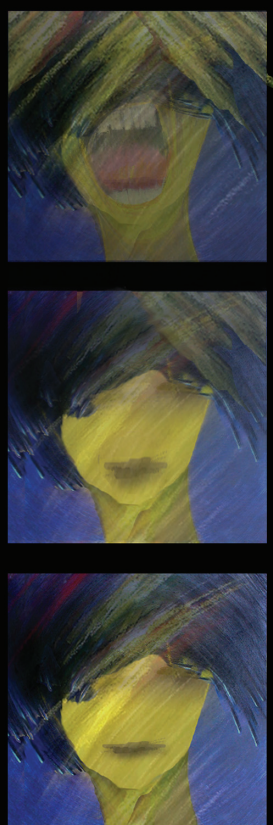
RHETORIC AND ARGUMENTATION IN THE BEGINNING OF THE XXIst CENTURY

EDITED BY

Henrique Jales Ribeiro



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CHAPTER 17

PERELMAN, THE USE OF THE "PSEUDO-ARGUMENT" AND HUMAN RIGHTS

Guy Haarscher*

ABSTRACT: In the *Traité de l'argumentation*, Perelman defines the "pseudo-argument" as follows. "It is actually possible that one seeks to obtain approval while basing the argument on premises that one does not accept oneself as valid. This does not imply hypocrisy, since we can be convinced by arguments others than the ones used to convince the persons we are talking to." I am not interested here in the possible absence of "hypocrisy", as for instance when the speaker uses a path of reasoning that is different from the one he used to convince himself (because the latter would not be understood in a specific context by a particular audience). It happens often, especially today, that the speaker pretends to begin with the same premises as the ones accepted by his audience, because it helps him penetrate the "fortress". In the examples I shall give, notably related to limitations to free speech, the censor pretends to begin with human rights premises. He then constructs an artificial and non-credible systemic conflict between religious liberty and freedom of expression. In certain instances, he is even able to completely invert the respective positions of the "hangman" and the "victim" by accusing the one who exercises his right to free speech of being a racist (who is guilty, for instance, of "islamophobia", "christianophobia", etc.). I shall try to show that the European judges on the European Court of Human Rights have never gone so far, but have accepted in certain circumstances the legitimacy of the "translation" of, notably, the problem of blasphemy into the language of the "right of others" not to be gratuitously hurt in their religious feelings. Now this is precisely, in my opinion, an example of the use of the "pseudo-argument" in the Perelmanian sense. I shall give many other examples of such a rhetorical strategy, which seems to be particularly confusing and pervasive today.

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1. INTRODUCTION

Perelman defines the "pseudo-argument" as an argument beginning with premises which the speaker does not really believe in. So why should he argue in such a way? Perelman insists that the pseudo-argument not necessarily involves "hypocrisy".[1] For instance, a judge may want to take a decision for moral reasons which are convincing to him; but in order to write an opinion, he is obliged to find motivations in law. The premises he will begin with are perhaps not the ones he personally finds totally adequate, but he is a judge, not a legislator, or a tyrant who would be entitled to dictate his moral views to all his subjects. Another example of the use of such an argument is when one has been convinced of the validity of a thesis through a certain path of reasoning, but such a rhetorical line of argument will not persuade a particular audience: then the speaker resorts to other premises than the ones he is most "attached" to.

But quite often, the use of the pseudo-argument involves what Perelman calls "hypocrisy". The resort to such a term necessarily imposes on us to enter, as it were, into the psychology of the speaker. If the latter is a "hypocrite", he will lie about his true positions, and try to deceive the audience by *pretending* to begin the argument with some premises the latter accepts. In that case, the speaker does not believe in the premises he uses: he resorts to them for other, hidden reasons.

Let us suppose that you want to attack the values of liberal democracy in the name of theocracy, or fascism, or the rule of the all-knowing and never-erring Communist party (the Party knows, as Hegel would have said, the cunning path of History). But you are convinced at the same time of the fact that an audience dedicated to defending human rights and democracy will of course not accept such premises, which blatantly run counter to its most cherished commitments. So you will abandon the frontal attack, and replace it with a more devious – but rhetorically more efficient – strategy. You will try to show your audience that you strongly believe in liberal-democratic values; you will present the latter as premises of your argumentation, which will take the audience so to say off-guard: the people you will be speaking to will think that the debate you have initiated is taking place *within* the realm of human rights and democratic values. Then – as did the sophists in Ancient Greece – you will distort the arguments in order to get to the results you wanted in advance. If the public is not informed enough of the complexities of the *apparently* simple notions of human rights and democracy, it will follow you. Then liberal democracy will have been fundamentally weakened, as those who want to undermine it will have had the intelligence to present themselves as "true democrats".

In the following pages, I would like to give a few examples that will show how such a rhetorical strategy works. Among them: the evolution of the notion of racism; the struggle of creationists against biological evolution; and the "translation" of the notion of blasphemy into the language of the "rights of the others".

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[1] "It is actually possible that one seeks to obtain approval while basing the argument on premises that one does not accept oneself as valid. This does not imply hypocrisy, since we can be convinced by arguments others than the ones used to convince the persons we are talking to." (Perelman 1989 : 80)

2. RACISM, SEGREGATION AND THE FOURTEENTH AMENDMENT

After the Civil War (1861-1865), slavery was abolished on the whole territory of the United States (Thirteenth Amendment to the Constitution – ratified in 1865). A little later, the Fourteenth Amendment (ratified in 1868), which was passed with much more difficulties, guaranteed among other things that no State would "deny to any person within its jurisdiction the equal protection of the laws". The provision is rather general, and it was for a long time controversial whether it applied to other situations than race relations between White people and recently emancipated Blacks. Now, as one knows, White people, especially in the South, reacted to the emancipation by not wanting to live with Blacks: this was the beginning of the segregation process, which took sometimes very violent forms, notably with the creation of the first Ku Klux Klan (1865-1871). But ordinary segregation took also legal forms: Blacks were excluded from public facilities, transportation, schools, restaurants, public places in general, etc., that were reserved to Whites. In the 1890s, the segregation policies were for the first time challenged before the Supreme Court of the United States. It is the famous *Plessy v. Ferguson* case (1896). Homer Plessy, a partially Black man, boarded a car of the East Louisiana Railroad that was reserved to White people. He was arrested and sued. The case was finally brought before the Supreme Court. The question was whether the Equal Protection clause of the Fourteenth Amendment had been violated. An affirmative answer seemed rather obvious: facilities reserved to Black people were of a much inferior quality than the ones provided for Whites, and anyway, the segregation process was a decision by the White majority, not the Black minority. Confronted with such an institutionalized and State-sponsored pattern of discrimination, the Court should have declared that the Equal Protection clause had been obviously violated and that the "Jim Crow" laws, as they were called, were unconstitutional. But the Court went the other way around and invented the famous and fateful notion "separate but equal". By this phrase, the Court meant that the Constitution did impose on the States the application of the principle of equality to Whites and Blacks, but did *not* require a mixing of the "races". In short, one could be treated in an equal way without necessarily living together and sharing the same facilities.

Of course, the majority opinion did not rely on a scientific assessment of the real situation: if the Justices had resorted to a serious sociological analysis, they would have discovered that segregation was imposed on Blacks by Whites and generated huge inequalities. It should have been deemed contrary to the Fourteenth Amendment of the Constitution. Such position was taken in a famous dissenting opinion: Justice Harlan flatly declared that the Constitution and the law in general should be "color-blind", and that, obviously, the segregation policies did not meet that standard.

3. THE RHETORIC OF TRANSLATION: LEGITIMATE OF PERVERSE

The rhetorical strategy used by the majority of Justices sitting on the Court is quite clear: instead of beginning the argument with racist premises (which were perhaps the ones that appealed most to them), they adopted the egalitarian premises that are, so to say, embodied in the post-Civil War revised Constitution, and drew some

consequences that led to the final conclusion: segregation is constitutionally valid. The Supreme Court position was finally overturned in 1954, in the famous *Brown v. Board of Education* decision, which forbade segregation in schools. Actually, the latter judgment constitutes only the beginning of a much broader process: in the 1950's and 1960's, segregation was progressively prohibited in all domains of State action by the Court. Then the Civil Rights movement succeeded in outlawing segregation in private relationships (in privately owned cafés or restaurants, on the job market, etc.). But for almost three quarters of a century, the "separate but equal" (bogus) doctrine was the supreme law of the United States. It was the Constitution, as interpreted by the US Supreme Court.

One immediately understands what kinds of benefits are attached to such a rhetorical stance. "Scientific" racism, especially in the XIXth Century, when it was expressed in a quasi-normal way in the public sphere, ran counter to the very idea of equality and human rights: it presupposed a fragmentation of humanity. The latter was divided into (at least) two biologically grounded entities, one superior, the other inferior. And it went without saying that the superior "race" had a natural right to rule over the inferior one, or to protect itself from any "contamination" by the latter. Now the Fourteenth Amendment was the very embodiment of the idea of equality and human rights: no *person* (the relevant provision is not reserved to US citizens) should be deprived of the equal protection of the laws by any public authority (be it the federal government, a State or a local authority). So the bogus reference to egalitarian premises ("separate *but equal*") created a rhetorical context that was favorable to the continuation of blatantly racist policies. *But, so to say, the Court made that form of racism invisible*: it pretended to apply the egalitarian principles of the Constitution.

I called elsewhere such a strategy the "wolf in the sheepfold", or the process of (perverse) "translation".[2] Let me explain the general meaning of these two metaphors. If the "wolf" appears as such, the "sheep" will fear him and flee or shout and cry, which will induce a strong reaction, say, by the shepherds. If, on the contrary, the wolf uses a sheep's skin as a disguise, he will not immediately be recognized for what he really is, and will enter the sheepfold by taking the animals and the shepherds off-guard. Then, once he will be inside the house of the "enemy", he will be able to wreak havoc on whoever he finds there. *Mutatis mutandis*, racism, as it was reinterpreted by the Supreme Court at the end of the XIXth Century, became – to use a phrase that of course did not exist at the time – politically correct: segregation was (poorly) justified by reasoning from egalitarian premises. This means that the whole debate had been deeply transformed by the rhetorical strategy. The process is the following: first you have a debate that at least is framed in clear terms: equality *versus* inequality; human brotherhood *versus* racist contempt, etc. Then the debate is subtly *translated* into quite another one: the discussion takes place *inside* the politically correct domain of equality and rights; the majority of the Supreme Court (in 1896) has a certain opinion on the way the Equal Protection clause should be applied to its primary object (race relationships), and the (great) dissenter, Justice Harlan, has another one. Thus, all this seems to boil down to a civilized conversation – a quite normal phenomenon

[2] See Haarscher 2008b.

indeed in democratic societies – between people adopting different (but reasonable) interpretations of *the same* values.

Of course, the phenomenon of "translation" I am criticizing *here* is very often quite legitimate. Indeed, it appears to be unavoidable when we need to defend a thesis while having to change jurisdictions and apply a law that is different from the one that was valid in front of a previous judge. For instance, one cannot argue the same way in defending the right to privacy against the tabloids in Europe and in the United States. The European Convention on Human Rights puts on the same plane freedom of expression (art. 10) and the right to privacy (art. 8): there is no *a priori* hierarchy between them, so the Court has to balance one right against the other in other to find a solution to a given conflict. In the United States, freedom of speech and of the press is guaranteed by the First Amendment to the Constitution, which the Court has considered applicable to the States and local authorities since the *Gitlow v. New York* decision of 1925. The right to privacy does not literally appear in the Constitution: it is the product of a broad interpretation of another clause of the Fourteenth Amendment, which states that no State "shall deprive a person from life, liberty, or property, without due process of law". Under such an interpretation, "liberty" is supposed to involve the "right to be left alone", that is, the very definition of privacy according to Warren and Brandeis who, at the end of the XIXth Century, initiated a movement in favor of such a right to privacy in a famous article.[3] But the reasoning does not stop here. It continues as follows: the right to be left alone involves the right to contraception (*Griswold v. Connecticut*, 1965),[4] and even a right to abortion, which the States cannot restrict during the first three months of pregnancy (*Roe v. Wade*, 1973).[5] It is therefore obvious that, when freedom of the press and the right to privacy come into conflict, the former right, which has the advantage of being literally guaranteed by the First Amendment, is more firmly entrenched than the second one, which depends on an elaborated and very controversial "construction" based on the Due Process clause of the Fourteenth Amendment. So we can conclude here that a lawyer will use premises that will vary according to the place: either in Strasbourg or in Washington. The difference of reasoning is perfectly justified by the difference of audiences, that is, of legal contexts.

But even if the process of "translation" appears to be necessary, and even unavoidable, in certain important circumstances, it is by itself problematic and potentially dangerous. There is always the possibility that the "jump" from one context to the other becomes wholly artificial. The possibility of manipulation is always present, as the use of the "trick" can help someone play the role of the "wolf in the sheepfold". A bogus translation is for instance at the basis of the *Plessy* decision of the Supreme Court: the integration of a racist ideology into an egalitarian legal context (the Equal Protection clause of the Fourteenth Amendment) is totally unwarranted and intellectually confusing. Of course, no translation, as understood in the present intellectual context, can be without risks: there exists always a certain distance between two audiences, and the transformation

[3] See Warren and Brandeis 1890.

[4] See Griswold v. Connecticut, 381 U.S. 479 (1965).

[5] See Roe v. Wade , 410 U.S. 113 (1973).

of the language, as well as the change of premises in the reasoning, will always be a process of reinterpretation and "construction". If the construction is too narrow, the translation will not be possible, and the cause will not be defended properly in the "second" forum. But if the construction is too broad, the dangers of confusion (paralogism) or deliberate manipulation (sophism) will inevitably increase.

4. SOME MORE REMARKS ABOUT THE TRANSFORMATION OF RACISM INTO A "HONORABLE" OPINION

The justification of racism has a long history. The progressive access of a doctrine belonging to an anti-humanist ideology to a liberal-democratic (humanist) legitimacy should be exposed in detail in order to prevent the "wolf" from easily eating the whole "sheepfold". In the present article, I only want to briefly mention a particularly clear example. After the Second World War, "scientific" racism seemed to be definitively banished from the legitimate public forums. So the extreme right tried several strategies in order to *hide its racist premises* and get to the same conclusions by reasoning from liberal-democratic points of departure. Actually, the Nazis themselves had already resorted to euphemisms to refer to the Holocaust: the very phrase "final solution" shows the abysmal distance existing between the unspeakable reality and the triviality of the words. Then, at the end of the war, when the defeat of the German army was a foregone fact, the Nazis destroyed the gas chambers in an attempt to erase all traces of their crimes. After the war, what would be known much later as the Holocaust denial movement continued the "negationist" rhetorical strategy by casting a doubt on the reality of the Holocaust. The most important implication was that the Jews had deliberately exaggerated the facts (or even forged them) in order to defame Germany and make their domination of the world and Palestine possible. Here the "translation" works as follows: Holocaust deniers are not supposed to be racists; actually (so the story goes), they are persecuted scientists who try to tell the truth about the Second World War and the so-called (in their opinion) destruction of the European Jews. Of course, their "science" is a bogus one, and their carefully hidden relationships with the "real" extreme right have been documented in many books, articles and television programs. But it remains that they can pretend that, instead of basing their argumentation on racist values, they reason in the context of objective facts, "discovered" by them: they defend a "science" that does not recoil in front of even widely shared "myths". The wolf is in the sheepfold in that nobody in the mainstream of contemporary societies can be "against" science and challenge scientifically established facts in the name of any ideology. So the advocates of Holocaust denial try to radically invert the situation, by using a rhetorical trick which has not yet been sufficiently deconstructed, at least before the public at large.

5. CREATIONISM AND THE RHETORIC OF TRANSLATION

It is not only in the debate about race relations that the "perverse" Perelmanian pseudo-argument has played an important role. If we consider the State/religion

relationships, we can see that here also the frontal attack strategy has not been the only one: after a certain time, it has been replaced with a rhetoric of (perverse) "translation". I shall take here the example of the debate about Creationism in public schools. This is a very important question. Biology courses are also sometimes challenged in European public schools by some religious (especially Muslim) groups as being contrary to the Law of God. I think the evolution of the problem in the United States, where it has existed for almost a century, can give us some useful perspectives about how to deal with it in Europe, where it appeared much more recently.

When Darwin decided, after hesitating for a long time, to publish *The Origin of Species* in 1859, he perfectly knew that his discoveries could be considered, under a literal reading of the Bible, to be at odds with religion. He had long delayed the publication of the book, because he feared "the firestorm of anger that his ideas were sure to unleash".[6] But the question did not reach public schools until after the First Wold War. Indeed, until then, access to secondary schools had been the privilege of a small elite. So only a few teenagers could be exposed to the teaching of scientific biology. But in the 1920's, as the economy dramatically developed, secondary education began to be "massified": it became accessible to more and more young people. Then protestant fundamentalists reacted, and statutes outlawing the teaching of doctrines contrary to the Bible were passed in many States. So at that time, the rhetorical strategy – which is the only question I am interested in here – was clearly frontal: the teaching of "anti-religious" doctrines was forbidden because they were supposed to be opposed to the Law of God. And indeed, this is the time when (in 1925) the famous Scopes trial – dubbed the "monkey trial" – took place in Dayton, a small town in Tennessee. Scopes, a biology teacher, had exposed in class the theory of natural selection and had been sued under the Butler Act, one of the statutes outlawing the teaching of Darwinism. In that trial, which is considered to be the first media event of the kind in US history, an atheist attorney, Clarence Darrow, defended Scopes, while William Jennings Bryan, a famous Democrat politician, took a strong position in favor of Creationism. Literally speaking, Darwinism teaches that the human species has evolved from other ("animal") forms of life, while the Bible says that the human being is a privileged Creature, separated from the rest of the nature, and that all the species were created by God and did not evolve. Darwinian biology also explains the process of evolution by natural selection, which appears "immoral", as it runs counter to, notably, the Christian theological virtue of charity. Moreover, at the time when the trial took place, some intellectuals – notably the disciples of Darwinian philosopher Herbert Spencer – had tried to apply the theory of natural selection to the social sphere, in an attempt to scientifically justify power politics and unregulated capitalism, which were considered to be the very embodiment of the doctrine of the "survival of the fittest". Bryan was a political figure that leaned to the left a far as social problems were concerned, but to the right when morals, religion and the liberty of scientific investigation were at stake. (This is a kind of ideological mixture that is not that rare today.)[7] So the attack was frontal, Scopes lost the trial and was convicted for having

[6] See Scott 2004. Foreword by Niles Eldredge, at x.

[7] A well-known example of such a phenomenon is the Muslim public intellectual Tariq Ramadan.

violated the Butler Act. Statutes criminalizing the teaching of Darwinism remained on the books for about thirty years. Then an apparently unrelated event took place. In 1957, the United States was taken by surprise when the Soviet Union launched an artificial satellite, called the "Sputnik". The government then made a critical evaluation of the teaching of science in public schools: the idea was that the courses were obsolete, the teachers and pupils were weak on the relevant topics. A decision was therefore taken to reinforce the science curriculum. Of course, the teaching biology was also affected. The irony of the situation consisted in the fact that the Soviets were at that time themselves in a predicament because Lyssenko had ruled over biological research during Stalin's era: for reasons that are too complicated to be exposed here, he rejected genetics and took position in favor of Lamarck's inheritability of acquired characteristics, which seemed to be more compatible than random mutations with the Communist hope of creating a radically new Man. All this was done at a time when Watson and Crick largely confirmed the intuitions of the author of *The origin of species.* So in both countries, the United Stats and the Soviet Union, a dogmatic vision of the world had hindered biological research and teaching.

Be it as it may, Darwinian biology began to be "seriously" taught in American public schools. Now in the 1940s (*Everson v. Board of Education*),[8] the Supreme Court had decided that the Establishment clause of the First Amendment, which prohibits "Congress" from making any law "respecting an establishment of religion" applied not only to the rules enacted by the federal government, but also by the States and local authorities. As we know, many State laws regarding the teaching of Darwinism had been on the books since the 1920's and the "Monkey trial". As biology courses were enhanced in school curriculums, religious fundamentalists tried to enforce these laws. The Supreme Court considered in *Epperson v. Arkansas*[9] that the laws prohibiting the teaching of Darwinism were the product of the intervention of certain (monotheist, "creationist") Churches in the teaching of science, that is, their "establishment". The Court thus struck down the laws that had made possible the Scopes trial more than forty years earlier.[10]

Then the Creationists progressively abandoned the "theocratic" strategy – that is, the frontal attack – by suggesting both "conceptions" could be taught in class: the students would be allowed to choose between them. Such a position was very smart indeed, in that it boiled down to invoking freedom of choice, pluralism, and controversies (which are part of the "normal" scientific activity), etc. So the opponents of such a proposal appeared to be dogmatic. Such a rhetorical trick is in fact not exceptional at all: not only the wolf succeeds in pretending to be a sheep, but it is the sheep who is accused of being a "predator". Albert Camus once called that strategy: inversion of the respective positions of the hangman and the victim: "But the slave camps under the banner of liberty, the massacres that are justified by the love of man or a taste for super-humanity, in a sense, make the judgment impotent. On the day when the crime wears the clothes of innocence, it is innocence which is required to give its

[8] See Everson v. Board of Education, 330 U.S. 1 (1947).

[9] See Epperson v. Arkansas, 393 U.S. 97 (1968).

[10] Here and in the following, I use E. C. Scott 2004.

justifications, through a curious process of inversion that is characteristic of our times."[11] But the Supreme Court did not accept the pseudo-argument, and also rejected such an apparently more open and tolerant position: even if, this time, the teaching of scientific biology was no more forbidden, it remains that one cannot put on the same level religion (Creationism) and science (Darwinism). This would only be, according to the Court, a subtler (and probably more devious) form of establishment.[12]

But as far as the "translation" of a discourse against secularism into the very language of… secularism was concerned, Creationists had other arguments at their disposal. They defended the famous theory of "Intelligent Design", which appeared to be purely scientific: this time the suggested choice would no more take place between a controversial scientific theory and a religious doctrine, but between *two* scientific theories, each of them pretending to be a valid approach of the phenomena of life. The argument runs as follows: some organs or organisms are supposed to be too complex to have been generated by the blind mechanisms of mutation and adaptation. They presuppose an intelligent being, just as, one might say, for Voltaire, the clock presupposes a clockmaker.[13] Many studies have shown the implausibility – to say the least – of the doctrine propagated (with a lot of money) by the Discovery Institute, which is the main promoter of the ID thesis. Anyway, even if – very improbably – a "Designer" should be presupposed as a hypothesis by serious biological scientist, it would not easily be identified with the Christian God, who is associated with the ideas of Trinity, Incarnation, Redemption, etc. – in short, the God of Abraham, Isaac and Jacob.

So the pseudo-argument works in the following way: the clearly Creationist position taken in the 1920's ("blasphemous" science shall be forbidden) is replaced with a translation of the problem into the language of free scientific debate. Recently, the Board of Education of Dover, a small town in Pennsylvania, decided that a disclaimer mentioning the existence of "other" theories than Darwinism (the only taught theory) would be read to the pupils in the beginning of biology classes. The Board did not even dare to suggest that both Darwinism and ID should be taught and adopted a still more "modest" position. Nevertheless, a federal judge who, ironically, was appointed by George W. Bush, decided that such a disclaimer was unconstitutional: Intelligent Design was not real science (some of the main biologists teaching in the best universities testified in that sense in court), and that the advocates of such a doctrine were disguised Creationists.[14] The stratagem of perverse translation was thus once again revealed by a federal judge. But this is not a decision taken by the US Supreme Court, so it only applies to a district (a part of Pennsylvania). The "saga" is far from over.

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[11] Camus 1951 : 14. My translation: "Mais les camps d'esclaves sous la bannière de la liberté, les massacres justifiés par l'amour de l'homme ou le goût de la surhumanité, désemparent, en un sens, le jugement. Le jour où le crime se pare des dépouilles de l'innocence, par un curieux renversement qui est propre à notre temps, c'est l'innocence qui est sommée de fournir ses justifications."

[12] See Edwards v. Aguillard, 482 U.S. 578 (1987).

[13] "L'univers m'embarrasse, et je ne puis songer [que] cette horloge existe et n'ait point d'horloger." (*Les Cabales*, 1772).

[14] See Tammy Kitzmiller, *et al. v*. Dover Area School District, *et al.* (No. 04cv2688) (2005).

6. THE "CHILLING" OF FREE SPEECH

The pseudo-argument is maybe still more dangerously present in the questions related to freedom of expression, particularly when the latter is confronted with demands of censorship made by religious groups. The same confusion is working here, and even pushed to extremes. In democracy, reasoning is very often related to the short run, and decisions are rushed. It seems to me that nowadays, a non negligible part of the public opinion, as well as the conformist Left, considers that the main danger comes from too much (and not too little) expression: the principal risk would consist in the fact that members of diverse communities would be shocked in their convictions and "sensitivities". Critique should thus be limited to speech that does not gratuitously shock the others. Such is the main tenet of a vague and omnipresent current that is called "political correctness". But if such a claim can be made in good faith (why shock our neighbor without necessity?), it remains that its possible perverse effects are pervasive and often underestimated. First, who is the "other" whose convictions and sensitivities should be respected? In religious matters, such a claim boils down to saying that one should not blaspheme, that is, insult or defame the God (or Gods) venerated by a part of the population. But in our pluralist societies, religious groups are numerous, and often disagree with each other (even inside a given community). If freedom of expression were limited by the respect of "sensitivities", notably religious ones, the whole intellectual debate would be threatened. We must take the measure of such a danger for liberal democracies. Many of us think that the main danger related to the use of the right to free speech is exaggeration, that is, in a vigorous democratic debate, the fact of gratuitously shocking people. In an intellectual debate, one should therefore avoid what would hurt without necessity some "others" in their convictions. One would of course still be authorized to criticize religions and ideologies, but one would have to balance the right to free speech against the respect of beliefs. I showed elsewhere that such an application of the doctrine of political correctness would inevitably lead to what the Americans call a "chilling effect", that is, a "freezing" of discourse. Many people who want to express their ideas or feelings would not do it out of fear of sanction. Now the main danger to our societies does probably not consist in an always possible exaggeration, but in the opposite: intimidation, conformism, hypocrisy and the temptation of following the "herd" (gregariousness).

There is no real democracy if the individuals cannot speak their minds without being intimidated. If they think that expressing their ideas on a subject will get them into trouble, they will choose to remain silent, and all that repressed speech will be lost for the democratic vitality of our societies. Here, I can only give a schematic presentation of the argument. Individual defamation and insult constitute abuses of the right to free speech, but it would be very problematic indeed to immunize ideas – notably religious ones – from criticism, and even from caricature. The possible impact of religions on societies and States, and their reference to an absolute Truth, are a subject that is obviously of general interest. If, in pluralist societies, criticism of religions (or atheism, or any ideas) were not totally free, freedom of expression would depend on the veto of those who, for various reasons, and on a subjective basis, would declare themselves shocked. That is exactly the "heckler"s veto. I showed

elsewhere[15] that such an attack on free speech – a vital principle for democracies – had at least taken two distinct forms. On the one hand, one does not speak any longer of "blasphemy" ("defamation" of God), but of an "exaggerated" attack on the others' convictions: the relationship, which was as it were "vertical" in the beginning (blasphemous speech/God) becomes "horizontal", in that this time it opposes the one who exercizes his right to free speech to the one who, being shocked, considers that such a discourse amounts to an attack on his religious freedom. But the very reasoning is characteristic of the "bad" pseudo-argument: freedom of religion in no way involves the right to be immunized against even virulently critical speech.

Such an argumentative strategy consists thus in not speaking any more of blasphemy, and in rephrasing the conflict that really exists between free speech and religious dogmatism by transforming it into a conflict taking place *inside the system of human rights* (what is currently called a "systemic conflict"): between two rights, namely, freedom of expression and freedom of religion. But we already know that this argument amounts to a sophism: freedom of religion is independent from the right to criticize religions. It seems to me that, in Europe, the courts have accepted too often such an argument, which is politically correct *par excellence*. The European Court of Human Rights[16] has not clearly declared that the laws prohibiting blasphemy were contrary to the 1950 Convention: the Court has accepted up to a certain point the "translation" of these repressive criminal provisions into the language of human rights: one speaks of shocked communities, not of a "defamed" God).

But a second strategy is quite often used nowadays. It consists as it were in "poisoning the source" of the speech: if you criticize a religion (or some of its aspects) in such a virulent way, the argument goes, it is because you dislike the people who practise it; in doing so, you are overwhelmed by an irrational fear – a phobia: you are islamophobic (or christianophobic, judeophobic, "atheistophobic" if one may say so, etc.). In short, the pseudo-argument is pushed to extremes: the individual who exercizes his right to free speech in an "exaggerated" or "caricatured" way is… a racist. Such an argument is very frequently used in contemporary debates: it aims at delegitimizing the opponent, above all because in many European countries racist speech is not considered an "opinion" and is criminally prosecutable.

7. A FEW WORDS TO CONCLUDE

Pseudo-argument, perverse translation and the strategy of "the wolf in the sheepfold" are omnipresent in contemporary debates. Patiently deconstructing them constitutes a necessary and urgent task in philosophy, as defined by Perelman: "a systematic study of confused notions".[17] I would like to conclude by quoting a decision of the United States Supreme Court in a blasphemy case. The opinion speaks by itself: the

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[15] See Haarscher 2008: 139-230. See also Haarscher 2008a.

[16] See Haarscher 2008: 140-163.

[17] Perelman 1990: 17: "One can draw the conclusion, which might seem disrespectful, that the proper object of philosophy is the systematic study of confused notions."

problem is presented in a clear way (yes, it *is* a case of blasphemy, or, in other words, of "sacrilegious" speech), and it is *not* translated into a bogus systemic conflict between two human rights, that is, freedom of speech and freedom of religion. Blasphemy is described as such – a speech that is "repugnant" to a religious group because it is an attack on God – *and considered to be protected by the First Amendment*. "In seeking to apply the broad and all-inclusive definition of 'sacrilegious' given by the New York courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts *but those provided by the most vocal and powerful orthodoxies*… Under such a standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments... Application of the *'sacrilegious' test*…, might raise substantial questions under the First Amendment's guaranty of separate church and state with freedom of worship for all... However, from the standpoint of freedom of speech and the press, it is enough to point out that *the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient* to justify prior restraints upon the expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches, or motion pictures."[18]

[18] See Joseph Burstyn, Inc. *v.* Wilson, Commissioner of Education of New York, *et al.*, at 6. My underline.

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