Chapter Four

Coercion by citizens and the role of positions

4.1 Introduction

The assumption underlying the argument from coercion is that citizens have the power and the opportunity to coerce one another, albeit not directly but via laws. I identify three possible ways in which citizens using arguments in public discourse can be understood as being involved in exercising coercive power. The most plausible interpretation, which is the main focus of this chapter, is that citizens decide on laws in the course of public discourse, and thereby authorise the coercion exercised by law and implemented by government.

In connecting the use of arguments to coercion, I argue, three steps are necessary. The first step leads from arguments to positions; the second from positions to decisions; and the third from decisions to coercion. I analyse each step in the main part of this chapter. The main claim is that the links between the first two steps are weak; the relationship between the use of religious arguments and coercion is in fact a circuitous route with many tenuous links, which is not able to sustain the claim that using arguments in public discourse allows citizens to exercise coercive power over one another. This means that the main justification for public reason as it applies to citizens is unconvincing.

In this chapter I introduce a distinction between arguments and positions. This distinction does not figure in present public reason theories but it is necessary to un-
derstand what happens in public discourse. Moreover, it is essential for understanding what a religious position is, as distinct from a religious argument (I provide a definition of a religious position in section 4.3), and for identifying what is and what is not problematic about religious arguments. In particular, the distinction between religious arguments and religious positions exposes a characteristic peculiar to public reason theories: many of them seem to oppose religious arguments either because they confuse them with religious positions, or because they oppose secular positions which are sometimes defended by using religious arguments. Neither of the two can or should be addressed using the notion of public reason, or so I argue.

4.2 Using arguments and exercising coercion

The success of the argument from coercion as moral justification for public reason depends crucially on the claim that citizens exercise coercive power over one another.

After specifying the conditions under which an action can be considered coercive, the issue to be addressed is how political coercion proceeds, and the role citizens play in it. I can think of three interpretations of the way citizens’ discourse relates to coercion.

4.2.1 Interpretation 1: citizens exercise coercion

In the first interpretation, citizens exercise coercion. This means that giving arguments for policies is in itself a coercive act, or a set of many individuals’ coercive acts. According to this account, citizens are both the coercees and the coercers: when discussing laws and regulations, all citizens are equally positioned as bearers of the sovereign power; as citizens they are all equally subject to the law. In public discourse, citizens seek to change other citizens’ will by persuading them of the benefits of their preferred policy option; since this is a public process the attempt at interference is known to all participants. In this interpretation, the relationship between citizens’ discourse and the exercise of coercion is direct and strong, yet very probably this interpretation would not be embraced by any of the proponents of public reason because it does not adequately capture the nature of political coercion. The concern of public reason is not with coercive public reasoning; the coercive interference with someone’s will is located not primarily in public discourse but in laws.
and regulations, which prescribe behaviour. The same applies to the threat of punishment as a condition for coercion: the threat of punishment is not given in public discussion but is provided for by rules and regulations for actions and behaviour. It is not discourse that makes citizens do what they do not want to do, but laws and regulations.

4.2.2 Interpretation 2: citizens authorise coercion

This leads to the second interpretation, according to which coercion is exercised by laws and regulations. Citizens decide on laws and regulations in a process of public discourse, and government exercises and administers laws and regulations and puts the coercive threats of the law into practice. According to this interpretation, citizens authorise coercion: they decide how coercion is to be employed, to what effect, and with which sanctions. It is their will that interferes with citizens’ behaviour, in the form of laws. In this interpretation, the coerces are the citizens, who are directly subject to laws and regulations. Coercion is exercised by law, which is in turn decided on by citizens and executed by government. To put it shortly: the law coerces and the citizens decide on it.

The relationship between citizens’ discourse and the exercise of coercion in this account is indirect but still strong. Citizens’ discourse results in law which coerces, and citizens are the authors of the law and therefore the authors of coercion. Government is involved in coercion in that it executes the laws, which represent the will of the people (or a majority thereof).

The statements by proponents of public reason cited above suggest that this interpretation underlies the concept of public reason. The claim that citizens exercise coercive power is then best understood as meaning that citizens exercise political power when making laws which coerce. This is essentially what the phrase “citizens as lawmakers” means (see chapter 3, section 3.6). In this interpretation, citizens are regarded as the authors of laws, while at the same time being those who are subject to the laws and their coercive effects. In the rest of this chapter I analyse the plausibility of this interpretation and its central notion of citizens as lawmakers.

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1 This is not to deny that there can be coercion in discourse. Participants may try to change the other participants’ will and may use threats, intimidation and the like to interfere with what others say in public discourse and with the policy options they support. Power relationships between participants play a major role here. While these aspects of discourse are relevant from a broader perspective of coercion in public deliberation, they do not coincide with political coercion as defined here.
Before analysing this relationship between citizens, laws, and coercion, some remarks are appropriate on the third interpretation of the relationship between citizens’ discourse and the exercise of coercion. In this third interpretation, liberal democracy, like any other political system, is seen as a coercive system. It is the system as such that has coercive effects, regulates citizens’ life and punishes behaviour of which its rules do not approve. In a democratic system citizens have a role in this system which may be less than that of lawmakers but more than that of private people pursuing their private concerns. It is this role of citizens which in this interpretation establishes a relationship between citizens’ discourse and the exercise of coercion. Citizens are part of a system that coerces, and when they act in their capacity as citizens they participate in the system that coerces and are therefore involved in the exercise of coercion. They participate by taking part in public discussions, by voting, by joining political parties etc. In this third interpretation, the relationship between citizens’ discourse and coercion is both indirect and weak.

There are two ways in which this interpretation could be relevant to the relationship between citizens’ discourse and coercion. The first is to regard the coercive influence of citizens’ political behaviour within a coercive system as indeterminate. According to this view, citizens can never be sure about the precise nature and importance of their contribution to the system, and thus of their share in the coerciveness exercised by the system as a whole. The claim could be made that, acting under uncertainty, citizens are well advised to take the safe route and exercise self-restraint, on the basis that their political behaviour risks being coercive. However, as I argue in section 4.4, the role citizens have in democracy is not indeterminate. Rather, their share in the exercise of coercive power can be determined by looking at the political processes in democracy and the citizens’ share in them.

The second way in which the interpretation of the coercive system is relevant to the relationship between citizens’ discourse and coercion points to a way in which citizens do not make decisions but could be able to influence decisions. As participants in a coercive system, citizens stand in relation to other actors in the system, most notably their representatives, who make decisions on laws. If citizens are related to their representatives (in a way that remains to be specified), they could have a certain share in decision making, albeit an indirect one. I explore this interpretation in section 5.2 on Rawls, as Rawls addresses this issue in *Political Liberalism*.
4.2.4 An example

The following example clarifies what is involved in the relationship between religious arguments and coercion. It is a very roughly sketched version of public discourse, serving not to give an empirically adequate account but to highlight the main elements in public debate.

Suppose we publicly debate the issue of abortion and I say: “I oppose abortion because I believe in God and God has forbidden the taking of life”. Suppose you are an atheist and think that all religious believers are fundamentally mistaken in believing in God. You reject my argument as unconvincing and misguided. You also think that the right of women over their own bodies outweighs any considerations in favour of protecting the foetus, and that is why you think abortion should be allowed without qualification. You say “I advocate an absolute right to abortion because the right of women over their own bodies is so important that it outweighs any other consideration”.

So far, all that has happened is an exchange of arguments and opinions on policy options. There is no reason for either you or me to feel coerced by what the other said, nor has there been a coercive act. Neither of us has openly tried to change the other’s will by threatening him with undesirable consequences if he were to do what he intended to do.

A public discussion has more than two participants, though. Imagine that many of the other citizens in our discussion happen to be people who think like me. There are also a few citizens who think like you and we have a prolonged debate in which we exchange arguments but cannot reach a common position. Finally, we take a vote and the outcome is that two-thirds of participants favour a ban on abortion. Our government passes a law that expresses the will of the majority, thereby making abortion illegal.

Imagine too that a few months later you become pregnant with a child you do not want. Given your openness to abortion and your unwillingness to have a child, you want to have an abortion. However, there is the new law, which makes abortion illegal. You realise that technically it would still be possible to have an abortion (you could find someone who offers to do it for a large amount of money) but you know that any violation of the law against abortion is punished with at least five years’ imprisonment. Even though you would want an abortion, you decide not to have one because you do not want to risk going to prison.

Thinking back to our public discussion, you feel that the law prevents you from having the abortion you would like, and that law was passed thanks to a majority in favour of a religious argument. You feel this is a matter of illegitimate coercion.
because you are being coerced on grounds you cannot (and think you should not be made to) accept.

The example brings to the fore the most prominent elements involved in the relationship between religious arguments and coercion: the religious argument which I put forward in our discussion was an argument for a certain position, namely, the position that abortion should be illegal. You defended a different position, for different reasons. A vote was then taken and a decision reached. Because of the distribution of positions on abortion in our society, my position against abortion found a majority. The decision resulted in a law. The law has a coercive effect on all citizens, even on those who did not agree with it, in that it prevents them from taking a course of action they might otherwise have taken. The elements, then, which I wish to highlight are: arguments, being advanced in favour of positions; different positions, leading via some decision mechanism to a collective decision; and, finally, a collective decision leading to coercive political measures backed by the punitive powers of state authority. Three steps are involved in getting from arguments to coercion: a first step from arguments to positions; a second step from positions to decisions; and a third step from decisions to laws. I now examine these steps in turn.

4.3 Arguments and positions

The focus on arguments in relation to liberal democratic justice is the main feature of public reason liberalism, distinguishing it from other, more minimal, variants of liberalism. In minimal liberal theories, the emphasis is on the decision aspect of political processes. Public choice approaches to democracy, for example, focus on dilemmas of collective decision making such as transitivity of preferences, impact of voting procedures etc. Public reason liberalism, by contrast, focuses on reasons for political arrangements, and relates political justice to the adequacy of reasons as justifications for policies.

In political theory, minimal and more comprehensive approaches can be seen as ends of a spectrum extending from whether a political theory of democracy is dedicated to the “why”-question (the reasons underlying collective choices) to the “what”-question (the choices themselves) (List 2006). However, in the present context these approaches appear as two steps in a model of the political process that need to be taken together to provide an adequate description of the line from arguments to coercion. The public reason approach, with its focus on arguments, religious or otherwise, elucidates the relationship between arguments and positions. But its claim that there is something by way of coercion involved in using certain
arguments cannot be made sense of without also drawing a line between positions and decisions (and from decisions to coercive laws).

4.3.1 Religious positions defined

In chapter 1, I used Audi’s definition of a secular argument to define a religious argument as depending on the existence of God (or denying it) or on theological considerations. By analogy with this distinction between secular and religious arguments, I propose to distinguish between religious and secular positions. Distinguishing not only religious and secular arguments, but also religious and secular positions will help identify what public reason is about and what it can and cannot achieve as a normative principle in political theory. The distinction also helps to clear up a widespread, if subliminal, misunderstanding about public reason.

Distinguishing secular from religious positions is somewhat more complicated than distinguishing between religious and secular arguments. Consider the following positions:

1. Abortion should be prohibited.
2. Blasphemy should be prohibited.
3. People should be free to believe in God.
4. Adults should be free to buy and possess soft drugs.

If we apply Audi’s definition of a secular argument to positions, we could say that a religious position is one which refers in terms of its content to a religious belief, practice, or entity. This explains why position 1 is unlikely to be taken as a religious position: it does not refer to religion at all. It also explains why position 2 is generally taken to be a religious position. However, this simple definition of a religious position would make position 3 a religious position, and would establish a basic commonality between positions 2 and 3, even though, obviously, position 3 is of a different nature, since it favours an option to be religious and prescribes neither a religious belief nor course of action. Position 4 also favours an option but does not refer to religion. To explain these differences, I suggest the following two criteria for religious positions:

a) The position refers to a religious belief, practice, entity, or concept.

b) The position prescribes a belief or course of action for all citizens or a specified group of citizens.

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2 A religious position that is prohibited by law in some countries, as in the Netherlands (article 147 of the Dutch criminal code). Moreover, the United Nations human rights council has passed several anti-blasphemy resolutions in the past few years.
Both criteria must apply if a position is to be considered religious. If only one or neither applies, a position is considered independent of religion and in that sense secular. Of the above four positions, on my definition 1 is secular (b but not a), 2 is religious (a and b), 3 is secular (a but not b), and 4 is secular too (neither a nor b).

The definition of a religious position also covers positions according to which a religious belief or practice should not be prescribed for the whole population, but only to a religious group. For example, the position “All Muslim women in this country should wear a headscarf” is a religious position by my definition. By contrast, the position “Everyone who wants to drive a car needs a driving licence” is not.

An objection to my definition may be that it relies on an implausible distinction between prescribing a belief or course of action and prescribing that there be an option for a belief or course of action. Consider the position “People should be free to kill those who insult the Lord”. This is not a religious position in my account because it prescribes an option for a course of action rather than a course of action. It is, like position 3, a position that refers to the degree of freedom citizens should have to pursue the courses of action recommended by their faith. Indefensible as the position may be, it is not a religious position according to my definition, nor should it be, as it is a position marking the extent of religious freedom rather than imposing a religious course of action. That is why I think that the distinction between courses of action and options for courses of action should be maintained.

I see only one case in which my definition may lead to counterintuitive results, which is the case of atheistic positions. Consider the position “Children should be told in school that there is no God”. It fulfills both condition a and condition b and is therefore a religious position according to my account. This may seem odd: after all, it is an anti-religious position. I believe this need not be a problem for my definition, though, at least not in the present context, which involves the analysis of when the use of religious arguments in discourse constitutes coercion on a religious basis. A position that prescribes atheism can be considered a position that prescribes a view of religion and in that sense is a religious position, which could constitute coercion on a religious basis.

\[\text{Note that I am not saying that atheism is a religion; note too that my use of the term atheism here does not refer to all positions which are not explicitly religious, but only to positions which explicitly reject a belief in God.}\]

\[\text{This is also why I think that the position “All Muslim women in this country should wear a headscarf” is a religious position regardless of who expresses it. It may be, for example, that someone who objects to Islam holds this position because he thinks that Muslim women should be recognisable in public life. As his position is one that seeks to impose a religious practice, I see no problem in that position being religious by my definition.}\]
4.3.2 Positions and arguments, secular and religious

With this distinction between religious and secular positions in place, we can identify four possible relationships between secular or religious arguments and secular or religious positions: (1) secular arguments for secular positions; (2) secular arguments for religious positions; (3) religious arguments for religious positions; (4) religious arguments for secular positions.

(1) Secular arguments for secular positions. Secular positions can in all cases be argued for using secular arguments. In many if not all cases several secular arguments will be available for the same secular position. A ban on Sunday shopping, for example, can be argued for by pointing to possible adverse consequences of Sunday shopping for family life; referring to the disproportionate burdens for small enterprises and stores; or stressing the importance of a common day of rest for society. I do not discuss the case of secular arguments for secular positions, since religion is not at stake, so it falls outside the purview of this dissertation. Suffice it to say that questions of the legitimacy of arguments can arise in this context in cases where arguments are secular (not religious) but arguably inaccessible (consider esoteric arguments, for example).

(2) Secular arguments for religious positions. This is a theoretical possibility but it is not relevant in practice. Religious positions, such as the position that sins should be punishable offences, are hardly ever argued for using mainly secular arguments. This is because the main point about religious positions lies precisely in their relationship to a religious belief or practice, while secular arguments for such positions cannot capture this element and therefore miss the point. The position that the word of God should be the guiding star of government, for instance, is a religious position and can be defended by religious arguments (pointing, for example, to the belief that God is the ultimate authority of both spiritual and earthly life). It is possible to think of secular arguments for this religious position, such as the argument that if the word of God were the guiding star of government there would be a stronger emphasis on the importance of moral norms in public life and that would be beneficial to society. Such an argument would be instrumental; that is, it would refer to a religious belief or practice in order to bring about a secular (non-religious) good.

5 There are a number of positions, frequently held by religious citizens, for which secular arguments are also common or at least imaginable. For example, a Muslim citizen may hold that it is wrong to eat pork because Allah has forbidden it, and a secular, animal-loving citizen may agree that one should not eat pork because one should not eat meat at all. Notice, however, that the position that one should not eat pork is not a religious position according to my definition.

6 There is one example of a religious position defended by a secular argument that is relevant here, which is Pascal’s wager. Pascal suggested that one cannot determine by reason whether God exists.
Moreover, religious positions, because they prescribe a religious belief or practice for all citizens, are most usefully discussed as a problem of the freedom of (and from) religion rather than in terms of arguments. I do not therefore discuss this case.

(3) Religious arguments for religious positions. Again, religious positions are more pertinently considered as posing the problem of freedom of religion. Where religious arguments are concerned, this category overlaps with the following:

(4) Religious arguments for secular positions. Not surprisingly, all examples from the public reason literature fall into this category, namely, the religiously founded rejection of abortion, same-sex marriage, stem cell research, euthanasia etc. As I argued in chapter 2, the rejection of these conservative positions is a concern of many proponents of public reason, including the inclusionists. The distinction between secular and religious positions can help explain why such secular positions against abortion etc. pose particular problems for liberals who seek to oppose them. A religious position, like prescribing morning prayer for all schoolchildren, can be rejected with the argument that it constitutes an imposition of a religious practice. In order to point out the illegitimacy of this position it is therefore sufficient to refer to the right to freedom of religion. By contrast, secular positions such as the prohibition of abortion cannot be discarded that readily. Religious freedom will not be enough as an argument in these cases, as the connection of a secular issue with religion is neither obvious nor exclusive. Abortion, or its prohibition, are practices that are in themselves (that is, independently of their justification) not reliant on a religious entity, belief, or practice. They can be justified with respect to religion, but they can also be justified independently of religion. The argument that embryonic cells constitute human life from the point of conception, for example, is a serious argument against abortion which does not rely on a religious belief or practice or the statement of a religious authority.

4.3.3 The importance of distinguishing arguments from positions

The fact that there is in virtually all cases more than one reason to support a given position is referred to as overdetermination. Virtually all secular positions can be based on a number of different arguments, both secular and religious. Take the position that statutory store opening hours should exclude Sunday openings. This position can be justified by pointing to the status of the day of rest in the Bible. It can

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or not, but that one should nevertheless believe in God. The stakes are high – infinite happiness – and it is therefore a safer bet to believe in God than not. I thank Jan-Willem van der Rijt for pointing this example out to me.

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also be argued for without any reference to religious belief, saying, for instance, that store opening on Sundays would have detrimental effects on family life. The fact of overdetermination has a number of consequences for decisions on positions. Given a pluralist society, it is impossible to infer from a given decision on an issue the bases individual citizens had for supporting it. Moreover, it is likely to happen often that citizens have more than one reason for supporting a position. It is very likely that the ultimate decision will always be based on more than one reason for a position.

Nevertheless, some authors in the public reason literature deny overdetermination for certain positions. In particular, several of them have claimed that the rejection of homosexuality or same-sex marriage can only be grounded on religious arguments. Christopher Eberle, for example, claims “there is no credible nonreligious reason to believe that homosexual behavior is immoral or otherwise aberrant” (Eberle 2002, p. 9). Similarly, Michael Perry holds that “one can fairly doubt that any secular argument that all homosexual sexual conduct is immoral is sound” (Perry 1997, p. 85). Perry corroborates his claim by scrutinising two possible secular arguments against same-sex marriages: the claims that homosexual relationships do not bring forward children; and the claim that they do not properly constitute the loving friendship characteristic of marriage. What Perry shows – in a painstakingly elaborate discussion taking up almost twelve pages – is that these arguments are not persuasive as reasons against same-sex marriage. Most political philosophers will agree with Perry, but that is not the issue. Perry argues that the argumentation based on those two propositions against same-sex marriage “is not sound. It is not an argument we should accept” (ibid., p. 95). But this is a non sequitur. There is a difference between finding an argument unpersuasive and it being inaccessible. Paul Weithman has put this point nicely, defending

the importance of distinguishing those who violate the obligations of citizenship from those whose politics we dislike. There may be many people who use religious arguments to support positions with which we vehemently disagree and candidates whom we hope will lose. It does not follow from this that they violate some obligation of citizenship. [...] Though the philosophical arguments used to defend restrictions on religious political argument and activity are very powerful, the intuitive appeal of these restrictions depends, I believe, upon unspoken assumptions about the policies that religious citizens advocate and vote for; and upon opposition to those policies (Weithman 2002, p. 5).

It is important not to confuse illegitimate with unpersuasive arguments. The reason this happens, as I argued above and in chapter 2, is the fact that these positions – against homosexuality, against same-sex marriage, against abortion and so on – are conservative. It is therefore no surprise that most political philosophers, aca-
demics with mostly liberal inclinations, should find such positions unpalatable, and direct their calls for citizens to show respect and take a self-critical attitude towards their own beliefs, particularly those concerning opponents of abortion and homosexuality. Although it is nowhere explicitly stated, these characteristics of the public reason literature do suggest that some proponents of public reason believe that the notion of public reason could and should be an appropriate tool for declaring certain conservative positions illegitimate (for a similar claim, see Fish 1999).

As an example of such suggestive writing, consider Jeremy Waldron’s contribution to the debate (Waldron 1993). In defending the need for a concept of public reason for citizens, Waldron emphasises the power of citizens in a democracy:

Acting collectively as voters, they can inflict great harm on minorities, or on one another; they can make the difference between peace and war; they can leave needy persons overseas languishing in famine if they make it clear that they will vote out of office anyone who increases foreign aid. [...] Persons such as the homeless, the poor, the sick, the old, the very young, the unemployed, and the hungry are, so to speak, at the mercy of their fellow citizens on election day. [...] If the voters decide to roll back property taxes, or to vote out of office anyone who proposes to increase the fiscal demands made upon them, they are in effect deciding that nothing is to be done, or that less is to be done, to assist people in need. So, if an argument can be made in favor of officials not exercising their political power on the basis of their religious convictions, consistency requires that the same argument can be applied also to voters (Waldron 1993, p. 828).

What Waldron tries to do is to establish a relationship between using certain arguments and outcomes. The stakes, Waldron suggests, are high: there is always the danger that the wrong decisions are being taken, decisions which deny help to those in need of help. Note that Waldron implies that those who decide and those who are affected by the decisions are two different sets of persons. This may be the case where foreign aid and foreign policy is concerned, but not in the case of the unemployed, for example, as unemployed citizens are also voters (formally, they have the right to vote). What Waldron describes may be considered misuses of power by majorities over minorities, but what their precise relationship is with the concept of public reason remains unclear. By pointing to decisions which many readers may think morally objectionable, and by appealing to the readers’ feelings of compassion

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Similarly, Stephen Carter has suggested that liberal academics are motivated by a fear of the US American Christian Right but that they wrongly suppose that the movement is dangerous because of its religiosity rather than because of its platform (Carter 1993, p. 266). Jason Carter notes that the American debate is characterised by polarisation between the religious right and the secular left (Carter 2006).
for people in need, Waldron suggests that limitations to arguments in discourse are apt to avoid such undesirable outcomes.

The problem with this suggestion is that the concept of public reason is neither necessary nor sufficient to prevent the adoption of such conservative policy options as prohibiting abortion or not introducing same-sex marriage. Public reason is not necessary for this purpose, as practical political examples show: in many countries where religious arguments feature in public discourse, abortion is nevertheless allowed and same-sex marriage has been introduced (as is the case in the Netherlands, for instance). This is partly related to the relative unpopularity of religious arguments in Europe, but also to the facts of pluralism and overdetermination: any plural society will likely have citizens who support these positions for either secular or religious reasons, as well as citizens who reject these positions for either secular or religious reasons. Such cross-cutting cleavages (producing, for example, alliances between secular conservatives and religious citizens) are evident in many discussions in European countries on abortion, same-sex marriage, statutory store opening hours, Islam etc.

There are also theoretical reasons why public reason is not necessary to prevent the adoption of conservative policy options. The liberal arsenal of arguments is large enough to reject positions like the above with reference to other values and ideals than those of public reason. These arguments are not as conclusive as religious positions, but they are available and they have the advantage of targeting the position itself, regardless of whether it is supported for religious or secular reasons. Same-sex marriage, for example, can plausibly be defended from a liberal viewpoint with reference to the values of negative liberty (not being prevented from doing something one wishes to do that would not do harm to others) and the positive value of civic equality for all, to name just two. It is possible that such arguments might prove inadequate to convince the majority of a society, but such is the course of democracy.

Neither is public reason sufficient to declare the above positions illegitimate, and this again has to do with overdetermination. Contrary to what Eberle and Perry hold, there are in fact secular arguments against homosexuality and same-sex marriage. Two which are not infrequently heard are “It’s against nature” (or a variety thereof, such as “If everyone did that, humanity would die out”) and “It is incompatible with the notion of marriage as a unit for procreation”. One need not be persuaded by such arguments to see that they are not illegitimate. On a conception of public reason that focuses primarily on religious arguments, it would still be legitimate to argue in favour of these positions if one were to use only secular arguments. Even a Rawlsian conception of public reason, which excludes not only religious arguments but all
arguments based on a comprehensive doctrine, would have difficulties stating why these secular arguments would have to be considered illegitimate, as it is not clear whether they are based on a comprehensive doctrine. In sum, public reason as a notion of the accessibility of arguments has only limited regulatory influence on the content of secular positions.

### 4.3.4 Consequences for public reason theory

There are three main consequences that can be drawn from the above distinction between arguments and positions in relation to the public reason literature. The first two consequences point to the neglected role of positions in public reason for the notion of liberal justice and the notion of respect; the third consequence concerns the relationship between coercion and the use of arguments.

In terms of the relevance of positions for justice, it appears that some positions will seem blatantly unjust to most citizens in a liberal democracy, regardless of the reasons supporting them. This is because these positions are in violation of central liberal-democratic values such as liberty and equal rights for all. I believe that any position outlawing homosexuality (as distinguished from same-sex marriage) would meet with such reactions. Of course the notion of public reason need not entail the claim that justice is exclusively a matter of arguments, but only the weaker claim that arguments play an important role. However, it seems that in some cases at least, justice is primarily a matter of positions, not arguments. This seems to be the case with most of the examples on which public reason liberalism focuses, namely, abortion, same-sex marriage etc. Perhaps this is the case because citizens tend to hold strong views on these issues. Citizens care about *what is done politically* in these respects, more so maybe than why it is done.

Secondly, if we take the focus on arguments seriously, we arrive at counterintuitive consequences for the notion of respect that plays such an important role in public reason liberalism. Remember that, according to the notion of public reason, citizens who use illegitimate arguments in public discourse display a lack of respect for their fellow citizens. This means that citizens who do not observe their duty of citizenship can be reproached by other citizens for their offence. Suppose that in a public discussion a secular citizen opposes same-sex marriage with the argument that “it is against nature”, while a religious citizen also opposes same-sex marriage, but with the argument that “it is an abomination to God”. According to the logic of public reason (which interprets respect as a matter of giving reasons that are accessible to others), the former is more respectful behaviour than the latter. This will
strike most people as counter-intuitive. Even more counter-intuitively, a citizen who advocates same-sex marriage on the ground that God has created all human beings in his image would be behaving with less respect, other things being equal, than a secular citizen who opposes same-sex marriage with the claim that it would lead to the extinction of the human race. This shows that the criterion that arguments should be accessible if behaviour in politics is to be considered respectful is insufficient and even distorting. Moreover, this conception of respect is extremely unlikely to coincide with the citizens' view (it is likely that a citizen who wishes to have the option to marry his same-sex partner will not agree with this view of respect, according to which the anti-same-sex marriage citizen respects him more than the pro-same-sex marriage religious citizen). These examples show that positions rather than arguments sometimes determine how respect may best be understood.

The importance of positions for both justice and respect demonstrates that public reason theories attach too much importance to arguments, to the cost of positions. This is not to say that arguments do not play a role in either justice or respect, nor that theories of public discourse should not be concerned with the arguments participants use. There should not, however, be an exclusive focus on arguments but a balanced view of the role of both arguments and positions in discourse. Public discourse is not only about arguments, but also about positions. Participants do not only participate in discourse to exchange arguments for the sake of it; they exchange arguments in order to argue for certain positions.

A third consequence of the distinction between positions and arguments concerns the relationship between the use of arguments and the exercise of coercion. It has become apparent that, so far, there has been no instance of coercion in the use of religious arguments. Coercion cannot be related to the arguments themselves, nor even to the positions they are supposed to support if these positions are secular and not religious. Moreover, I have argued that not all positions that refer to a religious entity, practice, belief, or concept are ipso facto religious positions. In the cases discussed in the public reason literature, viz., secular positions, which are often defended with religious arguments, positions are opinions, standpoints on is-

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8 The notion of respect as envisioned by public reason liberalism is, in line with this interpretation, directed at persons, not the abstract notion of public reason (respect for what public reason demands) nor at the spirit of democracy. Moreover, my point holds independently of whether one thinks that respect should be accorded to citizens in their capacity as free and equal persons (claiming, as in the above case, equal rights) or to citizens in their specific identities (as homosexuals, for example). For this distinction, which is the distinction between recognition respect and appraisal respect, see Darwall 1977.
sues, and have no coercive effect in themselves. Moreover, even if these positions seem unpalatable to many, their opponents need to show why they are also illegitimate. Given the fact of overdetermination, reference to religious arguments alone is not sufficient to declare a secular position illegitimate.

### 4.4 Decision making in modern democracy

The next part of the reasoning leading from the use of religious arguments to coercion is the step from positions to decisions. This step is not straightforward. Modern societies are characterised by a plurality of reasons, but also by a plurality of positions. Political matters are often of such a complexity that there is a broad range of relevant positions. In the case of abortion, for example, the legislative choice is not usually between abortion's prohibition or legalisation, but the conditions relating to either option. Presumably even the staunchest opponent of abortion would hesitate to ban abortion unconditionally (including, for instance, the case of a risk of permanent damage to the health of the mother). Similarly, supporters of abortion often accept that some cut-off line is needed and that there should be no unconditional right to abortion (for example, that the right to abortion should only apply up to the third month of pregnancy). The choice that has to be made, then, is one between a large number of partly very similar positions. The intricacy of many issues on which positions need to be chosen complicates the process of arriving at a decision and contributes to the improbability of a consensus. Because a consensus is unlikely as the outcome of a deliberation procedure, a decision mechanism has to be introduced to arrive at a decision on an issue.

There are many ways in which democratic political processes of decision-making can be portrayed from the perspective of public reason. Public discussion between citizens is a central element of public reason and the exercise of political power is located with citizens. Citizens exchange arguments, arrive at decisions, and the decisions are then implemented to form the political arrangements of a polity. The state and state actors hardly figure in these theories, or only in so far as they act under orders, executing the will of the people. Public reason is believed to apply to citizens because citizens are seen as those who are primarily responsible for the

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9 Note that this chapter deals only with the citizens' public discourse, so that hierarchies of power are less important than they would be if legislators, judges etc. were included in the discussion. For an account of public reason as it applies to public officials, see chapter 6.

10 Exceptions to this general rule that supporters of public reason focus on citizens and neglect the role of the state and its actors are discussed in the next chapter.
exercise of coercion, or more precisely, as the authors (rather than the executors) of coercion.

There are two ways in which citizens can be pictured to decide about coercive laws in the way public reason thinks they do (as a collective of citizens without public office). One is by public discussion and the other is by voting.

4.4.1 Voting

Consider first the case of voting. This is one of the main tasks of citizens in modern representative democracies. Universal suffrage is one of the most basic democratic participatory rights that citizens enjoy. Through elections, citizens determine who is to govern them, and hold their representatives accountable. In general elections, citizens as a collective make a decision that is binding on all: they decide who is to represent the population as a whole in parliament. The decision at stake in elections is a decision on and between persons. It is thus not about a position (for or against abortion, same-sex marriage and the like), but about a person or a party. It has been argued that a citizen's support for a representative is based on the candidate's position on issues and an expectation of what the candidate will do if elected, given his positions (Weithman 2002, p. 117). While this may be true, it certainly is not all that is involved in voting. Subliminal factors like one's social group and one's parents' political orientation influence voting decisions. Moreover, they are also influenced by reasons which are not directly related to a position, such as trust in the leadership qualities of a representative, or considerations surrounding strategic voting.

Public reason does not have the ambition to offer a detailed, empirically complete account of political processes. As a normative political theory it rightly takes the liberty of abstracting from the messy circumstances of real life. Yet even if we assume that citizens also vote for representatives on the basis of their positions, the relationship between arguments, voting, and exercising coercion does not become much stronger. First, positions will not be the only relevant consideration; parties, their leading figures, the perceived competence of candidates etc. will also play a role. Second, even if positions were the only considerations citizens entertained when deciding in favour of a representative, the result of a general election could not be construed as a decision on a position, because it cannot be taken for granted that citizens all decide on the same issue. Some will think that abortion is very important; others will decide which representative shares their position on the protection of the environment. Moreover, it is unlikely that a single position would serve as the underlying rationale for an individual voter's decision. Rather, citizens
will have to weigh all the issues they think important, on which a representative may have opinions which partly diverge and partly converge with theirs.

In elections, therefore, the general outcome is not an outcome in favour of or against a position, but the result of a much more complex set of considerations. If citizens exercise coercion in voting, it is coercion about who is to represent the population as a whole, not the coercion of imposing a decision regarding a position. Elections cannot be seen as decisions on issues.

One could argue that, while this may be correct in the case of general elections, referenda are a different case. Referenda are decisions on issues, made by all citizens; they commonly take the form of simple decisions between two or three positions (for or against ratifying a convention of the European Union, for example). In many cases the decision taken in a referendum is not meant to provide only an indication of public opinion; rather, the outcome is a binding decision, which will be turned into law. Here, then, it should make a difference whether citizens support positions for religious reasons, given that their position is directly relevant for the outcome. However, the question is how far an individual voter is relevant to the outcome. The following considerations apply to all large-scale decision procedures, that is, not only referenda, but also general elections.

One major factor in collective decision-making processes is the role of decision mechanisms in aggregating opinions. A large body of public choice theory has indicated problems associated with collective choice situations (see, for example, Mueller 1989). These are more relevant to general elections than referenda, since general elections involve a wider range of possible choices and are structured according to the rules of the electoral system (voting for parties or for candidates; having one vote or more etc.). Outcomes can vary greatly depending on the size of the electorate, the form and size of electoral districts, the choice of proportional representation or majoritarian electoral systems, the number of parties in the party system and many more factors.

Two other points are important for citizens’ role in decision making (see Gaus 2007). One concerns the decisiveness of a voter, that is the responsibility born by a single voter in bringing about the outcome. The precise size of a voter’s decisiveness is contested, but it is clear it is very small. A single voter can only decide the outcome in the unlikely case of an exact tie. The likelihood of this happening in a typical US presidential election is about one in 12,500, or probably even less (Brennan and Loamasky 1997, p. 20). The value of decisiveness is infinitesimal if the probability that any voter will vote for one of two options is not very close to 0.5 (ibid., p. 54). This is unlikely to be the case in either referenda or general elections, so the responsibility of a single voter in bringing about the outcome is minimal.
The second point concerns the case in which a religious citizen endorses a posi-
tion solely on religious grounds but the position is defeated in the decision proce-
dure. Here the link to coercion is even more tenuous. If the position the religious voter
embraced was not chosen, and therefore not turned into law, the religious voter is
not responsible for wrongful legislation since there was none. One may still claim
he attempted coercion, although it should matter that it was unsuccessful, and that
the reasons for voting are not made public.

Given these points, the process of voting does not substantiate the relationship
between arguments, positions, and decision making.

4.4.2 Public discourse

Even though proponents of public reason frequently write about citizens’ public dis-
course, they probably do not assume – or even wish to prescribe – that there are gen-
eral deliberative assemblies of all citizens in which issues are debated and decisions
are made. Such large-scale deliberative assemblies are a fiction: not only do they not
exist, neither are they going to exist; they are neither feasible nor practicable.

While there are no large-scale deliberative assemblies, there is public discourse
in democracies. Proponents of public reason do not have much to say about how they
picture the details of public discourse, its participants, location etc. By contrast, the-
ories of deliberative democracies have devoted more attention to the circumstances
and possibilities of a general and public discourse of citizens. Seyla Benhabib has
suggested that

the procedural specifications of this model [the deliberative one, A.S.] privilege a plurality of
modes of association in which all affected can have the right to articulate their point of view.
These can range from political parties, to citizens’ initiatives, to social movements, to voluntary
associations, to consciousness-raising groups, and the like. It is through the interlocking net of
these multiple forms of associations, networks, and organisations that an anonymous ‘public con-
versation’ results. It is central to the model of deliberative democracy that it privileges such a public
sphere of mutually interlocking and overlapping networks and associations of deliberation, con-
testation, and argumentation (Benhabib 1996, p. 73f.; emphasis in original).

What Benhabib describes here is the ensemble of associations commonly referred to
as civil society. One may emphasise that not all participants in civil society need to be
organised in associations; things like newspapers, radio, internet and television are
important to public discourse in civil society without their constituting voluntary
associations or organisations.

Traditionally, civil society is conceptualised as a sphere separated from and inde-
pendent of the state. Jürgen Habermas, for example, has described the public sphere
as a body of private persons who come together to develop a public opinion, which serves as a counter-weight to the state. Similarly, Rawls has conceptually separated the “background culture” of the media and civil associations from the realm of the state, and emphasised the importance of unrestrained discourse in the background culture (see next chapter).

### 4.4.3 Weak and strong publics

What characterises civil society as a place of public discourse is precisely its separation from the realm of political decision making. In the media, in voluntary associations and other loci of discourse, what takes place is opinion-formation, not the making of political decisions. Because of that feature of the public sphere in this classically liberal model – the separation of opinion formation from decision making – Fraser has referred to the public sphere as “weak publics”, defined as “publics whose deliberative practice consists exclusively in opinion formation and does not also encompass decision making” (Fraser 1992, p. 134). Their critical discursive check on the state is made possible by the distinction between the public sphere and the state; if the public sphere were to acquire the authority to make decisions, this function would be lost.

Thus, far from rendering discourse meaningless, the separation between open discourse as opinion formation and the state sphere of political decision making makes autonomous, critical discourse possible. Apart from being a counterweight to the state, public discourse can have a number of other benefits: it allows citizens to inform each other about their positions and increase the clarity of their own positions by having to explain and justify them; it helps enhance civic trust and understanding through communication, deepens citizens’ understanding of justice, enables citizens to identify common ground, etc.

Political decision making, by contrast, occurs in institutions of the state. Individuals participate in them not in their capacities as citizens, but as holders of official functions, as members of parliament, ministers, judges and so on. Parliament in particular is not only a place of decision making, but also of debate and discussion. Fraser has therefore suggested we refer to sovereign parliaments as “strong publics”, “publics whose discourse encompasses both opinion formation and decision making. As a locus of public deliberation culminating in legally binding decisions (or laws), parliament was to be the site for the discursive authorization of the use of state power” (Fraser 1992, p. 134).

In terms of participants, weak publics are constituted of citizens without a public office. Strong publics like parliaments are constituted of citizens with a public
office. The salient point is that citizens without a public office are participants in a form of discourse that is not linked with the power to make binding decisions. In so far as the making of legally binding decisions is necessary for the exercise of coercion, the connection between discourse and coercion is present in the case of strong publics but not in the case of weak ones. That is, it is present in the case of officials’ discourse and absent in the case of citizens’ discourse. Where the discourse in weak publics is concerned, therefore, the requirement of justifying coercion cannot serve as a justification for imposing the limitations associated with public reason. By contrast, in the case of strong publics, there is reason to assume that the requirement of justifying coercion can indeed serve as a justification for imposing the limitations of public reason, in so far as discourse takes place and is followed by decisions on laws and regulations.\textsuperscript{11}

To sum up, I have argued that it is difficult to substantiate a relationship between the positions citizens embrace and the decisions on laws and regulations taken in democratic politics. Citizens without public office debate, but they do not make decisions. Their discourse, and the arguments they use, can at most be regarded as exerting an influence on those who make the binding decisions, their representatives in parliament,\textsuperscript{12} but cannot in itself be seen as exercising coercion. Neither is there a relationship between positions and decisions in voting, as citizens vote in general elections on who is to represent them. Due to the complexities of elections, they cannot be interpreted as decisions on certain issues, that is, as affirmations or rejections of certain positions.

\subsection*{4.5 Justifying law}

The final element in the reasoning from the use of arguments to the exercise of coercion is the step from decisions to coercion. In the previous chapter (section 3.6), I identified the law as the locus of coercion. This view accords with Nozick’s definition

\footnote{Thompson has argued that binding decisions are made in civil society, too, so the difference between civil society and the state should be seen as a matter of degree rather than an opposition (Thompson 2004, p. 2079). I agree with Thompson that the difference between civil society and the state is not one of opposition. However, it should be noted that Thompson uses the notion of civil society in a different way from, for example, Fraser and Habermas. To Thompson, voluntary associations like clubs and societies are part of civil society, whereas Habermas’s public sphere and Fraser’s weak publics refer to political activities of citizens, not their membership of voluntary associations. The binding decisions in civil society to which Thompson refers are decisions on membership, policy etc. – decisions that are binding only on members of the club or association in question, not the whole of the population.}

\footnote{For a version of this claim and its refutation, see chapter 5, section 5.2.}
of coercion. Law intentionally seeks to influence citizens’ behaviour, and this aim is both open (known to those subject to the law) and proceeds via citizens’ wills, not (primarily) via the use of force as a means of prevention. The law provides sanctions for noncompliance, that is, it issues a credible threat of consequences. Finally, it is reasonable to assume that the threat of sanctions issued under the law is partly why citizens choose to adhere to the law; that is, it is causally involved in bringing about the desired result.\textsuperscript{13}

The coerciveness of law admits a number of differentiations and graduations. Perhaps the most important, where the justification of coercion is concerned, is the distinction between primary and secondary coercion (Audi, pp. 25f.). Primary coercion requires a particular action, such as paying income taxes or, in some countries, taking out health insurance. Secondary coercion refers either to an act related to primary coercion (such as the state spending the taxpayer’s money in a way he disapproves\textsuperscript{14}) or to conditional coercion, i.e. coercion in situations that citizens are free to avoid (one has to obtain a licence to be allowed to drive a car, but one can choose not to drive).\textsuperscript{15} Since law needs justification due to its coerciveness, primary coercion – being the more direct or fundamental or invasive kind of coercion – is in greater need of justification than secondary coercion.

Obviously arguments play a role in the justification of coercive law. Coercive laws need to be justified, and the means for justifying them is giving arguments that make the content of the law appear a cogent decision. The lack of adequate arguments for a coercive law increases the risk that citizens feel illegitimately coerced because they feel they cannot accept the grounds for a law by which they are coerced. It may very well be impossible to achieve, through giving adequate reasons, that every single citizen shall accept a coercive law as justified. Individual moral judgements may vary too much to permit that. But it is certainly a very reasonable view of liberal democracy to ask that citizens be given reasons that could induce at least most of them

\textsuperscript{13} For the present purpose, it is sufficient to assume that law is coercive, but this point is contested in legal philosophy (Edmundson 1995; Lamond 2000; Lamond 2001). Strictly speaking, not all laws and regulations are coercive in the sense used here, for not all laws and regulations intend to prevent citizens from acting in certain ways. Some types of laws and regulations provide for rights, such as the right to vote, or regulate administrative procedures such as the conclusions of agreements or the legalisation of documents.

\textsuperscript{14} Even though there is a coercive element in the state spending the taxpayers’ money, it is, as Greenawalt has emphasised, rightly distinguished from primary coercion, for otherwise almost any state action would have to be considered coercive (Greenawalt 1995, p. 193 n. 1).

\textsuperscript{15} Subsidies (for example for the construction of religious buildings) and special taxes (on alcohol, for instance) can also be considered instances of secondary coercion.
(the reasonable, for example, or those willing to engage in peaceful cooperation) to accept a coercive law as legitimate.

However, the claim that citizens are entitled to be given good reasons for a coercive law to which they will be subject is not the same as the claim that citizens need to give each other good reasons for a coercive law. The difference between the first and the second claim is that the first stipulates only that reasons which fulfil certain conditions should be given (that is, should be publicly known); the second claim entails the more demanding stipulation that it is all citizens who have the duty to give such reasons. As I have sought to argue in this chapter, this more demanding claim cannot be justified, at least not with reference to the claim that coercion needs to be justified.

4.6 Conclusion

In this chapter I have argued that the main justification for public reason as it applies to citizens is unconvincing. That justification lies in the claim that citizens exercise coercive political power over one another and should therefore exercise self-restraint and use only arguments which other citizens can reasonably be expected to accept as bases for political coercion. I have sought to show that citizens do not exercise coercion over one another, at least not in the sense envisaged by public reason, that is, as a collective deciding on laws and regulations. Neither in public debate nor in voting can the relationship between using arguments and exercising coercion be substantiated for citizens who hold no public office.

I have defended this claim by showing that the link between religious arguments and coercion is in fact a circuitous route with many tenuous links. One such link is that public reason liberalism has little if anything to say about secular conservative policy options, which religious believers sometimes support and which liberals often seek to invalidate. Some proponents of public reason seem to suggest that public reason can be used to prevent such positions from being defended in public discourse, but public reason is neither a necessary nor a sufficient means to that end.

A second problem is that the notions of respect and political justice offered by public reason liberalism remain partial at best, for they cannot incorporate important intuitions about the significance of positions for respect and political justice. Moreover, in some cases these notions contradict plausible liberal conceptions of respect and justice.
A third weak link is the decision aspect of politics. Voting is directly related to decisions, but not to decisions on coercive laws. Debate among citizens is not related to decisions. In neither case, then, is citizens' political activity directly connected to the exercise of coercion.

Given all these tenuous links in the steps from using arguments to exercising coercion, the connection between citizens' discourse and coercion is too weak to serve as a justification for self-restraint. At least, this is the conclusion for citizens. It rests on the distinction between citizens on the one hand and public officials on the other. If it is true that citizens do not exert coercive political power over one another but that public officials do exert power over citizens, then there would be a prima facie case for restraints on the discourse of public officials.