always other-thing-equal morally wrong, although the ground for this property varies with the context. My interest here is in both of these positions.

17. I leave aside the issue of whether harm is better understood as an other-things-equal state that might be outweighed by certain benefits or whether it is an all-things-considered state that focuses on the net effect on a person’s properly weighted network of interests.

18. I owe this objection to John Kekes.

ABSTRACT: This paper argues that, given the fact of reasonable pluralism, citizens of a liberal democracy have a moral duty not to use religious arguments in public attempts to persuade their fellows to support coercive public policies. Beginning with the fundamental Rawlsian assumption that a liberal society is a “fair system of cooperation,” the citizens of such a society cannot view themselves as cooperating for the common good unless the rules that each follows in her social interaction with others are ones that these others might reasonably be expected to accept as governing their social interaction with her. Rules of this kind exclude the attempt to employ religious arguments to publicly persuade one’s fellows to support coercive public policies. Although this is a conclusion Rawls himself has come to deny, the paper maintains that it is one he should embrace.

I. INTRODUCTION

The question I want to consider is this: whether, given the fact of reasonable religious pluralism, citizens of a liberal democracy have a moral duty not to use religious arguments in public attempts to persuade their fellows to support coercive public policies. This is, in some ways, a relatively narrow question of political philosophy, but I believe that it is both fundamental and topical: fundamental, because the public accommodation of conflicting religious perspectives is the raison d’être of modern liberalism; and topical, because of increasingly widespread appeals to religious rationales as publicly acceptable grounds for coercive legislation. The answer I wish to defend is that, with one important qualification (see n. 13), we citizens do have such a duty, one that derives from a more basic duty of civility towards our religious and nonreligious fellows.
I will proceed as follows. First, I will clarify the question at issue, distinguishing it from questions with which it might be confused. Second, I will canvas a variety of answers to it that have been proposed by philosophers and legal theorists, and explain why some of these answers fail to persuade. Third, I will explain the reasons for adopting the answer I favor. And finally, I will defend this answer against various objections.

II. The Question Clarified

The first thing to notice about our question is that we are considering whether the duty not to engage in a certain form of public conduct attaches to the citizens of a society characterized by the fact of reasonable religious pluralism. By this, I mean a society characterized by the widespread acceptance of reasonable, but incompatible, comprehensive religious doctrines. The doctrines are reasonable, inasmuch as they are consistent with the essential features of liberal democracy (about which more anon); they are incompatible, in that the basic principles of each doctrine are logically inconsistent with the basic principles of the others; and they are comprehensive, insofar as their scope is wide enough to include all that is valuable in human life and conduct. So, to be clear, my concern is not whether the public persuasive employment of religious arguments is morally impermissible in a religiously uniform society. As I argue below (see n. 9), even if the correct answer to my question is "yes," the answer to this last question may very well be "no."

Let us also be clear about the nature of liberal democracy. Democracy is a system of government in which the power to legislate lies with the people, either directly or indirectly (say, in their fairly elected representatives). In this sense, democracy is appropriately contrasted with such systems as oligarchy and theocracy. And let us say, following Rawls (1993, I.1.2 and IV.5.3), that a system of government is liberal if (1) it protects basic rights (such as liberty of thought and conscience, freedom of movement and association, and freedom of expression), (2) assigns these rights a special priority, especially with respect to claims of the general good, and (3) includes measures to ensure that citizens have sufficient material means to make effective use of these rights. To be precise, then, my concern is not whether the public persuasive employment of religious arguments is morally impermissible in a theocracy or in a system that does not respect or prioritize fundamental rights.

Four aspects of our question remain to be discussed. First, let me emphasize that I am focusing on the public use of religious arguments. It will not follow from the position I defend below that the use of religious arguments in private conversations and meetings conducted among friends or among the members of a voluntary association is morally unacceptable.

Second, I will be arguing that the duty not to use certain sorts of religious arguments in the public square is a moral obligation. It does not follow from this, and I do not intend to draw the further conclusion, that this sort of obligation may be enforced by the state. As I noted above, freedom of expression (including the freedom to violate moral duties of conversational civility) is one of the basic liberties protected in a liberal system of government. As such, it is prima facie incompatible with state proscription of the public use of religious arguments, and stands as a serious obstacle to all who would maintain that the state may ban or restrict religious expression.

Third, it is important to clarify the concept of a coercive public policy. I count a policy as coercive if its effects (whether intended or not) include (or would include) the restriction of citizens’ basic liberties. Thus, to take the most obvious example in the area of public policy that concerns me, legislation prohibiting certain kinds of abortion would have the effect of restricting some of the basic liberties of women and their physicians, and therefore counts as coercive. Although it is possible that the argument defended below also provides an answer to the question of whether we are obligated to refrain from publicly using persuasive religious arguments to support noncoercive public measures, this is a question I leave aside for further discussion. My concern is not whether persuasive religious arguments have a place in the public discussion of the choice of a state bird or the naming of a public thoroughfare.

Finally, the nature and function of religious arguments demands further elucidation. Following Robert Audi (1989, p. 278), I count an argument as religious if its premises ultimately depend for their justification on the existence of a supersensible deity, on sacred texts, or on the pronouncements of religious authorities qua religious authorities (that is, on religious authorities qua recipients of divine inspiration or interpreters of sacred texts). Thus, arguments with premises such as “God said p,” “The Bible says p,” or “the Pope’s latest encyclical says p,” all count as religious, in the relevant sense.

Further, it is crucial that one distinguish among the different uses to which arguments might be put. As Audi (1993, pp. 685–6) remarks, one might use an argument “to persuade others,” “to get something off one’s chest,” “to show someone else where one is coming from,” or “to stimulate the discovery of new truths.” My concern is whether religious arguments, when used to persuade, may be employed by the citizens of a liberal democracy in public discussion of coercive public policies. I am prepared to accept that citizens may use arguments in other ways even when (as I will argue) they may not use them to persuade.
Since much of my argument below depends on the distinction between the different aims with which the very same argument may be deployed, it is well that the nature of the distinction be clarified at the outset. An argument is a piece of reasoning designed to establish the truth (or probable truth) of some proposition (the argument’s conclusion). The reasoning rests on premises that provide (deductive or inductive) support for the conclusion. This characterization of an argument should make it clear that it is possible to employ arguments to achieve a variety of distinct purposes. Surely the most common purpose in public discussion among citizens, and the purpose on which my argument focuses, is that of persuading others. When X uses an argument to persuade Y, X attempts to make it the case that Y accepts the argument’s conclusion on the basis of the argument’s premises. The achievement of this aim may require that Y abandon a position of doxastic neutrality with respect to the conclusion or even give up beliefs with which the conclusion is incompatible. So the persuasive aim involves the intention to change the minds of agnostics and opponents. But this is not the only purpose with which an argument may be deployed. If I use an argument to get something off my chest or to show others where I am ‘coming from,’ it does not follow that I intend to get my interlocutors to adopt any particular epistemic attitude toward the argument’s conclusion. I might simply be trying to communicate my (perhaps admittedly idiosyncratic) reasons for accepting the conclusion.

III. Some Unpersuasive Answers

Let us now consider some of the answers that have made their way into the philosophical and legal literature. To fix ideas, it helps to classify these answers into three groups. Say that an answer counts as exclusive if it judges the public use of religious arguments to be morally impermissible in all relevant circumstances; that it counts as totally inclusive if it judges the public use of religious arguments to be morally permissible in all relevant circumstances; and that it counts as moderately inclusive if it judges the public use of religious argument to be morally permissible in some relevant circumstances, but not in others.

Bruce Ackerman and Richard Rorty are the best-known advocates of exclusivism. Ackerman’s exclusivism rests on a principle of Neutrality, according to which no power holder is morally permitted “to assert that his conception of the good is better than that asserted by any of his fellow citizens.” And the germ of this principle, according to Ackerman, is the antipaternalistic idea that “nobody has the right to vindicate political authority by asserting a privileged insight into the moral universe which is denied the rest of us.” Since religious inspiration counts as a form of “privileged insight into the moral universe,” it follows that citizens may not use religious arguments to back their exercise of political power (see Ackerman 1980, pp. 10–11).

One of the main premises of Ackerman’s argument for exclusivism is that the epistemological pretensions of religious inspiration are questionable. Were the reasons for accepting religious doctrines less privileged, and hence less doubtful, Ackerman’s antipaternalism would not have exclusivist consequences. There is much to be said in support of this assumption. The problem with using it as a basis for exclusivism is that it is not likely to attract many religious adherents. Those who accept religious doctrines on religious grounds do not recognize their reasons for belief to be epistemically deficient. If exclusivism is to be recommended to the religious and nonreligious alike as a basis for political debate between them, then the reasons for adopting it should rest on assumptions that both sides can share.

Rorty’s exclusivism rests on the thesis that religious arguments are, in his words, “conversation-stoppers.” Rorty imagines a believer beginning a conversation by telling an atheist that he should support some public policy because God approves of it. Rorty’s main point is that this conversation is dead on arrival. In his (imitable) words (1994, p. 171):

Are we atheist interlocutors supposed to try to keep the conversation going by saying, “Gee! I’m impressed. You must have a really deep, sincere faith”? Suppose we try that. What happens then? What can either party do for an encore?

This is pithy and powerful stuff, but I don’t think it gives us much reason to become exclusivists. There are two reasons for this. First, Rorty’s claim that religion is a conversation stopper relies on the controversial epistemological assumption that sources of religious knowledge-claims can’t be shared or understood by atheists. And, second, even if we accept that religious arguments stop conversations (at least with atheists), Rorty does not explain why we should value never-ending conversations over those that come to an end somewhere. I suspect that, in Rorty’s mind, the value of continuous conversation is tied to his Dewey-inspired pragmatism, according to which “growth itself is the only moral end” (see Rorty 1999, p. 28). But given the objections to pragmatism, I would hope that, at least for the purpose of obtaining wide agreement on fundamentals, exclusivists should try to find a way to defend their views on nonpragmatic grounds.

Diametrically opposed to exclusivism is total inclusivism, according to which the public use of religious argument is always permissible. Among the reasons offered in support of total inclusivism, we may cite the thesis that any moral restriction on the public use of religious arguments
threatens religious liberty. If exclusivism and even moderate inclusivism threaten religious liberty, then they must be rejected; for religious liberty is one of the basic freedoms protected by a liberal system of government. But I fail to see how the alternatives to total inclusivism threaten religious freedom. For these alternatives entail no more than that there are circumstances in which we are morally required not to use religious arguments; in particular, they do not entail that there are circumstances in which we are not free to use such arguments. Those who worry that anything short of total inclusivism threatens religious freedom do not realize that it is possible to be free to do action A without being morally permitted to do A. To take an example: the United States government respects my freedom to refuse to contribute anything to charity (inasmuch as it does not forcibly remove monies from my bank account and does not threaten me with punishment if I do not contribute), but it seems to me wrong not to make charitable donations.

The best argument for total inclusivism, in my view, runs as follows. Any alternative to total inclusivism will have the effect of (at least occasionally) privileging secular (i.e., nonreligious) beliefs over religious claims. But, so the argument goes, discriminating in favor of secular beliefs in this way is fundamentally unfair. Now we will return to the charge of unfairness later, to see how it can be answered. But, for the sake of argument, let us accept for the moment that moral restrictions on the use of religious arguments are prima facie unfair, and that those who defend these restrictions must explain how the prima facie case for rejecting them is outweighed by the positive reasons for keeping them.

Now moderate inclusivists agree that, other things being equal, one should not discriminate among the reasons backing the use of persuasive arguments in the public square. The trouble is that other things aren’t exactly equal. For, so say the moderate inclusivists, there are reasons for thinking that some restrictions on the public use of religious arguments are morally appropriate.

Let us begin our brief examination of moderate inclusivism with the proposal defended by Robert Audi. Audi (1989, p. 284) offers what he calls “the principle of secular motivation,” according to which the citizens of a liberal democracy are morally permitted to offer persuasive religious arguments in the public arena if and only if they have, are willing to offer, and are motivated by, adequate secular reasons for the same conclusion. (A reason for a certain conclusion counts as adequate if its being true would be sufficient to guarantee the truth of the conclusion [p. 278].) So, for example, I would not be morally permitted to use religious arguments to back my public opposition to abortion if I did not also have adequate secular reasons for thinking that abortion should be illegal.

Audi provides two different arguments for the principle of secular motivation. The first relies on the ideals of freedom and democracy that are central to the conception of liberalism we’ve been working with. As Audi (1989, p. 278) puts the point (emphasis added):

One underlying idea is this: in a free and democratic society, people who want to preserve religious and other liberties should not argue for or advocate laws or policies that restrict human conduct unless they offer (or at least have) adequate secular (nonreligious) reasons to support the law or policy in question.

Audi’s point, I take it, is that our basic liberties (including, notably, religious liberty) are better preserved if we place an additional moral obstacle in the way of religiously motivated attempts to promote various restrictions on these liberties.

The problem with this argument is not that it proves too little, but rather that it proves too much. The principle behind Audi’s central idea, as I understand it, is that the greater the number of moral obstacles placed in the way of attempts to justify restrictions on our basic liberties, the more secure these liberties are. But this principle justifies far more than the moderate inclusivist principle of secular motivation. In particular, it provides sufficient reason for exclusivism! The reason is simply that exclusivism places an even greater number of obstacles in the way of religious attempts to justify coercive public policies, and so (by our principle) does even more to secure basic liberties than does any form of inclusivism. Moreover, as I argued above, exclusivism does not threaten religious liberty in any way.

Now Audi might reply that the principle of secular motivation is morally superior to exclusivism by virtue of the fact that it goes some way toward accommodating the total inclusivist’s worries about fairness mentioned earlier. But, as I will argue below, these worries about fairness are misplaced. So I conclude that the ideal of freedom gives us no reason to favor the principle of secular motivation over exclusivism.

Elsewhere, Audi provides a different route to the principle of secular motivation, one based on the ideal of autonomy. According to Audi (1993, p. 689), the ideal of autonomy specifies that “we may coerce people to do only what they would . . . do if appropriately informed and fully rational.” Let us call this “the principle of autonomy.” The grounds for adopting this principle are, first, that “if I am coerced on grounds that cannot motivate me, as a rational informed person, to do [X], I . . . will tend to resent having to do [X].” and, second, that “it is part of the underlying rationale of liberalism that we should not have to feel this kind of resentment” (p. 690).

The problem with applying the principle of autonomy to the question at hand is that it justifies the principle of secular motivation only if
it is possible for nonreligious persons to count as "appropriately informed" and "fully rational," in the relevant senses of these terms. But many a religious adherent will insist that, once appropriately informed, fully rational persons will come to see that they can best fulfill their epistemic duties by accepting certain religious doctrines. And if this is so, then the principle of autonomy licenses the coercion of those who refuse to accept these doctrines. So Audi's argument from the principle of autonomy cannot justify the principle of secular motivation without begging the question against a certain kind of religious adherent.

Let us now turn to the moderate inclusivist proposals of John Rawls. Rawls's views on this topic have changed over time, and the changes have come in three stages. Before coming to write Political Liberalism, Rawls inclined to exclusivism (see Rawls 1993, p. 247, n. 36). At the time of Political Liberalism, Rawls abandoned exclusivism for a very particular form of moderate inclusivism. According to this so-called "inclusive view," the citizens of a pluralistic liberal democracy are morally permitted "to present what they regard as the basis of political values rooted in their comprehensive doctrine [including, most notably, religious doctrines], provided that they do this in ways that strengthen the ideal of public reason itself," where the ideal of public reason includes liberal principles of justice and guidelines of inquiry (p. 247). Rawls applies this principle to two historical cases, the abolitionist movement and the civil rights movement (or at least that portion of it inspired by the teachings of Martin Luther King, Jr.). Concerning the latter case, Rawls says that King was morally permitted to use religious arguments as public reasons for racial equality, precisely because racial equality is a liberal principle of justice that forms part of the ideal of public reason that would be strengthened if the civil rights movement were successful (pp. 249–51).

But Rawls was not satisfied with the "inclusive view" of Political Liberalism. In "The Idea of Public Reason Revisited," Rawls adopts a slightly different moderate inclusivist proposal. The new proposal, in his words, is "that reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons...are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support" (Rawls 1999, p. 152). On this view, the public use of religious argument may be morally permissible even when it is not intended to strengthen the ideal of public reason, as long as those who offer the arguments are prepared to present, in due course, reasons that their fellow citizens might reasonably be expected to accept. Thus, on this view, King's public use of religious arguments was justified insofar as he was prepared, in due course, to offer specifically political reasons for racial equality. 

Let's consider each of these moderate inclusivist proposals in chronological order. In Political Liberalism, Rawls does not explain why the aim of strengthening public reason is sufficient to justify the moral permissibility of public religious argument. Rather, he provides reasons for the claim that, in a well-ordered society (i.e., "a society effectively regulated by a public political conception of justice" [Rawls 1993, p. 35]), the public use of religious argument is contrary to the duty of civility. This duty requires that citizens "be able to explain to one another on...fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason." This duty is itself grounded in what Rawls calls "the liberal principle of legitimacy," according to which the exercise of political power is justifiable "only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse" (p. 217). It would seem then, that, in a well-ordered society, since religious reasons are not reasons that all of one's fellow citizens may reasonably be expected to endorse, they should not be accorded a place in public advocacy. The "inclusive view" defended in Political Liberalism is a part of Rawls's nonideal theory, namely, the part concerning the duties of citizenship within a society that is less than well ordered. On that view, if the policy being fought for would strengthen the ideal of public reason itself, then public religious arguments may be used to support it.

So Rawls's "inclusive view" depends on the claim that moral restrictions on the public use of religious arguments, while appropriate under ideal circumstances, may well be inappropriate when the circumstances fall short of the relevant ideal. The problem with this two-level theory of civic obligation, as I see it, is that the distinction between levels overlooks the tendency towards the entrenchment of social patterns of communication. The effect of this tendency is that those who are now permitted by Rawls's "inclusive view" to publicly use religious arguments in the service of strengthening public reason will be loath to relinquish this mode of social persuasion when circumstances have greatly improved. For example, despite (and perhaps even because of) the fact that religiously inspired social movements (such as abolitionism) were ultimately victorious, there has been no diminution (and perhaps even an upsurge) in the tendency of citizens to use religious arguments in the public square. From the existence of this tendency it follows that the lifting of certain moral restrictions on the public use of religious argument in nonideal circumstances is more likely than the alternative to result in the widespread refusal to adhere to these same moral restrictions under ideal conditions. This problem lies, not at the level of theory, but at the level of theory implementation. Still, as Rawls's concern with
the stability of political conceptions of justice illustrates, the issue of theory implementation is no less relevant to the question of justification than are issues of theoretical simplicity, coherence, and fruitfulness.7

The view defended in "The Idea of Public Reason Revisited" is that citizens are morally required to supplement their religious arguments with properly political arguments in due course. Rawls (1999, pp. 153–4) provides two main reasons for accepting this requirement (or "proviso," to use his terminology). The first is that accepting the proviso manifests commitment to constitutional (i.e., liberal) democracy, makes other citizens more willing to honor the duty of civility, and helps bring about the kind of society that exemplifies the ideal of public reason. The second is that mutual recognition of reasonable comprehensive doctrines is beneficial, inasmuch as these doctrines are recognized as giving reasonable political conceptions of justice (such as "justice as fairness") enduring strength and vigor.

I must say that I do not find either of these reasons compelling. Concerning the first, it seems to me that a citizen’s commitment to liberal democracy is more clearly manifest by exclusivism than it is by this particular type of moderate inclusivism. To take an example, suppose Reverend Smith uses religious arguments to persuade his fellow citizens that abortion should be outlawed (abortion being, in his view, an outrageous injustice), and then tells those who find his appeal to religious reasons unsettling that they shouldn’t worry (because, as he tells them, he will provide proper political reasons for outlawing abortion in due course). Wouldn’t atheists rightly count Smith as less committed to liberal democracy for failing to provide them with properly political reasons in the here and now? And wouldn’t Smith’s actions make his nonreligious fellows less, rather than more, willing to honor the duty of civility?

Concerning the second, although I fully agree that the mutual recognition of reasonable comprehensive religious doctrines is beneficial, it is not clear to me that this mutual recognition requires the public employment of persuasive religious arguments. I do not believe that my getting you to recognize the ways in which my religious doctrines support reasonable political conceptions of justice requires that I rely on these doctrines to persuade you to adopt particular public policies. Surely it is sufficient for me to get you to see 'where I am coming from' or to explain exactly how my religious doctrines support the adoption of certain public policies. (Recall the different ways in which arguments may be used.) Thus, since it is possible for us to obtain the benefits of mutual recognition without attempting to persuade one another, Rawls’s second defense of his proviso is inadequate.

The upshot of our discussion of Rawls’s proposals is that Rawls’s liberal principle of legitimacy, and the resulting duty of civility, provide greater support for exclusivism than they do for any of the moderate inclusivisms defended by Rawls himself. The problem we now face is that the entire discussion up to this point leaves us at an impasse. For, on the one hand, we have been given reason to accept total inclusivism on grounds of fairness; and, on the other hand, if we accept Rawls’s liberal principle of legitimacy, then we ought to choose exclusivism instead. Is there any way to adjudicate between these polar opposites?

I believe that there is.

IV. The Case for Exclusivism

The strongest case for exclusivism we’ve seen thus far lies in Rawls’s argument for the duty of civility, an argument that relies heavily on the liberal principle of legitimacy. But Rawls would be the first to point out that this principle of legitimacy is not self-justifying. What I now wish to argue is that understanding why this principle is justified will help us understand why the inclusivist’s unfairness complaint is misplaced.

Rawls (1993, p. 225) himself points out that the liberal principle of legitimacy and substantive liberal principles of justice are justified in exactly the same way, namely by being those principles which free and equal, reasonable and rational, parties in the so-called “Original Position” would choose over the available alternatives. We might then add, on Rawls’s behalf, that the Original Position is specifically designed to model a fair decision procedure the outcome of which automatically counts as fair. This, after all, is the main reason for placing the parties behind the famous “veil of ignorance,” a veil that keeps the parties from knowing the sorts of facts that would give them an unfair bargaining advantage (such as the assets, social position, sex, age, ethnic background, and so on, of the persons they represent—see Rawls 1993, p. 22 ff.). So if we found Rawls’s argument from the Original Position to the principle of legitimacy persuasive, then we would have an answer to the inclusivist’s unfairness complaint.

Let us then examine Rawls’s own argument for the liberal principle of legitimacy. In his words (1993, p. 225):

In securing the interests of the persons they represent, the parties insist that the application of substantive principles be guided by judgment and inference, reasons and evidence that the persons they represent can reasonably be expected to endorse. Should the parties fail to insist on this, they would not act responsibly as trustees. Thus we have the principle of legitimacy.

Much as I would like to agree with Rawls here, I must admit that I do not find the reasoning compelling. Recall that the parties in the Original Position are assumed to be rational, and on those grounds adopt
what Rawls (1971, p. 152 ff.) calls the “maximin” strategy for protecting the interests of the persons they represent: that is, *qua* rational, the parties choose the alternative that will maximize the position of the least well-off. Assuming, then, that the parties adopt the “maximin” strategy, here is the kind of reasoning I imagine myself producing when I put myself in the position of one of the parties:

Given the veil of ignorance, I do not know whether the person I represent (call him “Shem”) is devoutly religious or steadfastly atheist. So suppose, first, that Shem is an atheist. In this case, I am able to protect Shem’s interests by agreeing that he should attempt to publicly persuade others, and that others should attempt to publicly persuade him, on grounds that all could reasonably be expected to endorse. On the other hand, if I agree to allow others to publicly attempt to persuade him on religious grounds, then he will do less well, mostly by virtue of the fact that he may find this sort of appeal offensive. But now suppose that Shem is devoutly religious. Given the comprehensive nature of Shem’s religious doctrines, and his strong desire that these doctrines permeate all aspects of his social life, he will do rather poorly if I agree that he should exercise the kind of conversational restraint that would prevent him from attempting to publicly persuade his fellows on religious grounds. On the other hand, he will be rather pleased if I do not agree to the conversational restraint. However, it is clear that Shem, if religious, would be in far worse shape if I agreed to the relevant conversational restraints than he would be if he were nonreligious and I refused to accept the conversational restraints. Since maximin tells me to maximize the position of the least well-off person, I should choose to reject the conversational restraints.

The upshot of this piece of reasoning is that it is the abandonment, rather than the endorsement, of the liberal principle of legitimacy that would be chosen behind the veil of ignorance! So I am less than sanguine about the prospects of using the Original Position to defend the principle of legitimacy.8

Luckily, there is more than one route to the liberal principle of legitimacy. On Rawls’s view, the main function of the parties in the Original Position is to choose the principles of justice that are to govern the basic structure (i.e., the fundamental social institutions) of a well-ordered society. Society itself is viewed as “a fair system of social cooperation between free and equal persons,” and the principles of justice are to specify the fair terms of social cooperation, that is, the terms under which citizens can agree to work together for the good of all (Rawls 1993, I.3 and I.6). But the “fundamental organizing idea” of society as a fair system of social cooperation has far-reaching consequences. For it follows from this conception of society that you and I count as members of the same society only if we think of ourselves as cooperating for the common good. Furthermore, and this is my central claim, I cannot view myself as cooperating with you for the common good unless the rules I follow in my social interaction with you are ones that you might reasonably be expected to accept as governing your social interaction with me. Thus, if we are to view ourselves as members of the same society (so conceived), we must regulate our public conduct by means of rules that all may be expected to endorse.9

What this argument shows is that the liberal principle of legitimacy is already implicit in Rawls’s conception of society as a fair system of social cooperation between free and equal persons. Moreover, given that the terms of social cooperation are understood to be fair, it follows that our argument for the liberal principle of legitimacy (and for the attendant duty of civility) meets the inclusivist charge of unfairness.

To see why there is nothing unfair about the exclusivist duty of civility, consider the following example. Bob and Carol are building a house together. We may imagine that, while Bob holds the planks in their proper places, Carol nails them together; that, while Bob lays the electrical wires, Carol runs them through the switch box; and so on. Suppose now that, one fine day, Bob shows up for work with a new idea. Here’s what he tells Carol:

I had an epiphany last night. I realized that we should replace the hardwood floors with purple foam rubber, because purple foam rubber is an excellent goblin repellent.

Let us assume further that Carol doesn’t believe in goblins, and that Bob not only knows this, but also knows that nothing short of a similar epiphany would bring Carol to believe in goblins. Nevertheless, Bob tries to persuade Carol to agree to his suggestion. My contention is that Bob’s continuing to press his case in this way indicates that he no longer takes the idea of cooperation with Carol seriously. To view himself as cooperating with Carol in the task of building a house that is to benefit both of them, Bob must defend his decorating suggestions only on grounds that Carol might reasonably be expected to accept. Not to do so, in fact, would be quite plainly unfair to Carol. By analogy, or so I would argue, if those religious citizens who publicly press political claims wish to view themselves as cooperating with the atheists and agnostics on whom those claims are pressed, then they cannot attempt to publicly persuade their fellows on religious grounds without thereby acting unfairly.10 (This result, I should add, applies not merely to public speech but to voting as well. If it would be unfair of me to attempt to publicly persuade you on religious grounds, more so would it be unfair of me to base my voting decisions on religious arguments.) The point, in a nutshell, is that since the liberal principle of legitimacy is already implicit in the idea of society as a fair system of social cooperation, it
follows that the inclusivist’s unfairness complaint is simply turned on its head.\textsuperscript{11}

Of course, it is always possible for the religious citizen to argue that the idea of society as a fair system of cooperation forms no part of his conception of democratic liberalism. But I would argue that a democratic liberalism shorn of the fundamental idea of social cooperation is not a form of liberalism worth the name. It is the idea of social cooperation, more than any other, that distinguishes liberalism from its main competitors, communitarianism and libertarianism. The communitarian thinks of society as a social system designed to advance a particular conception of the good shared by its members. The libertarian thinks of society as a group of individuals all of whose social obligations are voluntarily undertaken. Conceiving of society as a fair system of social cooperation, the liberal avoids both Scylla and Charybdis. For she denies that cooperation requires sharing a conception of the good, and she insists that some social obligations (namely, those deriving from the fact of social cooperation) are not voluntarily undertaken.\textsuperscript{12}

V. Objections and Replies

Let us now examine some objections to exclusivism, in part because this may help to clarify the points I have been trying to make.

Jeremy Waldron argues against exclusivism on the following grounds. Defending the practice of using religious arguments in public deliberation, he writes (1993, p. 841):

We think it part of the point of public deliberation to expose citizens and other decision makers to perspectives and experiences with which they are initially unfamiliar. Only on the basis of such exposure is there any reason to believe . . . that the decision which results at the end of the deliberations will be any improvement over the prejudices with which the people went into the forum. Only on this basis can we expect the participants in dialogue themselves to be improved by the exposure.

Waldron’s point is that there are great benefits to be reaped from allowing citizens to “expose” their fellows to religious “perspectives.” For citizens who are presented with these unfamiliar perspectives will often learn from them in ways that they could not have predicted. Waldron (1993, p. 842) worries that “the prospect of losing [these benefits] is, frankly, frightening—terrifying even. . . . [I]t is to imagine open-ended public debate reduced to the formal trivia of American television networks.”

I agree with Waldron that it would indeed be a serious loss to all if religious perspectives were removed from the public square. But I should emphasize that this kind of blanket removal is not what I am advocating.

I have been arguing that the religious arguments that have no place in the public square of a modern liberal democracy are those put forward with the aim of persuading others. If I am right, nothing whatever follows concerning the acceptability of public arguments that are put forward (as Waldron [1993, p. 841] puts it) “as something for one’s fellow citizens to ponder and consider along with the other views that they are listening to.” There is a great difference between using an argument persuasively or, as we might say, expressively: whereas the former sometimes contradicts the duty of civility, there is no reason for thinking that the latter ever does. So the consequences of removing persuasive religious arguments from the public square are not nearly as terrifying as Waldron suggests. To the contrary: I expect and hope that in a vibrant liberal democracy whose members regulate their public conduct in accordance with the duty of civility, religious voices will never be silent.

Philip Quinn, in a recent presidential address to the American Philosophical Association, raises a different objection. In his words (1995, p. 39):

If the fact that religious reasons cannot be shared by all in a religiously pluralistic society suffices to warrant any exclusion of religious reasons for advocating or supporting restrictive laws or policies, then much else ought in fairness also to be excluded on the same grounds. For example, justification of a restrictive law or policy by an appeal to its maximization of utility should be excluded because many citizens reasonably reject utilitarianism. Indeed, it would seem that the appeal to any comprehensive ethical theory, including all known secular ethical theories, should be disallowed on the grounds that every such theory can be reasonably rejected by some citizens of a pluralistic democracy.

Quinn’s point is that exclusivism has far-reaching consequences that no reasonable citizen could accept. In particular, according to Quinn, the consistent exclusivist must accept the absurd proposition that the duty of civility prohibits the use of any persuasive ethical argument in public deliberation.

I believe that this criticism issues from a rather significant misunderstanding. As I have described it, the duty of civility enjoins us to attempt to persuade our fellow citizens only on grounds that they might reasonably be expected to endorse. Since it is reasonable for me to believe that my nonutilitarian fellows might be brought to accept utilitarianism, it follows that the duty of civility permits me to use persuasive utilitarian arguments in the public arena. By contrast, since it is not reasonable for me to believe that my nonreligious fellows might be brought to accept religious doctrines, it follows that the duty of civility prevents me from using persuasive religious arguments in public deliberation.\textsuperscript{13}

This clear distinction is obscured by Quinn’s having unwittingly conflated two different concepts: (1) the concept of a reason that others could
reasonably accept, and (2) the concept of a reason that others could not reasonably reject. Utilitarian reasons clearly fall under the first concept, but not under the second. If we avoid this conflation, then we can avoid the absurd consequences Quinn attempts to foist onto exclusivists.

Finally, let’s consider the worries of Lawrence Solum. Solum (1994, p. 225 ff.) describes four problems with the exclusivist duty of civility: (1) that the duty “may [actually] undermine toleration, mutual trust, and civility,” (2) that the duty conflicts with “the ideal of full respect for the autonomy of [one’s] fellow citizens,” (3) that the duty “detracts from authenticity” in political debate, and, finally, (4) that the duty may sometimes conflict with the need to prevent great evil.

Let us consider each of these charges in turn. Solum’s first worry is that the exclusivist duty of civility undermines the development of the civic virtue of tolerance. This is supposed to happen in the following way. According to Solum, the duty of civility requires not merely that one refrain from using persuasive religious arguments in the public square, but also that one “disapprove” when others do not so refrain. But to say that we ought to “disapprove” of incivility is to say that we ought to be intolerant of it, and the development of this limited intolerance threatens mutual trust and civility.

Now I agree that those who conform to the exclusivist duty of civility will most likely disapprove, and (in that sense) be intolerant, of incivility. But I fail to see how this limited form of intolerance threatens mutual trust and civility. In fact, how could the refusal to tolerate incivility not have the opposite effect? Perhaps Solum is worried that my being intolerant on this matter may lead to my being intolerant on other matters. But this worry is surely misplaced: we are really to accept that being intolerant of morally impermissible conduct makes it likely that one will become intolerant of morally permissible conduct? Surely the difference between right and wrong is robust enough to prevent the scope of intolerance from widening in this way.

Solum’s second worry is that the exclusivist duty of civility conflicts with the ideal of full respect for the autonomy of one’s fellows. Solum’s reason for this claim is that exclusivism “assumes that one’s fellow citizens should not even be allowed to listen and think about [religious] reasons, because they might not understand that these nonpublic reasons play only a supporting role—supporting in the sense that nonpublic reasons are only allowed if they either provide foundations for public reasons or provide additional reasons, when public reason alone would be sufficient” (p. 228). But to say that one’s fellows should “not even be allowed to listen and think” about religious reasons is to display much less than full respect for their autonomy, i.e., for their ability to make free decisions for themselves.

This objection is even less persuasive than the first. For it should be clear by now that the exclusivist duty of civility in no way entails that one’s fellows should not be allowed to “listen and think about” religious reasons. As I emphasized above, the duty of civility targets religious arguments that are designed to persuade, but does not prescribe the use of religious arguments for expressive (or other) purposes.

Solum’s third worry is that the exclusivist duty of civility detracts from authenticity in political debate. Solum doesn’t explain how the duty of civility is supposed to encourage inauthenticity, but I imagine that he is probably thinking along the following lines. The duty of civility will encourage religious citizens to hide, rather than ignore, their religious reasons for supporting certain public policies. The result is that sincere political debate will turn into a battle of hidden agendas.

But I really don’t think that exclusivists have anything to fear on this score either. For, again, there is nothing to prevent the religious citizen from telling others “where she is coming from,” as long as she doesn’t use these religious reasons in the attempt to persuade her fellow citizens. So there is no reason for her to disguise; rather, there is reason for her to find additional secular arguments that others might reasonably be expected to endorse.

Solum’s fourth and final worry is that the exclusivist duty of civility may conflict with the need to prevent great evil. To support this worry, Solum cites the two historical cases we’ve already encountered: abolitionism and the civil rights movement. Solum (1994, p. 228–9) claims that the public use of religious arguments by abolitionists was “an essential precondition for the events that led to the freeing of the slaves,” and consequently that many of us “share the intuitive sense that the use of religious argument by the abolitionists was not an offense against political morality.” Similarly, Solum says, “the contemporary civil rights movement also uses religious appeals, as powerfully illustrated by the speeches of Dr. Martin Luther King, Jr.” And, though Solum doesn’t say so explicitly, he would surely add that we do not take King’s public use of religious argument to have been uncivil or offensive.

I do not believe exclusivists should be swayed by Solum’s argument. To see why, let’s start with abolitionism. Solum argues that the abolitionists were morally permitted to use public religious arguments because these arguments were necessary to achieve the end of slavery. Now, first, it is not clear that religious arguments were needed to end slavery. But since this is a complex historical question, I will concede the point for the sake of argument. Second, it is not at all obvious that the arguments employed by abolitionists were intended to serve a persuasive function. Rather, abolitionists were busy pointing out that the religious premises accepted by the vast majority of their fellow citizens entailed that the
institution of slavery was wrong in itself. They did not go around saying: “These are the religious premises you all should accept. And since the wrongness of slavery follows from those premises, you should not hold slaves.” Rather, they argued as follows: “These are the religious premises you all already do accept. And since the wrongness of slavery follows from those premises, you should not hold slaves.” The important point here is that proving that your fellow citizens’ premises commit them to certain conclusions is not a form of persuasive argumentation. Whereas the latter sort of argument requires the assertion of certain premises, the former does not. The upshot is that abolitionists need not be viewed as having been uncivil, for they were not in the business of persuasion.

Now it might be objected that at least some abolitionists were trying to persuade their fellows. After all, they themselves accepted the religious premises at issue, and would have felt perfectly comfortable asserting them. But, even if this objection is on the mark, it still doesn’t follow that the abolitionists were uncivil (in the exclusivist sense). The reason is that, during the first half of the nineteenth century, there was far more homogeneity in matters of religion than there is now. In fact, it would have been difficult to find a non-Christian voter at the time. But, as I emphasized earlier, the exclusivist proposal being considered is not that the citizens of any liberal democracy are bound by the duty of civility; it is that this duty binds the citizens of a liberal democracy that is characterized by the fact of reasonable religious pluralism. Thus, even supposing that the abolitionists used persuasive religious arguments in the public square and that their arguments were needed to effect the eventual abolition of slavery, the exclusivism I have been defending does not entail that they should not have used the arguments that they did.

Now much as this latter reply works against the abolitionism counterexample, it cannot be applied to the case of the civil rights movement, for this movement occurred at a time when religious pluralism was a fact of social life. Nevertheless, I find the civil rights counterexample equally unconvincing, and here’s why. One of the more interesting and overlooked facts about the civil rights movement is that its leaders spoke with two voices. Let me illustrate this fact by referring to the writings and speeches of Martin Luther King, Jr. (since Solum and Rawls both mention them explicitly).

When King addressed those who shared his faith (or at least those who shared his belief in God), he often appealed to religious premises as support for his political conclusions. Perhaps the most oft-cited example of this occurs in the famous “Letter from Birmingham Jail,” composed from jail in the margins of a newspaper in which eight fellow clergymen had published a statement critical of the Birmingham demonstrations against segregation in which King had played a prominent role. In that letter, King (1963, p. 85) writes:

How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God.

On the basis of this religious answer to a moral question, King argues that legalized segregation is unjust. For he assumes, based on his understanding of the Bible, that segregation does not square with God’s law. This, then, is a religious argument, and might even be considered a persuasive religious argument as well. But King’s letter was addressed to “My Dear Fellow Clergymen” (p. 77). So, even though King made his letter public, he did not use it to persuade his nonreligious or non-Christian fellows, and consequently did not fail to abide by the exclusivist duty of civility.

Whereas King spoke in a religious voice to his coreligionists, he eschewed all except metaphorical religious language when addressing political bodies or the citizenry as a whole. In vain will one look for persuasive religious arguments in those of his books and speeches that were meant for the widest possible audience. Rather than appealing to religious values in these fora, King based his conclusions on the moral and political ideals of justice, equality, and democracy. Here is a typical example, extracted from King’s testimony to the Democratic National Convention’s Committee on Platform and Resolutions in August 1956 (see Carson 1997, pp. 337–8):

We must make it clear that we stand firmly against any form of segregation. Segregation is evil. Segregation is not only rationally inexplicable, but morally scandalous. The underlying philosophy of segregation is diametrically opposed to the underlying philosophy of democracy and all the dialectics of the logicians cannot make them lie down together. If democracy is to live segregation must die.

The point here is that King was acutely aware of the difference between a sermon (or a letter addressed to “fellow clergymen”) and a speech or book designed for public consumption. He recognized, at some level, that it would be appropriate to include religious arguments in the former, but that it would not be appropriate to include such arguments in the latter. In other words, contrary to what Solum would have us believe, Martin Luther King, Jr. was a model exclusivist.

VI. Conclusion

Let me now summarize the main points of this paper. I began with the question whether, given the fact of reasonable religious pluralism, citizens of a liberal democracy have a moral duty not to use religious arguments in public attempts to persuade their fellows to support coercive public policies. I then divided the possible answers to these questions
into three groups: exclusivism, which judges the public use of religious arguments to be morally impermissible in all relevant circumstances; total inclusivism, which judges the use of these arguments to be morally permissible in all relevant circumstances; and moderate inclusivism, which judges the use of these arguments to be morally permissible in some relevant circumstances, but not in others. I considered various ways of defending these three positions, and found them wanting. I then presented an argument for exclusivism grounded in Rawls’s liberal principle of legitimacy, itself grounded not in the hypothetical choice of parties placed behind a veil of ignorance, but in the fundamental liberal (and eminently Rawlsian) idea of society as a fair system of cooperation. Finally, I considered various objections to exclusivism, and found them all unpersuasive. My conclusion, then, is simple: if you think of yourself as cooperating with your fellow citizens for the good of all, then, even if you are deeply religious, you are nevertheless morally obligated to avoid the use of persuasive religious arguments in the public square.15

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NOTES

1. Here, and in what follows, I adapt terminology used by John Rawls 1993, I.2.2 and I.6.2.


5. Audi does not explain how religious arguments, considered in general, might be thought to threaten democracy; so I’m going to ignore Audi’s appeal to the ideal of democracy in what follows.

6. Note that Rawls’s two moderate inclusivist proposals differ from Audi’s. Whereas Rawls’s first proposal would permit the public use of religious arguments that strengthen the ideal of public reason even when those who present them were not prepared to offer secular reasons for the same conclusion, Audi’s would not. And whereas Rawls’s second proposal would permit the public use of religious arguments as long as those who present them were prepared to present “proper political reasons” for the same conclusion in due course, Audi’s principle of secular motivation requires that those who present religious arguments in the public square should be prepared to present nonsecular reasons for the same conclusion at the same time the arguments are presented.

7. See Rawls (1971, p. 6): “The scheme of social cooperation must be stable: it must be more or less regularly complied with and its basic rules willingly acted upon; and when infractions occur, stabilizing forces should exist that prevent further violations and tend to restore the arrangement.”

8. It must be admitted that Rawls’s 1993 account of the circumstances and interests of the parties in the Original Position entails that they are able to offer more than “maximin” reasoning in defense of their proposals (see p. 299 ff.). But it is unclear that, or how, any putative normmaxim reasoning for the principle of legitimacy offered by a party in the now-enriched Original Position would overcome the above-raised maximin reasons against the principle.

9. Note that this argument for the duty of civility, resting as it does on Rawls’s conception of society as a scheme of social cooperation for mutual advantage, does not entail that the citizens of a religiously uniform society are morally required to refrain from publicly using religious arguments to persuade their fellows. For in a society all of whose members share the same religious outlook, it is reasonable to believe that one’s fellow citizens might accept the religious arguments one is thinking of publicly offering them. Hence, adherence to the duty of civility in a religiously uniform society is not incompatible with the public use of religious arguments.

10. As Rawls points out (1993, p. 16), “cooperation is guided by publicly recognized rules and procedures that those cooperating accept and regard as properly regulating their conduct” and “involves the idea of fair terms of cooperation, . . . terms that each participant may reasonably accept, provided that everyone else likewise accepts them.”

11. Some inclusivists might worry on grounds of fairness that the liberal principle of legitimacy is tailor-made to exclude the public employment of religious arguments as such. But the Bob and Carol example shows that this is not so. The case for the liberal principle of legitimacy also entails that it is morally impermissible for a liberal citizen to use certain sorts of nonreligious arguments in the attempt to persuade her fellows to adopt coercive public policies. The excluded arguments are based on premises that others could not reasonably be expected to endorse.

12. If the defining feature of liberalism is that it conceives of society as a fair system of social cooperation, then how should we think of the definition of liberalism given above (134)? The answer is that, as Rawls 1971 and 1993 argues, the latter definition follows from the former. That is, it follows from a society’s being a fair system of social cooperation that it protects and gives priority to basic rights, while ensuring that citizens have sufficient material means to make effective use of these rights. For more on communitarianism and libertarianism, see Sandel 1982 and Nozick 1974 respectively.

13. Some would argue that their religious doctrines can be justified (whether deductively or inductively) on grounds that all citizens might be expected to endorse. It follows from the exclusivism I advocate that these believers are not precluded from advancing persuasive religious arguments in public, as long as they indicate how their religious premises are grounded in publicly sharable propositions. Still, it should be noted that this is something that few believers (other than theologians and philosophers) are prepared to do. The vast majority of believers, content as they are to rest their acceptance of religious doctrines on faith or tradition, are (on my view) precluded from using persuasive religious arguments in the public square.

14. This argument of Solum’s may have led Rawls to adopt moderate inclusivism in Political Liberalism. For Rawls’s abandonmen of exclusivism is clearly
motivated by the desire to accommodate these two cases. See Rawls 1993, p. 247, n. 36, and pp. 249–51.

15. I presented a shorter version of this paper at a Florida State University School of Law faculty seminar in March 2000. Many thanks to the seminar participants for their constructive comments and stimulating conversation. I would also like to thank Jon Mandle, Pat Matthews, Maria Morales, and Dana Nelkin, all of whom provided welcome feedback on previous versions of the paper.

REFERENCES


ABSTRACT: By appealing to a Rawlsian perspective, Susan Moller Okin argues forcefully for justice within the family, yet her argument illuminates deep tensions within liberalism itself. Okin’s argument either conflicts with a commitment to liberal neutrality among reasonable conceptions of the good, or it violates the liberal tenets of self-ownership and the ability to contract for whatever services one can voluntarily acquire. I conclude that Okin’s argument implies that liberalism must become less liberal.

What marriage may be in the case of two persons ... between which there exists that best kind of equality, similarity of powers and capacities with reciprocal superiority in them — so each can enjoy the luxury of looking up to the other, and can have alternatively the pleasure of leading and being led in the path of development — I will not attempt to describe.

—John Stuart Mill, The Subjection of Women

I. INTRODUCTION AND OVERVIEW

A recent report published in Working Woman magazine reveals that the wage gap between men and women narrowed in 1999 and that women’s salaries equal and even surpass men’s salaries in certain fields. While these trends are encouraging, such studies overlook the most important ways in which gender affects salaries and power relations between the sexes. While women in some fields are fortunate enough to earn more than their male counterparts, how many women are prevented from entering these fields, or other high-paying occupations, because of gender? Some consider such studies to be misleading since men often put in more hours at the office than women. Yet, do gendered inequalities themselves lead women to de-emphasize their career and put