed discussion of these points and a comparison between different models of secularism. See also Stepan (2000).

<sup>14</sup> If measured between low, moderate and high on Fox's dataset.

<sup>15</sup> Senegal scores (3/87) but Turkey scores (35/87), see ARDA.

<sup>16</sup> See, e.g., Reid and Gilson (2007).

<sup>17</sup> See Averroes (Hourani, 1961).

<sup>18</sup> For a detailed analysis of the paradoxes and limits of toleration, see Forst (2013).

<sup>19</sup> See Abu Nasr al-Farabi (Walzer, 1985, 281); see also Nederman (2011, 353).

<sup>20</sup> On the difference between tolerance and toleration, see Bader (2007).

<sup>21</sup> Turkey under the rule of the AKP is undergoing a process of Islamisation and the regime is drifting into authoritarianism which started after 2007, after the consolidation of its power and the success it gained in the past four consecutive rounds of legislative elections since 2002. After his success in the presidential election in 2014, Erdogan has been steadily sinking the country in authoritarian policies that witnessed their peaks in the purge of his opponents after the failed coup of 2016 and the 2017 referendum for constitutional changes

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which after the 2018 election victory have led to the perpetuation of his presidency. See Human Rights Watch's world report of 2015 and 2018 on Turkey; see also Yesilada and Rubin (2011).

<sup>22</sup> Whereas in Senegal the state is more tolerant towards other ethnic and religious groups and recorded no discrimination case scoring 0/90. See ARDA.

<sup>23</sup> I have no intention to discuss Rawls's notion of stability. His notion in *Political Liberalism* (Rawls, 1996) is the stability for the right reasons, the achievement of which centres on the acceptance by all citizens of the political conceptions of justice that is consistent with their comprehensive doctrines. This also brings up the discussion of the duty of civility and this has been subject to criticisms and generated massive discussion on this topic. As I have made it clear, I do not intend to review the literature on public reason, and this goes beyond the aim of this article.

<sup>24</sup> India is not a Muslim majority state but it has the third largest Muslim population in the world. The example of India is given here as an example of a religious society that gives significant role to religion in the public life and that it is a secular democratic state.

<sup>25</sup> Indonesia's democracy was not without great failures. Under the rule of Sukarno from 1959-1967 the country was under an authoritarian regime and the following president, Suharto, was clinging to power for several decades.

<sup>26</sup> It has to be said that the argument here is based on Fox's 2008 dataset and at that time Tunisia was an authoritarian state, but this has changed since the popular uprising of 2011 and establishment of new governments.

<sup>27</sup> See Zerilli (2012); Waldron (2012); Wolterstorff (1997). See also March (2013) for a discussion of the inclusivists' arguments for the inclusion of religious reasons and a different inclusivist argument.

<sup>28</sup> This condition does not exist in the inclusivists' position. Eberle (2002), for example, permits the use of purely religious arguments in support of a coercive law without describing the nature of the law. In my account, this condition is crucial to secure progressive laws in political contexts where guaranteeing such laws require much civil society pressure and struggle.

<sup>29</sup> The other exception is Turkey which bans the practice based on the country's secular foundation and laws.

<sup>30</sup> Rahman (1980, 457).

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<sup>31</sup> Fazlur Rahman argued for this as it appears in the quote mentioned above. Another Muslim scholar who argued for the prohibition of polygamy based on Islamic reasons was a prominent late Ottoman-era jurist, Mansurizade Said, see Kurzman (2002), quoted in Fadel (2007, 11).

<sup>32</sup> Here if public reason is understood in its standard or exclusivist notion.

<sup>33</sup> For this last point, I am grateful to the anonymous reviewer for pressing me on this to clarify the argument.

<sup>34</sup> The strategy of multiple justifications could perhaps be read along the lines of convergence theories of public reason offered by Gaus (2009), Stout (2004), D'Agostino (1996) and Vallier (2009, 2011, 2014). However, the main differences between the strategy proposed here and convergence conception of public reason can be summarised in the following. First, methodologically speaking, the strategy of multiple justifications, not to be too ambitious, is mainly designed for non-liberal and religious societies and not for liberal and secular societies. Second, while the convergence conception puts emphasis on individual reasons that satisfy the intelligibility requirement (Vallier, 2014, 106) to support laws, it does not put much emphasis on the outcome, i.e., the laws and public policies. The strategy of multiple justifications, by contrast, does not permit religious reasons unless they satisfy the four conditions set out in section 3.

<sup>35</sup> The political instability of some of the non-liberal societies like Egypt and other Middle Eastern countries is not due to the fact that religious legislations are part of the law but it is, to a large extent, due to the political authoritarian structure that dominates in the region and which controls religion and discriminates against religious minorities.

<sup>36</sup> On this point, see, e.g., Mahmood (2015); Mahmood and Danchin (2014, 130); Agrama (2012).

<sup>37</sup> The Ottomans established the *millet* system to keep non-Muslim communities under the tutelage of the empire, especially Christians and Jews who are considered People of the Book and were administered according to the *dhimma* system by granting them a certain amount of rights and autonomy. Under this system, they could practise their faith and exercise their own jurisdictions in family issues. However, this system was based on two unequal terms. First, it imposed on these communities a poll tax (*jizya*). Second, these communities, under this system, enjoyed lower status and rights than Muslims. In fact, non-Sunni Muslims did not have the same rights as Sunni Muslims. For a fuller discussion of these points, see, for example, An-Naim (2008, 184-96).

<sup>38</sup> See Asad (2003, 210-11).

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<sup>39</sup> Mixed courts were those courts which were administered by European judges and in which the legal matters of European inhabitants in their dealings with the Egyptians were governed. For a detailed account of these legal transformations in the nineteenth century Egypt, see Asad, *ibid*.

<sup>40</sup> An-Naim also argues that in India it was only during the British colonial rule when religion was privatised. “What British colonial officers believed to be ‘personal’ and ‘religious’ law became synonyms, though such closed categories would not have made sense for Hindus and Muslims in their precolonial experiences... What the colonial administrators decided was the realm of ‘personal’ matters, such as marriage and inheritance, was the repository of religious identity.” An-Naim (2008, 149).

<sup>41</sup> On this point see D.E. Smith (1999, 193).

<sup>42</sup> <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf>

<sup>43</sup> See, e.g., Zerilli (2012); Enoch (2015).

<sup>44</sup> <http://www.wipo.int/edocs/lexdocs/laws/en/id/id048en.pdf>

<sup>45</sup> This role playing process cannot and should not occur at the same time. So if nonreligious arguments used to justify the law, then this should be sufficient and no effort should be made to find similar religious reasons. The state should not try to simultaneously accommodate both nonreligious and religious arguments to support or reject a law. The religious argument is seen to be usefully effective where other arguments cannot play that effective role in bringing different perspectives together and maintain the stability of society.

<sup>46</sup> See An-Naim (2008, 224).

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