



Reply to Quong, Patten, Miller and Waldron

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Abstract

This is a reply to four critics of my book *Liberalism's Religion*: Jonathan Quong, Alan Patten, David Miller and Jeremy Waldron, whose essays have been published in a Special Issue of *Criminal Law and Philosophy*.

Keywords Liberalism · Public reason · Exemptions · Establishment · Religion and politics

I am grateful for this opportunity to discuss *Liberalism's Religion* with the prominent political theorists assembled in this Special Issue. Jonathan Quong and Alan Patten offer detailed critical engagement with my theory of state legitimacy and religious exemptions. Each defends a version of liberalism where one notion (neutrality, public justification, or fairness) can do most of the work; whereas I argue in *Liberalism's Religion* that such unitary theories are too vague and abstract to deliver practical ethical guidelines on their own. I defend a more fine-grained, more structured and more pluralist liberal political theory. David Miller and Jeremy Waldron, for their part, develop or comment on some central claims of *Liberalism's Religion*. Both encourage me, in different ways, to reflect on the deeper compatibility between liberalism and religion. In what follows, I respond to my critics (Quong and Patten) at length, before raising some questions for Miller and Waldron.

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1 Response to Jonathan Quong

Jon Quong is a generous and acute reader, and his penetrating work on political liberalism has provided a constant source of inspiration for mine. His incisive remarks invite me to clarify my argument at crucial points.

Let me start, first, with the general theoretical framework of *Liberalism's Religion*. One of the key arguments I develop is that a full account of liberal legitimacy must rely on a disaggregated account of religion. The popular liberal idea of the neutrality of the state towards religion, for example, is grounded in three distinct ideals. Roughly, the state should not endorse any idea about the good—secular or religious—that (1) infringes personal ethics, (2) entrenches social vulnerability or (3) violates public reason. It is only when (and *insofar as*) religious conceptions are comprehensive, divisive and inaccessible that they should not be invoked by the state. Quong rightly notes that if one holds, instead, a unitary account of legitimacy, ethical salience can be assessed from a single vantage point: in his case, the extent to which specific conceptions can ground public reasons. *Liberalism's Religion* aimed precisely to demonstrate the limits of such unitary accounts. Because they are pitched at a high level of generality, they cannot do sufficient normative work without the introduction of further downstream principles. Quong might reply that unitary theories can be filled out in such a way that they achieve completeness and coherence. This might indeed be true: my claim is not that unitary conceptions necessarily remain incomplete or incoherent. I meant simply to demonstrate that, because they relied on a simple view of religion and a simple presumption of state neutrality towards religion, such theories had tended to equivocate at crucial points about how the state should deal, in a more fine-grained way, with specific manifestations of religious belief and practice.

There is, however, a remaining ambiguity in Quong's comment. He attributes to me the view that 'when the parsimonious [i.e. unitary] theory *comes up against the messy pluralism of religious belief and practice*, the theorist is forced to make inconsistent claims or oscillate about what property of religion is ethically salient'. Yet my claim is not that liberal theory should be fact-responsive in this crude way. My theory of religion is an interpretive and normative one, as I insist in my reply to the Critical Religion theorists.¹ My account of legitimacy is grounded in a plurality of liberal principles, because this is what liberal normativity demands, not because liberal theories must be responsive to the empirical features of religion. My deeper criticism of recent political liberal theories, therefore, is that they have misunderstood the complexity of the liberal tradition itself, not simply that of religious belief and practice.

Second, at the centre of the liberalism invoked by John Rawls and his followers, lies a crucial distinction between matters pertaining to 'the right' and matters

¹ Cécile Laborde, *Liberalism's Religion*. Cambridge Mass.: Harvard University Press, Chapter 1. See, further, Cécile Laborde, 'Religion and the Law: the Disaggregation Approach', *Law and Philosophy*, November 2015, Volume 34, Issue 6, pp. 581–600, and 'Rescuing Liberalism from Critical Religion', *Journal of the American Academy of Religion*, Volume 88, Issue 1, March 2020, pp. 58–73.

pertaining to ‘the good’. The intuitive thought is that the liberal state should only enforce matters of justice—rightful interpersonal relationships—and leave determinations of the good life to individuals themselves. Yet beyond this plausible intuition, the distinction between the right and the good has been exceptionally elusive in liberal writings. One result of this persistent imprecision is that many of the controversies that liberals would characterise as disagreements about the good (and therefore irrelevant to liberal justice) can easily be interpreted as controversies about where the boundary between the right and the good lies.

This is why I argue that Quong’s liberal state does not meet Quong’s own conditions of legitimacy, when it draws the boundary between the right and the good in a place that can be contested even by those who endorse a liberal conception of the right. What I call the ‘jurisdictional boundary’ challenge is not simply the claim that the democratic sovereign state must adjudicate reasonable disagreements about justice. Liberals have no qualms about that, as Quong says. What is more troubling is that the democratic sovereign state adjudicates reasonable disagreements about where the boundary between justice and the good lies. Quong’s rejoinder is that all such disagreements are first-order, substantive disagreements, not meta-disagreements about boundaries. I agree. Indeed, my own approach in *Liberalism’s Religion* forefronts substantive liberal principles, instead of starting from a baseline of neutrality about a pre-existing domain of ‘the good’. But I do wonder whether more orthodox Rawlsian approaches, such as Quong’s, can get off the ground without a fairly stable starting point of neutrality towards a domain recognizable as the domain of the good.

Third, I turn to discuss Quong’s own version of the distinction between the right and the good. In his commentary in this volume, Quong claims that I have misconstrued his argument, but I am not convinced. Recall that he introduces the distinction as an answer to a common objection to political liberalism. According to the *asymmetry objection*, political liberals cannot adequately defend the asymmetry between right and good. People reasonably disagree about the right, as well as about the good. Why, then, do political liberals allow controversial conceptions of justice, but not of the good, to be enforced by the state? How can this asymmetry be justified? Quong’s answer, in his book *Liberalism without Perfection*, is that disagreement about the good is foundational (it goes all the way down), whereas disagreement about justice is merely justificatory (it is compatible with a shared normative framework).² In Chapter 3 of *Liberalism’s Religion*, I explore different possible implications of this suggestion, focusing on cases where the justificatory/foundational distinction does not map onto the right/good distinction. The question I aimed at Quong was whether, in cases where disagreement about the good is justificatory, it would follow—by his own theory—that it would be permissible for the state to impose the good.

In his reply, Quong denies this is the case. This is because, he argues, the only normatively relevant disagreement is disagreement between *reasonable* citizens, whom he defines as sharing political values of justice, but not any substantive

² Jonathan Quong, *Liberalism without Perfection*. Oxford: Oxford University Press, 2010, pp. 196–198.

views about the good (beyond a thin theory). It does not matter whether actual citizens share ideas about the good: reasonable citizens would not. If this is the case, however, then it looks as though Quong's response to the asymmetry charge is perfectly circular. The distinction between foundational and justificatory disagreement does not provide an *independent* explanation of the distinction between the right and the good. It can only justify the asymmetry by stipulating that reasonable citizens do not share ideas about the good.

The problem is that Quong still owes us an account of why this should be the case. The answer can't simply be the fact of pluralism and disagreement: as the asymmetry objection states, pluralism and disagreement apply to all kinds of things, including liberal justice itself. In sum, we need a normative account of the distinction between right and good: otherwise, the distinction remains entirely unmotivated. In *Liberalism's Religion*, I attempt to provide a non-circular, non-stipulative justification of what is special about claims about the good (and religion). I analyse the various features of the good (and religion) which justify—when they do—that the state not impose them, if it is not to violate the liberal principle that a legitimate state must be inclusive, limited and justifiable. I do not stipulate a priori that there is a moral domain—the good—that is unaccountably removed from claims of collective adjudication and enforcement.

Fourth, I now turn to Quong's objection to my own account of public justification (in Chapter 4). In Rawlsian versions of public reason liberalism, citizens appeal to shared liberal principles in their democratic deliberations. This is because, on a liberal conception of political justification, state coercion is legitimate when it appeals to reasons that reasonable citizens could accept. In *Liberalism's Religion*, I put forward a different conception of the relationship between public reason and liberal legitimacy. Instead of building liberal principles directly into the reasons that idealised citizens accept, I distinguish between public reason *stricto* sensu (the actual reasons that are the currency of democratic deliberation) and overall liberal legitimacy (all-considered judgements about the liberal permissibility of institutions and laws). As a result, my theory of public reason is more permissive than Rawlsian versions: it draws on a broader pool of reasons than liberal principles of freedom and equality. The upshot is that public reason *stricto* sensu is a necessary but not a sufficient condition for liberal legitimacy. A state may offer sound public reasons for its policies, yet these policies may be illiberal (consider, for example, a state that justifies severe repressive policies by appeal to the notion of public order). My approach gives theoretical shape to this intuitive notion.

Quong challenges my account of public reason *stricto* sensu, which I define as a principle of *accessibility*. I argue that it is not sufficient that reasons be *intelligible* only by reference to the standards of the speaker; but that it is too demanding to require that reasons be *shared*: that all endorse the same reasons by reference to shared standards. Public reasons should, however, be *accessible*: they can be evaluated via standards that are not only those of the speaker. Public reasons are the currency of democratic debate: when state officials present reasons for laws, it is important that citizens—even if they disagree with the law, or the reason—be able to assess and challenge them. On my theory, accessible reasons do not overlap with

secular reasons: reasons can be inaccessible even if they are not religious, and not all religious reasons are inaccessible.

Like Christopher Eberle before him,³ Quong points out that the criterion of accessibility is not robust enough to exclude beliefs whose epistemic credentials supervene on shared and widely accepted practices, such as the education people have received, or the testimony of trusted community leaders. A layperson's belief in the truth of Darwinian evolution or climate change is on the same plane, epistemically speaking, as the beliefs of a person brought upon in a closed religious community. Both are justified in their beliefs, because they are grounded in shared standards of evaluation. I agree that theorists of accessibility need to say much more about the standards against which the validity of reasons and beliefs are to be evaluated. However, I doubt that appeal to the epistemic value of education and testimony will provide the relevant standard. This is because it does not meet a crucial proviso of my conception of accessibility, namely, that relevant standards are what allows us to discuss, contest and challenge the reason offered to us. If we deem a belief accessible merely by virtue of being an apt response to one's epistemic environment, this provides no ground for engaging with the belief itself. It only suggests a standoff between hermetically sealed systems of belief. What Quong describes, therefore, is closer to an intelligibility than to an accessibility standard.

Lastly, Quong's final remark gives me an opportunity to pinpoint the key difference between our accounts. On his account, public reason is a sufficient test of legitimacy because, as publicly shared reasons are liberal reasons of freedom, equality, and fairness, laws that are grounded in these reasons are automatically liberal. By Quong's own admission, however, public reasons also include notions such as security, public order, welfare, etc.⁴ As such reasons are not liberal, it can't be the case that the liberal pedigree of laws is only a function of the liberal pedigree of the reasons that justify it. More plausibly, it requires an all-things-considered judgement of the appropriate balance between political values—an 'output' as much as an 'input' judgement. In my own version of liberal legitimacy, public reason *qua* accessibility is the input condition, and personal liberty and civic inclusion provide the more fine-grained liberal outputs. The three illustrative examples of religiously-inspired legislation that Quong mentions are designed so that they meet the three combined conditions of liberal legitimacy. As Quong does not discuss the specific cases, it is difficult to know exactly where he disagrees. He simply postulates that merely accessible reasons are not sufficient to justify a liberal law. Yet I do not deny this. I specifically argue that public accessibility is a necessary but not a sufficient condition of liberal legitimacy. Quong's ideal of public reason is too general and too inconclusive to do all the work of liberal justification.

³ Christopher Eberle, *Religious Convictions in Liberal Politics*. Cambridge: Cambridge University Press, 2002.

⁴ Jonathan Quong, 'On Laborde's Liberalism', *Criminal Law and Philosophy*, in this Issue.

2 Response to Alan Patten

Alan Patten is one of the most sophisticated theorists of neutrality, cultural accommodation and religious liberty working in the analytical tradition today. In his forensic contribution, Patten clearly sets out the key differences between my account of disproportionate burden and his favoured theory of fair opportunity. He points to various flaws and tensions within my account, and offers helpful suggestions to ease them. In what follows, I shall take some on board, reject others, and highlight our remaining core disagreement.

In Chapter 6 of *Liberalism's Religion*, I argue that people have a claim that their integrity-protecting commitments (IPCs) be accommodated if laws and regulations impose a disproportionate burden on their pursuit. A burden is disproportionate if it is direct and severe for the claimant, yet accommodating it would not thwart the aim of the law nor generate unreasonably high costs for others. Burdens that are disproportionate in this sense should be accommodated. If burdens are not disproportionate, the background against which people form and pursue their commitments is said to be fair. In this case, people are expected to take responsibility for their beliefs—to shoulder the costs of their pursuits.

Patten disagrees. He points to cases where we do not need to apply the disproportionate burden test—or any other balancing test—to deny an exemption. These are cases where the commitment producing the burden is one for which the claimant should be considered responsible from the outset. Consider, for example, a pilgrim demanding an exemption from a general travel tax increasing the cost of her pilgrimage. She does not even have a *pro tanto* claim to be considered for an exemption, because her claim is unfair. Even if the cost to others is not high, such tax exemptions are unacceptable because they entail a commitment to free ride on others. Patten concludes: ‘the mere fact that a person’s IPCs is disproportionately burdened by a law does not establish unfairness’.⁵ When a person’s religious commitments are properly her own responsibility, she should bear the associated costs. In those cases, there is no *pro tanto* reason for accommodation: no ground for regret that accommodation has been denied.

My answer is in three parts. First, I suggest that the disproportionate burden test can easily be amended to incorporate Patten’s concerns about fairness. Second, I deny that unfair claims should be denied from the outset. Third, I maintain that individual responsibility is a conclusion, rather than a premise, of the normative test of the permissibility of exemption.

First, as Patten himself suggests, we can narrow the gap between the disproportionate burden and the fair opportunity accounts, by making considerations of fairness more explicit in the proportionality test. In *Liberalism's Religion*, I set out the two requirements of ‘not thwarting the law’s aims’ and ‘no unreasonable costs for others’ at a high level of generality, but they can easily be interpreted to include Patten’s concerns about fairness. For example, we might think, in the tax exemption

⁵ Alan Patten, ‘Religious Accommodation and Disproportionate Burden’, *Criminal Law and Philosophy*, in this Issue.

cases, that the fact that costs are small does not entail that they are fair. This is because, arguably, one the aims of a general tax is to distribute the burdens of social cooperation fairly, and this consideration suffices to rule out any IPC-specific tax exemption. I concede to Patten that my original formulation of the disproportionate burden did not specifically include fairness considerations. Yet I see no principled reason why it cannot do so. The revised account would merely say that a burden is disproportionate when alleviating it would not impose unfair costs on others (where unfairness is introduced as an interpretation of a law's specific aims, or as a gloss on 'unreasonable costs').

Second, it is important to notice that, after incorporating these slight amendments, the basic structure and point of the test remains unchanged. By contrast, Patten argues further that we do not need the test at all if some IPCs are unfair. In such cases, he says, there is no *pro tanto* claim at all. Such claims are no different, he suggests, from what I call morally abhorrent claims: those that, because they infringe basic rights of others (rights to life, rights against oppression, etc.) do not deserve even *pro tanto* respect.

I disagree with Patten's suggestion here. It is important to be clear about the difference between the two sets of cases. In morally abhorrent cases, the relevant IPC is a practice that infringes on the basic rights of others. Claimants are requesting an exemption to do something that they do not have a right to engage in in the first place. In the cases that Patten discusses, by contrast, the relevant IPC (e.g. going on a pilgrimage) does not, in and by itself, infringe the basic rights of others. Claimants are requesting an exemption from a law that burdens a practice that they otherwise have a right to engage in. In other words, the unfairness is not inherent in the practice itself, but in the interaction between the practice and the laws and regulations that burden it. So I resist the suggestion that unfair claims should be analogized to morally abhorrent claims, which have no *pro tanto* credibility. What makes the claim unfair is the way in which the IPC interacts with a law. It is only after we have applied the test—however quickly—that we can determine the permissibility of the exemption. We can fairly deny the exemption because the burden has been shown to be proportionate.

This might seem to be an insignificant difference between Patten's and my account, but it points to something quite important, I think. Analogising morally abhorrent claims with claims that are not accommodated because doing so would be unfair on balance, has costs for the coherence of our approach to religious liberty. It means, in effect, that we only recognise *as a religious liberty claim* a claim which is not costly or unfair to accommodate. Consider two people, one whose faith requires her to pray once a week, and another whose faith requires her to pray several times a day. Plausibly, a disproportionate burden test might grant the former, but not the latter, some accommodation, on grounds of fairness. Patten's account, however, would commit him to saying that only the former claimant has a *pro tanto* religious liberty claim. This seems deeply counter-intuitive, because both commitments are recognizable integrity-protecting commitments.

Now, I agree that, given the expansive and not religion-centric notion of IPC that I rely on, I need to say more about what exactly counts as an IPC. Let me say, as a rough guide, that something is an IPC when individuals can be reasonably expected

to experience feelings of remorse, rather than mere regret, when their commitments are frustrated. Remorse engages the ethical identity of persons and their feelings of personal guilt or shame; whereas regret is merely connected to missed or lost opportunity. This is why it is clear to me that the money-grabbing capitalist that Patten, following Ronald Dworkin, alludes to, does not even have a *pro tanto* claim to be considered for an exemption.⁶

Third, and most importantly, I remain unconvinced by Patten's focus on the idea of individual responsibility as an explanation of the unfairness of exemptions. In my view, responsibility is a conclusion, not a premise of the disproportionate burden test. To be sure, Patten's deployment of the idea of responsibility is subtle and nuanced.⁷ It is grounded in the plausible idea that there should be a social division of labour: the state's responsibility in relation to people's aims and commitments is limited to providing fair background conditions. The state should not subsidize or accommodate what are in effect expensive tastes: it is the individual's responsibility to pursue their aims, however costly, within these parameters. I have no quarrel with this argument.

More problematic is Patten's suggestion that we can identify an *ex ante* responsibility, grounded in the notion of choice and control. He draws on Thomas Scanlon's idea of substantive responsibility and the idea that *having* a choice is sufficient for responsibility, while *making* a choice is not necessary. It seems plausible, of course, to think that people should be held responsible for their beliefs or IPCs in the sense that they have some control over them: they are not external afflictions such as disabilities. This seems sound as a *general* justification for the social division of labour. But I fail to see how the idea of *ex ante* individual responsibility can provide a *specific* guiding principle in controversies about exemptions. As Patten himself points out, the mere fact that someone had a choice is insufficient to ascribe responsibility to her. The fact that Muslims could theoretically become Christian does not mean that their unequal treatment by a Christian state is not unfair.⁸ I agree, and I think exactly the same reasoning applies to exemptions. To assess whether a religious exemption is fair, we do not ask whether, or how much, people have control over their beliefs. We ask whether the burdens on the beliefs they happen to have is fair, or proportionate.

Tellingly, when Patten himself provides arguments justifying specific religious exemptions (the peyote exemption from drugs and alcohol restrictions, conscientious objection from military service, unemployment compensation for Sabbatarians) he makes no appeal to the idea of *ex ante* individual responsibility.⁹ Instead, he deploys

⁶ I say more about *pro tanto* ethical salience in my response to a connected challenge by Paul Bou-Habib, in 'Three Cheers for Liberal Modesty', *Critical Review of Social and Political Philosophy*. Special Issue: Liberalism's Religion: Cécile Laborde and her Critics. 02 January 2020, Vol.23 (1), pp.119–135). See also my commentary on Patten's theory of neutrality: Cécile Laborde, 'The Evanesence of Neutrality', *Political Theory*, May 2017. Vol. 46, Issue 1, pp. 99–105.

⁷ See Alan Patten, *Equal Recognition*. Princeton: Princeton University Press, 2014, pp 141–148.

⁸ *Equal Recognition*, 146.

⁹ Patten, 'The Normative Logic of Religious Liberty', *Journal of Political Philosophy*, pp. 35–37, 41–42.

a complex calculus of fairness, weighing and balancing the different interests at stake. Individuals are owed an exemption (i.e., are not responsible) when the overall framework within which they make their demands is seen, on balance, as unfair. It is our theory of fairness that tells us when individuals should be held responsible—not vice versa. In sum, the idea of *ex ante* responsibility does not do any independent work. Responsibility is a conclusion, not a premise. If I am right in this, Patten may have greatly exaggerated the theoretical difference between our two positions.

3 Response to David Miller

In his interesting and characteristically thoughtful piece, David Miller makes a quietly subversive case for liberal religious establishment. There are different strands in his subtle argument. As I have discussed the relationship between establishment and equality elsewhere,¹⁰ let me focus here on Miller's specific claim about the relationship between establishment and religious moderation. As he himself recognises, the point rests on counter-factuals, to which I seek to draw attention.

Miller glosses on a rarely noticed comment by David Hume, to the effect that ecclesiastical establishments can be advantageous to the political interests of society, as churches that are entrusted with public functions tend to be more moderate and ecumenical. Even today's outspoken atheists, such as Richard Dawkins, have appreciated the taming effects of Anglican establishment, when they compare and contrast it to the radicalism of religious free enterprise in the USA. What we may call the Hume-Dawkins-Miller (HDM) thesis is a variation on a common trope in the comparison between the USA and Europe. As several astute observers of American political development—from Tocqueville to Seymour M. Lipset—argued, the elimination of established religion in the United States helped strengthen religion in that country.¹¹ These commentators echoed Adam Smith's indictment of established religion, which turns religious authorities into corrupt state functionaries and lazy monopolists, instead of active and zealous proselytes of sects competing in the religious marketplace.¹² This idea speaks to a powerful strand of Protestant theology that sees the state as a dangerous corrupter of religion. For US critics of establishment, such as Thomas Jefferson and James Madison, establishment degrades and subverts true Christianity.

¹⁰ Cécile Laborde, 'Can Religious Establishment be Liberal Enough?', *Studies in Christian Ethics*, January 2020. See also Cécile Laborde (with Sune Laegaard), 'Liberal Nationalism and Religious Symbolic Establishment', in David Miller & Gina Gustavsson (eds.) *Liberal Nationalism and its Critics*. (Oxford: Oxford University Press, 2020); Cécile Laborde, 'Miller's Minarets. Religion, Culture, Domination', in Zofia Stemplowska, Daniel Butt & Sarah Fine (eds.) *Political Philosophy, Here and Now. Essays in Honour of David Miller*. Oxford University Press. Oxford: Oxford University Press, forthcoming. See also my response to Jeremy Waldron below.

¹¹ Roger Finke & Rodney Stark, *The Churching of America, 1776-2005*. New Brunswick, N.J., Rutgers University Press, 2005.

¹² Adam Smith, *The Wealth of Nations*. New York: Random House, 1994 [1776].

The HDM thesis turns this argument on its head. It is, for them, a *positive* effect of establishment that it tempers the inherent vitality of religion. This is because one of the flip sides of religious vitality is its tendency to radicalisation and extremism, whereas a tame and officialised religion is more likely to be moderate and ecumenical. It is this thesis that we must assess: first, as a generalisation about the relationship between state control and religious moderation and, second, as an explanation of more specific trends in England and the USA.

It is fair to say that scholarly literature about religion and politics is, at most, inconclusive about the general relationship between establishment and religious moderation. Take, for example, the attitude of the Catholic Church towards social liberalism (including abortion, etc.). Is it really the case that the Church is *more* likely to be a regressive, radical force in states where it enjoys no official power? The evidence is mixed. Evidence from the US would suggest that this might be so—but the Catholic church is more liberal in *all* western European countries, regardless of whether there is religious establishment or not. Perhaps we could say that the historical legacy of caesaro-papist regimes in many European countries has greatly contributed both to the liberalization and the marginalization of Catholicism, at least once separation between church and state was achieved (interesting cases here are Ireland and Poland, where the *absence* of a caesaro-papist legacy seems, conversely, to have strengthened the socially conservative grip of the Church).

Yet this is not this kind of effect that the HDM thesis claims to track. Nor can it account for the more recent development, in many Catholic countries from Hungary to Poland to Brazil, whereby democratic governments have reinforced their connections with the Church precisely to enforce and promote a socially conservative religious agenda. Evidence from the Islamic world is also mixed. Morocco and Turkey bring some support to the HDM thesis. The moderate establishment in the former state is often credited with its (relative) success in keeping radical Islamists at bay; a success not achieved by the militantly secularist regime of Ataturk (the Turkish paradox, however, is that strict official secularism was combined with tight control of religious institutions). In today AKP-dominated Turkey, just as in countries such as Saudi Arabia, Pakistan, Iran, Qatar or Malaysia, one would be hard-pressed to detect any significant moderating effect of establishment on religion. Nor are matters very different beyond Christianity and Islam. The closer the Israeli state brings itself to Orthodox Jewish groups, the more likely it is to become hostage to their radical platform. And the high jacking of Hindu themes by India's BJP has, if anything, rigidified and ideologized what was a loose and pluralist loyalty into an exclusive (non-ecumenical, openly anti-Muslim) collective identity.

The best scholarly work on the subject suggests, however, that there is some evidence—as per the HDM thesis—that the co-optation of religious leaders within the structures of constitutional states is having some moderating effect. As the author of the most comprehensive comparative study on constitutional theocracies points out, 'granting religion formal constitutional status ... neutralises religion's revolutionary sting, co-opts its leaders, ensures state input in the translation of religious precepts into guidelines for public life, helps mutate sacred law and manipulate religious discourse to serve powerful interests and, above all, brings an alternative, even rival

order of authority under state control and supervision'.¹³ Constitutional theocracies around the world, then, provide a good test of the HDM thesis—but do not unambiguously substantiate it. Much depends on state capacity, and the specific aims and goals of religious and secular actors.

At this point, Miller might retort that his thesis has a much more limited import, and that it applies to *liberal* states, in particular the liberal states of Northern Europe. Apart from the Anglican Church, we can point to the designation of the Evangelical Lutheran Church as the state church in Norway, Denmark, Finland, and Iceland—arguably some of Europe's most liberal and progressive polities. On this interpretation, the HDM thesis is an update of the Tocquevillian transatlantic comparison: one that firmly remains within the scope of western Christianity and liberal democratic politics. Here the thesis has undeniable credibility. As one prominent sociologist has observed, if we are to explain the marginalisation and moderation of religion in Europe, in contrast to its resilience and vitality in the USA, it will not suffice to appeal to general social facts such as Enlightenment rationalism, social secularization, capitalism, or liberalism. These apply across both sides of the Atlantic. The only explanatory independent variable is, arguably, the contrasting histories of establishment and disestablishment. As José Casanova puts it, 'what America never had was an absolutist state and its ecclesiastical counterpart, a caesaro-papist state church. This is what truly distinguishes American and European Protestantism... One may say that it was the very attempt to preserve and prolong Christendom in every nation-state and thus to resist modern functional differentiation that nearly destroyed the churches in Europe'.¹⁴

This echoes the HDM thesis insofar it establishes a strong causal connection between religious establishment and the weakness, moderation, and decline of religion in Europe. Yet it is in tension with another claim of HDM: that it is the deliberate effect of contemporary regimes of establishment that they succeed in taming and moderating religion. Casanova's thesis, by contrast, attributes only residual significance to the continuation of establishment in Northern European states such as England. From a broader European perspective, the weakness of religion in *both* France and the UK (e.g.) can be explained by a shared *history* of strong religious establishment. We can further speculate that the fact that England has a vestigial state church, whereas France has a secular regime, has minimal incidence on general levels of secularization—which are very similar—or on the moderation of the dominant church—which is also very similar. The contemporary form of the regime has only a minuscule incidence on the mode of religion in its midst.

Let me illustrate this claim further. Both France and the UK have had to deal with similar issues of Islamist radicalisation. The paths to radicalization of French and British jihadists are broadly similar. Islamist radicalization has complex roots in colonial subjection, foreign wars, the explosive political situation of the Middle

¹³ Ran Hirschl, *Constitutional Theocracy*. Cambridge Mass., Harvard University Press, 2010, p. 13. Detailed studies of the countries I mention above can be found in that book.

¹⁴ José Casanova, *Public Religions in the Modern World*. Chicago: Chicago University Press, 1994, p. 29.

East, the doctrinal sclerosis of Islamic theology, the decline of traditional institutions of youth socialization, and the structural disaffection of a fringe of Muslims in Europe and elsewhere. The national variants of British establishment *cum* multiculturalism and French *laïcité* only play a minor role in explaining the success of Islamist ideology. The relationship between political regimes and religious extremism is, therefore, not a simple one, and should invite doubt about any principle—such as the HDM—that attempts to isolate and single out the effects of religious establishment.

4 Response to Jeremy Waldron

Jeremy Waldron's fine scholarship on liberalism, equality and dignity informs his spirited reflections on what he calls religion's liberalism. As he notes, *Liberalism's Religion* focuses on the question of how the liberal state construes and deals with religion. What Waldron terms religion's liberalism, by contrast, focuses on the different question of how religion itself informs liberal commitment. An exploration of the religious foundations of liberalism is an invaluable complement to my more limited approach. The further question that Waldron asks—whether a liberalism with religious foundations can serve as a public philosophy for the state—overlaps with the concerns of *Liberalism's Religion*. In what follows, I reiterate some doubts about the foundational liberalism that Waldron defends.

Let me start with Waldron's first point: that religious conceptions of the person, of liberty, of rights and of social justice have historically fed—and continue to feed—the liberal tradition of political theorizing. One virtue of Waldron's approach—often not displayed by secular philosophers writing about religion—is that he is acutely alive to the sense in which religious ideas are not epistemically sealed off and self-contained but are 'lodged among, linked to, and entangled with' secular ethical, moral, philosophical and empirical positions. (It is precisely this kind of consideration that led me to the thought that many religious ideas are in fact accessible, though a sub-set of them, those that directly appeal to sacred authority, are not). Waldron also rightly notes, drawing on his own seminal work on John Locke, that liberal toleration was historically justified on religious—specifically, Protestant—grounds.

A small point: one may question what Waldron implies about the broader genealogy of liberalism. He says that liberalism has 'especially deep roots in the Judeo-Christian tradition' and is 'more broadly Protestant than Roman Catholic'. The danger here is to confuse the (undeniable) historical claim that capitalism and liberal modernity emerged in Protestant countries with the (problematic) theological claim that Protestantism is inherently a liberal doctrine. Ideas and practices of toleration have been both peripheral and late comers in Christian history (and the Reformation itself was not, of course, a tolerant episode). Taking a broader comparative perspective, historians have shown that Muslim polities, up and including the Ottoman empire, had much more extensive practices of toleration than anything witnessed in the Christian world at the same time. The Indian subcontinent also has

a centuries-long experience of peaceful dealings with religious difference.¹⁵ Within Christianity itself, recent scholarship has unearthed the key role played by Catholic (not only Protestant) social thinking in grounding 20th-century notions of human rights, from the rise of personalism in the 1930s to the drafting of the Universal Declaration of Human Rights and the European Convention on Human Rights in the late-1940s and early-1950s. (All the same, the Christian conceptions of personhood and dignity and the liberal tradition of the rights of man were not always as mutually supportive as Waldron implies).¹⁶

These quibbles about genealogy, however, do not detract from the validity of Waldron's substantive point: that religiously-inspired conceptions can be central components of a liberal overlapping consensus. What is less clear, however, is whether they themselves can provide the official justification for state policy and laws. In a Rawlsian overlapping consensus, different comprehensive faiths converge on liberal political principles. Yet what is officially 'established' is only the latter. Rawls explicitly *denies* that liberal states can appeal to *even reasonable* comprehensive faiths to justify laws and policies. The idea of an overlapping consensus suggests that Christians—like other holders of comprehensive commitments—can come to endorse liberalism from within their own faith. But the fact that Christianity is compatible with liberalism is not sufficient to show that Christianity can be permissibly established by the state. Liberal states should appeal to thinner, more abstract principles of public justification, personal liberty and equality.

Let L be a set of liberal (and other publicly accessible) principles; and F be a foundational doctrine or philosophy that supports and justifies it. A political liberal state should be committed to L, but should be silent about F. This is because L can be supported by a plurality of doctrines F, F', F'', etc., but it can only be justified to all citizens if it does not appeal to any such F. Therefore, the kind of Christian liberal state that Waldron has in mind—one that scrupulously respects its citizens' rights to religious freedom and equality, yet publicly acknowledges its religious foundations—falls short of a requirement of liberal public justification.

Waldron suggests a number of objections to the anti-foundational political liberal stance. The first is that it is an illusion to assume that liberal states are equally justified to all actual citizens: members of religions that do not value liberal autonomy or conscience, for example, inevitably feel 'slighted' when a society is publicly committed to such values. But a political liberal state need not worry about the alienation of citizens who do not support L in the first place (in Rawls's terms, they are 'unreasonable'). What is more problematic is to explain why it should not worry about the alienation of citizens who adhere to F', or F''..., but not F, as F is a contingent not a necessary pathway to L. Waldron's response is that F should not be celebrated as the whole truth: what should be publicly celebrated is the part of it that supports the truth of L. The thought, as I understand it, is that a Christian liberal state should only acknowledge and celebrate the Christian origin of liberal rights, without celebrating Christianity (or any variant thereof) as such.

¹⁵ See, eg., Amartya Sen, *The Argumentative Indian*. London: London: Ailen Lane, 2005.

¹⁶ Samuel Moyn, *Christian Human Rights*. Philadelphia: University of Pennsylvania Press, 2015; Sarah Shortall & Daniel Steinmetz-Jenkins (eds.), *Christianity and Human Rights Reconsidered*. Cambridge: Cambridge University Press, 2020.

There are two problems with this suggestion: one that has to do with public justification, and the other with civic equality. The first problem is that an impeccably liberal state that appeals to Christian foundations does not provide citizens with accessible reasons, as it risks making the liberal quality of laws dependent on an interpretation of the Christian faith. Even if (*pro arguendo*) it is historically true that liberal rights have a Christian origin, this does not mean that the continuing democratic process of their collective interpretation should privilege one specific set of reasons, some of which inaccessible (or indeed unacceptable) to non-Christians. The second problem is that it is not sufficient for a collective identity to have liberal content for it to be inclusive in the relevant sense. To celebrate the exclusively Christian origins of liberal rights is implicitly to deny that there are other pathways to liberal rights. It is to privilege the spontaneously liberal identity of one group—Christians—over the putatively more precarious liberal credentials of others. This, I think, is incompatible with civic equality.

I am sympathetic, however, to the worry that Waldron expresses in closing. A stripped down, merely political liberalism—one silent about its own foundations—might well struggle to motivate citizens' commitment to non-utilitarian, non-consequentialist conceptions of individual rights and solidarity. It needs to be constantly fed and revitalized by richer, deeper, comprehensive traditions of thought. Liberalism's religion, in sum, needs religion's liberalism.

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