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Rhetoric and its abuses: how to oppose liberal democracy while speaking its language

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1. Vico and Perelman

It is difficult to measure the importance of Vico's 1708 address for our time. What he said – in particular his criticism of the Cartesian philosophy of education – has been validated many times, notably in the second part of the XXth Century. It seems thus that the revolutionary edge of his discourse has been lost precisely because of its contemporary success. Chaim Perelman began his *Treaty of argumentation. The new rhetorics*, which was published just 50 years ago, by criticizing the dominant paradigm of Descartes' *idées claires et distinctes*[1]. He wanted, as it is well known, to rehabilitate the ancient, essentially Aristotelian, rhetoric[2], by insisting on the necessity of educating people in dealing with an existential and social reality that is inaccessible to the methodology of clear and distinct ideas[3]. In brief, if people thought that the only authentic rationality were Cartesian, then the human and social reality would be considered totally irrational. Perelman's aim was to build a new rationality – he called it the "reasonable"[4] – that would be less demanding in terms of conviction than geometry and formal logic.

Vico himself, in his address, insisted – as Perelman would do so many times in his work – on the middle position of the "verisimilar" (*verisimili* – the probable, the credible, the plausible)[5]

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[1] "The publication of a treatise dedicated to argumentation and to its connection with an old tradition, namely, Greek rhetoric and dialectics, constitutes a break with a conception of reason and reasoning stemming from Descartes..." C. Perelman and L. Olbrechts-Tyteca, TRAITÉ DE L'ARGUMENTATION : LA NOUVELLE RHÉTORIQUE (Brussels: Editions de l'Université de Bruxelles, 5th ed., 1988), Introduction, I. Quoted in the following as TRAITÉ. I give my own translation with the paragraph numbers of the Treatise, so that the reader can easily use any edition of the book. « It is him [Descartes] who… wanted to consider as rational only demonstrations which, from clear and distinct ideas, transferred, with the help of apodictical proofs, the self-evidence of the axioms to all theorems. » (TRAITÉ, Introduction, II). For the English edition, see C. Perelman and L. Olbrechts-Tyteca, THE NEW RHETORIC : A TREATISE ON ARGUMENTATION, (Notre Dame, Ind.: University of Notre Dame Press, 1969).

[2] See TRAITE, Introduction, II, where Perelman justifies the connection of argumentation with Aristotelian rhetoric rather than dialectics. The main reason for such a choice is the following: rhetoric always implies that an argumentation is developed before an audience.

[3] "Must we draw the conclusion, from that evolution of logics, and the incontestable progresses it made, that reason is totally incompetent in the domains which evade calculation, and that where neither experience nor logical deduction can provide us with the solution of a problem, we have nothing left except abandoning ourselves to irrational forces, to our instincts, to suggestion or violence?" (TRAITÉ, Introduction, I). In order to solve this central problem, Perelman tried first to discover a "logic of value judgments". He soon abandoned that quest and looked instead for a rehabilitation of ancient rhetoric. See C. Perelman, L'EMPIRE RHÉTORIQUE. RHÉTORIQUE ET ARGUMENTATION (Paris: Vrin, 1977), Foreword. Quoted in the following as EMPIRE.

[4] See in particular C. Perelman, LE RAISONNABLE ET LE DÉRAISONNABLE EN DROIT (Paris: LGDJ, 1984).

[5] In his address, Vico takes the example of the physician who is always obliged to adapt his acquired knowledge to a particular and changing reality. Plato makes the same point against abstract laws in *The Stateman*, 294 b sq. Vico says that the closer one is to the concrete, the more the verisimilar, which is less ambitious but more efficient, prevails over the true. The verisimilar provides the politician, the judge, the physician, and even the moral theologian, with a rule for action.

between truth and falsity. If Cartesian methodology and the notion of "hyperbolic doubt" dominate education, the probable and the false will both be rejected in the darkness of the Platonic Cave. Human action and values will therefore be considered irrational, and the space will be open for irrationalism and "decisionism". Actually, of course, between Arnaud and Nicole's conceptions of education and the situation after 1945, when Perelman began to write his important articles on justice, there is a meaningful difference: the authors of the *Logique de Port-Royal* thought that it was possible to apply clear and distinct ideas to the conduct of life (I do not take into account here Descartes' *morale provisoire*), whereas the neo-positivists, accepting, grossly speaking, the same paradigm, would consider it impossible to apply Cartesian rationality to values, ethics, politics and substantive justice[6]. But for Perelman, both positions, understood as they had been by Kant in the *Critique of pure reason* (the dogmatic and the skeptic)[7], rested so to say on the same intellectual soil[8]. It was because the only kind of acceptable rationality was to be found in the *Méditations métaphysiques* and the *Discours de la Méthode* that, philosophers having discovered that human and social reality was unamenable to it, they deemed such a reality irrational.

In the very beginning of the XVIIIth Century, Vico had in a certain sense predicted such a "disenchantment" of the (ethical) world, to use Max Weber's formula[9]. Such an assessment was already present in his address, or, to put it in a more dramatic way, in his "lament". Arnaud was referring to Descartes in his struggle against the confusion of the mind. But Vico considered that such a method of education, far from eliminating the human predicament or alienation, would only aggravate it[10]. Cartesianism excluded, he said, the *topics* from the method of teaching; it was only based on what Vico called "critique" (*critica*), that is, clear and distinct ideas. Topics are intrinsically linked to the art of acquiring knowledge and being able to use it; they are also necessary for the conduct of a good life. The topics are related to the art of asking the good questions, finding the best arguments (this goes back to Bacon), gathering the maximum possible relevant information about a problem. Topics should come before *critica*, at least for two reasons. First, topics, general and particular, are related to imagination and memory, which are dominant in the minds of young people and must not be hindered by a premature resort to *critica*. Secondly, topics are necessary for asking the good questions. In a sense, we might add from a XXIst Century perspective that *critica* do not prevent us from attaining trivial and dispensable truths. Suppose they have been verified (or falsified, in the Popperian sense); they have been established by resorting to clear and distinct ideas. But they do not touch anything important. In order to attain *des vérités qui forcent à penser* ("truths that force [us] to think")[11], it is necessary to enter into a reflexive process *before* the "critical" phase. Such a process is based on topics, memory, and imagination, that Vico thinks are essential for the education of the youths. So in a certain way, the precedence of *topica* over *critica* anticipates the ascent of argumentation, even in the realm of "exact" sciences. Bacon, for instance, when he spoke of the problem of the light and the heavy, enumerated a certain number

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[6] "It is precisely to that conclusion that the positivists came: for them, value judgments had no cognitive value at all, no verifiable meaning." (EMPIRE, Foreword).

[7] See Kant, CRITIQUE OF PURE REASON (1781), "Transcendental dialectics", B 349/A 293 sq. Vico considers that Cartesianism is the principal cause of a widespread scepticism. (See VICO's letter, dated January 20, 1726).

[8] "But whether we take into consideration rationalist philosophers or the ones that are called antirationalists, all continue the Cartesian tradition through the limitation imposed on the idea of reason" (TRAITÉ, Introduction, I).

[9] In his letter dated from January 20, 1726, Vico describes a general exhaustion of intelligence. The Cartesian method has paralyzed the inventivity and creativity of philosophers. People do not read the classics anymore, and they rely, because of Descartes' rejection of the tradition of scholasticism, on their intuition of the "clear" and "distinct" Everyone breaks off with all traditions and only trusts his personal maxim, to the detriment of the common sense and the common good.

[10] See H. J. Perkinson, *Giambattista Vico and "The method of studies in our times" : a criticism of Descartes' influence on modern education*,(HISTORY OF EDUCATION QUARTERLY, Vol. 2, No 1, 34 [1962]).

[11] See G. Deleuze, PROUST ET LES SIGNES (Paris: P.U.F., 1971) at 21-33.

of questions that were, according to him, necessary to look at the chosen object[12]. These questions are as essential as the answers that will be given – when possible – by using clear and distinct ideas (*critica*). If the critique is the art of the true discourse, Vico summarizes, so the topics are the art of the fecund discourse.

As far as good life, law and ethics are concerned, the shortcomings and perverse effects of a Cartesian education are maybe still more visible. If one bases the reasoning on truth, one will not observe human nature because it is uncertain[13]. This anticipates Vico's theses in the *Scienza Nuova* (published in 1725 and 1730), and in particular the famous motto: *verum and factum convertuntur*. We can only obtain a "Cartesian" truth (that is, a truth immunized from any, even a small, possibility of doubt) about what we have done: this is valid, for instance, in mathematics (the case of history and philology in the *Scienza Nuova* is more complex, but it remains that the "new" science studies the world *made* by human beings). Anyway, we have not "made" the human mind. So we are condemned to the *verisimili* in the conduct of our private and civic life. This reminds us of Sartre saying, in *Being and nothingness*[14], that we are condemned to freedom (Vico explicitly relates the uncertainty and confusion in human life to liberty). So Cartesian education prevents students from being educated into prudence (Aristotelian *phronesis*) and common sense, which are essential for the individual and political life.

Cartesian education does not only "pervert" the young. It also disorients the masses, as they must be persuaded by concrete arguments, related to "occasion" and "choice": the elite educated in the Cartesian method is not able to make an argument persuasive, that is, to make truth "probable" or credible. In short, such an elite is not able to use *verisimili,* which are of primordial importance to the social and political life.

It is here that, it seems to me, a fundamental question must be raised, which concerns both Vico and Perelman. How can we make a meaningful difference between "good" rhetoric and a confused, irrational discourse, full of *paralogisms*, that is, involuntary errors of reasoning, or – worse – a deliberately manipulated speech (*sophistry*)[15]? This is an essential problem, as a recourse to *phronesis*, good reasons (being less powerfully convincing than mathematical rationality) and common sense gives a new legitimacy (as Hannah Arendt rightly emphasized) to *doxa*[16]. But how can we be sure, the Cartesians will say, that the "weakening" of rationality that is entailed by new rhetoric and the use of general and particular *topica*, will not open the door to demagogues and sophists? Vico was accused of being an anti-intellectualist, and of wanting to educate people to become courtiers instead of philosophers[17]. This is a very important point: paying court to someone always involves an element of flattery, at least of strategy. And thus, will such an education lead to

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[12] See *Giambattista Vico and "The method of studies in our times" : a criticism of Descartes' influence on modern education* at 36.

[13] "Nature and life are full of incertitude; the foremost, indeed, the only aim of our 'arts' is to assure us that we have acted rightly. Criticism is the art of true speech; '*ars topica*,' of eloquence." (G. Vico, ON THE STUDY METHODS OF OUR TIME (1708) (Ithaca: Cornell University Press, 1990).

[14] See J.-P. Sartre, L'ÊTRE ET LE NÉANT (Paris : Gallimard, 1943) at 515.

[15] Vico attacks both Descartes and the sophists for having broken the unity of philosophy and eloquence, reason and "heart".

[16] See for instance H. Arendt, *Philosophy and politics*, SOCIAL RESEARCH, 57, 1 (1990) at 73-103.

[17] "To the accusation that he wants to produce courtiers instead of philosophers, Vico replies that he wants 'philosophers of the court', who 'indeed love the truth, but at the same time love what *seems* so, followers indeed of honesty, but also followers of that which receives universal approval'…" (*Giambattista Vico and "The method of studies in our times" : a criticism of Descartes' influence on modern education* at 41)

the following alternative (or dilemma): domination or instrumentalization of the audience[18]? If the latter must be persuaded, will not the orator be tempted to flatter it or to disorient it by playing on passions and emotions? Indeed, if one must persuade an audience of the validity of a position, the only possibility of avoiding to blindly accept what it already knows (its own "premises"), the only possibility of getting one's way, will be in manipulating the audience. Vico himself recognizes that there is a tension between individual judgment and authority: in his autobiography, he explicitly affirms that he does not want to go back to the domination of authority, but that he would like to find a synthesis between the latter and Descartes' individualism[19]. Such a tension is reflected in the ambiguity of rhetoric: common sense, prudence, opinion, *verisimili*, etc. can be interpreted in a conservative way as involving a respect of traditions and the "authority of the eternal yesterday" (to use another Weberian expression). But on the other hand, one can develop – as Hannah Arendt did – an "open" conception of opinion, being related to the art of democratic controversy. One thing is sure: if people are educated in the Cartesian way, they will confuse the "probable" and the false; they will not be able to discriminate between sound non-formal argumentation and paralogisms or sophistry. One can at least assume that it is only if they have been trained in rhetoric that they will be able to make a difference between, on the one hand, a reasoning that, although not based on absolute proofs and total clarity of the notions, would be sufficiently convincing to support a reasonable "civic" action , and, on the other hand, pure demagoguery.

2. Two kinds of confusion

I would like to apply this reflection to an analysis of the rhetoric that is being used in contemporary debates concerning the defense of the values of liberal democracy. As values are concerned, we are here in the domain of argumentation (the rhetorical "empire") in the Perelmanian sense. My main point is the following: nowadays, human rights and liberal democracy constitute, as it were, the fundamental values of the political sphere. Such a primacy is not only, of course, recognized in Western democracies, but also in international legal instruments such as the 1948 Universal Declaration of Human rights, the 1966 Covenants, respectively on Civil and Political Rights, and on Economic, Social and Cultural Rights, as well as in many other documents that deal with more specific human rights topics. But, as we know, people very often only pay lip service to these political values.

Actually, schematically speaking, there are two opposed ways of trying to evade the constraints of human rights and the values of liberal democracy. I shall call the first one the "frontal attack": the "enemy" explicitly defends values that are radically at odds with liberal-democratic principles. For instance, the opponent defends an authoritarian conception of political power (fascism, Nazism, Soviet communism…), or a dogmatic conception of religious power (imposition of the law of God on earth, necessary eradication of the infidels, etc.). Such a rhetoric is very influential today, for instance – but not only – in the Islamic world. As everybody knows, it raises very serious problems for peace and security. The international instruments on human rights are explicitly negated in the name of other values. But this is not my present topic.

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[18] I once criticized Perelman for not giving enough arguments to solve that problem. See G. Haarscher, *La rhétorique de la raison pratique : réflexions sur l'argumentation et la violence*, REVUE INTERNATIONALE DE PHILOSOPHIE, 1979, n° 127-128, at 110-128.

[19] "We owe much to Descartes who established the individual sense as the rule for the true; it was a too debasing slavery to make everything rest on authority. We owe him much for having wanted to submit thought to method; the order of the Scholastics was only a disorder. But wanting that the individual judgment reigns alone, wanting to subject everything to the geometrical method is falling into the opposed excess. Heretofore, it would be time to take a middle term; to follow the individual judgment, but with the respect due to authority; to use the method, but a diverse method, according to the nature of things." (G. Vico, RÉPONSE À UN ARTICLE DU JOURNAL LITTÉRAIRE D'ITALIE (1711).

I am interested here in the second, totally opposed, strategy: in order to be at least heard by the democratic community, the "enemy" *uses the language* of liberal democratic values. By doing so, he or she very often succeeds in radically distorting the language of human rights. I shall call that strategy: the "Trojan horse", or, to use another metaphor, "the wolf in the sheepfold". The strategy is fundamentally related to demagoguery and, more subtly, to a sophistical distortion of reasoning. The more we consider the values of liberal democracies to be simple, "clear", "distinct", the less we can see behind these *apparently* unproblematic notions, which so many people *seem* to respect, some hidden controversies, or a sheer manipulation of the language of human rights. In our times, dominated by political correctness, when so many deeply controversial notions are superficially considered clear and distinct, Vico's lament keeps all its topicality.

Perelman defined once philosophy: "a systematic study of confused notions"[20]. This definition has at least two different meanings. First, in non-formal argumentation, we are confronted with notions that are confused because the interlocutors are governed by prejudices. Prejudice is a distortion and a simplification of reality that necessarily entails confusion. Secondly, *after* discussing the matter, we are left with a certain "remnant" of confusion. But the latter absence of clarity and distinction is not similar to the first meaning of the term. We might say in an ironic way that "confusion" is a… confused notion. Before "entering" the Perelmanian "realm of argumentation", "confusion" means prejudice; in and after the (unending) discussion, "confusion" means that there are still controversies related to a certain irreducible vagueness of the terms we use. A lack of clarity in the latter sense is normal, notably in democracy: we use a language that is natural, as opposed to an artificial (formalized) language[21]. The emphasis put on certain meanings will always be *to a certain degree* dependent on some irreducible feelings (a preference for liberty, or for solidarity, etc.), an immersion in a cultural tradition that we are not able to completely objectivize, some presently unfalsifiable predictions and hypotheses concerning the future, etc. This is one of the reasons why, in democracy, we need at a certain point to decide, that is, to vote. All interlocutors are equal in such a context, they share a common loyalty towards the *res publica*, and they enjoy the same freedom to interpret what the defense of the common good commands. Actually, there is another cause for the existence of a residual "confusion" even after a supposedly rational discussion, where the final say belongs to – as Habermas would say – "the force of the better argument"[22]: political problems (in a very general sense of the term) are necessarily more or less urgent, so deliberation and discussion must stop at a certain point. The situation is the same for judges. Of course, the idea that a discussion taking place without deadlines because of its non-urgent character would lead to complete clarity and distinctness is untenable: as Kant had seen it, metaphysicians disagree as much as do people living and acting in the world of *doxa* and being confronted with political problems, when time is a scarce resource[23].

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[20] « One can draw the conclusion, which might seem disrespectful, that the proper object of philosophy is the systematic study of confused notions. » C. Perelman, *De la justice* (1945), in ETHIQUE ET DROIT (Brussels : Editions de l'Université de Bruxelles, 1990) at 17.

[21] See TRAITÉ, § 34 for a discussion of "clarification and darkening of notions".

[22] "… the communicative structure of rational discourse can ensure that all relevant contributions are heard and that the unforced force of the better argument alone determines the 'yes' or 'no' responses of the participants." J. Habermas, THE INCLUSION OF THE OTHER. STUDIES IN POLITICAL THEORY, (Boston: MIT Press, 1998), Chapter 1, Part VIII.

[23] That phenomenon is particularly dramatic in emergency situations, when time runs still faster than in normal situations. Vico insisted in his Address on the time factor in the context of trials. "In pressing, urgent affairs, which do not admit of delay or postponement, as most frequently occurs in our law courts–especially when it is a question of criminal cases, which offer to the eloquent orator the greatest opportunity for the display of his powers–it is the orator's business to give *immediate* assistance to the accused, who is usually granted only a few hours in which to plead his defense. Our experts in philosophical criticism, instead, whenever they are confronted with some dubious point, are wont to say: 'Give me some time to think it over!'" (ON THE STUDY METHODS OF OUR TIME). For a good analysis of decision-taking in emergency situations, see M. Ignatieff, THE LESSER EVIL. POLITICAL ETHICS IN AN AGE OF TERROR (Edinburgh: Edinburgh University Press, 2005).

Such a very rapidly sketched difference between two meanings of "confusion" is the point of departure of the kind of research I would like to present in this paper. Let us first briefly analyze in a more detailed way the notion of confusion that exists *before* discussion[24]. In such a context, there exists a possibility of deliberate manipulation, that is, of sophistry. My aim is to show, by using some contemporary examples essentially based on the (often hidden) controversies concerning free speech, that deliberative democracy is highly vulnerable to such a distortion. I said previously that there were two completely different rhetorical strategies used by the adversaries of liberal democracy to attack it. (Of course, between these two opposed poles, there are a lot of possible intermediary positions.) The first strategy possesses at least a virtue: its *real* clarity. The values and aims are stated in a rather straightforward way. For instance, liberal democracy is considered by the censor to be against religion, as it replaces the law of God by the law of "We the People", emanating from the social contract. But such a frontal attack is not convincing at all in the liberal democratic community because it challenges the very premises of any successful argument that might be made in such a context. So another approach is more and more used: here the opponent uses *the language* of liberal democracy, by subtly distorting the meaning of the concepts and values that are at the core of human rights and democracy. Such a distortion permeates the general discussion in the *polis*, so that at a certain point even democrats acting in good faith fall prey to such a sophistic manipulation. Of course, the strategy I call the "wolf in the sheepfold" has the disadvantage (for us democrats) of taking the interlocutors off-guard: as they think they are confronted with someone accepting liberal-democratic values, they do not see the danger – or at least the intellectual challenge – they are exposed to. And so, as I said in the beginning, the democratic fortress must not be stormed: the enemy is already inside, as a Trojan horse.

3. The Danish cartoons and "translation"

In order to develop my argument, I shall begin by reexamining a very difficult problem that concerns some specific limits to free speech that are related either to religion (blasphemy) or to "race" (racist speech). I would like to analyze the rhetoric which is used today not only in the public debates but also sometimes by judges sitting on a high court (at least in Europe). I shall first analyze a sequence of events that took place in 2005 when the Danish newspaper *Jyllands Posten* published the now famous cartoons on the Prophet Muhammad[25]. Let us, as far as our problem is concerned, summarize the sequence as follows: when the Danish journalists were threatened by Muslim extremists, some newspapers in other European countries decided to republish the cartoons, not necessarily because they thought that they revealed a good and wise editorial policy, but out of solidarity with the threatened individuals, and in defense of free speech as a central value of liberal democracies. Now, in a sense, one might easily consider that these cartoons were blasphemous. Of course, they could also be read in a political context, for instance by giving them the meaning of a critique of a "human, all too human" instrumentalization of religion. Whatever interpretation one decided to give to the cartoons (the meaning of a drawing is always still more open than the meaning of a discursive expression), freedom of expression had to be protected. From the point of view of the (more or less violent) opponents of the journalists, the meaning of the caricatures was clear: it amounted to an offense to the Prophet of Allah, that is, an insult to God – in other terms an outrageous blasphemy. One immediately sees the danger, for the advocates of the *Jyllands Posten*, of trying to show that the drawings, after all, were *not* blasphemous: it would have meant that *if* it

[24] Of course, in a sense, discussion has always already, as Heidegger would have said, begun: my idea of a confusion related to a "pure" prejudice is evidently a pedagogical, artificial device.

[25] The cartoons were published on September 30, 2005. See G. Haarscher, *Free speech, religion, and the right to caricature*, in A. Sajo, ed., CENSORIAL SENSITIVITIES : FREE SPEECH AND RELIGION IN A FUNDAMENTALIST WORLD (Utrecht: Eleven International Publishing, 2006) at 309-328.

had been the case, the journalists would have been rightly convicted. "Another such victory and I am undone."[26]

So it would be safer for the future of freedom of expression to accept that the cartoons can reasonably be interpreted as being blasphemous or sacrilegious, *and that this should be protected speech*. At least the situation would be intellectually clear, although defending such a position would for obvious reasons be physically dangerous. The anti-blasphemy statutes that still exist in some European countries are, as it were, remnants of a time when religion was officially "established"[27] and protected by the secular power. The conflict was between the "dissident" individual and a theologico-political entity. Now in pluralist societies, religion in general, or a particular faith, should not be immune from criticism. The problem is not only a formal one. It is very important for us to begin with a clear characterization of the nature of the conflict that took place in Denmark, and then – this is unavoidable in an era of global communication – throughout the world. Some journalists writing (and drawing) for a newspaper exercised their right to free speech and were accused of blasphemy. For the moment, the question is not, "Is blasphemy a legitimate limitation of freedom of expression?" I am only trying now to characterize the situation. Obviously, it is because Muhammad is a sacred figure in Islam that the cartoons were attacked, at least on two counts. First, they were a representation of the Prophet, which, according to a dominant (but not the only) tradition in Islam, is radically forbidden. Secondly, the content of the drawings was blasphemous in that, for instance, one of the caricatures portrayed the Prophet wearing a bomb on his head instead of a turban.

Now everybody is entitled to give whatever meaning he wants to a drawing. A problem arises only when one considers that such an expression constitutes *as such* an abuse of the right and should be suppressed. We can limit ourselves to two different forms of suppression. The first one is legal censorship, that is, suppression of the "speech" *sensu lato* and possible punishment of the author inside the framework of the rule of law. The second one is to be situated outside the law: one tries to suppress the expression or to punish the author(s) by resorting to intimidation, threats and even outright violence. In this article, I am only interested in the first form of suppression, that is, legal censorship. The question is thus the following: "Is it justifiable under the rule of law to censor an expression because a part of the population thinks it is blasphemous?" Let us, for the sake of argument, take the position of the advocates of censorship. Their case is of course quite easy when they act in a country where an anti-blasphemy statute is in force: one has simply to apply the law.

But, rhetorically speaking, the situation is very different – and the case becomes much harder – when there is no blasphemy law on the books. We already know that some European newspapers decided to republish the drawings out of solidarity with the threatened journalists. All things considered, because there were attempts to suppress the cartoons in an illegal and violent way, they wanted to show that they would defend freedom of expression against intimidation and fanaticism. But here comes the legal form of suppression. The French magazine *Charlie Hebdo* republished the cartoons. In response to this, the advocates of legal censorship brought a suit against the newspaper, trying to obtain the suppression of the drawings by legal means. But here is the difficulty: France does not have an anti-blasphemy statute, so the case for censorship was much harder that it would have been, say, in Austria or in Britain.

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[26] Beauharnais *v*. Illinois, 343 U.S. 250 (1952). Dissenting opinion of Justice H. Black (rejecting the notion of collective defamation used by the majority).

[27] There still exist some established and official religions in Europe: Anglicanism in England, Presbyterianism in Scotland, Lutheranism in Denmark, Lutheranism and the Orthodox Church in Finland, the Orthodox Church in Greece, Romania and Bulgaria, etc. Except for the case of the Orthodox Churches, the official and established religions have been progressively stripped of their persecutory and discriminatory elements. If it had not been the case, "establishment" would have been abolished, as being blatantly anti-democratic. The same argument can be made concerning the survival of constitutional monarchies. See G. Haarscher, LA LAÏCITÉ, (Paris: PUF, 4th ed., 2008).

But the opponents of *Charlie Hebdo* succeeded in bringing the case before a tribunal. In order to be entitled to proceed with their claim, they first had to *translate* it into the language of French law. In other words, as there was no statute providing for censorship of blasphemy, they had to find another legal basis. If one looks at the arguments that were exchanged in front of the judge and in the press, it will be possible to distinguish between *two* different rhetorical strategies of "translation". As I shall try to show, both of them are in a sense "perverse", in that they transform the process of argumentation into pure sophistry; in other words, they artificially create an element of confusion[28].

The first strategy looks like this: one subtly transforms the conflict between a fundamental human right (freedom of expression) and the remnants of an official religion, into a conflict *between human rights*. Instead, therefore, of saying that the cartoons offend God, one affirms that they insult the religious feelings of a (more or less) defined community. The problem, then, is not that "God" is insulted (which was the original definition of blasphemy), but that certain individuals are (supposed to be) hurt in their religious feelings, which prevents them from exercising their right to freedom of religion. The translation works in the following way: the opposition between the individual and the order of God becomes a conflict *between rights*: between freedom of expression and freedom of religion. Now these rights are on the same hierarchical level: there is no priority rule (in the Rawlsian sense[29]) allowing us to make one of them superior to the other. So, if they are of equal value, the only way of taking a decision is to "balance" them against each other. In other terms, as freedom of expression and freedom of religion possess the same value, the judge will have to assess whether or not one of the rights has been exercised in an "exaggerated" way ("abuse of right"), preventing other persons from exercising the other right. There are many examples of such "systemic" conflicts, that is, conflicts arising *inside* the system of human rights, and not *between* a human right and some exterior Norm. For instance, freedom of expression must be balanced against the right of the suspect or the right of the accused to a fair trial, so that the press must show some restraint; but on the other hand, the journalists must inform the public of cases that are important for the democratic life of the country. Freedom of expression must also be balanced against the right to privacy or the right to reputation (law of defamation). These are well-known examples of systemic conflicts between human rights.

My point is that *in the case of* free speech and freedom of religion, the systemic conflict is artificially constructed, and, if one sees through it, it appears particularly absurd. One should argue in such a context that some drawings published in a Danish newspaper prevent Muslims anywhere in the world from exercising their right to freedom of religion; more precisely, one should try to show that the republication of the cartoons in *Charlie Hebdo* would be, as such, an abuse of freedom of expression, that violates the rights of French Muslims as far as the free exercise of religion is concerned. *If this were true* (or only plausible), a judge would necessarily have to balance a right against another as there exists no commonly accepted hierarchy between the two of them. Then we would find ourselves in a situation similar to the ones I mentioned earlier: free speech *versus* right to a fair trial (or *versus* right to privacy, or right to reputation, etc.) This would then confer a strong legitimacy on the limitation of free speech in the present case: not a censorship for religious-dogmatic reasons, not the crushing of human rights for the defense of the remnants of an official religion, but a systemic conflict between human rights – a conflict that would be deemed unavoidable in case of an absence of principled hierarchy. But the construction is wholly artificial. At the same time, many people "buy" the argument. We must understand why.

Actually, an obvious reason for the existence of such a perverse process of translation is the following one. It is very difficult, in the context of liberal democracy, to limit the scope of human

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[28] This is the "bad" sort of confusion I mentioned earlier, when I commented on Perelman's definition of philosophy as "the systematic study of confused notions".

[29] See J. Rawls, A THEORY OF JUSTICE, "The priority problem" (Cambridge, MA: Harvard University Press, 1971) at 40 sq.

rights in order to defend a "superior" value. This is easily understandable, as human rights are considered, at least since the 1948 UN Universal Declaration, the moral value *par excellence* governing the political sphere. So the rhetorical strategy will be much more efficient if the problem is transformed into a conflict between human rights of equivalent normative value. In the present case, instead of speaking of a limitation of free speech for the sake of protecting religion, or God, from being insulted, one does not "leave" the realm of human rights: the limitation of one right is imposed *in order to protect another right*. The rhetoric of the censor is transformed into an argumentation about human rights. As I already said in the beginning, the fortress is occupied without having to be stormed. But the result is exactly the same: free speech is limited.

Now one can ask whether or not such an argumentation has a chance to convince legislators and judges. In Paris – at Philippe Val's (the director of *Charlie Hebdo*) trial – it did not work, and the advocates of a strong protection of free speech won the case. But we shall see that what I call the rhetoric of translation (blasphemy becomes an attack on the "sensitivities" of a community) has succeeded in other legal forums. Before analyzing this problem, let us briefly summarize a second strategy, that was also used at the Paris trial.

The previous "translation" did not consist in abandoning the domain of free speech and religion. The argument was only about a change of "victim": blasphemy meant that the target (the insulted "entity"') was God; "wounded religious sensitivities" signifies that human beings are supposed to be affected by the discourse. The difference is essential, in that, as it were, the problem is "horizontalized": in the case of an explicit accusation of blasphemy, the relationship is so to say "vertical" between a human being who speaks (or writes, draws, etc.) and a supra-human entity. Of course, as I said before, it is difficult to argue for such a limitation (censorship) in a liberal-democratic context. But the situation is at least intellectually clear, although it is not without danger for the speaker: an essential human right is limited to protect religion and the sacred character of a divine being. When the ("perverse") translation process occurs, there is no more limitation of a human right for the sake of preserving the "reputation" of God (or the Church), but a conflict of rights that has to be resolved by finding an certain equilibrium. What is assumed here to be a zero-sum game works in the following way: what free speech "wins" is "lost" by freedom of religion (and the other way around). Under these conditions, one must strike a balance for the sake of the "system" of human rights itself. The tension still exists between speech and religion, but the problem has been reformulated in terms of *liberties*: one liberty against another. So in a certain way the victim of censorship (from the point of view of human rights) becomes the violator of the religious rights of the members of a community: he has abused his rights, "too much is too much", the criticism is gratuitous, and does not contribute to a debate of general interest. The attack on the convictions of a community are thus unacceptable, but only because the exercise of the right to free speech has been abusive. There is – in appearance – no violation of a human right, but a legitimate limitation of the exercise of a right *for the sake of another right*, that is, for the sake of consistency in the system of rights.

Now the second strategy goes farther. It consists in abandoning, as it were, the domain of religion and in reformulating the problem in "racial" terms. We can summarize the argument as follows. If you attack the convictions of a group of people in a virulent way, the argument goes, it is because you don't "like" them. You have fallen prey to a kind of irrational fear (*phobia*), which might incite you to hatred or contempt. In brief, you are a racist. This is, roughly speaking, the simplified meaning of – for instance – "islamophobia". The republication of the cartoons by the French newspaper is thus *reinterpreted in non-religious terms*: racism is not about ideas, it's about a certain class of individuals that are deemed *a priori* inferior and should not enjoy the same rights as the others. Racism is of course a very dangerous phenomenon, and racist speech is despicable. Some European countries have anti-racist *speech* provisions on their books. I don't want to enter for the moment into the debate concerning the legitimacy of the criminalization of racist discourse. But I want to emphasize the fact that there is a fundamental difference between blasphemy and racist

speech[30] – a difference which is precisely blurred by the recourse to a notion like "islamophobia". Indeed, vigorous criticism of religion is about ideas, and notably about the complex relationships between religion, politics and violence. The cartoons about Muhammad described the very dangerous instrumentalization of Islam by terrorist groups. On the contrary, racism is *not* about the ideas of the "other": when one refuses the equality of rights to, let us say, "coloured people", it is not because of the ideas they have or have not expressed. They are so to say *a priori* excluded from the democratic forum, "before" they have had a chance to say anything. The prejudice plays here a pre-eminent role: the racist "knows" in advance that the other is evil, ignorant, inferior, etc.

But if such a difference between criticism of ideas and criticism of persons is quite easy to grasp in general terms, there are strong incentives to deliberately blur the distinction. If you want to immunize a religion from criticism, you have the option of interpreting the attack as being motivated by hatred, irrational fear, and, to sum up the argument, racism. Now that argument pushes the translation process a little farther on: when blasphemy is "translated" into an exaggerated attack on the feelings and sensitivities of a (religious) group, the victim of the limitation of speech rights (here, the journalist) is (illegitimately) placed on the same footing as the potential "victim" of an attack on his or her religious convictions. The vertical relationship between the victim and the dogmatic oppressor is translated into a horizontal relationship between two potential victims. The balance of interests allows then the judge to decide in favour of one of the two rights. But in the case of a translation of the conflict into the language of racism, the positions are radically inverted. Again, we have a vertical relationship between an oppressor and a victim. But this time, the victim of dogmatic censorship (who is, so to say, at the "bottom" of the relation) becomes the oppressor (situated at the "top", because racism is a relationship of domination). If such a rhetorical strategy succeeds, it will become more and more difficult to criticize religion – a vital activity in a democratic society.

One must not underestimate the benefits of such an argumentative strategy. Not only is the "wolf" in the "sheepfold": in the case of an intra-religious translation, the wolf looks like another sheep. The censor is an individual, deeply shocked in his convictions by a speech (or an image). In the case of a translation into the language of racism, the wolf still resembles a sheep, but the "real" sheep takes the appearance of a wolf (a racist). Albert Camus said in the beginning of *L'homme révolté* that one of the main (and terrifying) characteristics of the XXth Century was the 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 justifications, through a curious process of inversion that is characteristic of our times. »[31]. Here, we are confronted with the contemporary version of such a strategy. The latter is no more used in the context of the Cold War: it does not serve anymore to place the Soviet totalitarian power in the position of the "encircled" victim of international capitalism and imperialism; it is no more used to freeze *political* criticism of totalitarianism and the Gulag, and to immunize Communism from rational assessment. According to Sartre, anti-Communists were "dogs"[32], they tried to reduce "Billancourt"[33] to despair, that is, they crushed the

30 See G. Haarscher, *Tolerance of the intolerant?*, in L. Gianformaggio, (ed.), TOLERANCE AND LAW, RATIO JURIS Vol. 10, No 2 (Oxford: Blackwell, 1997) at 236-46.

31 A. Camus, L'HOMME RÉVOLTÉ (Paris: Gallimard, 1951), coll. « Idées », at 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. »).

32 « Tout anti-communiste est un chien ! » (J.-P. Sartre, *Merleau-Ponty vivant*, in SITUATION IV (Paris: Gallimard, 1964).

hope of Western workers in a better world; they reinforced the *status quo* and the continued domination of the bourgeoisie. Criticizing Communism meant that one was motivated by hidden and shameful interests in the preservation of an unjust order based, Marx wrote in *Das Kapital*, on exploitation. Today, the very fact of criticizing, say, Islam (or even only the terrorist instrumentalization of Islam), is often supposed to mean that one is motivated by "hatred", "phobia" and racism, to the detriment of an unjustly attacked "community".

But if there are lessons to be learnt from the stigmatization of anti-Communists at the time of the Cold War[34], they are essentially the following ones: contrary to what the Communists said, one could plausibly criticize the Soviet Union from the point of view of human rights and democracy regardless of one's political positions in the domain of social redistribution and equality. By the same token, one can reasonably criticize Islamism, and be a loyal Muslim; of course, one can also criticize Islam, or even all religions, from an atheist position, provided that it does not amount to a defense of official atheism, that is, the forced eradication of the "opium of the people", as the young Marx defined religion[35]. More fundamentally, criticizing religion (or political religion, or a particular religion) is completely different from wanting to discriminate against a group that is defined by "racial" traits. Of course, the devil is always in the details, and racists have learnt to adapt their rhetorical strategies to a changing world which becomes – happily – more and more hostile to open racism[36].

But let us now consider the actual decision taken by the French tribunal in the case of the Danish cartoons (more exactly, their reproduction by *Charlie Hebdo*). So far, I have only mentioned the argumentative strategies of the advocates of a politically correct censorship, that is, a censorship which is not named as such but is translated into either the language of shocked religious sensitivities or the language of racism. Philippe Val, the director of the newspaper, was acquitted by the Paris tribunal. So the arguments summarized above did not prevail. This does not deprive them from their appeal to many people acting in good faith. As far as the defense of *Charlie Hebdo* was concerned, the emphasis was put on the importance of free speech for a democratic society. Many personalities (from the left and from the right) testified in favour of the accused. If certain limits must be assigned to the exercise of the right, they should not prevent the press and the individuals from defending opinions that are considered shocking by a part of the population. *A fortiori*, according to these witnesses, the free criticism of ideas, even in the form of caricatures (that by themselves imply exaggerations) should be guaranteed to avoid a "chilling" effect on the debate. Indeed, the argument goes, if one must take into consideration the sensitivities of the many groups which coexist in a pluralist society, nobody will feel safe when expressing an idea. We shall be confronted with the opposite danger: people will not speak "enough". The accent put unilaterally on

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[33] The Seguin island in Paris was famous for the Billancourt Renault factory that was built on it. It is a place where many workers' revolts took place. It does not exist anymore. See J.-P. Sartre, NEKRASSOV (Paris: Gallimard, 1955).

[34] Of course, Communists were also stigmatized in the West. For a balanced approach of McCarthyism, taking into account the discovery of, notably, the "Venona documents", see Martin H. Redish, THE LOGIC OF PERSECUTION. FREE EXPRESSION AND THE MCCARTHY ERA (Stanford: Stanford University Press, 2005).

[35] "Religion is the general theory of this world, its encyclopaedic compendium, its logic in popular form, its spiritual point d'honneur, it enthusiasm, its moral sanction, its solemn complement, and its universal basis of consolation and justification. It is the fantastic realization of the human essence since the human essence has not acquired any true reality. The struggle against religion is, therefore, indirectly the struggle against that world whose spiritual aroma is religion. Religious suffering is, at one and the same time, the expression of real suffering and a protest against real suffering. Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the opium of the people." (K. MARX, *Contribution to the Critique of Hegel's Philosophy of Right*, DEUTSCH-FRANZÖSISCHE JAHRBÜCHER [1844]). See G. Haarscher, L'ONTOLOGIE DE MARX (Brussels : Editions de l'Université de Bruxelles, 1980).

[36] See hereunder, the New Right and Holocaust denial.

the peril of exaggeration leads to a reinforcement of political correctness, conformism, and finally, hypocrisy. Already John Locke had affirmed, in one of his arguments against the use of force to impose a religious orthodoxy, that such a constraint would induce an individual to adhere to a faith for the wrong reasons: not because he was convinced by the basic tenets of the relevant religious doctrine, or because he "had the faith", but for prudential reasons: to avoid persecution or to obtain an advantage reserved to the privileged who profess the official creed[37].

4. The US Supreme Court and the European Court of Human Rights about "translation"

These are well-known arguments, and one might think that, in a contemporary liberal democracy, they would be sufficiently convincing for the case to be easily won. This is what happened, but one would be naïve to think that the defeated opinion (the "translated" thesis of the accusation) does not have the power to persuade many individuals – even non-religious or "tolerant" people (the ambiguity of the notion of "tolerance" is well documented, particularly when it is used as a Trojan horse in the process of perverse translation)[38]. In order to make my point, I would like to briefly summarize recent developments in the case law of two high courts (in the contemporary democratic world): the United States Supreme Court and the European Court of Human Rights.

The leading decision in the case law of the US Supreme Court is *Joseph Burstyn v. Wilson* (1952). A film by the famous Italian movie director Roberto Rossellini, *The miracle*, was censored by the New York authorities. The central character of the film was a young peasant girl. The movie suggested that she was raped by an individual she thought was Joseph, her favourite saint. The girl was expelled from the village when it was discovered that she was pregnant while still unmarried. Finally, she gave delivery in a church. The details of the case are not relevant here: we are only looking at the way the Court argues concerning an expression that was clearly considered blasphemy (or a sacrilegious act). The Justices denied the constitutionality of censorship. Their argument ran as follows:

"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

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[37] "For no man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consist in the inward and full persuasion of the mind; and faith is not faith without believing. Whatever profession we make, to whatever outward worship we conform, if we are not fully satisfied in our own mind that the one is true and the other well pleasing unto God, such profession and such practice, far from being any furtherance, are indeed great obstacles to our salvation. For in this manner, instead of expiating other sins by the exercise of religion, I say, in offering thus unto God Almighty such a worship as we esteem to be displeasing unto Him, we add unto the number of our other sins those also of hypocrisy and contempt of His Divine Majesty." (J. Locke, A LETTER ON TOLERATION [1689]).

[38] See for instance: "Nevertheless, it must be accepted that it may be 'legitimate' … *to protect the religious feelings* of certain members of society against criticism and abuse to some extent; *tolerance works both ways* and the democratic character of a society will be affected if violent and abusive attacks on the reputation of a religious group are allowed. Consequently, it must also be accepted that it may be "necessary in a democratic society" to set limits to the public expression of such criticism or abuse. To this extent, but no further, we can agree with the majority." (Otto-Preminger-Institut *v.* Austria, Judgment of 20 September 1994, 1994 ECHR 26. Joint Dissenting Opinion of Judges Palm, Pekkanen and Makarczyk; my underline). The "clear" idea of tolerance is: the shocked person should respect the dissenter as long as he does not use violent means. The "confused" idea means that the "dissenter" should respect the "reputation" of a religious group, and that "religious feelings" should be "protect[ed]". This is very ambiguous and problematic. Concerning group libel, see G. Haarscher, *Diffamation collective : une notion irrémédiablement confuse ?* (Brussels: REVUE DE LA FACULTÉ DE DROIT DE L'UNIVERSITÉ LIBRE DE BRUXELLES, 2008).

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."[39]

This is a principled position, which consists in comparing the situation of the judge (here, the Justices) to that of a sailor who is attracted by various currents. He has no chart to help him choose a direction, and he is finally carried away by the most powerful current. Of course, the notion is used here in a metaphorical way: if the judge decided to censor an expression because it was considered sacrilegious or blasphemous by a religious "current", he would be dominated by the most vocal and powerful orthodoxies. It is not the business of the State to suppress opinions that a religious group finds "distasteful". If we make a thought experiment and imagine in a counterfactual way that the Justices of the United States have to decide the *Charlie Hebdo* case, we can be sure that Philippe Val will be acquitted (as it actually happened in Paris): the position of the Court is stated without conditions[40]. The Court seems to be absolutely against censorship in matters of so-called blasphemy. We should notice that the Justices do not even mention the possibility of translating the position of Cardinal Spellman (who acted as spokesman of one of the "most powerful orthodoxies" – and was indeed very "vocal") into the language of human rights. The Cardinal himself did speak in a straightforward way[41]. The opposition is clear-cut: on the one side, the religious currents that want to suppress opinions they find "repugnant"; on the other side, the advocates of free speech[42].

Let us now present, in a very summarized way, the case-law of the European Court of Human Rights concerning the same problem. One must first know that a dictum of the Court in a famous 1976 case (*Handyside v. United Kingdom*) seems to go in the same direction as the *Burstyn* case. The judges say the following.

"Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject

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[39]Joseph Burstyn, Inc. *v*. Wilson, Commissioner of Education of New York, et al., 343 U.S. 495 (1952). My underline.

[40] "… without any 'ifs' or 'buts' or 'whereases.'" (Beauharnais *v*. Illinois, 343 U.S. 250 [1952] – the year of the *Burstyn* decision –, dissenting opinion of Justice Black concerning "collective defamation").

[41] "On Sunday, January 7, 1951, a statement of His Eminence, Francis Cardinal Spellman, condemning the picture and calling on 'all right thinking citizens' to unite to tighten censorship … laws, was read at all masses in St. Patrick's Cathedral." (Burstyn case).

[42] Many US Supreme Court decisions confirmed such a view. For instance: "There is no doubt that the caricature of respondent and his mother published in Hustler is at best a distant cousin of the political cartoons described above, and a rather poor relation at that. If it were possible by laying down a principled standard to separate the one from the other, public discourse would probably suffer little or no harm. But we doubt that there is any such standard, and we are quite sure that the pejorative description " outrageous" does not supply one. "Outrageousness" in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression. An "outrageousness" standard thus runs afoul of our longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience." (Hustler Magazine, Inc. *v*. Falwell, 485 U.S. 46 [1988]).

to Article 10 (2)[43] it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'."[44]

The position in 1976 seems clear: offending, shocking or disturbing speech is protected by the Convention. The European Court began to deal with blasphemy cases in the Nineties, first in a very controversial and much commented decision: *Otto-Preminger-Institut v. Austria* (1994)[45]. The aim of the Otto-Preminger association was to show art films that could not be seen in big theatres. As in the *Burstyn* case, a movie was considered "blasphemous". *A Council in the Heavens*, directed by Werner Schröter, told the story of Oskar Panizza, who had been convicted in 1894 by the Munich assizes court for blasphemy after writing a play in which God was portrayed as an impotent senile individual, Mary as a whore who kissed the devil, and Jesus as a mentally retarded youngster. A council decided to spread syphilis in order to punish humanity for its sins. The Otto-Preminger association decided to show the movie in Innsbruck. An anti-blasphemy criminal statute is in force in Austria. At the request of the diocese, the public prosecutor instituted criminal proceedings against the director of the Institute, under the Austrian criminal statute, for blasphemy (the exact charge was "disparaging religious doctrines"). Otto-Preminger was convicted under that statute, the movie being clearly blasphemous. Just as it was the case in *Burstyn* (which, so to say, took the opposite direction), the situation was clear: on the one side were the Catholic bishops (the dominant religious "current" in Austria), who wanted to enforce an anti-blasphemy statute; on the other side was the Otto-Preminger association, which had decided to show a movie on Panizza, on censorship and the relationships between speech, art, and religion.

But when the case was brought by the association before the European Commission of Human Rights (at that time the "antechamber" to the European Court[46]), the lawyers of Otto-Preminger were confident that they would win in Strasbourg. Why? Because the legal basis of the decision is fundamentally different. Indeed, in Austria, the judges had to apply a clear valid statute criminalizing blasphemy. In Strasbourg, the judges must apply the European Convention on Human Rights, which, of course, does not contain a provision against blasphemy, but, on the contrary, guarantees, in its article 10, the right to freedom of expression. Moreover, as I already said, the 1976 *Handyside* decision had created a liberal jurisprudence that made the advocates of Otto-Preminger very optimistic: speech "that offend[s], shock[s] or disturb[s] the State or any sector of the population" was supposed to be protected. Now freedom of expression is not an absolute right under the Convention, and paragraph 2 of article 10 provides for some possible limitations to the right. But again, blasphemy – or an offense to religion – is not one of the legitimate bases for limitation that are listed in that paragraph. So how did Austria's lawyers argue? In a very simple way: they *translated* the conflict (we already know how such a rhetorical strategy works) between the Otto-Preminger association and the State of Austria into a "systemic" conflict *between rights*. One of the legitimate aims in the name of which freedom of expression can be limited under the Convention (article 10, paragraph 2) is "the rights of others". It is the case when a conflict between rights of equal "value" occurs – but a conflict between *which* rights? Between, according to the majority of the sitting judges, freedom of expression (article 10) and freedom of thought, conscience and religion (article 9). The Strasbourg Court held that Austria had not violated article 10 of the Convention, but, on the contrary, had legitimately limited the right to free speech to protect the (religious) rights of the others.

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[43] Which stipulates that some precise and restricted limitations to the exercise of free speech are legitimate under the Convention.

[44] Handyside *v*. UK, Judgement of 7 December 1976, 1976 ECHR 5.

[45] See Otto-Preminger-Institut *v*. Austria, Judgment of 20 September 1994, 1994 ECHR 26.

[46] The Commission was abolished by Protocol 11 to the Convention. The Protocol entered into force in 1998.

But what are these "rights", and who are the "others"? We must first emphasize a similarity between the respective situations in Innsbruck (end of the 1980s) and Copenhague (2004): in each case, the relevant "community" did not express itself on that matter, but some very orthodox and vocal leaders spoke and acted: the bishops in Austria, as well as some radical Muslim leaders in Denmark (and elsewhere, which is unavoidable in a world of global communication). Of course, I only want here to stress a structural similarity between both situations: the attitude of the bishops is not comparable to what took place a couple of years ago in the Muslim world (especially the violence that erupted in some parts of the Middle East). The only common element is related to the problem of *representation*: the "people" did not complain or initiate the process. In a later decision concerning a rather similar case, a dissenting judge noticed that "[t]he actual opinion of believers remains unknown"[47]. Under such conditions, the translation of a blasphemy case into a systemic conflict of human rights becomes very problematic indeed: it would be difficult to affirm in good faith that the right of the Catholics to freely practice their religion was violated by the exercise of the right to free speech by the Otto-Preminger Institute. Actually, the movie was shown after 10 pm during the week, in a small theatre, and it was forbidden to children and teenagers under 17. The advertisement had been very cautious. So it seems obvious that Catholics were not prevented from living according to their spiritual orientations just because a movie they were not obliged to see was shown in a theatre. The fact is that the translation was so far-fetched that the decision aroused a virulent controversy. One can understand the situation in which Austria's attorneys were and the necessity for them to find legal arguments to support their case. What is not easily understandable is the fact that a majority of the judges sitting on the Court "bought" the argument and found that Austria had *not* violated the Convention.

So we can see that mavericks, bigots, or naïve leftist militants do not have the monopoly on problematic "translation". Eminent members of the legal elite have accepted the validity of the – very controversial – reformulated argument. And there is more to the predicament: *Otto-Preminger-Institut v. Austria* was not an isolated decision. The European Court has confirmed its jurisprudence until the present day[48]. But the problem is more complex than it appears to be at first glance. If we compare the 1994 decision by the Strasbourg Court to the 1952 US *Burstyn* case, we are tempted to make a clear-cut distinction. The Justices of the United States did *not* translate blasphemy into the language of human rights. They described the problem in plain terms: some religious groups (here, the Catholics) did not want some sacred figures to be mocked, or even – as it took place in *The Miracle*, which is not at all a "caricature" – presented in a shocking or offending way. The distributor of the movie invoked his First Amendment right to free speech. The Court did not translate the problem into a "systemic" conflict between rights, but presented it in a clear language and reversed the decision of the lower court. In brief, the Supreme Court took the side of free speech. At *first* glance, the European Court did *exactly the contrary* in the 1994 case. It "reconfigured" the conflict in terms of a systemic tension and decided in favor of Austria. But if this were totally true (it is at least partially valid), the Court would have had to clearly say that the *Handyside* jurisprudence was no more good law. But the Court, so far, has always affirmed the compatibility between *Handyside* and *Otto-Preminger*. How can we understand this, keeping in mind that *A Council in the Heavens* was obviously "offending, shocking or disturbing"? Did not the 1976 decision say without ambiguity that this was *protected speech*?

Actually, the Court has, since 1994, made a subtle distinction between two sorts of expressions: one of them is protected, the other not. Shocking speech is still protected, *except* if it is *gratuitously* offensive, that is, if it does not contribute to a debate of general interest. In other words, "too much is too much", and the shocking character of the speech must be "redeemed" by a certain social value. The "provocation" should not be unnecessary ("gratuitous"). (One partially

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[47] See Wingrove *v*. UK, Judgment of 25 November 1996, 1996 ECHR 60.

[48] See I.A. *v*. Turkey, Judgment of 13 September 2005, 2005 ECHR 590; Tatlav *v*. Turkey, Judgment of May 2, 2006.

similar argument was used by the United States Supreme Court, but it concerned obscenity, which is a very different matter[49].) But in the XIXth Century, Baudelaire and Flaubert were prosecuted in France, because describing lesbianism (in *Les Fleurs du Mal*) or adultery (in *Madame Bovary*) was considered a gratuitous provocation that did not nourish in any sense the public debate[50]. Everybody knows that these two books are major works of universal literature.

Let us summarize the argument. The US Supreme Court does not translate blasphemy into the language of human rights. It does not make the "wolf" look like a "sheep". It does not build a Trojan horse. It defends free speech against the dogmatic claims of the religious "currents". The 1952 decision is still good law[51]. The European Court of Human Rights *does* make the translation. Blasphemy is reformulated as the right of individuals not to be "gratuitously" offended in their convictions or sensitivities, without – so the judges say – any benefit in terms of public interest and debate. So there is an inevitable process of balancing between two rights and two competing claims, both invoking the Convention, the first, article 10, the other, article 9. In some cases free speech prevails, because the Court considers that the expression is shocking or offending[52], but at the same time serves the democratic debate and is thus not "gratuitous". In other cases, the Court finds in favor of *what it calls* freedom of religion, and decides that the State has *not* violated the Convention[53]. But this is heavily problematic, as nobody can seriously affirm that freedom of religion is hindered by the fact that a movie, a theatre play, a cartoon in a newspaper – which nobody is obliged to see – expresses ideas that are repugnant to members of some communities. We are not at all in the conditions of a "captive audience". So, obviously, this is an artificial construction, a bogus systemic conflict, which should never have been endorsed by the Strasbourg judges.

5. The ascent of the "pseudo-argument"

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."[54] 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). As we saw before, 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 gave before, related to limitations to free speech, the censor pretended to begin with human rights premises: "the rights of others". He then constructed an artificial and non-credible systemic conflict between religious liberty and freedom of expression. In certain instances, he was even able to completely invert the respective positions of the "hangman" and the "victim" by accusing the one who exercised his right to free speech of being a racist (who was guilty, for instance, of "islamophobia"). The European judges never went so far, but, as I tried to show, they accepted in certain circumstances the

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[49] See Miller *v*. California, 413 U.S. 15 (1973).

[50] On August 21, 1857, Baudelaire was convicted by a French tribunal for "insult to public morals" (*outrage à la morale publique*). The same year, Flaubert was prosecuted under the same charges, and finally acquitted.

[51] Although some US states still have blasphemy laws on the books from the founding days.

[52] For instance in the Tatlav case.

[53] For instance in the I. A. case.

[54] C. Perelman, RHÉTORIQUES (Brussels : Editions de l'Université de Bruxelles, 1989) at 80.

legitimacy of the translation of the problem of blasphemy into the language of the "rights of others". Now this is precisely, in my opinion, an example of the use of the "pseudo-argument" in the Perelmanian sense. The sophist uses it in a "hypocritical" way in a deliberate attempt to confuse the audience and introduce "the wolf in the sheepfold". The European judges, who of course act in good faith, fall prey to a "paralogism", that is, an involuntary error of judgment or an involuntarily false inference. In both cases, the real controversy is obscured, as the opponent (the censor) hides his own premises and pretends to adopt the ones of the other (the liberal democratic values). It is precisely at this moment that we should listen to Vico's and Perelman's advices. One needs a very good training in argumentation and a knowledge of the art of topics to be able to distinguish between real systemic conflicts (conflicts of rights) and bogus ones. Such a training is necessary to discriminate between interlocutors that actually accept the basic premises of liberal democracy, and interlocutors who just exploit the naïveté of contemporary audiences in order to promote their illiberal aims under the guise of… liberalism. Socrates was unjustly accused (by Aristophanes[55], and then, 20 years later, by Anytus, Meletus and Lycon at his trial) of corrupting the youth by making the weaker cause the stronger. Actually, the attack was aimed at the sophists, whom Socrates had virulently criticised. The equivalence made by the accusers (and before, by Aristophanes) between Socrates and the sophists was unfounded. But as far as sophists and demagogues were concerned, the critique was perfectly apposite: as they used rhetoric in a very skillful and cunning way, they were able to pretend that they adopted the same premises as the audience, and then to draw from them pseudo-conclusions by carefully hiding the deliberately mistaken inferences and the poorly established facts. The weakness of the cause was not visible as such – it looked like the stronger. By the same token, the "translation" of blasphemy into the rights of the others is – as I hope to have shown – very inadequate; but for an audience that is not educated in the art of sound argumentation, the weakness is not visible.

Now such a perverse use of the pseudo-argument is not limited to the realm of free speech. Actually, it is very pervasive. As I previously noted about Vico's address, there is always a danger in the realm of non-formal argumentation, namely, that the courtier replaces the intellectual. Basically, what does the *courtisan* do? He flatters the powerful (the king in monarchies, the "few" in aristocracies and oligarchies, and the "many" in democracies). One of the most efficient kind of flattery consists in making the other believe that he is right, that you agree with his basic principles, that you adopt the same premises, that you are "like" him – in brief, that no meaningful difference exists between him and you. Then, when the vigilance of the audience is so to say put to sleep, you draw some conclusions from the premises by using distorted arguments. The weakness of the latter is not visible, as the sophist, the courtier or the flatterer is very apt at subtly distorting the reasoning leading to a result he actually wanted in advance, before entering the discussion.

If we want to put the problem in a historical perspective, we can say that it is almost always the case that, when the advocates of a position get to be weakened, they choose less aggressive strategies. A couple of centuries ago, the Church had no difficulty in imposing the respect of God and the sacred symbols or figures on all potential dissidents or unbelievers. But progressively, the ascent of democratic values and secularism made it more and more difficult to adopt such a radically intolerant position. So the religious authorities often used another strategy: they pretended to accept human rights and the separation of Church and State. Of course, all "retreats" are not strategic. The "conversion" to human rights and the values of liberal democracy can be sincere. But here lies precisely the problem: if an individual is not educated in the theory and the art of argumentation, it will be definitely impossible for him to distinguish between an authentic inner transformation and "hypocrisy"[56]. On might suggest that making such a difference requires a knowledge of the underlying motivations, which would make the whole enterprise very problematic. But I do not think that we necessarily have to sound out the hearts and fathom the

[55] In The Clouds (423 BC).

[56] See above the use by Perelman of the notion of "hypocrisy" in the analysis of the "pseudo-argument".

intentions. Take our example of the pseudo "systemic" conflict in the abovementioned cases concerning blasphemy. It is enough here, at least in order to develop the critical sense, to point out that the so-called equivalence between "sensitivities" and freedom of religion is, particularly in such a context, unfounded. But if such an equivalence is nevertheless often made and the same "arguments" repeated time and again, we will be in the presence of a "pattern". This is what I would like to show in conclusion of the article: the "translation" as defined above is pervasive; it is partly the expression of a deliberate strategy dedicated to confusing the minds and weakening the "real" defense of human rights; it is also partly related to the *air du temps*, to the intellectual atmosphere of political correctness and the ignorance of the public (and the elite) concerning the weakness of the arguments made in favor of a censorship supposedly exercised in the name of human rights themselves.

I mentioned earlier Camus' statement according to which the respective positions of the "victim" and the "hangman" had been inverted in the XXth Century. Actually, the French philosopher had in mind the idea of "progressive" violence that was often used in the revolutionary rhetoric, at least from 1789 on. The idea was that the arbitrary use of the *guillotine* during the French *Terreur* of 1793-94, or the existence of the *Gulag* in the Soviet Union, were unfortunately necessary to struggle against the enemy, the exploiter, be it the *Ancien Régime* or capitalist imperialism. So if you resisted such a trend in the name of human rights, you were inevitably considered a reactionary: your "sentimental" arguments slowed the pace of History and made universal emancipation a more remote ideal. Conversely, the revolutionary who decided to "make his hands dirty" was a progressive. The revolutionary murderer was considered to be the defender of the innocents, and the advocate of the victim was… the hangman of humanity. I do not pretend that such an argument is *never* valid: in some very limited cases, violence can be labeled a lesser evil[57]. But in probably the majority of the cases, the argument is nothing more than an excuse, an "alibi": it helps transform the oppressor into the advocate of the victims. This is exactly what took place in the blasphemy cases I analyzed earlier, and it very clearly shows that what Camus said was not only valid for the XXth Century (revolutionary radicalism, Cold War, etc.), but also for the XXIst Century (struggle against secularism and all "godless Constitutions"[58]). To say one more word about Soviet Communism, let us mention the Constitutions that were adopted under, respectively, Stalin and Brezhnev: apparently, they guaranteed some first generation rights such as freedom of expression, freedom of assembly, and freedom of association. But at the same time the two Constitutions stipulated that the rights had to be exercised in support of the Communist Party and the "people" it was supposed to represent[59]. So the rights had to be exercised in favor of the government. This is of contrary to what these rights mean, that is, basically, the protection of dissident voices in democratic societies. So both Constitutions grant the rights with one hand, and withdraw them with the other. Dictatorship (that is, every act and speech must have the agreement of the government) is translated into human rights (which are "guaranteed" in the text). At least we can say that the translation is quite visible: the human rights "garment" is threadbare.

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[57] In THE LESSER EVIL, M. Ignatieff, analyzes very well the conditions necessary for the use of the argument of the lesser evil to be legitimate.

[58] See I. Kramnick & L. A. Moore, THE GODLESS CONSTITUTION. A MORAL DEFENSE OF THE SECULAR STATE (New York: Norton & Co., 2005).

[59] Soviet Constitution of 1936, Article125: "*In conformity with the interests of the working people, and in order to strengthen the socialist system*, the citizens of the U.S.S.R. are guaranteed by law: freedom of speech; freedom of the press; freedom of assembly, including the holding of mass meetings; freedom of street processions and demonstrations." (my underline). Soviet Constitution of 1977, Article 39, § 2: "Enjoyment by citizens of their rights and freedoms *must not be to the detriment of the interests of society or the state*, or infringe the rights of other citizens." (my underline). Article 62,§ 1: "Citizens of the USSR are *obliged to safeguard the interests of the Soviet state, and to enhance its power and prestige*." (my underline).

6. Creationism, Holocaust denial and "translation"

To close the argument, let us rapidly give some contemporary examples of the process of perverse translation. As I said before, the advocates of a religious polity can defend the latter by a frontal attack or by introducing the wolf in the sheepfold (or the Trojan horse in the "fortress" of human rights). Very often, both strategies are used at different moments. In the classical situation, the frontal attack is chosen when the advocates of a theologico-political State are powerful; but when they are no more in a position to impose their views, they change their strategy and use the "translation" device. This is particularly visible in the debate which opposes the Creationists and the advocates of "Darwinian" science.

Darwin decided to publish *The origins of species* in 1859 after waiting for almost 20 years, because he feared "the firestorm of anger that his ideas were sure to unleash"[60]. The idea of natural selection ran counter some basic elements of the Christian faith: human beings were no more distinguished (as created in the "image of God" and possessing a soul) from animals; on the contrary, a continuity was established between the latter and the former, through the process of evolution; evolution itself worked through the mechanism of natural selection, which was brutal and at odds with Christian values, notably charity. To make a long story short, in the United States, the conflict became acute after the First World War. Before, there were too few students in secondary school, and the teaching of science was rudimentary. But in the beginning of the Nineteen Twenties, with "the growth of secondary education… more students were being exposed to evolution"[61]. At that time, the conflict was clear, and no "translation" was necessary. The State of Tennessee had passed a statute stipulating that "It shall be unlawful for any teacher to teach any theory that denies the Story of Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animal"[62]. In 1925, the famous Scopes trial –the "monkey trial" – took place. Scopes had taught Darwinism in class and was finally convicted in Dayton for having violated the Butler Act. During the trial, former presidential candidate William Jennings Bryan exchanged arguments with Clarence Darrow, Scopes' attorney and a well-known atheist. "The antievolution laws remained on the books, and even increased in numbers."[63] But in the beginning of the Sixties, after the Soviets had succeeded in launching the Sputnik, the science curriculum in secondary school was considerably strengthened, including the teaching of biology. Creationists tried to suppress that teaching. They lost before the Supreme Court[64]. The Justices considered that suppressing the teaching of Darwinism in public schools in the name of Creation theory amounted to an establishment of religion. So the Creationists adopted a different strategy. The "translation" process had begun. They required "equal time and emphasis" or "balanced treatment"[65] for both conceptions. This means that Creationists did not want anymore (because at that time they did not have the power to do so) to suppress the teaching of "Darwinian" doctrines (that is, science); so they invoked liberal-democratic values, that is, equality and pluralism. The Court struck down statutes providing for equal time and emphasis[66]. The reasoning was that putting on the same level a scientific theory and a religious doctrine amounted to an establishment of

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[60] See E. C. Scott, EVOLUTION VS. CREATIONISM (Berkeley: University of California Press, 2004), Foreword by Niles Eldredge, at X.

[61] EVOLUTION VS. CREATIONISM at 91.

[62] Tennessee's Butler Act, quoted in EVOLUTION VS. CREATIONISM at 93.

[63] EVOLUTION VS. CREATIONISM at 97.

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

[65] See Arkansas Act 590, 1981.

[66] See McLean *v*. Arkansas Board of Education, 529 F. Supp. 1255, 1258-1264 (ED Ark. 1982); Edwards *v*. Aguillard, 482 U.S. 578 (1987).

religion, and therefore was contrary to the First Amendment to the US Constitution. Then the advocates of Creationism changed their strategy again, and went further in the process of "translation". They tried to introduce Intelligent Design in school. That doctrine is supposed to be based on purely scientific arguments. ID theorists consider that the complexity of life and living organisms is not understandable without the presupposition of a "Designer". Religion as such is no more invoked, because they want to avoid the establishment objection. ID advocates reformulate the argument based on equality and pluralism: this time, the translation of the tension between free scientific inquiry and religious dogmatism seems to be perfect, as the opposition is considered to be, so to say, a "systemic" conflict *between two scientific conceptions* of life.

It is worth while remembering that the same strategy has been used in blasphemy cases in Europe. A conflict between liberal-democratic values and theologico-political claims has been translated into a conflict taking place *inside* the democratic and secular sphere, that is, a perfectly normal scientific controversy. In 2004, in Pennsylvania, the Dover Board of Education decided that in the beginning of the biology course, a short statement should be read to the students, letting them know that there existed another acceptable scientific conception of life, that is, Intelligent Design. A federal judge, after long debates involving notably questions related to the definition of science, finally decided that introducing ID into public schools – even under the very "modest" form of a preliminary statement – was, again, an establishment of religion[67]. So for the time being, the strategy adopted by the opponents of scientific biology ("Darwinism") is completely different from the one that was used, say, in the Nineteen Twenties. One does not speak anymore of censorship, of even of equal time and emphasis for Darwinism and Creationism. Balanced treatment between Darwinism and ID is even not required any more: ID advocates "just" wanted a short statement to be read to the students in the beginning of the first class. Even such a modest demand was rejected by a federal judge as amounting to an establishment of religion. The controversy is far from over, but it shows very well how the strategy of translation actually works. Incidentally, it also shows that the federal courts do not seem ready to accept the arguments flowing from such a strategy.

Finally, another domain where "translation" is very present is racism. In our days, racists are deprived of legitimacy in the democratic debate. Again, "in the beginning", the problem was clearly enunciated. Racism is the exact opposite of human rights: the latter presuppose universalism (the human being as such is the repository of certain basic rights grounded in the equal dignity of all individuals). Racism is totally different from such a conception: it fragments, so to say, humanity in two (or several) parts; and it interprets such a particularization in a biological and hierarchical sense. XIXth Century racism, when it began to be systematized, ran counter our Modern universalistic moral intuitions. In its brutest form, racism is as old as humanity: a group has spontaneously the tendency to underrate the "Other" and stigmatize the "alien" by affirming the latter's inferiority. So, basically speaking, the opposition is clear, between, on the one hand, a particularistic, communitarian and hierarchical conception of humanity, and on the other hand a universalistic, individualist and egalitarian view.

However, in the XIXth Century, racism as an explicit ideology developed on the basis of illegitimate extrapolations from philology and biology, that is, from "science". Indeed, as we have seen, racism was opposed to the moral values underpinning liberal democracy and constitutionalism. But the new claim was that it was grounded in scientific inquiry, an activity also intimately linked to Modern values. Now scientific activity "disenchants" the world: science is the opposed of wishful thinking, and its results can frustrate our most cherished expectations. So the theoreticians of XIXh Century racism could begin to translate the conflict between human rights values and brute racial prejudice into a kind of "systemic" conflict between two Modern values: universal human dignity and the "scientific" theory of racial superiority. After 1945, the process of translation was considerably radicalized. Indeed, after Nazism and the Shoah, racist pseudo-scientific ideas were definitely rejected on two counts. First, biology (in particular population

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

genetics) had refuted racism in the field of science itself; second, the tragic effects of racist policies had reinforced, on a universal level (through for instance the 1948 Universal Declaration of Human Rights), the values of liberalism and democracy. So another strategy was devised, notably in France, which led to the ascent of the New Right (*Nouvelle Droite*)[68]. That new orientation had the following advantage: the arguments did not rely on biological, hierarchical, racism. On the contrary, they were based on two fundamental transformations imposed on the old pseudo-scientific racism. On the one hand, the various human groups were no more considered in biological terms as being characterized by unchangeable natural traits. Instead, the *Nouvelle Droite* spoke of *cultures*, that is, of communities grounded in different traditions and defending different values and world-views. On the other hand, the hierarchical element, which was of course central in XIXth Century racism, was abandoned and replaced with an apparently egalitarian view: New Right advocates affirmed that all cultures were equal. But they added a third (essential) element to their intellectual construction: cultures are fragile organisms, they should not be mixed in a reckless way, they must be preserved from *métissage* ("mongrelisation" – a term used in the United States at the time of Segregation). So, as far as immigrants coming from other parts of the world were concerned, the theory was different from old "scientific" racism, but practice remained identical. Culturalism and differentialism led to the same conclusion: the "Other" should not mix with us. By speaking the language of culture and equality, the "wolf" of racism had entered the "sheepfold" of liberal-democratic values. The language of the opponent was now our own language and the values he professed were our own values. Again, the fundamental premises of liberal democracy had been sophistically perverted by a Perelmanian pseudo-argument, as defined above.

But, as far as racism is concerned, there is another post-Second World War translation strategy. Instead of speaking the language of cultures and equality (as opposed to the language of biological races and natural hierarchy), Holocaust deniers affirm that the gas chambers never existed. The idea is to challenge the factual basis of the reaffirmation of human rights after the Second World War. Here, the strategy does not rely on cultures; it puts the scientist in the position of the victim, that is, a new Galileo who is supposedly confronted with – and persecuted by – a new dogmatism. Holocaust deniers replace Ptolemaism and geocentrism with "Exterminationism" (which, actually, is simply the scientific description of historical reality). Of course, the writings of Holocaust deniers are no more scientific than the ones of ID advocates. And they serve much more evil ends: after all, the intolerance and bigotry of Creationists and "Designers" pale before the hidden racism of Holocaust deniers.

I might lengthen the list of fields in which the translation strategies work today. But I just wanted to signal the importance and the power of Perelmanian pseudo-arguments in contemporary controversies. If the advocates of liberal democracy are not able to refute these sophisms (and first to *see* them as such), Vico's lament will continue to haunt us well beyond the beginning of the XXIst Century.

[68] See P.-A. Taguieff, SUR LA NOUVELLE DROITE, (Paris: Galilée, 1994).