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Rethinking Religious Reasons in Public Justification

ANDREW F. MARCH *Yale University*

This article intervenes in the debate on the place of religious arguments in public reason. I advance the debate 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 forms of religious arguments and, more importantly, (b) different areas of political and social life which coercive laws regulate or about which human political communities deliberate. Religious arguments are of many different kinds, are offered to others in a variety of ways, and the spheres of life about which communities deliberate pose distinct moral questions. Turning back to the public reason debate, I argue then that political liberals ought to be concerned primarily about the invocation of a certain subset of religious reasons in a certain subset of areas of human activity, but also that inclusivist arguments on behalf of religious contributions to public deliberation fail to justify the use of religious arguments in all areas of public deliberation.

INTRODUCTION: THE INCLUSIVIST CHALLENGE TO LIBERAL PUBLIC REASON

Before the last two presidential elections, the U.S. Conference of Catholic Bishops issued a comprehensive "teaching document on the political responsibility of Catholics." *Forming Consciences for Faithful Citizenship: A Call to Political Responsibility from the Catholic Bishops of the United States* (United States Conference of Catholic Bishops 2011; hereafter USCCB) reads as a paradigmatic example of a religious contribution to public deliberation that takes square aim at some of the assumptions most commonly associated with the doctrine of political liberalism. The document begins with an enunciation of "the Church's right, obligation, and opportunities to participate in society without being forced to abandon or ignore its central moral convictions" and avers that "our nation's tradition of pluralism is enhanced, not threatened, when religious groups and people of faith bring their convictions and concerns into public life" (USCCB 2011, 4). However, in addition to directly challenging one strand of liberal theory, the politics of this document raises a more interesting moral quandary for political theorists and citizens who are broadly attracted both to public reason as an ideal of citizenship in conditions of pluralism and also to progressive and cosmopolitan ideals of social justice. *Forming Consciences for Faithful Citizenship* draws on the tradition of Catholic social doctrine to argue on grounds of scripture, tradition, authority, and reason for bans on abortion, euthanasia, stem cell research, and same-sex marriage, but also against torture, capital punishment, cruel immigration policies, union busting, and cuts to social services. Can a public-reason left liberal criticize some of these religious arguments as inappropriate or uncivil uses of revelation or authority in public while at the same time welcoming other equally religious interventions as both respectful and justice promoting? Or is accepting public religious argumentation on all political issues, from sexual equality to health care, simply the price of living in a pluralist and democratic society?

In recent years, a number of prominent political and legal theorists have challenged the common political liberal view that religious arguments are *prima facie* inadmissible in public deliberation over coercive laws. These thinkers have tried to show that many of the arguments offered by liberal theorists in favor of a principle of religious self-restraint in reason-giving fail to justify that principle, and that many positive arguments can be given in favor of welcoming religious contributions in public deliberation. The thinkers in consideration here are neither (theocratic) perfectionists nor radical skeptics of liberal legitimacy. Rather, they defend one version or other of "inclusivism," which holds that a "citizen is morally permitted to support (or oppose) a coercive law even if she enjoys [only] a religious rationale for that law" (Eberle 2002, 10).

Jeremy Waldron, for example, offers the following alternative to Rawls's famous proviso:[1] "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

Andrew F. March is Associate Professor, Department of Political Science, Yale University (andrew.march@yale.edu).

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[1] On Rawls's later view, public reason "allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support" (Rawls 1997, 776).

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reason for church people to refrain from participation in public life on the basis of their values, provided this is accompanied by a willingness 'to grant all citizens of every worldview and moral conviction the legitimacy of their own faith-based participation in American public life' [quoting David Gushee]" (Waldron 2012, 849). Waldron and Eberle are joined by Nicholas Wolterstorff (1997a; 1997b), Jeffrey Stout (2004), Michael McConnell (1999; 2007), Michael Perry (1987; 1996; 2001; 2003), Paul Weithman (2002) Steven Shiffrin (1999), Philip Quinn (1995), James Bohman (2003), Gerald Gaus and Kevin Vallier (Gaus and Vallier 2009; Vallier 2012), Simone Chambers (2010), and many others in challenging the view that respect between fellow citizens in conditions of moral and epistemic diversity requires withholding arguments from religious and other comprehensive doctrines.

Inclusivists devote most of their energies to demonstrating the defects of exclusivism in its own terms. Common criticisms are that public reason is incomplete (Frohock 1997, 1999; Horton 2003; Reidy 2000; in response: Schwartzman 2004; Williams 2000), that the liberal terms of public reason are arbitrary (Campos 1994; Coles 2005; Fish 1997; McConnell 1999; Quinn 1995), and thus that demands of self-restraint in a society with many religious citizens are both unfair to believers and unduly diminish political life. (For comprehensive lists of objections to liberal ideals of public reason see Quong (2011, 259–60) and Vallier and D'Agostino (2012).) Given these charges, inclusivists usually argue (directly or by implication) for a different understanding of democracy, a less deliberative, consensus-seeking one and a more competitive or agonistic one (Bader 2008; Coles 2005; Connolly 1999; Dyzenhaus 1996; Honig 1993, 2009; Mouffe 1999; Zerilli 2012).

The problem of religious reasons in public justification is one of the most exhaustively treated questions in recent political philosophy, and the dispute between exclusivist views and inclusivist ones is well known (Clanton 2009a; Macedo 1999; Rosenblum 2000; Weithman 1997). Nonetheless, I argue here that the debate has been hampered by a tendency for advocates of both exclusivist and inclusivist views to treat the two central concepts at stake—"religious arguments" and "political issues"—in unitary terms. The standard public reason argument proceeds from a characterization of the moral requirements of democratic deliberation (respect, recognition of moral pluralism, a commitment to democratic legitimacy) to the conclusion that arguments derived solely from a particular religious doctrine are *prima facie* uncivil and inappropriate (Ackerman 1994; Audi 2000; Benhabib 1994; Cohen 1989; Greenawalt 1988, 1995; Gutmann and Thompson 1990, 1996; Habermas 2006; Larmore 1990, 1999; Macedo 1997; Moon 1993; Nussbaum 2011; Rawls 1996; Rorty 1994; Solum 1993[2]). Inclusivist critiques will often proceed by presenting a religious argument that even public-reason left liberals are likely to appreciate (for example, the role of religious citizens in opposing slavery (Zerilli 2012), torture (Waldron 2012), or cuts to social services (Wolterstorff 1997b)), by warning about the dangers of excluding religious energies from politics (Coles 2005; Connolly 1999; Waldron 2006; Walzer 1999), and thus concluding that religious arguments are *prima facie* acceptable or even desirable in political argument.

I am moved by many of the examples given by scholars such as Waldron, Perry, Eberle, Wolterstorff, and Zerilli, and agree that religious arguments or appeals in the public sphere are often nontheocratic, respectful, and justice promoting. However, I think that the question of religious arguments in public justification remains more complicated and interesting than the emerging consensus that religious arguments should not be excluded from public life. I also believe it is possible to improve upon the most common hybrid or qualified positions that the morality of using religion in political argument depends on the political *roles* or *offices* citizens may occupy, the different *arenas* or *sites* of political argument, or the various moral-affective *dispositions* citizens cultivate towards reasoning and disagreeing with other citizens.

The alternative approach advanced in this essay is to begin by breaking down "religious arguments" and "political issues" into component parts. Whether we accept deliberative, convergence, or agonistic conceptions of democratic engagement, the morality of the inclusion of a religious argument in public deliberation over a political decision differs, often radically, depending on the specific properties of each, namely the form and content of the religious argument and the subject matter of the political decision. This essay is an effort to think more systematically, analytically, and schematically about different kinds of religious arguments and different kinds of political problems, and to demonstrate how this gives us a subtler perspective on the problem of religious reasons in political argument than the main inclusivist alternatives to (or interpretations of) liberal public reason.

The typologies of religious reasons and political issues that I propose below are not ends in themselves, but help us focus attention on the core questions that should motivate inquiries into the morality and politics of public argument. Rather than reducing the morality of political argument to one master value (e.g., respect or consensus), we can acknowledge many factors as bearing on our judgment of contributions to public debate. On my view, the most important considerations at stake in formulating judgments about political arguments are (1) the moral attitude towards others expressed in our public speech, (2) the democratic legitimacy of public decisions, (3) the justice of public

[2] I cannot do justice to all of the important differences between these various positions. Discourse theorists like Habermas and Benhabib in particular have claimed that their view is more hospitable to religious concerns in the broader public sphere than public reason liberalism. However, on my reading, the shared concerns with reciprocity, reason giving, and the ideal of consensus mean that discourse-theoretic approaches to religion and public reason have more in common with political liberalism than with any of the strongly inclusivist positions.

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decisions, (4) social solidarity,[3] and (5) the ability of a democratic society to respond to collective problems. Importantly, I would suggest that these concerns about the morality and politics of political argument can be shared by a wide range of democratic theorists, and not only political liberals or deliberative democrats.

Rather than focusing on the narrow question of whether an argument issued in public has a "religious" or "comprehensive" character, is immediately accessible to or shareable with others, or proceeds from and builds on an existing moral consensus, we can explore how religious arguments can take different forms that affect the above five considerations in quite different ways in that they involve greater or lesser degrees of appeals to revelatory or clerical authority, strictly understood. Similarly, the stakes for the above goods differ with different kinds of political issues. To anticipate much of what I will argue below, what often matters is whether so-called "religious arguments" are advocating (a) for interests that are generally and appropriately recognized as interests in a political community, (b) of agents or entities that are generally recognized as legitimate objects of politically enforced moral concern, (c) in ways that do not require unintelligible or unreasonable self-sacrifice of fellow citizens. Focusing on these variables often gives us a clearer view of why some religious arguments do violate norms of respect, civility, and fairness, while others do not.

Obviously, no one regards all religious arguments and all political decisions as identical, and most theorists have qualified in some way their arguments for the inclusion or exclusion of religious reasons. I do not anticipate that merely claiming that there are different kinds of religious arguments, different modes of giving them, and different subject matters of political decisions will be regarded as controversial or interesting. However, I will try to show that there is a tendency to treat religious arguments and political life in a unitary manner and that moving the debate in a pluralizing direction can advance it substantially. Thus, in the following section I briefly discuss the approaches of two of the most prominent inclusivists (Jeremy Waldron and Christopher Eberle) in order to establish that there is indeed a common failure to systematically disassemble "religious arguments" and "political issues" into more basic concepts and that this detracts from the persuasiveness of the inclusivist position.

[3] I do not explore the idea of solidarity in depth in this article, except to note here that both including and excluding religious arguments in public can be said to adversely affect feelings of solidarity amongst citizens. The ideal of public reason is partially motivated by a concern about the impact on social solidarity when citizens feel no obligation to justify laws to fellow citizens affected by them. However, insofar as religious citizens feel alienated from the public sphere or inhibited from sharing views derived from religious traditions, this can also be said to inhibit bonds of civic solidarity. Whether a concern for solidarity as one political good amongst many calls for more or less religious argumentation in public, however, depends on a more nuanced contextual analysis of the kind of religious reasons in question and the subject matter of political argument about which they are given. A concern for solidarity does not militate unambiguously for or against either view.

In the two sections following this, I introduce my two typologies and discuss why this way of analyzing religious arguments in public justification improves on the existing models. I argue that this form of analysis helps us to clarify both exactly why the common positive examples of religious contributions to political argument are persuasive and also why there remain plausible grounds for criticizing other religious interventions as violating certain norms of respect between fellow citizens. These two sections are followed by a more detailed discussion of a few paradigmatic cases of religious argument in which I use my scheme to show why a democratic citizen can in good faith object to certain modes of using religious arguments in certain areas of political decision making (e.g., on sexuality and marriage) while not objecting to others (e.g., on social justice). My conclusions are in some ways shared with inclusivist and agonistic approaches, but I offer an alternative way of thinking about religious arguments in public life that is more precise than the emerging inclusivist consensus that "there is no particular reason for [religious] people to refrain from participation in public life on the basis of their values."

INCLUSIVISM TRIUMPHANT? DISASSEMBLING "RELIGIOUS ARGUMENTS" AND "POLITICAL ISSUES" AS CONCEPTS

It is acknowledged by almost everyone that there are many ways of using religion in public argument. 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, including those advanced by theorists of liberal public reason (e.g., Solum 1993; Vallier 2011).

For example, in an article 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 (Waldron 2012, 853–4).

In this passage Waldron makes a number of distinctions: between looking to religion for practical authority and looking to it for theoretical authority, between theocratic and democratic religious interventions in

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politics, and between looking to religious traditions for help or inspiration and looking to them for decisive answers. As Waldron argued in an important earlier article, 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" (Waldron 1993, 847). He observes 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 fetal 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 (Waldron 2012, 855).

This passage adds a further distinction pertaining to the 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. Citizens can use a literal reading of a scriptural passage directly as a premise in an argument. 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.

My position builds on Waldron's, as I think that more can be derived from these distinctions between various modes of forming, articulating, and offering religious reasons. The real lacuna in Waldron's analysis, however, is in not considering whether different kinds of political problems give us a different understanding of the moral stakes in arguing from religious traditions. Waldron invokes religious views on policy areas—torture and social justice—that largely appeal to secular liberals. But does the positive influence of religious advocacy in these specific areas justify the conclusion that "so long as there is due recognition of the multifaith 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" (Waldron 2012, 849, emphasis added)? 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" (Waldron 2002, 20) 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, racial justice, parental leave, homosexuality, birth control, and the HPV vaccine as subject matters and areas of collective political action.

Despite the positive (if incomplete) example provided by Waldron, some of the most influential contributors to this debate fail to make appropriate distinctions between different kinds of religious argument. For some inclusivists, the distinction is between various moral-affective dispositions with which any kind of "religious argument" is presented as part of an overall process of reason-giving or conscientious engagement. Just as Rawls qualifies the acceptability on arguing from religious reasons by requiring that nonreligious, public reasons be given in due course, inclusivists often argue that the primary requirement for religious citizens is to cultivate a certain attitude of goodwill for citizens of other moral persuasions (George 1997a), to make some conscientious attempt to search for shared reasons (Eberle 2002) or to be willing to subject one's own religious arguments to critical scrutiny and possible defeat (Clanton 2009b). 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 engaged conscientiously in this way and still failed to persuade enough of her fellow citizens, Eberle believes that she is not under 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 conscientiously engaging with others and one who does so after going through such a process. He gives us two citizens—the real-life Bill McCartney, University of Colorado football coach and founder of the Promise 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 by using arguments from Liberation Theology, 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. He wants the example of Elijah to demonstrate to public reason liberals (who are presumably less alienated 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 possible alternatives 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 that 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 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

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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 the kind of advocacy represented by McCartney (Eberle 2002, 109–115).

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 overlooks a possible connection between the two. Many persons oppose sexually discriminatory laws as unjust partially because one requires a controversial religious doctrine to justify them since there are no legitimate public interests or other individual rights threatened by sexual equality. Similarly, when Eberle distinguishes between distaste for the "types of people who refuse to exercise restraint" with our distaste for the refusal to exercise restraint, he does not consider whether the refusal to exercise restraint *is* why some have distaste for certain right-wing evangelicals. He assumes that refusal to exercise self-restraint is never a reason for distaste.

However, my larger concern with Eberle's argument is his failure to distinguish between (1) different ways of deriving religious arguments and presenting them in public debate and (2) different areas of political action. The greatest sources of distaste for McCartney-style political interventions are precisely (1) the *form* of religious justifications given (citing Leviticus, giving "abomination to Almighty God" as a justificatory reason) and (2) the area of activity being legislated on (human sexual and intimate 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 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 wider or secular basis. But by changing two crucial variables (Elijah's precise form 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 factors in the above cases are that liberals support bans on torture and the expansion of social justice provisions and oppose bans on same-sex marriage (Fish 1999), or the spirit and disposition with which religious arguments are given, I think it is worth examining whether a finer understanding of the morality of religious arguments in political debate can be achieved by first trying to generalize about the different kinds of "religious reasons" and the various broad areas about which political communities deliberate. What would it mean to treat the concepts of "religious reasons" and "political problems" not as simple concepts but as ones that bundle together a number of quite distinct ones?

WHAT IS A "RELIGIOUS REASON"?

What is relevant, on my view, is not so much the overall moral-affective disposition with which religious reasons are offered, but rather the *form* that religious arguments take, the claims to authority embedded in how they are structured. I would suggest as a working typology four forms that religious contributions often take:

1. A command extracted from a revealed text, religious authority, or personal mystical or revelatory experience.
2. A theological or moral doctrine that is not clearly attributed to a specific claim from a revealed text, but is derived from certain theistic claims and revealed knowledge.
3. An appeal or reference to traditional religious commitments or practices.
4. An appeal to practical wisdom or moral insight found in traditions of religious thought.

This is not necessarily a final or conclusive typology and, importantly, I am not offering these categories as *exclusive vis-à-vis* one another. Religious contributions to political discourse need not belong to one and only one of the above categories, and religious citizens need not be the kinds of persons 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.

But the distinctions do some work for us. For example, the "Evangelical Declaration Against Torture: Protecting Human Rights in an Age of Terror" (National Association of Evangelicals 2007), which Waldron draws from heavily in "Two-Way Translation" (2012) contains all four of these forms of religious argument, in addition to references to secular legal and moral traditions.

1. The Declaration first states that "we are Christians who are *commanded* by our Lord Jesus Christ to love God with all of our being and to love our neighbors as ourselves (Mt. 22:36–40)."
2. The text then invokes Genesis 1:26–27 ("And God said, 'Let us make human beings in our image, in our likeness.'") to declare that "we ground our commitment to human rights, including the rights of suspected terrorists, in the core Christian belief that human life is sacred." This basic view, which "is a moral norm that both summarizes and transcends all other particular norms in Christian moral thought," is linked to torture not through clear Scriptural command but through an analogy with the torture of Jesus (after the incarnation "the cries of the tortured are in a very real sense the cries of the Spirit") and through the claim that "human life is expressed through physicality, and the well-being of persons is tied to their physical existence."
3. Later, the Declaration argues that "commitment to human rights can be seen as a systematic way to look out for the interests of others, and thus as an

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expression of Christian love. This is now the overwhelming consensus of the Christian community."

4. Finally, the Declaration states that "when torture is employed by a state, that act communicates to the world and to one's own people that human lives are not sacred, that they are not reflections of the Creator, that they are expendable, exploitable, and disposable, and that their intrinsic value can be overridden by utilitarian arguments that trump that value"; "a commitment to life's sacredness and to human rights is a seamless garment. It cannot be torn anywhere without compromising its integrity everywhere"; and "human rights place a shield around people, even when (especially when) our hearts cry out for vengeance."

We can immediately see what happens to the debate over "religious reasons in public justification." There is no such debate, for there is no *single* such thing as a religious argument. Not only is "religious" too underinclusive a category (which is why Rawls always spoke of "comprehensive" doctrines, a category that includes both religious and secular doctrines), but it is too overinclusive a category as well. When a citizen quotes the Bible or a Papal encyclical to *prove* in an authoritative and determinate manner that homosexuality or divorce ought to be forbidden, she is simply not doing the same thing morally, politically, and discursively as when she claims that human life is inherently valuable ("sacred"), that Christian just war doctrine contains enduringly wise lessons for the conduct of war or that human sinfulness cautions us against overconfidence in our own moral intentions. It is not only that for the latter issues "in due course, we [can] give properly public reasons to support the principles and policies our comprehensive doctrine is said to support" (Rawls 1997, 776), it is that the first form of argument is an undemocratic approach to knowledge, politics and authority, while the other, equally "comprehensive," reasons are less so from the very outset. The moral and epistemic humility of the citizen willing to subject her arguments to evaluation and debate in public is measured less by some inscrutable interior state of affect, or by her willingness to argue and engage with others, than by the form and structure that her public arguments take.

The most obvious lesson here is for liberals who feel the pull of a strict form of exclusivism (Audi 2000; Macedo 1997). 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. Not all theistic contributions to public discourse are offered with an implicit authoritarian or theocratic premise. When Martin Luther King, Jr. invoked Augustine to argue that "an unjust law is no law at all" (King 1991, 293), he was not invoking him 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, just as the Evangelical Declaration on Torture is presented as a way of inviting fellow citizens into an imaginative space through the dramatic use of religious imagery.[4]

The pluralistic, fragmented nature of large societies thus forces us to interpret certain religious interventions in politics from a rhetorical standpoint. Not all *contributions* to public life are meant as general *justifications* of coercive laws, strictly construed. 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 no one who confesses Christ as Lord can accept torture it is forbidden for the US to practice it, and we think that 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 officials who publicly 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"? The Evangelical Declaration against Torture obviously does not hide its theistic and theological foundation, but nor does it preclude any doctrine of restraint, discrimination, or judgment in public reason giving. The authors do not only present the Declaration as one more area on which religious integralists like evangelicals must have a Biblically rooted position, but also as an *emergency* intervention: "As evangelicals, we are first obligated to be faithful to Christ and his teaching. We are to be Kingdom people, disciples who think biblically about all things. *In this particular situation*, discipleship requires a clear word from us to our nation and its leaders." (Emphasis added.)

But there is a familiar, more narrowly philosophical, lesson here for a certain kind of inclusivist 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 general conclusions about "religious" arguments as such? If there are certain kinds of religious arguments that are morally acceptable in public debate precisely because they are translated relatively easily into other moral languages (Habermas 2006), this might merely show that they have more in common with certain secular moral views than with certain other religious arguments. Furthermore, this simply serves to isolate those religious arguments that are genuinely authoritarian in the sense of implying the premise that clear statements from revelation (or clerical authority) can decisively settle a political question for all affected without a requirement of translation into or convergence with other doctrines. Showing that there are important counterexamples that disprove the claim "Religious arguments are never (or even usually)

[4] From the Evangelical Declaration: "However remote to us may be the victim of torture, abuse, or mistreatment, Christians must seek to develop the moral imagination to enter into the suffering of all who are victimized."

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permissible in public justification" does not successfully defend the counterclaim "Religious arguments are always unproblematic in public justification."

This is, in fact, a necessary implication of some inclusivist views. 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 livability of life issues (torture)? First, it is argued that these are unresolved questions to which freestanding public reason does not give a complete, determinate answer. At this point, there are two options. One is what I have been calling the (agonistic) 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 and persuasion, in a spirit open to rupture and novelty. The other is the "wide" or "inclusivist" response, which calls for the extension of public deliberation but by including deeper religious or philosophical views.

The latter is the position we are considering here. I want to briefly raise two possibilities. The first is that the wide public reason or inclusivist position is actually none other than the agonistic democratic position. 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 that bring in controversial epistemic commitments do so? The call to "complete" public reason through including more metaphysics, rhetoric, or affect may be justifiable, but only as a plea for democratic persuasion and majoritarian outcomes (see, e.g., Garsten 2006).

But I don't think that this is what all inclusivists mean, or want. Some suggest that 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.[5] But *why*? If the argument is not that the indeterminacy of public reason forces us to view (and celebrate) democracy as the struggle for coalitions and majoritarian outcomes, then it must be that inclusivists think that there may be something *persuasive* in one's religious arguments to fellow citizens who are not coreligionists. Presumably inclusivists do not mean here wholesale conversion to the religion from which specific arguments are derived. They mean that difference in religion is not an impediment to mutual learning, to being moved in particular areas of policy by others' comprehensive religious views. One does not need to be a Catholic to appreciate and learn from Catholic writings on dignity (Rosen 2012) or believe in a divine Creator to be swayed by the claim that human life as such is sacred, or at least ought to be treated *as if* it is sacred (Dworkin 1993, 71–84).

But the implication of this is that the religious authority or origin of a particular argument is unnecessary, not—to be sure—to the believing citizen herself but to the moral validity of the claim in question for *public* purposes. 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, she may also believe that one need not believe in God or Christ to appreciate these claims for practical purposes, and thus that the religious premise is not what is doing the public, political work. Without denigrating the importance of the divine origin of her knowledge for *her*, what the cases of abortion, torture (of noncitizens), war, and euthanasia teach us is that religious arguments are most potent and enduring precisely in those cases where revealed religion is not a source of exclusive moral knowledge and not invoked as authority. Where one does need to accept particular revelatory claims, or the authority of certain clerical figures, as arguably with opposition to marriage equality (*pace* Girgis, Anderson, and George 2012), the religious arguments are far less compelling, troubling, and enduring.

I do not intend to trivialize religious thought by reducing all valuable and acceptable religious arguments to generic statements of universal morality or particularly effective rhetorical tools. But I do intend to suggest that there is a limited set of moral claims (as opposed to isolated premises in arguments) that are both genuinely inaccessible to outsiders and entirely dependent on their original theistic foundations.[6] Many religious arguments are put into the public sphere in a form (not just a spirit) that does not require their original revealed or theistic premises in order to be publically intelligible. I also intend to suggest that there are widely accepted (if contestable) limits on the kinds of interests and the kinds of entities that are appropriate to advocate for in a pluralist, post-traditional society that takes the freedom and equality of its members seriously. I discuss this in more detail below.

What should be clear from the preceding is that public reason liberals ought to be concerned not with "religious" arguments as such 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, revealed, or clerical command. More importantly, they

[5] I do not take a strong position in this article on the conflict between agonistic or deliberative conceptions of democracy. My goal is to present an analysis that speaks to partisans of both. I merely note that a number of important advocates of religious arguments in political debate do see inclusivism as compatible with justificatory and deliberative aspirations. Gaus and Vallier have tried to elaborate an alternative position that allows for the use of religious reasons, provided that the law advocated for does not preclude a *convergence* of distinct reasons. My position shares with theirs a focus on the moral content of the proposed political outcome, namely whether the law or policy is reasonably demanded of all affected by it.

[6] *Pace* Nietzsche in *The Twilight of the Idols*: "When we renounce the Christian faith, we abandon all right to Christian morality. . . . Christianity is a system, a complete outlook on the world, conceived as a whole. If its leading concept, the belief in God, is wrenched from it, the whole is destroyed; nothing vital remains in our grasp. . . . Christian morality is a command; its origin is transcendental. It is beyond all criticism, all right to criticism; it is true only on condition that God is truth" (Nietzsche 1990, 80).

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are arguments given in an authoritarian manner (regardless of the overall good will of the citizen). 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 effect this has on others or what they think about it."

But while these distinctions are important, I believe they are broadly recognized in the literature (particularly through the notion of translation), and 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 (more social justice, less torture) seem less problematic I engaged in excessive, and selective, interpretive charity. At some level, the religious may be willing to say that torture is *forbidden* and charity *commanded* by a revealed scripture or religious authority 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 true in the case of opposition to sexual equality or abortion? In other words, when there are clear examples of religious arguments that are given in a nonauthoritarian, nonscripturalist 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 (dis)honorable dispatch that it deserves (Zerilli 2012). 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 "political problem" that does not beg substantive questions of justice?

WHAT IS A "POLITICAL PROBLEM"?

While it may be argued that the primary salient feature of a law is that it is coercive and thus that the main distinction is between those aspects of morality that are legitimately enforced by the state and those that are not (Larmore 2008, 86; Quong 2011, 233–50; Rawls 1996, 12; Solum 1993, 738–9; Vallier and D'Agostino 2012), this does not capture all the salient features of the different areas in which humans act collectively. It is even more challenging 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 and judgments are frequently given concerning the following:

1. the freedom of fully self-representing citizens to act and make choices based on their understanding of their own interests;
2. the interests of those who cannot fully represent themselves within a social contract framework;
3. the interests of those who cannot represent themselves or advance claims within a social contract framework;
4. the morality of collective action and public institutions;
5. the morality of a society's overall character or direction.

The justification of these categories will require more work than my typology of religious arguments.

We begin with full members of the political community in good standing—sane adults. All laws that we enact restrict the choice set of self-representing individuals—from traffic regulations to taxation to public nudity ordinances. But for my first category I have in mind restrictions on citizens' choices as to what to do with their bodies and property, or with the narrow category traditionally referred to as the sphere of negative freedom. Laws on assault, blasphemy, traffic, land use, public decency, pornography, raw milk, abortion, sodomy, rape, material support for terrorism, and so on, all prevent me from (or punish me for) using my body or property in particular ways. Obviously, merely to say that a law restricts one in this way is not to pronounce on its justifiability. Our individual actions, of course, often impinge on the rights and interests of others. But all of these can coherently be described in ways that identify discrete individual actions of members of a political community as objects of legislation. The scope and significance of this category will only become clear in light of the subsequent ones, particularly category 4.

Political communities also have partial citizens. With my second category I primarily have in mind children, although it is not hard to recall political imaginaries in which women or racial minorities were treated as incapable of representing 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 that deny that the state ought to provide for the education, health care, or security rights of children. (Some of the political agenda of the religious right in the United States focuses on a restoration of more robust parental rights over children, including through a proposed Parental Rights Amendment to the U.S. Constitution (Lane 1998).) Political communities argue internally about what interests partial-cum-future citizens have, what interests citizens have in those future citizens, and who is entitled to enforce which interests.

There may be subjects of political power that fall in between these first two categories at times. There are persons who are neither foreigners nor children yet who are often spoken of in paternalistic terms. Debates over punishment, prostitution, exploited workers, the elderly, the mentally infirm, women in patriarchal religious communities, the poor, and resident noncitizens are often conducted in a way that does not quite reflect

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a desire to enforce a single controversial conception of the good or of virtue on all persons, but yet involves the assumption that certain persons must be spoken for and defended by others. Here I merely want to note and bring attention to this hybrid category of persons who are often the object of political debate in this way. Laws and policies that we oppose or defend on moral grounds (including religious ones) are often not about the rights of sane adults capable of representing themselves, children, or those outside the social contract, but about certain classes of persons who would normally belong in the first category but for some contingent politically, economically, or culturally disenabling condition.

Political communities are faced with deciding to what extent they ought to protect the most basic interests of entities and agents with no direct representation within a polity. These issues are sometimes referred to as the "who is the subject of rights?" question (e.g., Benhabib 2004, 2011). If all agree, *ex hypothesi*, that all fellow *citizens* are owed obligations of justice and we then seek to justify what those obligations are, we are left—by the admission of some social contract theorists—with no *decisive* answers about what we owe to others outside of the immediate social contract (Cohen and Sabel 2006; Nagel 2005). This is not to claim that nontheist moral thinkers have no resources derived from contractarian or constructivist methods for thinking about what obligations we have toward these various noncitizens (Forst 2012; Nussbaum 2006; Pogge 2002). (Many constructivists are universalists first and struggle to justify special and overriding obligations to citizens.) But there is an undeniable legal, rhetorical, and emotional deficit when it comes to persuading fellow citizens that outsiders are owed obligations of justice. Nonetheless, political communities often make laws and policies that affect in the most immediately physical and vital way the interests of noncitizens who are not directly represented within the polity in question. Importantly for my analysis, there is often no real dispute about what interests persons have—we are talking about bare life, physical health, bodily security, economic well being—only about *whose* interests we have obligations to affect in certain ways.

In this third category of political problems (concerning those who cannot represent themselves or advance claims within a social contract framework) I place such issues as abortion, the rights of enemy combatants, stem cells, the rights of nonhuman animals, global economic and ecological justice, and the rights of future generations. On first glance these issues seem radically different from one another and my categorization seems at variance with common associations. We often speak about abortion alongside homosexuality as belonging to the concerns of religious citizens, united by a common connection to human bodies and sexual choices (George 1997b). However, from a contractarian standpoint these issues all have something more philosophically compelling in common, namely that they pertain to the domain of legislating on the bare life, physical integrity, or minimal welfare of noncitizens.

In religious moral systems, obligations to entities beyond the political community often include nonhuman and non-natural entities. God, "the Church," the honor of this or that prophet or messiah figure, human souls, holy texts, sacred places, and buildings, or even "the sacred" as such are often claimed to be objects of moral concern. In rights-based religious moralities, this form of thought is perhaps best included in this third category. Islamic law, for example, speaks of "the rights of God" and the rights of the Prophet Muhammad, entities who make claims on but cannot directly represent themselves within the social contract. While I would also place these entities in my third category, it is clear why religious arguments in support of protections for the most basic and uncontroversial interests of certain kinds of noncitizens (e.g., persons) are a very different political act from similarly structured arguments on behalf of other kinds of noncitizens (e.g., deceased prophets).

My fourth category of collective political action can be difficult to distinguish decisively from the previous ones, as all coercive laws have a public, collective character. But there are certain acts, policies, or institutions that are predominantly, if not always irreducibly, collective. A political community has nuclear weapons or a state religion, to give two relatively clear examples, only as a collective act. All resolutions of collective action problems—from traffic laws to the exploitation of natural resources—are also a form of political action larger than the sum of the individual acts restricted or regulated. This category also includes a community's basic political institutions, including its electoral laws and system of distributing wealth.

What a society does with its public money thus falls into this category. (Including enforcing all of the laws discussed above as restricting the freedom of particular, discrete agents.) There is something in the collective nature of the welfare state 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. Moreover, many religious and secular arguments stress this collective dimension. Political argument is often about more than the claim that specific rights are involved or that certain policies would be more optimal than others; it is often about what we are willing to accept "in our name."[7]

With my fifth category I have in mind reflections on the moral quality of a society's present historical consciousness and practices of valuing and judging that see that quality as transcending any of its individual moral

[7] Consider, again, a passage from the "Evangelical Declaration against Torture": "We live in a free society, a representative democracy, and while only a few may be direct perpetrators of human rights violations or even torture, we all share the responsibility because we are the citizens on whose behalf interrogators and military personnel are working. Whether we commit an offense against humanity, or simply sin by refusing to speak up for someone who is being victimized, as individuals and a society we are accountable for the indignities that are authorized and carried out by our nation." (See also Beerbohm (2012).)

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acts or judgments. Consider religious interventions that take the form of prophetic witnessing. Prophetic witnessing is very often tied to the specific things a society is doing—practicing 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 fallen. Rectifying specific policies or acts is 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 (Hertzberg 2011).

Declinist narratives about modernity often involve a similar scope. Alasdair 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 1981). MacIntyre's Thomism is representative of a wider school of (particularly Catholic) thought that laments the theological turn in late medieval Europe towards a nominalist metaphysics and voluntarist God (Elshtain 2008; Gregory 2012). We are now incapable of seeing ourselves as wholly rational and connected to the divine through our participation in unchanging reason.

There are, of course, secular versions of sociohistorical criticism on this scale, Nietzsche's being the paradigmatic one. Hannah Arendt's concerns with the practice of judgment in modernity also begin with a story of loss and an effort to diagnose certain conditions that afflict modern Western societies at large: "we are living in a topsy-turvy world, a world where we cannot find our way by abiding by the rules of what was once common sense" (Arendt 1953, 383; also, e.g., Arendt 1961, 1992). Foucault's analyses of psychiatry, prisons, education, and other modern discourses and practices of power are not declinist or nostalgic, but they do resist reduction to discrete normative demands or claims. He is trying to reflect back to us the state we are in as such, with the insistence that there is little we can do about it merely through the mechanisms of sovereign legislative power. We now live in societies where human freedom, agency, and self-fashioning are diverted and preempted through the countless processes and discourses that produce modern humans as subjects. Less drastic are reflections on contemporary practices of valuing. In moralities for which some nonhuman entities have noninstrumental value (for secular moral thinkers, such entities might include the environment and the natural world, art, or the state of scientific knowledge (Dworkin 1993; Raz 2001a, 2001b)), the question is not 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 intrinsic value. If my previous categories presumed the possibility of internal, connected criticism, this fifth category often involves tragic judgments about what humans are capable of within their present social and political horizons.

I do not intend the previous sketch to be perfectly 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 inclusivists have defended religious contributions—slavery, abortion, global justice, domestic social justice, torture, punishment, nuclear weapons, war, and imperialism—we see not only that religious argument takes many different forms besides the paradigmatic scriptural command form, but also that the kinds of religious arguments we are discussing are interventions into radically different areas of democratic political action.

RELIGION AND PUBLIC REASON: RESTATING THE QUESTION

What do we think is either threatened or enhanced by the use of "religious" arguments in public debate? As noted above, I regard the following 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. Whether an argument issued in public has a "religious" or "comprehensive" character is insufficient for evaluating its impact on these important political goods. The various forms that religious arguments take affect the above considerations in quite different ways, and the stakes for the above considerations differ with different kinds of political issues.

An ideal of public reason is obviously most challenged by religious arguments of my first form, those that appeal directly to scriptural or ecclesiastical authority (in the most strict sense of the term) in order to justify a law or a 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 reading of the revealed scripture of one's own religion is a very different act *vis-à-vis* fellow citizens when it is done: (a) to restrict the personal freedoms of others to make decisions about their bodies and property based on a paternalistic understanding of their interests, (b) to exhort fellow citizens to protect the rights of other fellow citizens, or (c) to persuade fellow citizens to protect the relatively uncontroversial interests of noncitizens. I will try to demonstrate this through a few select examples.

RELIGIOUS ARGUMENTS ON SEXUALITY AND SOCIAL JUSTICE: A PRINCIPLED DISTINCTION?

To return to a question I asked above: Do (public reason) liberals have any good way of distinguishing between the public use of an argument from scripture or authority that says that Christians *must* oppose same-sex marriage and one that says Christians *must* support universal health care? I noted that a tempting answer

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is to say that they do not and that any liberal attempt to argue for the difference is an attempt to cheat by claiming false neutrality for their own rules of engagement. Thus, liberals who concede that Christians ought to be encouraged to promote social justice through religious arguments simply have to live with Christian arguments about sexual morality. But is the fact that liberals tend to agree with Catholics on social justice and disagree with them on sexuality and marriage the only variable in these two positions? According to the analysis I have developed in this article, we should also ask broader questions about the area of human activity being legislated on in these two areas.

Before we get to the question of same-sex marriage, consider the question of tolerance for homosexuality *per se*, understood as the decriminalization of homosexual acts between consenting adults. (A number of U.S. states still had criminal sodomy laws before *Lawrence v. Texas* (2003), a decision from which three justices dissented.) Such an issue clearly belongs to my first category—bringing the law to bear on what humans do with their bodies and property. This is the category where political liberalism is most concerned about the authoritarian and paternalistic 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 authoritarian and theocratic. Importantly, I would submit that secular agonistic approaches to democracy can also accept not only that laws against homosexuality are unjust but also that the public use of arguments from scripture or authority is indeed an added harm in this case, without subscribing generally to a liberal theory of public justification based on the search for shared reasons.

It is not hard to justify this. 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. Furthermore, the use of our own bodies for pleasure and self-expression is the clearest case of a sphere of human activity where a direct justification to the person being coerced is required if we endorse any conception of freedom and equality between citizens. To coercively restrain and punish other human beings for activity in this area of human life for no other reason than that God, as my reading of scripture or nature has it, has declared it vile and sinful is the clearest possible example of regarding other human beings as subject to one's own extrapolitical epistemic and moral authority. If any area ought to be regulated in a democratic society by a strict application of the harm principle, this is it.

This is not, however, 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 incompatible *per se* with her *own* dignity or freedom is regarded by most liberals as an insufficient justificatory reason for enacting a coercive law (Nussbaum 2010; although see Rosen 2012, 63–77, for a paternalistic use of "dignity" in European human rights jurisprudence on the issue of dwarf tossing). If it is ever coherent to speak of autonomous choices about how to live our lives when they do not harm the fundamental interests of others, then this is the area where the use of paternalistic arguments to restrict human choice is the most objectionable.

However, while contemporary liberalism is right to discourage religious and other perfectionist arguments in the sphere of individual negative freedom where they are unavoidably and unacceptably paternalistic,[8] the lessons from this sphere need to be independently argued for in other areas of collective political life. Same-sex marriage 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, defend some interests of children, 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. On this view of "marriage," the question of same-sex marriage is as much a negative liberty question as that of protection for homosexual conduct 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 nonauthoritarian, nondominating 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 (and thus belonging to my fourth category of political decisions). Of course, the very decision to characterize domestic partnerships in the first or the second way is a political act. What kind, though? In this case, we can observe that the attempt to characterize marriage as a public institution is an attempt to remove it from the realm of debate about what kinds of personal choices are permissible in their own right or how people should live their own lives. For many (this author included), that is precisely what is objectionable about this form of opposition to same-sex marriage. Rights claims are suppressed by changing the subject; the core interests of some citizens are weighed at near zero in order to protect some symbolic institution from any marginal harm.

But my scheme provides resources to say much more about a religious, even scripturalist, argument against same-sex marriage than that it is a violation of respect because it advances religious reasons in public

[8] This is not to claim that paternalistic policies, including over the actions of self-representing adults, can never be justified. (See Conly 2012 and Sunstein 2013 for a recent discussion.) But it is to presume a *prima facie* right to justification and to articulate and act on a conception of your own interests. I also mean to posit certain limits on the sources of knowledge about others' interests that can be used to justify paternalistic coercion. (Conly, for example, is primarily interested in faulty human reasoning in advancing our interests, choosing effective means to our ends, not in identifying our true interests and ends.)

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deliberation. 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 that 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 latter way of framing the question does not subject the personal realm of choice, freedom, and expression to a *complete* (theo)democratic veto. Furthermore, the religious framing of the political issue of "marriage" 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 religious arguments from revelation or authority against permitting same-sex marriage, beyond the mere point that "religious arguments" should be kept out of "politics." Marriage is not merely a symbolic institution like a flag, powerless monarch, or national flower. It is one that regulates access to crucial social goods, at least in many contemporary societies (although it is far from clear that a democratic society ought to distribute benefits and rights through a formal legal status like marriage). It is arbitrary to say that the interests of religious citizens in preserving their monopoly over how the 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. Because the costs of this exclusion from certain publicly distributed goods are specifically targeted at a particular class of free and equal fellow citizens, justifications are owed directly to those particular persons.

My scheme permits us to draw still further distinctions. Suppose the religious response to the push for same-sex marriage is to propose "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 civic 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 that many liberal, feminist, and queer theorists might equally endorse because of their own reservations about "marriage" as a symbolic institution with which they, or the state, can identify (Butler 2002; Chambers 2013; Cott 2000; March 2010, 2011; Metz 2010; Polikoff 2008; Sunstein and Thaler 2008; Warner 1999).

This does not mean there are no grounds for objecting to certain religious arguments in this case. For example, do these hypothetical scripturalist arguments for privatizing marriage (a policy that we are assuming here to be at least reasonable) 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 believers 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 article allows us to make finer distinctions between the roles that even the same kind of religious arguments play in different political contexts.

Moving then to the case of Christian arguments for social justice from scripture or authority, we see that according to my scheme the realm of political decision at stake is my fourth category—that of collective action pertaining to how much a state should tax its citizens and what it should do with this money. Religious arguments are obviously controversial in this area, precisely because of the public, coercive, and collective nature of such political action. We object to the state endorsing and sponsoring one religion, or religion as such, 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 and the Protestant doctrines elaborated by Wolterstorff) do run the risk of asserting that a sectarian interpretation of revealed truth can serve as a good justificatory reason for everyone for the kinds of things a state can do with public money—money collected coercively from citizens. Arguments for universal health care easily become arguments for subsidies to religious organizations for sectarian religious goals.

Why, then, are public interventions like the Pastoral Letter that Waldron discusses and other Christian interventions in support of social justice not as authoritarian, theocratic, and disrespectful as equally scripturalist arguments about personal sexual decisions and individual citizens' access to important publicly distributed goods? I think there are three readily perceptible considerations. First, the political demand at stake is *other regarding*. It speaks to what we owe each other within the political community, not what we owe God or other entities that we reasonably might not recognize as objects of moral concern. Obviously, the deeper arguments for what we owe each other might be based on obligations to God, to Jesus, or to ourselves in a natural law sense. But the demand is to treat other persons 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 by being singled out for exclusion or disadvantage. We are not asked to render goods or duties to others in a servile or self-negating way. We are not asked to regard our own material welfare as insignificant or spiritually tainted. We are only being asked to see a gap between our possessions and our selves, to accept that property is acquired through social relationships. Such arguments about obligations to others are thus inherently different from, for example, religious arguments exhorting women to obey men or homosexuals to deny the value of their self-expression. The most intimate sphere of

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our own negative liberty is not being encroached on when we legislate about obligations to fellow citizens realized through proportionate financial contributions to public institutions.

Third, the way we are being asked to benefit others is *not problematically 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 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 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.

I do not claim neutrality for my view or for the demands of social justice. It very much is the case that deep religious views have been essential to progress (as well as reaction) in the areas of racial and social justice precisely when no prior consensus existed, and I have merely tried here to defend the public *use* of religious arguments for social justice, not to proclaim them self-evident or victorious. But I believe that I have shown that there are still some principled grounds for democratic citizens to distinguish between religious arguments on the question of sexual equality and religious arguments on the question of social justice and, thus, that one cannot necessarily derive the conclusion that the acceptability of advancing religious arguments in public applies in the same way for all subject matters of political action. It does not come down to whether the policies being advanced are themselves just or unjust. (Perhaps other citizens reasonably reject the social justice policies advocated for in religious terms.) Rather, it is that the very advocacy of coercive action in different dimensions of political life makes different levels of demands on fellow citizens because of the kinds of interests involved, and thus the use of equally "religious" arguments in public can express quite distinct moral attitudes towards others as free and equal fellow citizens.

EXPANDING THE SPHERE OF JUSTICE: RELIGIOUS ARGUMENTS ON BEHALF OF OTHERS

To recall: in my scheme, the questions of abortion, the torture of enemy combatants, 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 of the immediate political community. The first part of this statement (that these issues are concerned with relatively uncontroversial interests) has been discussed above. It matters that religious intervention in such cases is often about expanding the sphere of the most basic moral concern to others. As far as the relationship between free and equal citizens is concerned, saying on the basis of religious arguments that our collective power and resources should be deployed or constrained to protect the bare life of some noncitizen is quite different from saying that our collective power should be deployed to ensure that said noncitizen be saved through Jesus Christ. No moral doctrine (with the possible exception of Stoicism) disputes that bare life, physical integrity, or bodily health are goods. (Moral doctrines dispute only the weight and importance of these goods relative to other ones, and even the Stoic objection is as much semantic as categorical (Cicero 2001, 67–89).) Thus, one way of viewing religious argumentation in the above cases is that believers 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 persons whose vital interests are adversely affected by policy decisions we make, and yet who do not speak for themselves within a particular body politic. Abortion, torture, the environment, and global justice all involve, in a crucial way, the most basic interests of others.[9]

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, nonexceptional problems of collective self-governance in already well-ordered societies. 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 rights. Religious and other metaphysical arguments, or appeals to affect, to extend considerations of justice to them will thus be superfluous, and religious attempts to export sectarian ethical standards into the common system of rights will be unwelcome.

However, political communities never expand their sphere of moral concern without a struggle. Even domestically, contrary to Rawls's view that the constraints of public reason apply only, or with particular force, when communities seek to justify constitutional essentials and the basic principles of justice (Rawls 1996; in response: Quong 2004), it seems that it is precisely at these moments of founding and refounding within a polity, when obligations of justice are extended to previously excluded groups, that religious, philosophical, and extrarational modes of persuasion are most urgently needed. The challenge of extending moral concern to outsiders, who are not only excluded from official political institutions but are unable even to engage in extraconstitutional political struggles within the public sphere of the polity in question, is that much greater. 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

[9] I say this without endorsing any particular policy prescription on any of them, particularly abortion, which obviously involves also the bodily and moral interests of self-representing citizens (women) in ways the other issues do not.

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the state, that the global community is always itself a form of political community insofar as the global political structure distributes benefits, advantages, costs, and suffering.

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 nonrational. Religious argument and persuasion include both rational and nonrational 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 for 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 (here even political liberals should be able to join in the politics of rupture and risk celebrated by agonists); 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 laws that protect the interests of certain entities outside the social contract. While some such entities may be presumptively inappropriate as objects of political protection (the Qur'an, Jesus Christ, the Sun-God Ra) I do not believe that the entities we have focused on here—enemy combatants, the distant poor, and future persons—are inappropriate in this way. Liberals may welcome or solicit this help in some areas (global poverty, torture) more than others (abortion), but if my scheme is persuasive, then liberals ought to at least regard religious interventions about abortion as belonging to the same sphere of political activity. (Obligations to the nonhuman natural world, including animals, are a harder case, which I do not address here, and perhaps do not admit of determinate answers.)

If the preceding is convincing, though, there is a greater lesson for the inclusivists. Religious advocacy for the protection of the basic, uncontroversial interests of entities and agents beyond the social contract ought to be tolerated, respected, and welcomed by secular political actors for three very concrete and limiting reasons: (1) we accept that such entities have interests that ought to be protected; (2) there is no real dispute over what interests those entities have; and (3) 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 partially religious society such help ought to be religious. But there is no implication that advocating for the protection of entities one might reasonably deny the existence of (spirits, saints, sun gods) or for the imposition of interests one might reasonably reject as interests (to be saved in Jesus Christ, to be liberated from sinful desires) is equally acceptable.

It is not, however, that religious exhortations to protect the basic entities of persons outside the political community are trivial and make no controversial demands on fellow citizens. For example, in the case of the exhortation to not torture a suspected terrorist, the protorture citizen might claim that the religious citizen is asking her to accept the risk of losing her life if the captive is not compelled to divulge the information he supposedly possesses. (She would be right, although she may be wildly wrong about the actual size of the risk.) Rather, the point is that if the religious argument is derived from the value of the human life of the terrorist, rather than, say, from *the insignificance of our own death since we will be given an afterlife by God*, then that particular "religious" argument is no *more* controversial, demanding, or paternalistic than identical "secular" arguments that it is better to live with the risk of violent death than to live in a world where torture is acceptable (Shue 1978; Sussman 2005). Whether demanding that I expose myself to mortal danger on the basis of revelation or theology is uncivil and disrespectful seems to depend as much on the reasonableness of the demand deriving from the theistic premises as on the mere use of those premises. I may reasonably reject both faith-based attempts to persuade me, but there is (quite literally) a world of difference between the moral attitude expressed toward me when I am told that the life of another human matters and the one expressed when I am told that my own death does not.

A truly strong inclusivist position would have to accept as blameless the kind of religious argument that appeals to the *fact* of an afterlife to justify why free and equal citizens should be willing to accept the risk of losing this life. Most inclusivist positions do not go that far but rather endorse religious contributions that are largely justifiable as attempts to expand the sphere of moral concern by (a) protecting the generally recognized interests (b) of entities that are generally recognized as worthy of moral concern (c) in ways that do not require unintelligible or unreasonable self-sacrifice. Inclusivists are thus right that secular democratic citizens should welcome "religious arguments" in such areas, but we see precisely why this evidence cannot be leveraged into a defense of religious arguments in those areas where it *would* be paternalistic, inaccessible, and authoritarian *vis-à-vis* free and equal fellow citizens.

CONCLUSION

My primary conclusion is that the enduring appeal of religious reasoning in democratic life has less to do with the general incompleteness of public reason as such, or with concerns about fairness to religious citizens who want to act on their conscientious commitments, than with the limitations of public reason in a certain select set of areas, particularly how to conclusively justify basic obligations to those outside the bounded political community and how to remedy failures to secure basic justice within it. But even here the scope for religious contributions seems limited. In the case of expanding

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the sphere of moral obligation, we are almost always discussing policies where the human interests at stake—life, physical integrity, primary goods—are relatively uncontroversial and religious contributions are less a matter of justifying moral knowledge than of providing moral motivation. 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. Thus, the appeal of religious arguments or forms of persuasion is primarily related to the dilemmas faced by bounded political communities in conditions of universal morality.

There remain harder cases that I do not claim to be able to address within such a brief treatment. Public problems such as the interests of children, a society's use of natural resources, modes of relating to nonhuman life, the cultivation of political virtues (such as charity and sacrifice) amongst citizens, the protection of entities of noninstrumental value, the use of public space, or the quality of social relationships are not easily reduced to determinations of core interests held by identifiable agents that others ought to observe or protect (i.e., rights). Deep and controversial moral reasoning in these areas is not exactly excluded by or in tension with public reason, but such topics exceed the realm that Rawlsian or Habermasian forms of public deliberation excel 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 and whether public coercive power would be an appropriate tool for addressing them. For democratic citizens, "religious," or even "comprehensive," should not be the primary category by which public contributions on such emergent, novel, and startling problems are evaluated morally.

But inclusivist advocates of religious reason should also be modest in their extrapolations from this. What is doing the work in making room for certain kinds of religious arguments here are certain specific features of these problems of collective action, rather than some general failure of political liberalism to ever justify the discouragement of any kinds of religious reasons. It is possible for moral exhortation in such areas of political life to be nontrivial and morally controversial (which religious arguments often are) yet not involve paternalistic or authoritarian attempts to discipline, exclude, or disadvantage 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[10] 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 money and energies are often directed to projects that many citizens would not have chosen or actively 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 or as is being excluded for arbitrary reasons from public goods or institutions. Many collective acts reflect a conception of the good or of virtue, yet not necessarily in an unjust way. Creating national parks and other public spaces, public service obligations, public mourning and memory, exhortations to love and sacrifice, and other similar political practices, are not best discussed through the language of rights, and yet a priority for justice as the first virtue of a political community does not exclude public consideration of non-justice-impinging public acts. As with basic obligations to noncitizens, public reason leaves a gap that must be filled.

Nonetheless, while there are good reasons to welcome many kinds of religious contributions to public life, this does not leave us devoid of any resources for a nonhypocritical, good-faith rejection of the use of specific kinds of religious premises in debates over specific problems of political life. Public reason liberals can save the most important parts of the doctrine of religious self-restraint (the freedom of individuals from arbitrary external domination and fairness in the distribution of the costs and benefits of association) without requiring that all religious arguments be suspect in public life.

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[10] Again from the Evangelical Declaration against Torture: "Torture is but one of many violations of human rights. . . . All these and the like are criminal: they poison civilization; and they debase the perpetrators more than the victims and militate against the honor of the creator."

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