

What are Religious Reasons in Public Justification?

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Abstract: *This paper intervenes in the debate between various kinds of “inclusivists” and “exclusivists” with regard to the place of religious arguments in public reason. I seek to move the debate along not by asking whether something called “religious reasons” ought to be invoked in the justification of coercive laws, but by creating a typology of (a) different kinds and modes of religious arguments and, more importantly, (b) different areas of human and social life which coercive laws regulate or about which human political communities deliberate. I argue that to speak of “religious reasons” as such is insufficient. Religious arguments are of many different kinds, are offered to others in a variety of ways, and what are religious reasons for citizens invoking them are often not exclusively or authoritatively religious from an outsider’s perspective. I then suggest a typology of five important areas where communities often deliberate, and argue that the use of various kinds of religious arguments is of variable moral significance in different areas. Turning back to the public reason debate, I argue then that liberals ought to be concerned only about the invocation of a certain subset of religious reasons only in a certain subset of areas of human activity.*

Christopher Eberle expresses the “inclusivist” response to a certain understanding of the obligation to restrain oneself from invoking religious reasons in public debate when he writes that a “citizen is morally permitted to support (or oppose) a coercive law even if she enjoys [only] a religious rationale for that law.”¹ Eberle defends this inclusivist position against what is sometimes presented as the standard public reason view that a citizen must have a sufficient public or secular rationale for supporting a coercive law, in addition to any religious reasons she may have, and if she does not, must restrain herself from supporting such a law.

The purpose of this paper is not to argue for or against the inclusivist claim as it stands, but rather to explore what happens to the debate over this claim when we break apart its two central concepts—“a coercive law” and “a religious rationale”—into a series of more basic concepts. Eberle clarifies that it is not always permissible for a citizen to support a coercive law in this way “without *concern* for whether she enjoys a plausible non-religious rationale for that law, without even *attempting* to articulate some rationale that will be convincing to her compatriots.” But even with this qualification, is it still possible that Eberle’s claim is only right or wrong with respect to *certain specific forms* of religious rationales but also to *certain specific kinds* of coercive laws or areas of collective action?

In other words, must we think that the only morally relevant feature of a law is that it is coercive and that all coercion requires a similar form of public justification? If so, are we left with the conclusion that the only thing that distinguishes religious arguments against marriage equality from religious arguments in favor of the progressive redistribution of wealth is that liberals support the latter and oppose the former? Are there ever reasons for supporting or opposing a law that would be acceptable but for their

¹ Christopher Eberle, “What Respect Requires—and What It Does Not,” p. 305.

religious nature? Are there laws or policies that would be acceptable but for the religious reason supporting them?

Conversely, are there laws, policies or actions which are in their own right terrible or deplorable and yet something is added to their moral badness by a distinctly religious rationale behind them? For example, take the ultimate evil—the destruction of all human civilization, as well as much non-human life, through either nuclear warfare or environmental catastrophe. Is a justification for permitting nuclear war or the destruction of the environment on the grounds that it will hasten the Rapture in some way worse than a secular rationale for this policy, say on grounds of national pride or the necessity of upholding a policy of deterrence? Or in the case of same-sex marriage, is an argument against same-sex marriage based on religious authority doubly bad so to speak? Is it bad because it denies certain rights to fellow citizens and also because it disrespects all fellow citizens by expecting them to submit to an external religious authority? What would be a secular argument against same-sex marriage that would not also involve this kind of disrespect?

These are the kinds of questions, I believe, on which the question of religious arguments in public justification turns. My way of reframing this question consists in stepping back slightly from what is by now a very sophisticated, if also at times a bit repetitive, debate. I find myself convinced by arguments offered by scholars such as Eberle, Nicholas Wolterstorff, Jeremy Waldron, Michael Perry and Michael McConnell that there are a great many cases in which religious arguments are invoked to justify coercive laws that do not constitute disrespect towards fellow citizens, do not reveal crypto-theocratic attempts to impose a single religious vision on others and quite obviously do enrich what is often a very impoverished public sphere. The most important cases which reveal the unwisdom of marking “religious” arguments as liable for exclusion, at least the examples which have moved me the most, are those of abortion, torture, social justice, war and human attitudes toward the environment. It has been persuasively argued by many (a) that it is unfair to expect religious persons not to invoke what are from their perspective religious reasons for social welfare legislation or just war doctrine, (b) that secular liberals or progressives are unwise when they fail to build coalitions with fellow citizens motivated to support similar policies on religious grounds, and (c) that there are some crucial areas where liberals or progressives have intuitive moral commitments which cannot quite be decisively defended in public reason terms and thus benefit from support from comprehensive moral perspectives (I have in mind here policies related to moral commitments to entities beyond the community of citizens, such as global justice, the environment, future persons, non-citizens, etc.).

At the same time, I remain convinced not only that policies that restrict equal rights to homosexuals, constrain sexual autonomy for adults and impose harmful conditions on medical decisions are unjustified and ought to be opposed, and not only that the influence of religion in these areas tends to be pernicious, but also that the justification of such policies on distinctly religious grounds *does* add to their badness. If forbidding same-sex couples from marrying, restricting adults from access to contraception, punishing persons (women in particular) for adultery or unpopular sexual practices and preventing girls from getting the HPV vaccine are all injuries, justifying these policies on grounds of exclusive religious authority constitutes, in my opinion, an added insult.

This, I believe, is the impasse. Liberal public reason exclusivists have no good answer as to why religious arguments as such should not be invoked on behalf of social justice or against torture. Those who advocate no a priori restrictions on the use of religious arguments to justify coercive laws have no good answer as to why religious arguments are not an insult in the areas of sexual freedom and public health.

Where does this impasse leave us? For some, the problem lies in the very aspiration to mutual justification in public. Many legal and democratic theorists simply reject the vision of democratic politics as one based on the search for the law or policy most justified to all citizens all things considered. Rather, politics is always an agonistic competition between groups divided on grounds of interests or values. Since all attempts to set the rules by which justification should be bound are partial and arbitrary, not to mention unrealistic given the nature of humans and politics, we should simply accept that democratic politics will always involve the deepest commitments of engaged citizens and not seek to rig the game by a prior set of rules.² Perhaps the “democratic” camp might concede that in some societies constitutional commitments ought to constrain certain political outcomes, and so laws that disenfranchise one religion, sex or race must never be allowed to succeed. But this is just that—a constraint on outcomes—not a constraint on discursive inputs.

For others, the impasse leaves us with the victory of the inclusivist, but not anarchic, position. Democratic citizens should aspire to a justification of laws and policies they support, but that justification should be understood widely. The laws and policies that democratic communities are forced to make are not restricted to minor matters of administration within a robust pre-existing moral consensus. Politics, rather, involves the constant creation and recreation of that moral consensus and since this involves deep questions, the answers will also often be deep. We should respect our fellow citizens, but not all invocations of deep moral claims that are not the object of pre-political moral consensus violate civic respect. Quite the opposite. Nonetheless, argue inclusivists (and this is why they are not mere agonists or discursive anarchists), there is a place for self-restraint and not all moral arguments are appropriate given a commitment to public justification or conscientious engagement.

For the purposes of this paper, I want to assume that public justification is a both a legitimate and realistic aspiration. That is, I want to bracket the agonistic critique of the entire debate over religion and public reason, although I will note at times that many scholars who ostensibly argue in favor of religious arguments in public discourse are actually not so much defending the place of religious arguments in public debate but rather simply defending a more competitive democratic understanding of politics.³ I am interested in whether the inclusivist position has triumphed as such. Has it been established that something called “religious arguments” have a legitimate place in the public justification of something called “coercive laws”? My answer is that while the question, phrased in that way, is almost palpably broad and vague, the debate is far too often phrased in exactly those terms. Traditional public reason “exclusivists” far too often move from the fixed conviction (which I endorse) that religious doctrines and traditions should not be allowed to determine what other citizens can read, say or do with their

² [Mouffe, Connolly, Honig, Dean, Wolin, Shapiro, etc.]

³ [McConnell, Perry, Wolterstorff, Connolly, Walzer]

bodies to the general position that something called “religious arguments” or “comprehensive reasons” should be kept out of the public justification of all laws. Similarly, public reason “inclusivists” far too often move from the claim (which I also endorse) that religious arguments are not necessarily disrespectful or divisive when invoked in public debate about social justice, war, the boundaries of life or the rights of those beyond the social contract to the general position that, therefore, religious arguments are permissible in democratic politics. The problem, in my view, is that we are too often treating “religious arguments” and “coercive laws” *as such* and thus failing to make the right distinctions between *varieties* of religious argument and *varieties* of collective action. Those are the distinctions I want to begin with in this paper in the hope that this will shed light on a very well trodden debate.

Before proceeding with my effort to break down “religious arguments” and “coercive laws” (or “public affairs”) into more basic component parts, I want to begin with a brief summary of the most important arguments which have been advanced in objection to the exclusion of “religious arguments” from political debate.

Objections to the Exclusion of Religion from Public Justification

What we might call the “standard” public reason view holds that it is a moral obligation of citizens in a pluralist democratic society to offer in support of coercive laws only those kinds of reasons which all reasonable members of such a society could accept, consistent with respecting themselves and others as free and equal citizens. This is what Rawls most notably referred to as the “duty of civility.” While there are important differences between the views of Rawls, Habermas, Audi, Greenawalt and Gaus, the standard view tends to hold (a) that disagreement over the best way to live and over the ultimate sources of moral knowledge is both inevitable and epistemically reasonable in modern conditions, (b) that political life ought to put an extremely high premium on the legitimacy of its laws, (c) that legitimacy is relative to the justifiability of laws to all reasonable persons subject to them, (d) that politics is largely a process of deliberative reason-giving between citizens, and (e) that that reason-giving ought to be restricted to terms which take into account the truth of (a). Most religious reasons are thus regarded under the standard view as usually falling afoul of (e); religious reasons do not tend to be shared by all persons in modern societies and invoking such reasons in support of coercive laws thus shows insufficient respect for fellow citizens and the requirements of legitimacy, and tends toward social division and domination.

I think that there are roughly seven core arguments against this view, which I will call the arguments from (1) Arbitrariness, (2) Political Agonism, (3) Epistemic Agonism, (4) Fairness, (5) the Poverty of Secular Reason, (6) Moral Motivation, and (7) Incompleteness.

1. *Arbitrariness*: It is often argued that secular reason is no more inclusive and no less partial than religious reason. There is no form of public reason that all reasonable citizens affirm or agree about the contours of. Justice is no less a subject of reasonable disagreement than the good life, and all attempts to identify a purely political morality free from and neutral between judgments about the

- good and moral truth fail. In this case, excluding religious reasons is arbitrary and jeopardizes legitimacy in a religious society.⁴
2. *Political Agonism*: Given the fact that the idea of a neutral public reason is unstable, many argue that the very idea of politics that lies behind the vision of public justification needs to be revised. We should see democratic political debate not as deliberative but instead as agonistic or competitive. Politics will always involve the competition not only between different interests, but also between different ideals of value and the good. Since this cannot be avoided by retreating to a yet higher or more abstract idea of shared public reason, we must simply embrace the idea of politics as agonistic competition.⁵
 3. *Epistemic Agonism*: Connected to the previous claim, but more open to the idea of a deliberative or consensus-driven form of politics, is the idea that we should see reason and judgment more broadly not as deliberative but as agonistic. J.S. Mill is at times invoked as an authority for the view that if secular liberals don't approve of certain religious claims then they should not seek to exclude these claims from the outset but to counter them in public debate, to show what is wrong with them substantively not merely by virtue of being "religious" and thus out of bounds per se.⁶
 4. *Fairness*: Others continue to maintain mutual justification within a democratic community as an ideal to be pursued. All citizens, including the religious ought to show respect to others by giving them reasons for why a law is morally appropriate all things considered. However, religious reasons do not necessarily fall afoul of this obligation to respect others, and in a society with many religious citizens, religious views and rationales ought to be prima facie admissible within the justificatory process on grounds of fairness. This is the hallmark of the "inclusivist" position: that (contra the agonists) not all rules or exclusions within public justification are arbitrary, but also (contra the standard form of exclusivism) not all religious reasons fall afoul of this more inclusive set of rules.⁷
 5. *The Poverty of Secular Reason*: A related argument is that the ideal of public debate proceeding on the basis of what we already agree on works better when the issues under consideration are less momentous and less contested. However, many public issues are deeply momentous and usually persist in public life not only because groups of citizens disagree, but also because multiple compelling values or interests are at stake. Abortion, poverty and social justice, the environment, war and torture are paradigmatic such issues. Even if secular liberals believe they have adequate answers to many of these questions (that public reason is not "incomplete" in these areas), those answers may fail to be persuasive to a wide range of citizens. Those unpersuaded citizens, however, are not manifestly unreasonable. Secular public reason itself would often benefit from

⁴ [Fish, McConnell, Perry, Sandel, Thunder, D'Agostino]

⁵ [Connolly, McConnell, Walzer, Quinn, Wolterstorff, Perry]

⁶ [Eberle, McConnell, Waldron]

⁷ [Eberle, Habermas, Rawls, McConnell, Quinn, Perry]

drawing from the wellsprings of religious traditions and public life more broadly can be enriched by novel perspectives and by particularly deep ones.⁸

6. *Moral Motivation*: A closely related claim is that political liberalism's own commitments require a wider view since they often lack motivational force. Political liberalism is, for all of its attempts to thin itself out and refer to existing shared beliefs, nonetheless still a demanding doctrine. Part of the agonistic objection, after all, is that deliberative and consensus-driven forms of politics are too demanding and unrealistic for citizens who live in worlds of self-interest and partial moral attachments. Secular public reason would often have citizens act for moral reasons contrary to their existing desires. Dry references to a social contract, original position, ideal speech situation, reciprocity or shared views implicit in our political culture will often fail to move people, especially when acting morally is thought by some to come at great risk to one's own security or other interests. Why would adherents of a theory of justice want to deprive themselves of what has historically been one of the most effective sources of moral motivation in achieving what liberals themselves regard as some of the greatest victories of modern democratic societies: enshrining religious freedom, the abolition of slavery, advances in social justice and civil rights movements?⁹
7. *Incompleteness*: A final claim, often given in its own terms but possibly implied by the preceding is that public reason is "incomplete" and indeterminate. Advocates of public reason can only offer it as a standard for conducting public debate if it has the resources to lead practitioners of it to clear answers to all political questions and, ideally, one single most reasonable answer to such questions. Public reason, however, fails to achieve this even in its own terms.¹⁰

I have some sympathy for these arguments. However, I think something is missing from them. As I have alluded to above, what I think is problematic is a tendency to treat the question of "religious arguments" and "coercive laws" without breaking these complex concepts down into more basic, simpler concepts. "Religion" is either in or it is out, and it is either in "public debate" or it is not. In fact, many of the political issues used in the public reason literature reveal quite different things about the strengths and weaknesses of political liberalism

Disassembling "Religious Arguments" and "Public Affairs" as Concepts

What would it mean to treat the concepts of "religious arguments" and "coercive laws" not as simple concepts but as ones that bundle together a number of quite distinct concepts? It is acknowledged by almost everyone in the debate that there are many ways of using religion in public debate. Not all religious arguments take the same form or are delivered in the same way. In fact, demonstrating the variety of religious argumentation in public is a crucial component of some inclusivist arguments against a narrowly construed duty of civility.

⁸ (Waldron, Smith, Sandel)

⁹ (Waldron, Habermas, McConnell, Rawls, Wolterstorff)

¹⁰ (Reidy, Quinn, Waldron)

For example, in a paper devoted largely to a discussion of the 2007 “Evangelical Declaration against Torture,” Jeremy Waldron writes that

most religious interventions on abortion are not of the kind [of saying that abortion should be made illegal once again because the Pope has denounced it]. They say abortion should be prohibited because it is wrong. They draw on the teachings of the church to understand and explain its wrongness, but they draw on that as theoretical authority; i.e., as a heritage of deep thinking about the matter than can inform their own thinking and their own conclusions. ... The point is that there is nothing implicitly theocratic about drawing on theoretical authority ... [I] can draw on the arguments I find in an encyclical to supplement, enrich, and deepen my own thinking on justice, human dignity and the issues surrounding abortion without committing myself to the view that the Pope who authored the encyclical has the right to rule in our society.¹¹

Note that Waldron is making a number of distinctions in this passage: between looking to religion for practical versus theoretical authority, between looking to religious traditions for help or inspiration versus looking to them for decisive answers, and between theocratic and democratic religious interventions in politics. He notes further that

many of the religious interventions that people are concerned about are not scripturally based at all, or at least not directly. ... The argument against abortion, such as it is, is mainly a natural law argument based on the apparent continuity of foetal development and it is perfectly intelligible to a secular moral sensibility. The religious aspect is just the disciplined insistence on taking the continuity of human life (both in and outside the womb) seriously in light of what biblical faith tells us about the preciousness of human life generally.¹²

If the previous passage outlined a set of distinctions between modes of using and appealing to religious arguments, this passage adds a further distinction pertaining to the very form and content of the religious argument. Waldron distinguishes here between arguments that are “scripturally based” and arguments from “natural law.” Even this has to be further narrowed (as I will do below) to distinguish between different ways of basing religious arguments on scripture. Arguments can point to a literal reading of a scriptural passage and directly apply its ruling to a matter of applied political ethics. This very narrow “divine command” form of drawing on religion needs to be distinguished from positions in applied ethics which refer to and are based on scriptural messages but require multiple steps of human deductive, analogical and interpretive reasoning to get to the final position.

In an earlier paper that largely takes the National Conference of Catholic Bishops’ 1986 Pastoral Letter *Economic Justice for All* as its touchstone, Waldron notes that the Bishops’ opposition to Reagan-era attacks on social welfare programs involved a number of distinct forms of secular and religious argumentation. The Bishops cited a number of

¹¹ Jeremy Waldron, “Two-Way Translation: The Ethics of Engaging with Religious Contributions in Public Deliberation,” University of Virginia Meador lecture, February 18, 2010 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708113), p. 9.

¹² *Ibid.*, pp. 10-11.

Old Testament texts and teachings of Jesus Christ found in the New Testament, as well as traditional Church teachings about property, social justice, rights and responsibilities. In this case, Waldron is at pains not to collapse the Bishops' reasoning into easily accessible appeals to purely political values. Nonetheless, his lesson for liberals from this case is not only that Catholics should be enlisted as allies in the struggle for social justice, but that traditional religious metaphysical or philosophical statements are often not invoked as authority but as "rich sources of *intimation* for the development of our theories of man and society, justice and economy, equality, freedom, and dignity."¹³

My position is not far from Waldron's although I think that more can be derived from the kinds of distinctions that Waldron makes between different modes of forming, articulating and offering religious reasons. The real lacuna in Waldron's analysis, however, is in not considering whether different areas of *politics* give us a different understanding of the moral stakes in turning to religious traditions. Waldron is savvy in choosing policy areas—torture and social justice—that he knows will appeal to secular liberals. But does the positive influence of religious activism in these specific areas justify the conclusion that "so long as there is due recognition of the multi-faith and secular aspects of our society and due recognition of the constitutional structure that responds to that, there is no particular reason for church people to refrain from participation *in public life* on the basis of their values"?¹⁴ Just as there is a world of difference between a religious argument taking the form of "a crude prescription from God, backed up with a threat of hellfire, derived from general or particular revelation"¹⁵ and one taking the form of an appeal to the absolute value of the human person, so are there crucial differences between torture, welfare rights, abortion, homosexuality and the HPV vaccine as subject matters and areas of collective political action. Just as we should not impose a totalizing treatment on "religious reasons," so should we not treat "public life" as something where religious arguments always contribute in the same way.

Nonetheless, the need to begin with distinctions between different kinds of religious argument is highlighted by the failure of some of the most thoughtful commentators in this debate to do this. For some, the distinction is between various modes in which a "religious argument" is presented as part of an over-all process of reason-giving or conscientious engagement. For Christopher Eberle, for example, what determines the moral acceptability of presenting religious arguments in public is primarily whether the citizen has first gone through a process of rationally justifying the law in her own mind, searching for secular or other reasons for the law and trying to persuade other citizens that the law is right all things considered. If she has done all of those things and still failed to persuade enough of her fellow citizens, Eberle believes that she is not under an obligation of self-restraint, that is, an obligation to refrain from further campaigning for the law on a purely "religious" basis.

Eberle thus distinguishes between a citizen who argues for a religiously-supported law without engaging in conscientious engagement and one who does so after going through a process of conscientious engagement. He gives us two citizens—the real-life Bill McCartney, University of Colorado football coach and founder of the Promise

¹³ Jeremy Waldron, "Religious Contributions to Public Deliberation," p. 847.

¹⁴ Waldron, "Two-Way Translation," p. 4. Emphasis added.

¹⁵ *Ibid.*, p. 23, quoting himself from *God, Locke and Equality*.

Keepers who campaigned against equal rights for homosexuals in Colorado by referring to Leviticus and calling homosexuality an “abomination of Almighty God”, and an imaginary “Elijah” who endorses a radical redistribution of wealth on a religious basis but only after exhausting the possibilities of conscientious engagement on secular terms. Eberle supposes that most public reason liberals will condemn McCartney on the grounds that he failed to exercise self-restraint and was willing to impose his religious views on others. What he wants the example of Elijah to do is demonstrate to public reason liberals (who are presumably less turned-off by Elijah’s politics than by McCartney’s) that it is not the failure of self-restraint per se on McCartney’s part that constitutes disrespect.

He offers three alternative possibilities to seeing the failure of religious self-restraint as what we might object to in McCartney’s activism: (1) that it was the unjustness of the law which merits our anger not McCartney’s lack of religious restraint in arguing for it; (2) that we should not confuse our distaste for the types of people who refuse to exercise restraint (foaming-at-the-mouth evangelicals) with distaste for the refusal to exercise restraint; (3) that McCartney combined a failure to exercise restraint with a failure to conscientiously engage. Eberle thinks we should endorse (3) and then notes that refusing to conscientiously engage and self-restraint after engagement are two separate things. It is possible to honor conscientious engagement while not applying a duty of self-restraint. We should thus not confuse all use of religious argument with McCartney-style advocacy.¹⁶

There are a number of problems with Eberle’s argument. First, when Eberle distinguishes between liberal anger at McCartney’s refusal to give secular or public reasons and anger at the unjustness of the law, he begs the question of a possible connection between the two. Many persons oppose anti-gay rights laws as unjust also because one requires a controversial religious doctrine to justify them. Similarly, when Eberle distinguishes between distaste for the “types of people who refuse to exercise restraint” with our distaste of the refusal to exercise restraint, he begs the question of whether the refusal to exercise restraint *is* why we have distaste for certain right-wing evangelicals. He assumes that refusal to exercise self-restraint is never a reason for distaste.

But it should be clear by now that my larger concern with Eberle’s argument is his failure to distinguish (1) between different ways of deriving religious arguments and presenting them in public debate and (2) between different areas of political action. The greatest sources of distaste for McCartney-style political interventions are precisely (1) the *mode* of giving religious justifications (citing Leviticus, giving “abomination to Almighty God” as a justificatory reason) and (2) the area of human activity being legislated on (human sexual and domestic relationships). Eberle’s example of Elijah the Christian socialist may indeed show that liberals ought not to view religious activists as their political enemies merely because they are religious and often give religious reasons in public, but this example does not show about that in the case of McCartney a lack of religious self-restraint was not in fact the problem. In order to even begin to do this, Eberle would have to give an example that kept everything the same except for the failure/willingness to conscientiously engage. That is, we need an example of a religious opponent of equal rights for homosexuals who previously conscientiously engaged on a

¹⁶ Christopher Eberle, “What Respect Requires—and What It Does Not,” pp. 340-1.

wider or secular basis. But by changing two crucial variables (Elijah's precise mode of religious argumentation (which we are actually not given) and the political subject matter), we are left with the possibility that *these* are the crucial variables, and not a prior history of conscientious engagement.

Rather than assuming that the crucial factor in the above cases is that liberals support bans on torture and the expansion of social justice provisions and oppose bans on gay marriage, or whether religious positions are advocated after a process of conscientious engagement, I think it is worth examining whether a deeper understanding of the morality of religious arguments in political argument can be achieved by first trying to generalize about the different kinds of "religious reasons" and the different broad areas in which political communities act. On the basis of this discussion and the examples given by Waldron, I first want to suggest a typology of different kinds of religious argumentation.

What is a religious reason?

I would like to suggest as a point of departure four forms that religious argument often takes:

1. A command based on a revealed text.
2. A theological or moral doctrine that is not clearly attributed to a specific claim from a revealed text, but is inspired by and dependent on certain theistic claims and revealed knowledge.
3. An appeal or reference to traditional religious commitments.
4. An appeal to inspiration from a religious tradition, to certain transcendent values, or to wisdom or moral knowledge found in religious thought.

This scheme can be fleshed out by giving a few examples of what I mean by each type of religious argument. Arguments that homosexuality ought not to be accorded toleration or equal respect based on statements from the Old or New Testament are clearly what I have in mind by the first category. Arguments against abortion or the death penalty based not on, say, the Decalogue but deduced from theistic assumptions of the inherent sacredness of the person are an example of the second category. Defenses of traditional gender roles or standards of public morality based not on clear scriptural authority and at a still further remove from clear theistic truths belong to the third. Finally, by the fourth category I have in mind arguments about justice, human welfare and moral anthropology which are inspired by religious commitments but do not appeal so much to the transcendent authority of revelation as the enduring wisdom and insight of traditions of thinking about law, morality and human behavior.

This is not meant to be a final or conclusive typology and, importantly, I am not offering these categories as remotely *exclusive* vis-à-vis one another. Religious arguments need not belong to one and only one of the above categories, and religious citizens need not be the kinds of religious subjects who think in one and only one of the above modes. My purpose here is to make religious argument seem both less strange and less monolithic, not more so.

Nonetheless, we can immediately see what happens to the debate over “religious argument in public reason.” Quite simply, there is no such debate for there is no *single* such thing as a religious argument in public justification. Not only is “religious” too under-inclusive a category (which is why Rawls always spoke of “comprehensive” doctrines, a category which includes both religious and secular doctrines), but it is, obviously, too over-inclusive a category as well. When a citizen quotes the Bible to *prove* in an authoritative and determinate manner that homosexuality or divorce ought to be forbidden, she is simply not doing the same thing as well she claims that human life is inherently valuable, that Catholic just war doctrine contains enduringly wise lessons for the conduct of war or that human sinfulness cautions us against over-confidence in the success of our best laid plans. It is not only that non-theistic or non-sectarian reasons are more likely to be found for the latter kind of positions; it is that the first is simply an undemocratic approach to knowledge, politics and authority.

The most obvious lesson here is for public reason liberals who feel the pull of Audi-style exclusivism. Not only is opposing torture quite different morally from opposing marriage equality (which I will try to justify in my next section), but citing a proof-text from revealed scripture that declares homosexuality to be sinful by way of justifying a coercive law in a religiously diverse community is not the same kind of discursive act as inviting fellow citizens into an imaginative space whereby they suspend their fear of the other long enough to ask what kinds of things should and should not be done to the human body in captivity. What is different across these various modes of religious argument or persuasion is the assumption about what kinds of *authority* humans should be subject to in democratic societies. Presumably there are equally scripturalist, authoritarian, or voluntarist proofs for many of the kinds of laws and policies progressive liberals endorse (say, on feeding the poor).¹⁷ However, not only are these policies more easily translated into non-theistic language, but very often even the theistic justification of them is not offered in an authoritarian, theocratic or jurispathic way. When Martin Luther King invoked Aquinas to the effect that an unjust law is no law at all, he was not invoking Aquinas as the final word, as a literally authoritative figure to be obeyed by Americans. He was inviting others, and not only Christians, to ask whether they are really committed to a hollow form of legal positivism without regard for justice or morality.

The pluralistic, fragmented nature of large societies also forces us to interpret certain religious interventions in politics from a rhetorical standpoint. Many religious interventions do not invoke scripture or tradition as authoritative truth but as a way of elevating one’s argument rhetorically. We often quote others—including the authors of religious texts and prominent theologians—not as authorities *stricto sensu* but by way of saying “This puts it better than I ever could.” (Quoting scripture is *de rigueur* for Presidential inaugural addresses.) But even with interventions clearly drawing on revealed truths as authority, there is room for interpreting the political message being conveyed.

Consider Waldron’s example of the Evangelical Declaration against Torture. Waldron rightly draws our attention to the theologically exclusivist and sectarian nature of the arguments against using torture against suspected terrorists. “Isn’t it the position of

¹⁷ Waldron is clear in both of the cited articles that the Evangelical Declaration against Torture and the Catholic Bishops’ pastoral letter do include such scripturalist, divine command arguments, which is why they represent a hard case for left-liberals.

the authors of the Evangelical Declaration that the United States should not torture *because* Jesus is Lord, or that we should not torture *because* this is what Scripture requires? Surely this reasoning presupposes that we should be governed by *whatever* Jesus requires or by *whatever* scripture demands?”¹⁸ Waldron is right that the implications of these views are troubling, but the actual political message of such interventions is still a matter of interpretation. What kind of political message is being issued when Evangelicals say, “when torture is employed by a state, that act communicates to the world that human lives are not sacred ... [which] no one who confesses Christ as Lord can accept”? Is it necessarily “because the Lord has forbidden this it is forbidden for the US to engage in this and we think that all, or most, political issues can be resolved in this way”? Or can we, without undue interpretative generosity, interpret such an intervention as conveying any of the following messages: “Not in our name” ... “Don’t count on our support as Evangelicals” ... “Many who identify as Christians are now doing this and it falls on us to push back” ... “We regard ourselves as under this kind of authority and in issues where human life is at stake cannot remain silent”?

But I think there is also a lesson here for a certain kind of defender of religious argument in public. Does the successful demonstration that religious arguments are quite often both respectful and beneficial to public discourse justify any more *general* conclusions about “religious” arguments as such? If there are certain kinds of religious arguments that are morally permissible in public debate precisely because they are not authoritarian, sectarian or inaccessible to others, does this not merely show that they may have more in common with certain secular moral views than with certain other religious moral views? Furthermore, does this not further isolate those religious arguments which are genuinely authoritarian and, at least in the realm of the specific policy question at stake, theocratic? In other words, showing that there are important counter-examples which disprove the claim “Religious arguments are never (or even usually) permissible in public justification” does not successfully defend the claim “Religious arguments are *prima facie* unproblematic in public justification.”

It is worth considering, moreover, whether many of the most frequent examples of policy issues which purportedly show why religious arguments, motivations and sentiments ought not to be excluded from public justification in fact reinforce many of the assumptions of liberal public reason. What, after all, is the case for giving religious arguments wider latitude in debates over beginning of life issues (abortion), end of life issues (euthanasia, capital punishment, war) and quality of life issues (social justice, torture)? First, it is argued that these are unresolved questions to which freestanding public reason does not give a clear, determinate answer. (This is the so-called “incompleteness of public reason” claim.) At this point, there are two options. One is what I have been calling the “agonistic” or “democratic” response which holds that since such issues must be legislated on but will never be resolved by some shared public reason, we have no choice but to resolve them through open democratic competition. (Again, this response can be given in a tragic, joyful or gloating spirit.) The other is the “wide” or “inclusivist” response, which calls for the extension of shared public debate but by including deeper religious or philosophical views.

¹⁸ Waldron, Two-Way Translation: The Ethics of Engaging with Religious Contributions in Public Deliberation,” p. 5.

The latter is the position we are considering here. I want at this point only to raise two possibilities. The first is that the wide public reason or inclusivist position is actually none other than the agonistic democratic position in another guise. For if a thinner form of public reason does not lead to determinate outcomes on deeply contested issues of political morality, how can thicker forms of moral reasoning which bring in controversial epistemic commitments do so? The call to “complete” public reason through including more and more metaphysics or affect may be justifiable, but only as a plea for democratic persuasion and majoritarian outcomes.

But I don't think this that is what all inclusivists mean, or want. I take them at their word that they think certain religious arguments can be offered in good (civic) faith as part of a process of conscientious mutual engagement with other citizens deliberating over questions like abortion, the welfare state and killing through law or war. But *why*? If the argument is not that the indeterminacy of public reason is merely a license to open up democracy to majoritarian outcomes, then it must be that inclusivists think that there just may be something *persuasive* in one's religious arguments to fellow citizens who are not co-religionists. Presumably inclusivists do not mean here wholesale conversion to one's religion. They mean that difference in religion is not an impediment to mutual learning, to being moved in particular areas of policy by comprehensive religious views. One does not need to be a Catholic to appreciate and learn from Aquinas or be a believer in the Bible to be swayed by the claim that human life as such is sacred.

But, and here is my second point, is this not at times an argument that the religious truth of a particular position is almost beside the point, not—to be sure—to the believing citizen herself but to the moral validity of the claim in question? While the believer may very well believe that it is God, and only God, who has made human life valuable and sacred (if not always inviolable) from conception, or that the Passion of the Christ teaches us that torture is an abomination, isn't it also the case that she very often believes that one need not be a believer in God or Christ to appreciate these truths? Without denigrating the importance of the religious origin of her knowledge for *her*, can't we say that what the cases of abortion, torture, war and euthanasia teach us is that religious arguments are most potent and enduring precisely in those cases where religion is *not* a source of exclusive moral knowledge? Again, without minimizing or denigrating the religious thought which has gone into the abortion debate, it strikes me that abortion is so controversial and enduring as a political issue precisely because one does *not* need to be a believer or a theist to experience religious objections to abortion as compelling or troubling. If one did need to accept particular revelatory claims, as with opposition to equality for homosexuals, the religious arguments would be far less compelling, troubling and enduring. (To be clear, I am offering this as a hypothesis not about religious knowledge as such but about the nature of public debate in our contemporary circumstances.)

The preceding comments are, I suppose, in the tradition of talking about the “translation” of claims from different traditions into other ones or into a potentially common moral language. While it may be profoundly important to the citizen that her commitment to social justice or nuclear disarmament follows from her religious commitments, it may be less so for other citizens. Rather than dwell on the religious language in her claims, the other citizen may regard it as merely accidental or contingent that these claims are justified in religious terms. Yes, Catholics have particular reasons

for supporting social justice and want to give voice to those reasons, especially in light of the prevalence of religious opposition to redistributive taxation in this country, but the non-Catholic citizen may decide that nothing in the Catholic case for the welfare state implies (a) that Catholic leaders think that only Catholics or Christians can support the welfare state nor (b) that Biblical or Catholic teaching should serve as the official, state justification for the welfare state. It is, for the non-Catholic citizen, a non-essential property of the case for social justice that it has a theological foundation; it is not only non-sectarian but also non-theistic.

What should be clear from the preceding is that public reason liberals ought to be concerned (and, anthropologically speaking, probably as a general rule only *are* concerned) not with “religious” arguments as such in public reason, nor with “comprehensive” or “metaphysical” or “philosophically” controversial arguments in public reason, but with a particular kind of religious argument, namely arguments of the first category. Those are arguments that tend to be justified by reference to a clear scriptural or revealed command. More importantly, they are arguments given in an authoritarian manner. It is not “Our tradition teaches us that life is sacred or that laws ought to be moral; we think this reflects some truth which all should be able to endorse.” Rather, it is “Our revealed text has laid this down and we are not concerned about what affect this has on others or what they think about it.”

But while these distinctions are important, they still do not give us enough to understand what is at stake in the debate over religion and public reason. As I acknowledged above, religious arguments are not likely to fit clearly into one and only one of my four categories. It might also be suggested that in order to make religious arguments in support of policies that I also support (social justice, less torture, less war) seem less problematic I engaged in excessive interpretive charity. At some level, the religious may very well be willing to say that abortion and torture are *forbidden* and charity *commanded* by revealed scripture that only the faithful will be able to fully appreciate. The religious are happy in these cases if others agree for other reasons, but isn't this also the case with opponents of gay marriage (what we are using here as the paradigmatic case of an unreasonable intervention in politics)? In other words, when there are clear examples of religious arguments that are given in a non-authoritarian, non-scripturalist manner, public reason liberals may have good reasons for distinguishing between those arguments and arguments that merely cite the Bible. But do public reason liberals have any good way of distinguishing between a scripturalist argument that says that Catholics *must* oppose same-sex marriage and one that says Catholics *must* support universal health care? Some might say that they do not and that any liberal attempt to argue for the difference is yet further evidence of liberal bad faith and failure to give the aspiration to neutrality the (honorable) burial that it deserves. That may be the right answer. However, I think we are not there yet. Just as we tried to unpack the concept of “religious arguments” into more basic parts, can we do the same with the idea of a “coercive law” in a way that does not presume the justness or not of specific laws?

What is a “public affair”?

While some may argue that the only morally salient feature of a law is whether it is coercive and thus that the main distinction is between those aspects of morality that are

legitimately enforced by the state and those which are not, this does not reflect the reality of the different areas in which humans act collectively. It is even harder to offer a typology of political issues than to offer one of religious arguments, but the following is an attempt. We can see that religious and other moral arguments are frequently given concerning:

1. the freedom to act and make choices of those who can represent themselves within a social contract framework;
2. the moral education or integrity of those who cannot *fully* represent themselves within a social contract framework
3. the physical integrity of those who cannot represent themselves or advance claims within a social contract framework;
4. the morality of indivisibly and unavoidably collective action;
5. the morality of a society's overall character or direction.

We begin with full members of the political community in good standing—sane adults. All laws that we enact restrict the choice set of these sane adults—from traffic regulations to taxation to public nudity ordinances. But not all categories of laws are necessary in the sense of being indivisibly collective (things we only do as a collective) and unavoidably collective (things we must do). A state does not have to regulate marriage. A state does not have to protect non-human animals. A state does not even have to punish for homicide. (Homicide is a civil action, a tort, in many pre-modern legal systems, such as the Roman and Islamic ones.) On the other hand, a state must regulate property—one might say that whoever holds the authority to enforce property claims *is* the state. (It is not clear that there are any further members of this category.)

For my first category, then, I have in mind restrictions on humans' choices as to what to do with their bodies and property. Laws on assault prevent me from (or punish me for) beating you. Laws on blasphemy prevent me from (or punish me for) speaking blasphemy, from using my eyes and ears to experience it and from using my money to purchase it. Laws regulating traffic prevent me from (or punish me for) driving against traffic. Laws on the creation and use of public lands prevent me from buying land and building condos or coalmines in Yosemite. Laws on public decency prevent me from (or punish me for) teaching class in the nude. Laws on theft prevent me from (or punish me for) stealing your laptop. Laws on abortion prevent me from (or punish me for) having one. Laws on sodomy prevent me from (or punish me for) engaging in it. Laws on rape prevent me from (or punish me for) raping someone. Laws on material support for terrorism prevent me from (or punish me for) donating money to the IRA or to a hospital in the Gaza Strip. The scope and significance of this category will only become clear in light of the subsequent ones.

Political communities also have partial citizens. With my second category I have in mind primarily children, although it is not hard to recall political imaginaries where women or racial minorities are treated as incapable of assuming responsibility for themselves. Political communities do many things that directly and indirectly affect the interests of children, although it is also not hard to recall political imaginaries where it is not assumed that the society-at-large ought to provide for the education, health care or security rights of children. (Some of the political agenda of the religious right in this

country seems to focus on a restoration of more robust parental rights over their children.) Let us begin with those interests that children have that are the least uncontroversial as interests—physical health, basic education, emotional well-being. Deep disagreement starts to creep in even here. (Does a child’s physical health trump a divine injunction to rely on God’s help or a commitment to a certain kind of sexual morality? Is a child’s emotional well-being consistent with stern corporal punishment, with fear of eternal damnation or with mistrust of religious others?) But let’s assume these are rare and somewhat less interesting than some of the more common disputes over providing for the interests of children. A society like ours has taken on the task of educating all children through a certain age. Given that we all assume that children cannot fully speak and decide for themselves about what is good and valuable until a certain age, we all agree that some substantive decisions must be made that are paternalistic. How should this be done in schools and in the broader society? What values should children be taught? What influences should they be exposed to and protected from respectively? What should children be taught to believe? What interests do children have that are prior to and separate from the interests parents have in making their children like them? And for the answers to all of these questions, reasons must be given. What kinds of reasons are appropriate?

There may be many subjects of political power that fall in between these first two categories at times. There are persons who are neither foreigners nor children who are yet often treated in paternalistic terms. Debates over prostitution, trafficked women, exploited workers, organ donation,¹⁹ resident non-citizens, clitoridectomy, Muslim women, the poor and prisoners are often conducted in a way that does not quite reflect a desire to promote a single sectarian conception of the good for all persons but yet involves the assumption that certain persons must be spoken for and defended by others. Perhaps it is because the present political system is so corrupt that certain persons are de facto politically disenfranchised (prisoners, workers, the unemployed); perhaps it is because the present economic system is so unjust that persons lack the resources to defend and represent themselves (trafficked women, migrant workers, non-citizen workers, prostitutes); perhaps it is because a certain cultural system is so oppressive that persons are seen by others to be complicit in their own self-subjugation (Muslim and other religious women, those trapped in a “culture of poverty”). At this point I merely want to note and bring attention to this hybrid category of persons who are often the object of political debate. Laws and policies that we oppose or defend on moral grounds (including religious ones) are often not about the rights of those beyond the social contract, children or sane adults capable of representing themselves but about certain classes of persons who would normally belong in the last category but for some contingent politically, economically or culturally disabling condition.

By the third category, I have in mind such political issues as abortion, stem cells, the rights of enemy combatants, the rights of non-human animals, global economic and ecological justice and the rights of future generations. On first glance these issues seem radically different from one another. However, from a particular contractarian lens they all have in common that communities are faced with deciding to what extent they ought to protect the most basic interests of entities with no direct representation within a social

¹⁹ <http://www.bbc.co.uk/news/uk-wales-14998726>

contract. These issues are sometimes referred to as the “Who is the subject of justice?” question. If all agree, for the sake of argument, that all fellow *citizens* are owed obligations of justice and we then seek to justify what those obligations are through contractarian or constructivist methods, we are left—by the admission of social contract theorists—with no clear answers about what we owe to others outside of the immediate social contract. This is not to argue that non-theist moral thinkers have no resources derived from contractarian or constructivist methods for thinking about what obligations we have toward these various non-citizens. (Many constructivists are universalists first and struggle to justify obligations to citizens.) But there is an undeniable rhetorical and emotional deficit when it comes to persuading fellow citizens that the claims of non-citizens matter. Nonetheless, political communities are often making laws and policies that affect in the most immediately physical and vital way the interests of non-citizens who are not directly represented within the polity in question. At present, we are assuming that there is no real dispute about what interests people have—we are talking about bare life, physical health, bodily security, material well-being—only about *whose* interests we have obligations to affect in certain ways, about *whose* claims matter.

If these three (and a half) categories are clear enough (if still of unclear importance), there are other things that a state need not do but if it does do have an irreducibly collective character. This fourth category is somewhat hard to distinguish decisively from the previous ones, as all coercive laws have a public, collective character. But there are certain policies or institutions that are irreducibly collective. A political community decides to have nuclear weapons or a state religion, to give two relatively clear examples, only as a collective act.

What a society does with its public money also falls into this category. (Although this is still over-inclusive as enforcing all of the laws I listed above involves public money.) A society does or does not feed all of its poor and provide universal health care. A society does or does not provide universal public education. There is something in the collective nature of these acts that exceeds the mere coercive element and the rights-claims involved. A mandate to send your child to any school, to purchase health care or subscribe to a protection agency at your own expense is a somewhat different public act than financing these projects out of public funds.

Of course, individual persons—their bodies and property—are coerced by these choices. People are taxed and thus have less money at their personal discretion. Category four overlaps with the others, and assigning a collective action to one or another may be a matter of ideological preference. For example, is a state’s welfare policy about “the morality of indivisibly and unavoidably collective action” (things the community must do one way or another and which only the society as a whole is doing) or is it merely about interference in the freedom and rights of legitimate property holders? Furthermore, there is a way in which almost any law that restricts individual action can be redescribed as a choice that reflects the morality of society as a whole. Whether a society has a law against marital rape can be described as a question of whether “society does or does not defend women” or alternatively whether “society does or does not defend the traditional family.” Are abortion laws about deciding whose rights trump (those of women or those of fetuses) or about “whether a society protects unborn children”? There are harder cases. The quality of air and water can only be achieved through collective action (“a society does or does not protect the quality of its air and water”), but is this not achieved merely

by restricting what we can burn, produce and throw away? Is this more of reflective of irreducibly collective action than all laws solving coordination problems, including traffic laws?

I do not want to deny or lose sight of the ideological choices and definitional difficulties in distinguishing between categories one-three and four. There is a way in which almost every collective choice can be redescribed in terms of its effect on rights (category one) and every rights-claim can be redescribed in terms of how it reflects on the overall moral character of society (category four). But for the purposes of the present discussion, I merely want to draw attention to the fact that religious and other moral arguments very often do make this distinction. Religious and other arguments for social justice often go beyond a rights-based contractarian justification for social welfare; they often (if unrigorously) speak about what kind of society we are and want to be. Religious and other arguments against nuclear weapons often go beyond discussions of whether it could even be justified to use such weapons; they speak about the moral transformation of a people from living in a world where nuclear holocaust is a possibility. Religious and other arguments about imperialism and occupation often go beyond a discussion of rights in an international context; they talk about what happens to a nation that governs other peoples imperiously. Religious and other arguments about the death penalty often go beyond a discussion of the rights of criminals; they speak about whether people can in good conscience identify with and be loyal to a state that kills in a premeditated way.

For the moment, I do not want to defend analytically the absolute distinction between these two categories; rather, I want to focus attention on a particular way of characterizing political choices that is quite common, particularly in democratic societies or societies where members expect the political system to be somehow reflective or representative of their moral interests. This is important for a discussion of religious arguments in politics not only because religious argument takes this form of reflecting not merely on rights but on the moral character of society, but also because religious moralities often seek to protect non-human entities. God, “the Church,” the honor of this or that prophet or messiah-figure, your soul and mine, or “the sacred” as such are often claimed to be objects of moral concern. Again, this form of thought need not be exclusive vis-à-vis the previous ones. In religious moralities which are rights-based, this form of thought is perhaps best included in my third category. Islamic law, for example, speaks of the “the *rights* of God” and the *rights* of the Prophet Muhammad. It might be best to include this form of thought in my category pertaining to the rights of those who cannot directly represent themselves within the social contract.

However, in many cases that would be an over-simplification. In both religious and secular moralities certain non-human entities are often thought to have not merely rights but *value*. For secular moral thinkers, such entities might include the environment or natural world, art or the state of scientific knowledge.²⁰ Such entities are thought to have value beyond any benefits that attach to specific human agents, or value that is not reducible to the instrumental value to humans. There is thus a genre of moral thought that focuses not so much on what we owe to each other but whether we are the kinds of persons who live in the kinds of societies that value the kinds of things that have value.

²⁰ E.g. Joseph Raz, *Value, Respect, and Attachment* (Cambridge, UK: Cambridge University Press, 2001) and “The Practice of Value,” *The Tanner Lectures on Human Values* (University of California, Berkeley, March 19, 20, and 21, 2001).

The preceding paragraph brings us to a fifth category that may or may not be quite distinct from the fourth. I have in mind reflections on the moral quality of society that see that quality as greater than the sum of its individual moral acts. Consider religious interventions that take the form of prophetic witnessing or declinist narratives about modernity. Prophetic witnessing is very often tied to the specific things a society is doing—allowing slavery, tolerating homosexuality, permitting blasphemy or heresy, cultivating feminism or gender equality, abandoning the poor—but the critique goes beyond the call to rectify this or that policy. The idea is that society itself is somehow lost, ungodly or treasonous. Rectifying specific policies or acts are only a first step, a precondition for an overall repentance or *return* to a different state of character that would never have permitted these impieties in the first place.

Declinist narratives often reflect a similar scope. MacIntyre's critique of modern morality goes beyond a concern with specific policies or practices; he is reflecting on the loss of a common moral vocabulary about the good and our failure to replace it with anything equally stable and valuable. MacIntyre's Thomism is representative of a wider school of thought that laments the theological turn in late medieval Europe towards a nominalist metaphysics and voluntarist God. We are now a society that is *incapable* of seeing ourselves as wholly rational and connected to the divine through our participation in unchanging reason. If my previous category presumed the possibility of internal, connected criticism, the category often involves the tragic judgment that we are no longer *capable* of valuing certain things of inherent value, or acting in accordance with moral character.

There are, obviously, secular critiques of this nature. Nietzsche's is the most obvious. Consider also Foucault's critique of the technologies of modern power. As has been widely discussed, Foucault's analysis of psychiatry, prisons, education and other modern discourses does not lead to any obvious normative recommendations. He is trying to reflect back to us the state we are in as such, possibly with the awareness that there is nothing we can do about it. We are now the kinds of people living in the kind of society where authentic human freedom, spontaneity and self-creation are no longer imaginable.

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I don't intend the previous sketch to be entirely conclusive or stable. However, even more than with the categorization of different modes of religious argument, I think we are in a position to hold up the question of religious argument in public debate at a different angle. Recalling the most compelling political issues on which religious contributions have been defended—abortion, global justice, domestic social justice, torture, nuclear weapons, war and imperialism—we see not only that religious argument takes many different forms besides the paradigmatic scriptural command form, but that the kinds of religious arguments we are discussing are interventions into quite different areas of political action.

Religion and Public Reason: Restating the Question

What ought to matter to liberals attracted to the ideal of public justification based on a shared, or fair form of public reason? What do we think is either threatened or enhanced by the use of "religious" arguments in public debate? The following strike me

as the most important considerations: (1) the fundamental moral attitude towards others expressed in our public speech; (2) the democratic legitimacy of public decisions; (3) the justice of public decisions; (4) social solidarity; and (5) the ability of a democratic society to respond to collective problems. Rather than focusing on the narrow question of whether an argument issued in public has a “religious” or “comprehensive” character, we are advised to keep in mind that such arguments can take different forms that affect the above considerations in quite different ways. Similarly, the stakes for the above considerations differ with different kinds of political issues.

Political liberalism is obviously most challenged by religious arguments of my first form, those that appeal directly to scriptural authority in order to justify a law or position within practical ethics. However, we can also note that even that form of argument plays a morally distinct role in different areas of collective political life. Invoking a literal interpretation of the revealed scripture of one’s own religion is obviously a very different act in each of the following cases: (a) when it is done to restrict the personal freedoms of others, (b) to defend one’s own religious freedom from state interference and (c) to encourage fellow citizens to protect the relatively uncontroversial interests of other fellow citizens.

So let us return to a question I asked above: Do public reason liberals have any good way of distinguishing between a scripturalist argument that says that Catholics *must* oppose same-sex marriage and one that says Catholics *must* support universal health care? I noted that a tempting answer is to say that they do not and that any liberal attempt to argue for the difference is yet further evidence of liberal bad faith and failure to give the aspiration to neutrality the (honorable) burial that it deserves. But is the fact that liberals tend to agree with Catholics on social justice and disagree with them on same-sex marriage the only variable in these two positions? I think it is clear that it is not. According to the analysis I have developed in this paper, we should also ask a broader question about the area of human activity being legislated on in these two areas.

Before we get to the question of same-sex marriage, we might raise the question of tolerance for homosexuality per se, understood as the decriminalization of homosexual acts between consenting adults. Such an issue clearly belongs to my first category—bringing the law to bear on what humans do with their bodies, minds and property. This is the category where political liberalism is most concerned about the influence of religious and other comprehensive, perfectionist arguments. Moreover, out of all forms of religious arguments, those of the first kind—scripturalist, authoritative, divine command arguments—are the most problematic.

It is not hard to see why this is the case. Human negative freedom is the most obvious standard that we use to judge the extent to which some human beings hold the most obvious form of authority over others. It is the area where a direct justification to the person being coerced is most obviously required. Furthermore, the use of our bodies for pleasure and self-expression is the clearest case of a sphere of human activity that should be coercively restricted by others only to protect the most immediate and generalizable interests of others. To coercively restrain and punish other human beings for activity in this area of human life for no other reason than God, as my reading of scripture has it, has declared it vile and sinful is the clearest possible example of regarding other human beings as subject to one’s own pre-political epistemic and moral

authority. If any area ought to be regulated in a democratic society by a strict, Millian application of the harm principle, this is it.

This is not, of course, a statement only about *religious* authority. Liberal opposition to European bans on wearing the Muslim face-veil in public has exactly this logic. The sense on the part of some that an adult voluntarily wearing a face-veil is per se incompatible with her *own* dignity or freedom is regarded by most liberals as an insufficient justificatory reason for enacting a coercive law.²¹ If it is ever coherent to speak of autonomous choices about how to live our lives that do not harm fundamental interests of others, then this is the area where the use of paternalistic arguments to restrict human choice is the most objectionable.

I want to register awareness that what I arguing for here is not obvious or uncontroversial. Many religious arguments against things like homosexuality or blasphemous speech do consist in saying that such acts are wrong in themselves, wrongs to the selves that engage in them or wrongs to God. All three categories of wrongs will always be problematic within any form of liberal, democratic public reason. However, often what religious arguments consist in is an attempt to identify a harm to others or to society.²² I suspect that what makes the question of religion and public reason so frustrating for many, religious citizens in particular, is that they feel that their attempts to bring attention to harms are too often dismissed as crypto-theocratic attempts to impose an exclusive, sectarian ethical vision.

It is not the goal of this paper to outline a definitive list of harms a democratic political community ought to be concerned about. There are many cases, though, where the general method of public reason of universalizing claims advanced in the public sphere through a reciprocity test leads to relatively stable and persuasive answers. For example, suppose the claim advanced from a religious perspective in response to blasphemous or offensive speech and art is not that God or other sacred figures have rights or immunities that must be protected in any political context,²³ but that religious persons are injured, wounded or offended by assaults on their sacred or emulated figures.²⁴ This kind of claim may be morally important all things considered, but feelings of injury, wounding or offense *alone* are clearly not generalizable as justifications for coercion because of the ubiquity of emotional injury and offense.²⁵ We would be left with very few things could say in public. Similarly, religious attempts to translate their

²¹ [Martha Nussbaum, "Veiled Threats, New York Times Opinionator blog, July 11, 2010, <http://opinionator.blogs.nytimes.com/2010/07/11/veiled-threats/>.]

²² [Talal Asad on secularism depriving the religious of the freedom to "identify their harms." (Asad, *Formations of the Secular*, p. 6.)]

²³ Consider a letter to the editor of the New Haven Register applauding Yale University Press's decision not to reprint the Danish cartoons: "The cartoons portray outright lies and distortions. ... When it comes to God and his divine wisdom in appointing prophets there are boundaries that cannot be crossed. ... For Muslims, Muhammad was a mercy sent by God to the entire world. To portray him as less than that is blasphemy and it is incumbent upon those who have intelligence to direct the majority away from such contemptuous acts." (Jamilah Rasheed, "Excluding Cartoons a Step toward Justice," *New Haven Register*, Sept. 18, 2009, p. A4.)

²⁴ See, example, Saba Mahmood's characterization of the Muslim response to the Danish cartoons in "Religious Reason and Secular Affect: An Incommensurable Divide?"

²⁵ See my arguments in "Speaking about Muhammad, Speaking for Muslims," and "Speech and the Sacred: Does the Defense of Free Speech Rest on a Mistake about Religion?"

objections to same-sex marriage into a language of harm-to-others are often plainly unconvincing. Arguments that allowing same-sex marriage will harm opposite-sex marriage fail to demonstrate empirical plausibility, fail to be universalizable (we allow lots of things that harm marriage) and treat the interests of homosexuals as close to zero in weight. Arguments that homosexuals may be permitted civil unions but that the state and wider society should reserve “marriage” for the kinds of families and sexualities endorsed by traditional religious morality or wisdom makes a claim for sovereign possession over the symbolic and affective dimensions of the public sphere that, quite deliberately, seeks to mark some citizens as less valuable.

However, this is clearly an area where political liberals should keep an open mind about religious reason. Religious citizens are often pointing to harms in ways that are not sectarian or epistemically-exclusive, and many of the practices set up for critique on these grounds are less intimate or intrinsic to individual autonomy than our intimate or sexual relationships and speech about the social world. Suppose religious citizens point to the harms of the over-sexualization of youth culture or violence found in video games or popular culture using distinctly religious language. Or suppose the religious use distinctly religious language in order to warn against certain harms to the nuclear family and to justify certain positive protections or subsidies for the nuclear family against the market in way that does not involve depriving others of access to such goods. Religious traditions are often rich sources of moral thought about the harms of reducing human and social life to quantifiable market-exchange value or to the general harms of materialism and greed. What I am arguing in this paper is that our responses to religious reason in these cases has much less to do with some broader point about the acceptability of religious contributions to public justification *as such* than with an analysis of different areas of collective political action.

Back to the question of same-sex marriage. Part of the point of this paper is to argue that, while contemporary liberalism is right about restricting religious and other perfectionist arguments in the sphere of individual negative freedom where they are unavoidably and unacceptably paternalistic, the lessons from this sphere should not be over-extended to other areas of collective political life. Same-sex marriage, I would argue, is an issue that overlaps a number of my categories of political action and is highly dependent on how we describe it. Regulating marriage is not something that a state needs to be in the business of. It is highly likely that a modern state will want to keep track of new citizens, tax property, and arbitrate civil litigation. But it is far from clear that the state needs to concern itself with who can form civil partnerships with whom.²⁶ On this view, the question of same-sex marriage is as much a “negative liberty” question as that of protection for homosexual conduct and relationships insofar as we have a presumptive right to form partnerships and legal contracts and the state’s interference in our private decisions is what requires special justification. On this description, it is hard to imagine a non-authoritarian, non-domineering use of any kind of religious reason to prevent same-sex legal partnerships.

On another interpretation, marriage is a quasi-public institution, something we establish as a community collectively, like nuclear weapons or a national church. Of course, the very decision to characterize domestic partnerships in the first or the second

²⁶ See my papers, “Is There a Right to Polygamy?” and “What Lies beyond Same-Sex Marriage?” arguing that the state should not marry.

way is a political act. What kind, though? We can observe that the attempt to characterize a policy decision in this way is an attempt to remove it from the realm of debate about what kinds of personal choices are ethical in their own right or how people should live their own lives to the realm of debate about public goods and institutions. For many, that is precisely what is objectionable about the religious argument in the case of same-sex marriage. Rights-claims are suppressed by changing the subject; the core interests of some citizens are weighted at near to zero so as to protect some symbolic institution from any marginal harm.

Thus, on my scheme, we have resources to say much more about a religious, even scripturalist-based, argument against same-sex marriage than that it is a violation of respect because it advances religious justifications within public justification *per se*. First, we can distinguish between such religious arguments that object to same-sex marriage because homosexuality itself is a sin—an affront to God or a harm to the self—and those arguments which say that “marriage” is a public institution that ought to be treated in a different way than the criminal law. The least that can be said is that the second way of framing the question does not subject the personal realm of choice, freedom and expression to complete theocratic veto. Furthermore, the religious framing of the political issue as one about a collective, public institution is compatible with permitting same-sex civil unions that extend to homosexuals the same substantive legal rights and protections.

However, we also see the *precise* grounds for objecting to scripturalist religious arguments against permitting same-sex marriage, beyond the mere point that “religion” should be kept out of “politics.” Marriage is not merely a symbolic institution like a flag or national flower. It is one that regulates access to crucial social goods. It is arbitrary to the point of cruel to say that the interests of religious citizens in preserving their monopoly over how the secular state defines this institution for symbolic and affective purposes outweighs the interests of free and equal citizens to the substantive goods and rights distributed through this institution.

My scheme also permits us to draw further distinctions. Suppose the religious response to the push for same-sex marriage is to proposing “leveling down” to a universal civil union status for *all* citizens, reserving “marriage”—like baptism—for the realm of religious associations. Suppose the religious move, even using scripturalist forms of religious argument, is not to deny civil and moral goods to homosexual fellow citizens, but to get the state out of the marriage business entirely, to save the symbolic and sacred associations by removing “marriage” from state power. This is not only politically reasonable, but something which many queer activists might equally endorse because of their own reservations about “marriage” as an institution with which they can identify.

This does not mean there are no grounds for objecting to certain religious arguments in this case. For example, do scripturalist arguments for privatizing marriage (which we are assuming here to be looked upon favorably by liberals) imply that such scripturalist reasoning binds the state as such, that a state representing all of its citizens is bound to enact that marriage law preferred by the most convincing interpretation of scripture? Or rather do we interpret such statements as arguments only directed to fellow scripturalists justifying to them why they should accept same-sex civil unions? The former obviously is subject to certain objections. However, the scheme proposed in this paper allows us to make finer distinctions between the role that even the same kind of religious arguments play in different political contexts.

Moving then to the case of Christian scripturalist arguments for social welfare provisions, we see that according to my scheme the realm of public action at stake is that of irreducibly collective action pertaining to how much a state should tax its citizens and what it should do with this money. Religious arguments are obviously precarious in this area, precisely because of the public and collective nature of such political action. We object to the state endorsing and sponsoring one religion, or religion as such, because it uses citizen's resources to advantage a metaphysical doctrine and way of life they might reasonably dissent from and because it sends the message that the public sphere belongs to one moral community more than to others. Scripturalist arguments for redistributive taxation (such as the Bishops' Letter discussed by Waldron) do run the risk of asserting that a sectarian interpretation of revelation can serve as a good justificatory reason for everyone for the kinds of things a state can do with public money. What justifies universal health care also justifies subsidies to religious organizations.

What can be said about public interventions like the Pastoral Letter that Waldron discusses and other Christian interventions in support of social justice? (Wolterstorff, etc.) First, the political demand at stake is *other*-regarding. It speaks to what we owe each other within the social contract, not what we owe God or ourselves. Obviously, the arguments for what we owe each other are based on obligations to God and to ourselves in a Thomistic sense of fulfilling our telos and ethical personality. But the demand is to treat others in a particular way that benefits them. Second, the way we are being asked to benefit others is not demeaning or humiliating to us. Unlike demands to accept that our sexual life is inferior to that of others to the extent of accepting material, emotional and moral deprivations, we are not being asked in this case to accept our own inferiority. We are not asked to render goods or duties to others in a servile or self-negating way. We are being asked only to see a gap between our possessions and our selves, to accept that property is not natural or innate but acquired through social relationships. Such arguments about obligations to others are thus inherently different from, for example, such religious arguments as commands to women to obey men or to dalits to remain in their social place. Third, the way we are being asked to benefit others is not problematically authoritarian or paternalistic to the beneficiaries. The goods and interests that we are being asked to provide for others are relatively uncontroversial *as* goods and interests. The Pastoral Letter is not asking us to provide for goods or interests which are themselves sectarian in the sense of only being valued as goods or interests from within a particular moral doctrine. We are not asked to contribute Bibles, religious education or instruction in sacred tantric sex to the poor; we are being asked to contribute goods which (almost) everyone recognizes as goods—food, housing, employment, health care, money.

In addition to these core differences between arguments about social justice and arguments about homosexuality, there are two further issues of interpretation. Without denying the deeply metaphysical and “sectarian” nature of the Pastoral Letter, from a perspective external to the Pastoral Letter, it is possible to note that the demands in question are more than intelligible to others. They converge with many other doctrines. Finally, even on an internal reading of the Letter, it is not clear that we are being asked to first accept the underlying doctrines and reasoning, and not only to act on the obligation. There is no evidence that the Bishops believe that one cannot act justly in the sense being called for here without being a Catholic. We are not being asked to believe something controversial or sectarian from a metaphysical standpoint first. There is, rather, like with

the Evangelical Declaration against Torture an emergency quality to the language in the Pastoral Letter—grave issues are at stake and we cannot remain silent in the face of present events, especially as so many Americans regard themselves as followers of Christ.

My point here is neither to deny a partial moral perspective on my part nor to claim that the arguments for social justice are unproblematic, neutral or purely “political” in the Rawlsian sense. It very much is the case that deep religious views have been essential to progress in the areas of racial and social justice precisely when no existing consensus existed. But I believe that I have shown that there are still some principled grounds for liberals to distinguish between their reception of religious arguments in the areas of gay rights as opposed to social justice and, thus, that one cannot necessarily derive the conclusion that the acceptability of advancing religious arguments in public applies in all areas of collective political action.

What about some of the other common examples given of areas where excluding religious reasons is both unfair and unwise? On my scheme, the questions of abortion, torture, the global environment and global justice, for all their differences, share an important feature, namely the concern with the basic, relatively uncontroversial interests of persons (including future persons) outside the immediate social contract. The first part of this statement (that these issues are concerned with relatively uncontroversial interests) has been discussed above. It matters, in my opinion, that religious intervention in such cases is often about expanding the sphere of the most basic moral concern to others. It is quite different, as far as the relationship between free and equal citizens is concerned, to say that our collective power and resources should be deployed or constrained to protect the bare life of some non-citizen than it is to say that that collective power should be deployed to ensure that said non-citizen should be saved through Jesus Christ. No political morality disputes that bare life, physical integrity or bodily health are goods. (Moral doctrines dispute the weight and importance of these goods relative to other ones.) Thus, one way of viewing religious argumentation in the above cases is that the religious are not advancing a controversial account of the good or of justice for public enforcement, but rather merely expanding the sphere of justice, defending those subjects whose vital interests are adversely affected by policy decisions we make, and yet who have no representation within a particular body politic. Abortion, torture, the environment and global justice are all, in a crucial way, about the most basic rights of others.

There is a certain paradox in the appraisal of religious interventions here. On the one hand, my interpretation runs the risk of reducing religious arguments to a generic universal morality. On the other hand, I am offering an interpretation of collective action in such cases that allows us to see religious arguments as less than theocratic, disrespectful or paternalistic. There is an element of truth in both. I do think it is often the case that many paradigmatic cases of religious activism are so enduring and problematic, despite the genuinely deep theological commitments at stake, because theological commitments are not necessary. It is precisely where theological commitments are pricking the conscience of others, including secular moralists, that the religious claims are so hard to dismiss. Slavery, civil rights, torture, global justice, corporate greed and even abortion are such cases. Life, liberty and dignity are the primary values at stake in these cases, and these are all values that liberal secular moralities regard as admissible in public justification.

At the same time, more is at stake than mere “translation” in these cases. Religious appeals are often defiantly untranslated and they are often particularly militant when public deliberation has run aground, or at least run its course. Furthermore, we should not assume that these are all policy areas where secular left-liberals find political comrades in the religious. Some of the paradigmatic cases of disagreement between the religious and the secular include abortion, the evil of poverty all things considered, and the proper balance to be struck between a language of public right (justice or morality in Kantian-Habermasian terms) and the language of personal virtue (ethics in Kantian-Habermasian terms) in the struggle against corporate power.

Nonetheless, there are powerful reasons why those attracted to the ideal of public justification should not regard religious interventions in disputes about what we owe those outside the social contract as a priori uncivil. First, the terms of public reason are best suited to routine, non-exceptional problems of collective self-governance. In societies with strong commitments to civil and human rights, including rights to personal expression and privacy, those capable of representing themselves within the social contract will likely not have to establish themselves as subjects of justice. Religious arguments to extend considerations of justice will thus be superfluous, and religious attempts to export sectarian ethical standards into the common system of right will be unwelcome.

However, political communities never expand their sphere of moral concern without a struggle. Almost by definition, in a non-cosmopolitan political world, public reason does not resolve what moral considerations are due entities outside the particular political community. Furthermore, political particularism, i.e., nationalism, has a morally constraining quality. Outsiders are easily seen as enemies, competitors or strangers and their interests are easily dismissed or disdained. And yet it is hard to deny that we have moral obligations to those outside the social contract, that the global community is always itself a form of social contract. How to bridge this gap between the fact of moral obligation to others and the morally cramping powers of nationalism? This is not a question for political philosophy, but for political psychology. Our moral concern, defined as an uncoerced willingness to sacrifice any of our own interests for the interests of others, is contracted and expanded in a variety of ways, most of them non-rational. (Some may require reasons, and be convinced by reasons, for valuing the interests of moral others.) Religious argument and persuasion straddle the rational and non-rational processes of moral growth. Religious efforts of various forms to persuade us that we have moral obligations to those who are not protected and represented within the social contract—enemy combatants, the distant poor, fetuses and other future persons—cannot be dismissed by political liberals to two core and mutually-defining reasons: (1) the terms of political and social cooperation do not claim to have settled the rights of such entities and thus religious interventions do not challenge some existing political achievement; and (2) most political liberals are uneasy about the nation-state as an exhaustive context for moral and political obligation, at least in the world as it is, and are open to domestic politics enacting laws that protect the interests of certain entities outside the social contract. While some such entities may be a priori inappropriate as objects of political protection—God, Jesus Christ, the Sun-God Ra—I do not believe that the entities we have focused on here—enemy combatant, the distant poor, and future persons—are

inappropriate in this way. (The non-human natural world, including animals, is a harder case, which I cannot address here.)

If the preceding is convincing, though, there is also a lesson for the advocates of religious argument in public justification. Religious advocacy for the protection of the basic, uncontroversial interests of entities beyond the social contract ought to be tolerated, respected and welcomed by secular political moralists for two primary reasons: (1) we accept that such entities have interests that ought to be protected and (2) we recognize that the interests of such entities are often terribly hard to advocate for in national political contexts—we need all the help we can get and in a religious society such help ought to be religious. Liberals may welcome or solicit this help in some areas (global poverty, torture) more than others (abortion), but if my scheme is convincing, then liberals ought to at least regard religious interventions about abortion as belonging to the same sphere of political activity. However, this cannot be leveraged into a defense of religious argument in those areas where it would be paternalistic and authoritarian vis-à-vis free and equal *fellow citizens* within the social contract.

To this point, I believe that I have given an account of why it is not bad faith for liberals to treat religious arguments pertaining to my first category as different kinds of interventions from arguments pertaining to my third category. I think the other categories are harder. There is obviously a massive literature on religion and education in a democracy, but I would like to note a few things about what makes my second category difficult. First, all discussions of how a society ought to educate its future citizens are by nature paternalistic and authoritarian. Thus, it is harder in this sphere to distinguish between problematically authoritarian religious arguments and unproblematically legitimate secular considerations. Second, most liberal views will recognize some relevant separation between the public and the private, some parental authority over children and some freedom to private education. Thus, it is hard to distinguish between reasonable and unreasonable demands for control over what one's children learn.

Space allows me to make just a few notes in this context. First, the presence of religion in public or the defense of religion as a category is not the same as a “religious argument” in public debate. To argue that a constitution protects religious freedom, or that parents ought to have substantial authority over their children or that religion is valuable and beneficial is not to offer a “religious argument” in public. These are all secular rationales that can be given by religious and non-religious citizens equally. Second, political liberalism is most concerned about religious interventions in support of or in opposition to policies pertaining to children, when such interventions seek authority over the education of *all* future citizens. At most, political liberals can recognize that teaching democratic civic values, sensitive areas of science, tolerance for sexual and moral minorities or sexual education is *controversial*. What it cannot recognize, I believe, is that the interests of future citizens in being educated in these areas is either so minimal or so ideologically arbitrary that they can be outweighed at large by the religious objections of some citizens. In other words, the most obvious concern of political liberalism in my second category is with religious attempts to assert authority over *all* children. Again, here the typology of religious arguments also helps to clarify why different kinds of religious interventions will signal disrespect or authoritarian attitudes to different degrees.

My fourth category spoke of indivisibly and unavoidably collective action—things that the political community does at large and not necessarily by regulating, disciplining and restricting the behavior of individual members. Some examples of issues belonging to this category are quite clear (nuclear weapons) but others may be less a description of the policy area itself than of the ideological argument for or against a policy. In this category, I think some of the same considerations raised in discussing the third category (treatment of non-citizens) serve to show why political liberals should keep an open mind about religious arguments, particularly those of a non-scripturalist, non-command form. First, many such issues are actually about the many ways a political community can harm others. Objections to nuclear weapons are objections to what we can do to others with them. An argument that “a good society protects the lesser of its brothers” (not: “as Christians we all have [individual] obligations to protect the lesser of our brothers”) is, obviously, an argument for the claims of the poor or vulnerable. Second, like with obligations to non-citizens, public reason has a hard time providing for a language for speaking collectively about political issues that are not clearly matters of justice. Many collective acts reflect on a collective conception of the good or virtue, yet not necessarily in a problematically sectarian way. Creating national parks and other public spaces, public service obligations, public mourning and memory and other similar political practices are not best discussed through the language of rights and yet a language of rights or justice might not exclude public consideration of them. Like with basic obligations, public reason leaves a gap that must be filled.

But there are further reasons to see religious reason as operating according to a distinct logic in this area. It is possible for moral exhortation in such areas of collective action or direction to be non-trivial and morally controversial (which religious arguments often are) yet not involve paternalistic or authoritarian attempts to regulate, discipline or exclude individual lives. For example, to say that torture not only violates the rights of the tortured but also corrupts and makes wicked the soul of the nation that enacts torture as a policy (imagine this uttered in some more theologically rich language) does not import religious ethical standards for individual behavior in the same way that religious arguments against homosexuality, gender equality, birth control or the HPV vaccine do. Public monies and energies are often directed to projects that many citizens would not have chosen or object to. And yet we recognize that having one’s own share of the collective disposable income diverted to something we would not have chosen is not the same kind of assault on our dignity and autonomy as is having the criminal law brought to bear on our personal choices that do not harm others in universalizable ways or is being excluded for arbitrary reasons from public goods or institutions.

Finally, I suggested above that one of the concerns that ought to regulate liberal treatment of the problem of religion in public debate is the ability of a democratic society to respond to collective problems (5). Part of a society’s ability to respond to collective problems is its capacity to diagnose them. Again, an emphasis on reciprocity between citizens (the hallmark of public reason) is often thin here. Diagnosing collective problems often involves a rich moral imagination, a concern for connections between different areas of life and a long time horizon. Public discourse about a society’s use of natural resources, modes of relating to non-human life, cultivation of values amongst its citizens, or quality of social and human bonds are not exactly excluded by or in tension with public reason. Far from it. But such topics exceed the realm that Rawlsian or

Habermasian public reason excels at giving complete and determinate answers. Thus, we don't often know what public discourse about such issues will look like; indeed, we don't often know what the issues themselves will be. My point pertaining to the broader question should be clear: for political liberals "religious" should not be the primary category by which public arguments are evaluated morally; but advocates of religious reason should also be modest in their extrapolations. What is doing the work in making room for certain kinds of religious arguments here are certain specific features of this realm of collective action.

Conclusion: Religious Exhortation as the "Exception"?

This paper proceeded by bracketing the agonistic rejection of public deliberation in pursuit of justification. The previous discussion highlights, I think, the way that public justification as a practice to be adopted in controversial areas remains quite tenuous. I want to conclude by noting that much of what I have said by way of agreement with those who defend the role of religion in public discourse refers to the rhetorically persuasive power of religious interventions in public, rather than on the role of religion in providing novel arguments or reasons. It is difficult to imagine an area of collective political action where (a) there are *only* religious arguments for a law or policy and (b) both the arguments and the law are not morally problematic in a diverse, pluralist society.

But (a) if religious arguments are most acceptable in those areas where what is at stake is expanding the circle of moral concern both to new or tenuous subjects of justice and to new areas or topics of collective behavior and (b) it is assumed that the values and interests being asserted in religious arguments are not absent from or incompatible with secular forms of public reason, are we not back to an affirmation of agonism? In areas such as torture, global poverty, the rights of future persons or the ill effects of greed what religious arguments are doing is not quite completing the terms of public reason so that the latter now has a device or language for definitively resolving political disputes. Rather, it is pricking the consciences or enlarging the moral imaginations of those who are predisposed to experiencing religiously-based exhortations as moving in areas that are neither matters of applying existing norms of justice nor merely making policy beneath the radar of justice.

If religious arguments become most salient when communities are not merely fulfilling and applying existing standards of justice nor arguing over the normal spoils of politics, does this not point to a role analogous to the exception? We see religion intervening, and liberalism most open to religion, in cases of emergency threats to justice itself, or to survival (in the case of nukes or the environment). After all, Rawls' most famous examples of cases where he could not exclude the role of religious argument were the public exhortations of Lincoln and Martin Luther King (he might have added revolutionary-era arguments for religious freedom and state-church separation). But like with what I have argued in this paper about the expansion of moral concern to those outside the social contract, the irony is that just when liberal theory needs it most it will need religious motivation (at least in the United States). It is precisely when we can't point to existing constitutional or social agreement for principles of justice (the meaning of life and the person, the basic obligations of social justice, the evil of slavery, the equality of the races, the physical integrity of the enemy terrorist ...) that we have no

choice but to reach for the deepest and most moving reasons that we have. This is the “exception” that makes and allows for “normal” discussion to proceed or resume; it is the presence of *politics* at its deepest, albeit already in discursive form.

Although I think this opens up to a completely different discussion, I wonder whether there isn’t something in this observation for both liberals and agonists. Liberalism tends to look away from these moments of exception, to want to treat them as “merely” exceptional; agonists tend to want to make too much of them and to see them everywhere. Whatever descriptive, conceptual or genealogical implications the reliance of liberalism on religion has, I would like to close with two normative suggestions:

1. We ought to cultivate a shared secular and religious awareness of the boundaries of normal and exceptional politics and a commitment to minding that boundary. Not everything should go nuclear, but certain moments are genuinely foundational and transformative.
2. Justice does not take care of itself and we do not now live in a just society under a just constitution. If Rawlsians or left-liberals can take some comfort from progress on issues pertaining to the first principle of justice (civil rights issues: race, homosexuality, gender, due process), there is little doubt that we are (even from a Rawlsian perspective) in a crisis on aspects pertaining to the second principle of justice (equality), as well as on possibly existential issues beyond the scope of justice (environment). Justice is defended and advanced in moments of exception and this requires not only solidarity, institutions and will, but also overpowering moral energy. It is not (only) that solidarity tends to atrophy and legal-bureaucratic bonds are too weak to resist this, but rather that there are perpetual forces that oppose justice (militarism, capitalism) and resisting them often requires recourse to a powerful foundationalist language

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