

PERMISSION TO SPEAK: RELIGIOUS ARGUMENTS IN PUBLIC REASON

PATRICK RIORDAN, SJ
Heythrop College

In an important late essay John Rawls acknowledges the development in the Catholic Church's attitude to politics.¹ He recognizes elements of the Catholic intellectual heritage and the contribution which it might make to political discourse, relying on the notions of natural law, common good and solidarity, as presented by authors drawing on that tradition. While acknowledging the development that has taken place, Rawls also reminds the reader of the problems that form the background to the emergence of political liberalism.

A persecuting zeal has been the great curse of the Christian religion. It was shared by Luther and Calvin and the Protestant Reformers, and it was not radically changed in the Catholic Church until Vatican II. In the Council's Declaration on Religious Freedom – *Dignitatis Humanae* – the Catholic Church committed itself to the principle of religious freedom as found in a constitutional democratic regime. It declared the ethical doctrine of religious freedom resting on the dignity of the human person; a political doctrine with respect to the limits of government in religious matters; and a theological doctrine of the freedom of the Church in its relations to the political and social world. All persons, whatever their faith, have the right of religious liberty on the same terms. ... As John Courtney Murray, S.J., said: 'A longstanding ambiguity had finally been cleared up. The Church does not deal with the secular order in terms of a double standard – freedom for the church when Catholics are in the minority, privilege for the Church and intolerance for others when Catholics are a majority.'²

The background to this acknowledgement has been an ongoing conversation, conducted mostly in the United States of America, about the role of religion in public life. In the literature of this conversation, religious thinkers recognize that philosophical liberalism as it is found in the American polity is hospitable to religion in public life, at least to the extent of being tolerant.³ Finding themselves at home in the public space, these thinkers investigate the appropriate role of religious language and what religion has to contribute. Of course there is an acceptance of some separation and some difference, so that the rules of participation in the two spheres of religion and politics are different. Out of this literature has

emerged a mutual recognition and appreciation between significant thinkers in politics and religion. This literature is to be contrasted with the theological discussions devoted to the critique of liberalism and especially to the analysis of the deficiencies of liberalism as the culture of a political system.⁴

The positive attitude expressed in Rawls' essay on public reason towards reasonable religious comprehensive doctrines in general and towards Catholicism in particular is in marked contrast to a long tradition of suspicion and exclusion. This tradition goes back to Hobbes who devoted two of the four sections of *Leviathan* to the discussion of the kind of religion which could be tolerated within the commonwealth, and the kind of religion which would have to be censured. Hobbes was particularly concerned to exclude the Catholic Church from those who might be licensed by the sovereign. It posed a special threat to the security and stability of the commonwealth, because it claimed for itself an authority superior to that of the sovereign.⁵ Such a claim to a superior authority was incompatible with Hobbes' understanding of the role of the sovereign, who guaranteed peace and security in the state precisely because it held a monopoly of all authoritative power.

Although he provided a very different account of the nature and limits of political power, John Locke also expressed concerns about the dangers of unrestricted religious expression.⁶ For instance, among the categories of people who could not be tolerated as citizens of the political communities in which rights would be secured by limited government he included Catholics and Muslims. Catholics ought not to be tolerated, Locke thought, because in a position of power, perhaps being a majority in a democracy, they themselves would not be tolerant of the religious views of others. Their performance in history as well as their espoused doctrine confirmed this expectation. Muslims, on the other hand, believed by Locke to owe allegiance to a foreign prince, the Mufti of Istanbul, could not be tolerated as fellow citizens engaged in rule of the polity on a basis of equality. The same argument was also used against Catholicism, which was accused of owing allegiance to the Pope, a foreign prince.

The suspicion of religion in liberal political thought is linked also to the Enlightenment expectation that the liberation of reason from the shackles of myth, superstition and authority would lead to human progress in all areas, including political existence. The belief that reason is the key to eliminating ignorance, error, oppression, injustice, poverty, and the myriad other evils which plague human existence survives in various forms. Continued reliance by religious believers on authority, whether the authority of the sacred text (Bible, Koran), of religious leaders and ordained ministers, or the authority of personal faith experience, is seen to frustrate this hope.

Liberal fears of religion have been reawakened by recent developments. The religious origins of various types of terrorism, the emergence

of fundamentalism with its political ambitions, the role of Islam in international affairs and the political significance of the New Right in America have drawn attention to the relationship between religion and politics and the possible dangers associated with religious involvement in public discourse.

The liberal maintains that the governing of human societies must be with the consent of the governed. For the liberal, theocracy must always be suspect, because of the fear that the will of God (as interpreted by the powers that be) will be imposed on those who do not share the faith of the powers. This fear is warranted historically, and John Rawls, for instance, makes a great deal of the history of religious persecution, and the turmoil caused by the wars of religion in Europe as the background to his political liberalism.⁷ Robert Audi, in his listing of aspects of religious (as distinct from secular) reasons in politics includes the following features: 'infallible supreme authority', 'condemnatory tendencies', 'threat of religious domination', 'cults and the spectre of fanaticism', 'dangers of an inflated sense of self-importance', and 'a passionate concern with outsiders'.⁸ This listing speaks for itself in indicating the liberal's grounds for anxiety.

I. JOHN RAWLS ON PUBLIC REASON

John Rawls dealt with the question of religion and politics in *Political Liberalism*, and he revisited the topic in 1997 in the significant article, 'The Idea of Public Reason Revisited'. Rawls developed his ideas of Political Liberalism because of his discovery that his notion of Justice as Fairness, as articulated in *A Theory of Justice*, effectively advocated what he came to call a comprehensive moral doctrine. But his basic concern had been to find a way in which people could agree to regulate their common life despite their radical disagreements about what they would like to achieve in their lives. He imagined several reasonable comprehensive doctrines coexisting in a liberal, pluralist polity, each with its view of the good life and its notions of justice and truth. The polity is only possible, however, because each of the adherents of a comprehensive doctrine exercises restraint, not insisting on her view of the true and the good, but willing to accept the content of the overlapping consensus between the reasonable doctrines as a basis for regulating the common life. Each one will have her own reasons for seeing this content as true and good, based on her comprehensive doctrine. But the grounds for arguing in favour of this content with representatives of other reasonable comprehensive doctrines will not appeal to these reasons, but only to public reason.

'I propose that in public reason comprehensive doctrines of truth or right be replaced by an idea of the politically reasonable addressed to citizens as citizens'⁹. This proposal relies on a two-tiered model. There are

several reasonable comprehensive doctrines, some of them religious, but in the liberal polity there is one overlapping consensus which relies on notions of the politically reasonable rather than on notions of truth. This two-tiered model seemed to require considerable restraint on the part of the religiously committed citizen. Only what could belong in the overlapping consensus might be part of the public discourse between a representative of a Christian world-view and, for instance, a defender of secular liberal individualism.¹⁰

Rawls called his 1997 essay his ‘most detailed account of why the constraints of public reason, as manifested in a modern constitutional democracy based on a liberal political conception ... are ones that holders of both religious and nonreligious comprehensive views can reasonably endorse’.¹¹ In this essay he presents a structure which is more complex than the two-tiered model. His driving question in the later discussion is of interest to us:

Is it possible for citizens of faith to be wholehearted members of a democratic society who endorse society’s intrinsic political ideals and values and do not simply acquiesce in the balance of political and social forces?... How is it possible – or is it – for those of faith, as well as the nonreligious (secular), to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline?¹²

Note that he conjoins both secular, i.e., non-religious, reasonable comprehensive doctrines with religious ones in their relation to the constitutional regime. That is, he does not consider the constitutional regime as automatically favouring a secular worldview over against a religious worldview.

This later model is more complex. It comprises three different layers.¹³

- 1) The background culture of civil society.
- 2) The public, political culture, viewed widely.
- 3) Public reason: public political culture, viewed narrowly.

The background culture is said to be the culture of civil society. This has available to it many forms of conversation and argument and various media through which communication and information-flow take place. Rawls endorses the need for as open and free a communication as possible in this background culture, and he quotes David Hollenbach approvingly to this effect:

Conversation and argument about the common good will not occur initially in the legislature or in the political sphere (narrowly conceived as the domain in which interests and power are adjudicated). Rather it will develop freely in those components of civil society that are the primary bearers of cultural meaning and value – universities, religious communities, the world of arts, and serious journalism. It can occur wherever thoughtful men and women bring their beliefs on the meaning of the good life into intelligent and critical encounter with understandings of this good held by other peoples with other

traditions. In short, it occurs wherever education about and serious inquiry into the meaning of the good life takes place.¹⁴

The idea of public reason applies in the public political forum. Rawls restricts the idea in terms of context, content and persons.¹⁵ The context of public reason is the discussion of the law which is to be enacted and applied for a democratic people with the coercive backing of the state. The content of public reason is provided by the family of reasonable political conceptions of justice upon which people draw in making their proposals and criticisms in the discussions about coercive law. The people involved are judges, public officials, and candidates for public office in their public capacities.¹⁶ Citizens also are included in the requirements of public reason insofar as they subject their own proposals to the criterion of reciprocity. This criterion requires of them to make only proposals that they can expect would be found reasonable by their fellow citizens, considered as free and equal.¹⁷ Compliance with this criterion is part fulfilment of the duty of civility.

Political liberalism requires there to be comprehensive doctrines which ground for their own adherents the validity of the elements on which consensus can be attained, even though the reasons for assenting to the consensus will be different for the various doctrines. Judgments grounded in a comprehensive doctrine may be true or false; judgments which are part of the overlapping consensus are said to be reasonable. Citizens who endorse a reasonable judgment in the overlapping consensus will hold it to be true or right on the basis of their comprehensive doctrine. 'It is central to political liberalism that free and equal citizens affirm both a comprehensive doctrine and a political conception'.¹⁸

While Rawls considers some religious comprehensive doctrines to be unreasonable, his mature position includes religious comprehensive doctrines with their appropriate languages as among the reasonable doctrines which uphold and sustain the overlapping consensus. At the same time, the content of public reason is not secular; on the contrary, secular in the sense of deliberately non-religious doctrines are among the comprehensive doctrines supporting the political conception. It is neither religious nor secular, but a political conception capable of being accepted by proponents of both religious and secular comprehensive doctrines.¹⁹

In describing the content of public reason Rawls calls it a framework, and maintains that it contains many possible forms. So there is no single 'public reason' but several varieties. Rawls insists that there are many possible political conceptions of justice and so many forms of public reason. 'There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one'.²⁰ Rawls now includes within the family of possible political conceptions 'Catholic views of the common good and solidarity when they are

expressed in terms of political values'.²¹ He also includes Habermas' discourse conception of legitimacy. Important in this quoted passage is the qualification about expression in terms of political values. Rawls refers to John Finnis and Jacques Maritain in a footnote, which seems to suggest that their works achieve such expression. It suggests that the type of argument in terms of natural law which builds its understanding of social and legal order on the basis of the dignity of the human person could offer a candidate for a political conception of justice. This possible political conception might offer an alternative to Rawls' own proposed justice as fairness. Acceptable political conceptions of justice propose principles which apply to the basic structure of society, which can be presented independent of any comprehensive doctrine, and which are grounded in such fundamental ideas as the freedom and equality of citizens and the idea of society as a fair system of cooperation.

Thus, the content of public reason is given by the principles and values of the family of liberal political conceptions of justice meeting these conditions. To engage in public reason is to appeal to one of these political conceptions – to their ideals and principles, standards and values – when debating fundamental political questions. This requirement still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.²²

Far from excluding religious considerations, Rawls here seems to allow for religious considerations to be part of political debate, with the proviso that if any policy or legal measure is being advocated the appropriate public reasons be provided at some later date. Religious reasons are not being excluded; but only those religious reasons may be advanced in support of political proposals which are capable of being translated into public reasons in the strict sense. The reference to the perspective of the common good suggests that this language is capable of such translation, even if it is associated with a particular religious comprehensive doctrine.

This tolerance for religious and secular reasons in public discourse characterizes what Rawls terms the wide view of public political culture. The *proviso*, the injunction to present proper political reasons in due course, protects public reason, and marks off public political culture from the background culture of civil society.²³ But Rawls also emphasizes that there are positive reasons for introducing comprehensive doctrines into public political discussion. That citizens would have knowledge and understanding of each other's comprehensive doctrines strengthens the viability of an overlapping consensus, since proposals made in public reason for legislative measures will respect the reasons that others will have for supporting or rejecting the proposals. Once again Rawls cites with agreement David Hollenbach in advocating the desirability of

conversation and argument about visions of the good life espoused by different religious groups.²⁴

It might be thought an exaggeration to see the narrow and the wide views of public political culture as two tiers of a three-tiered structure. But the following considerations support the proposal. Public political culture in the narrow sense is confined to the use of argument by a limited number of people acting in official capacities within rather narrowly defined roles. Public reason, as Rawls has introduced it, is restricted in this double sense. But at the same time, civil society embraces many areas of engagement in which people associate only or at least primarily with those who share their religion, their values, their convictions or their interests. The background culture as Rawls has characterized it can be very tolerant, in allowing diverse groups to coexist, but such groups do not necessarily interact. The interaction which takes place in public reason can only lead to the formation of overlapping consensus if there is some other arena in which citizens and groups can interact in a process of dialogue and deliberation. Rawls' idea of the wide view of public political culture seems to be an acknowledgement of the need for a bridge between public reason in the narrow sense, and the range of comprehensive doctrines in the background culture. The need is for a forum of some kind which mediates between, and overlaps, both the private domains of civil society and the arena of public reason. In practice, in our experience in pluralist societies with liberal polities, this forum is provided in a fluid way by the media, educational institutions, and cultural and religious groups including churches, which contribute to fostering the relevant encounter. The development from the two-tiered model is perhaps a case of Rawls adjusting his theory to take account of political practice.

Rawls' discussion of public reasons suggests that religious arguments do not have to remain confined to the non-public realms of civil society. Believers, speaking from their faith convictions, do not have to be on the defensive within liberal political communities. His acknowledgement of the richness of their intellectual heritage, for instance, is an invitation to Catholics to make a more vocal contribution to public life. However, the condition under which such contribution is welcome is that citizens of faith continue to abide by reasonable norms of argument and reasonable standards of participation in public discourse. Rawls has a specific meaning for the term 'reasonable' in this context:

Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept

them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position.²⁵

Is this a satisfactory solution? For instance, can a Catholic citizen who wishes to contribute to a just social, economic and political order be content with this permission to speak, under the proviso of conforming to requirements of public reason? It is a conditional and therefore limited permission. But is it enough?

David Hollenbach, who is quoted with approval by John Rawls, seems to think that it provides for all that a Catholic would wish to contribute to public discourse. Michael J. Perry echoes this approval.²⁶ After all, even the searching questions which have been addressed to liberalism by its critics, some of them coming from faith-based communitarian positions, have not sought to endorse coercive law in the narrow ambit of public reason. They have instead called into question some of the foundational premises of liberal theory, especially the conception of the unencumbered individual, the narrow understanding of rationality, and the perhaps unintended endorsement of a particular vision of the good life. All of these discussions could be conducted either in the background culture or in the wide public political culture.

Similarly, questions about the realist foundations of our social order, the ultimate possibility of justice beyond our flawed human attempts, the dialectic between failure and redemption in our difficult social and political histories, whether our common good is merely constructed and invented, or whether it can be discovered to be rooted in our ultimate common good who is God, these questions can be asked and pursued rigorously in our wide public political culture, without thereby intending to impose answers, or more specifically, constitutional arrangements and coercive laws derived exclusively from those answers on fellow citizens.²⁷ Accordingly, this position developed and articulated by Rawls in his late work might be satisfactory.

II. CHRISTOPHER EBERLE AND THE THEIST'S DOUBT

Christopher J. Eberle does not think so. His book, *Religious Conviction in Liberal Politics*, does not focus exclusively on Rawls, but on what he calls 'justificatory liberalism'.²⁸ What distinguishes justificatory liberalism from other forms of liberalism, according to Eberle, is 'commitment to the following claim: because each citizen ought to *respect* her compatriots, each citizen ought to pursue *public justification* for her favored coercive laws'.²⁹ The requirement of public justification is derived from the duty of respect owed to fellow citizens. Eberle concedes that this is an umbrella category which covers a variety of positions, each with its own account of respect and of justification. But the positions all agree on

one thing: 'justificatory liberals *unanimously* agree that a responsible citizen in a liberal democracy ought not support (or reject) a coercive law on the basis of religious convictions alone'.³⁰

Eberle explains that there are two requirements expressed in this common position of justificatory liberalism. The first is the requirement that those wishing to support or reject a coercive law, very definitely within the realm of public reason as Rawls presented it, should pursue public justification for their favoured position. This is the requirement of pursuit. The second requirement is restraint. That a citizen should restrain herself from supporting a coercive law for which no public justification is available, or that a citizen should not rely exclusively on religious grounds for supporting or rejecting a coercive law. An example of this from another justificatory liberal is Robert Audi's proposed two principles 'the Principle of Secular Rationale', and 'the Principle of Secular Motivation'. The first principle 'posits a prima facie obligation not to advocate or support any law or public policy that restricts human conduct unless one has, and is willing to offer, adequate secular reason for this', and the second principle imposes an 'obligation to abstain... unless one is sufficiently motivated by normatively adequate secular reason'.³¹ Audi calls the first a minimal justification principle while the latter is a virtue principle.³² In Eberle's terms they both underline the requirement of restraint, so that no one would rely only on a religious reason in supporting a coercive law. They imply the requirement of pursuit.

Eberle argues that the systems of justification developed by justificatory liberals are successful in grounding the obligation of pursuit in the duty of respect. However, he maintains that their efforts at grounding the obligation of restraint are less successful. The main focus of his work is to challenge the consensus of justificatory liberals that the requirement of restraint is justified. His thesis is:

*a citizen has an obligation sincerely and conscientiously to pursue a widely convincing secular rationale for her favored coercive laws, but she doesn't have an obligation to withhold support from a coercive law for which she lacks a widely convincing secular rationale.*³³

In other words, against the liberal consensus he argues that there are circumstances in which a citizen is morally permitted to endorse a coercive law even if she only has religious grounds for doing so.

He discusses several liberal positions, but it is his treatment of Rawls which is particularly useful here. Rawls relies on the device of the original position, even in his late work. The device remains powerful, even if Rawls has revised considerably the theory of justice as fairness in which the construct of the original position first played a central role. The original position is a hypothetical choice situation, in which choosers are imagined to choose principles to regulate society's main institutions so that a just society would be achieved. To ensure that no one will be

unfairly advantaged or disadvantaged the choosers are described as choosing behind a veil of ignorance. They are assumed to be without all that particular information about themselves which might influence them to choose in their own favour. They do not know what family or social class they belong to, for instance. They do not know what their ideal of the good life is, what their guiding values are, or what profession they exercise. At the same time they are assumed to have sufficient general information about psychology and society, economics and politics, to be able to choose principles for a society. So they are aware of the typical range of visions of the good life and plans of life in a society, as well as of the typical socio-economic spread in a population.

Their ignorance of their own particular social position means that the choosers in the original position will have to calculate on the possibility that they themselves would end up in the least desirable position in society. Ascribing to them a very cautious attitude and reluctance to take risks, Rawls maintained that the choosers would avoid all principles of a utilitarian nature which would tolerate the pursuit of a greater overall good for society, and even a greater average utility, that could only be achieved at the expense of some minority. Any conceivable disadvantages might turn out to be borne by the choosers, and so they would be very careful about choosing any principles which would tolerate any unequal distribution of burdens.

In the early versions of his theory of justice, Rawls used this construct to generate his two principles of justice. The first of these two principles specified as large a set of basic liberties for each one as was compatible with the same liberties for everyone else, and the second allowed for some inequality in society, but only on the double condition that the inequalities functioned so as to make the worst-off in society better off than they would otherwise be, and that the advantaged positions were open to all under conditions of equal opportunity. The two principles, Rawls argued, would be chosen by rational choosers behind a veil of ignorance in the original position, and for this reason would be justified as the principles of justice.

The theory was much more complex and nuanced than this brief summary. It also involved the further steps of the elaboration of a constitution for the state, the design of legislation, and the guidance of adjudication, consistent with the two principles. The basic justification of the principles, as what would be chosen in the original position, was corroborated by two further forms of justification, namely, first, reflective equilibrium of the two principles with established moral judgments, and second, success in founding a society which revealed itself as just and sustainable.

In later writings Rawls continued to rely on the idea of justice as fairness and on the construct of the original position and the two principles of justice. However, he presented justice as fairness as a

political conception of justice which might be part of the overlapping consensus between reasonable comprehensive doctrines in a constitutional liberal polity. Some of the reasonable comprehensive doctrines would be religious world-views, and Rawls expected that their adherents could subscribe to the political conception of justice in the overlapping consensus, including the requirement of restraint in relation to public reason.

Eberle revisits the argument about the original position to challenge Rawls' assumption that the requirement of restraint is justified. He asks if it would be acceptable to the choosers in the original position. Retracing the steps of Rawls' argument he proceeds as follows. Behind their veil of ignorance, the choosers in the original position do not know if they are theists or not. But from their general knowledge, they know what theists are, and what they believe. They know, for instance, that theists consider that their obligation to obey the will of God overrides all their other possible obligations. Accordingly, they know that if they were to choose the principle of restraint in the original position, and then subsequently discover their religious commitment as theists, they would not be able to sustain the undertaking given in the original position. This is the 'strains of commitment' argument which Rawls relies on in his discussion of the principle of average utility.³⁴

The question is, given that the parties in the original position might turn out to be theists, and given that they might take themselves to have an overriding and totalizing obligation to obey God, can they commit themselves in good faith to the liberal principle of legitimacy?³⁵

For present purposes we can accept Eberle's account of Rawls' principle of legitimacy as entailing the duty of civility which in turn entails the duty of restraint; and we can also allow his account of how Rawls proposed his position on this point as subject to the same conditions of justification as the two principles of justice.³⁶ Eberle's conclusion is that the choosers could not commit themselves under these conditions, since they are aware of the strains their commitment might place them under. The unlikelihood of commitment to Rawls' principle is increased if there is available to them a satisfactory alternative for realizing the duty of civility. Eberle suggests there is such an alternative, which he presents as 'the ideal of conscientious engagement'.

The ideal of conscientious engagement is formulated in a set of six constraints which can guide a citizen in the exercise of her duty of respect for her fellow citizens.

- (1) She will pursue a high degree of rational justification for the claim that a favoured coercive policy is morally appropriate.
- (2) She will withhold support from a given coercive policy if she can't acquire a sufficiently high degree of rational justification for the claims that that policy is morally appropriate.

- (3) She will attempt to communicate to her compatriots her reasons for coercing them.
- (4) She will pursue public justification for her favoured coercive policies.
- (5) She will listen to her compatriots' evaluation of her reasons for her favoured coercive policies with the intention of learning from them about the moral (im)propriety of those policies.
- (6) She will not support any policy on the basis of a rationale that denies the dignity of her compatriots.³⁷

Eberle acknowledges that he is working with two concepts of justification. The public justification mentioned in (4) is different from the rational justification of (2), and the difference becomes evident in those cases in which the favoured coercive policies achieve no public justification. He discusses the difference between the two notions of justification, and draws attention to the danger of assuming that the provision of public justification is a test of rationality. Two factors contribute to rational justification: the manner in which a belief is formed, and the evidential set available to the person holding the belief. The manner of belief formation, to be rational, includes a number of dispositions such as: the willingness to form a belief on the basis of the best available evidence, to seek out relevant evidence, to subject the belief to criticism, and to change the belief if the evidence requires that. The evidential set is that assortment of beliefs and experiences which a citizen assumes to be true while subjecting the controverted belief to assessment.³⁸ That a belief is rationally justified for a citizen does not imply that the arguments adduced in support of the belief are sound. 'Soundness has to do with the objective adequacy of an argument for a given conclusion; rationality has to do with whether some argument *appears* to be sound given a citizen's evidential set and given that she has gone about evaluating that argument in the appropriate manner'.³⁹ Public justification is achieved when a citizen is able to present arguments for her belief which each one of her compatriots can, or actually does, find compelling. Needless to say, and Eberle admits it, this is a very demanding requirement.⁴⁰

The core of Eberle's criticism of Rawls is a powerful and telling argument. It exploits a strength of Rawls' powerful device of the original position and uses it to endorse the requirement of pursuit while at the same time to show that the requirement of restraint does not enjoy the same foundations in the duty of respect.

So are we brought to the position that the citizen of a liberal democratic polity is not bound to restrain herself from reliance on exclusively religious reasons when deliberating about coercive law? Must we agree with Eberle that the religiously committed citizen, once she has conformed to the constraints of conscientious engagement, but has failed to discover public justification for the favoured coercive measure and has

not been convinced by counter arguments from fellow citizens, is then warranted in supporting the proposed measure on religious grounds?

Is Eberle correct in the description of the theist, and specifically in the description of the Catholic theist? Is this what Catholics hold about politics and involvement in public discourse? The contrast with Hollenbach seems to suggest that it is not a correct description.

III. CATHOLICS: THEISTS AND/OR LIBERALS?

Eberle's description of the theist merits closer analysis. First of all, he stresses that the theist resists the liberal's attempt to transform religious commitment into privatized preference or lifestyle choice. Theists typically will resist 'dividing their lives into a private realm governed by a set of overriding obligations to God and a public realm in which they accord their divinely imposed obligations some lesser weight'.⁴¹ On the contrary, and second, theists will regard their obligations to obey God as overriding and totalizing. Martin Luther King is quoted from the context of the opposition to racial segregation:

You have a dual citizenry. You live both in time and eternity. Your highest loyalty is to God, and not to the mores or the folkways, the state or the nation, or any man-made institution. If any earthly institution or custom conflicts with God's will, it is your Christian duty to oppose it. You must never allow the transitory, evanescent demands of man-made institutions to take precedence over the eternal demands of the mighty God.⁴²

Critical also for the strains of compliance argument is the fact that the theist sees her obedience to God as essential for her leading a meaningful life, and therefore for her moral identity. Obedience to God is taken to embrace areas of social and political existence as well as what may be considered private. This is why in the original position the principle of restraint derived from the duty of respect would be known to be particularly burdensome to theists.

Eberle wants to insist that this is not just a feature of some extreme sects, but is a common feature of theism. In his words,

the claim that a theist has an overriding and totalizing obligation to obey God is hardly the personal property of 'certain fundamentalist sects': it is an ecumenical claim, endorsed by theologically liberal Catholics, Orthodox Jews, politically liberal evangelicals, Eastern Orthodox Christians, and adherents to almost any other theistic perspective.

He concedes that there may be disagreements about the content, the sources and the language of the obligation, but 'one thing they are *unlikely* to disagree about is the overridingness of their obligation to obey God'.⁴³

Eberle's argument relies on the view that the theist recognizes an overriding and totalizing obligation to obey God. This premise in the argument is only relevant to the conclusion, however, if it is also assumed, first, that God may command something which would require of the believer that fellow citizens be coerced so that God's will may be done, and second, that there are instances in which no public justification would be available for that which God commands. Both of these assumptions seem contrary to Catholic sensibilities, so we should query Eberle's inclusion of Catholics in his category of theists so understood.

The traditional Catholic reliance on natural law reveals the expectation of the coherence of the moral with the metaphysical. Natural law is understood as God's law in the human itself. As created, human nature has an exigency and a teleology, and these reveal God's will for his creature, as imprinted in what he has made. God's will for his creature, as revealed through scriptures and Church teaching, cannot be inconsistent with God's will for his creature, as revealed through the creature's created nature. At the same time, for those matters in social and political existence for which coercion is required, the Catholic tradition conveys a confidence that appropriately non-religious arguments can be found. A classic example is Aquinas' discussion of the natural law bases of civil law, and the question whether the civil law ought to command or prohibit all that natural law commands or prohibits. For Aquinas, whether or not some activity, known to be immoral, should be prohibited in the civil law, depends on the impact that activity has on society. So he maintains that certain actions like murder and theft could not be tolerated, not because of their wrongfulness, but because they would make social existence impossible.⁴⁴ What is necessary for the security and survival of society is a matter of practical judgment and can be deliberated upon without any reference to revelation.

Catholic tradition has developed a sophisticated position concerning the impact of moral teaching on political and legal order. This position is summarized neatly in the quotation from Rawls, given above, in which he refers to the document on religious liberty from the Second Vatican Council. In its *Declaration on Religious Freedom, Dignitatis Humanae*, the Vatican Council insisted that no one should be coerced in matters of religious belief and practice. This teaching marked a significant development from the previously accepted position in the Church, according to which error had no rights, and that the good state was one in which Catholic moral norms were enforced in civil law. While abandoning neither the claims of the Church to truth, nor the assertion of the duty of all to seek the truth and the true Church, the Council acknowledged that even an erroneous conscience possessed dignity and ought to be respected.

Freedom of this kind means that all should be immune from coercion on the part of individuals, social group and every human power so that, within due

limits, nobody is forced to act against his convictions nor is anyone to be restrained from acting in accordance with his convictions in religious matters in private or in public, alone or in association with others.⁴⁵

This principle of religious liberty has been applied in the Church to the question of the appropriate attitude of the state to moral matters.⁴⁶ This is the significant area in which Catholics have been faced with the question whether they are required by their faith commitment to coerce fellow citizens into abstaining from activity which Catholics hold to be immoral. Transposed from the arena of religious freedom to that of morality, the principle requires that state law on moral matters should not coerce anyone to act against their conscience, nor should the law prevent anyone from following their conscience, within due limits. This applies even in cases in which one might rightly hold the view that people were acting immorally. Note that the due limits refer to those requirements mentioned by Aquinas as necessary for the existence of society.

Various local Churches have had to translate this new thinking into practical political stances in their own contexts.⁴⁷ It is interesting to review the history of the Irish Catholic Church from the past twenty-five years or so, as it has sought to adopt a new position in public life. A series of legislative issues from contraception and divorce to abortion raised the issue of whether Catholic voters were required by their Church to support measures which fellow citizens would view as coercive. Discussions concerning the future of Northern Ireland also drew from the Catholic Church a statement of its view of its own role in society and state. In addressing these issues, the Church insisted that it does not conclude from the fact that an action is immoral that it should be prohibited in law. It recognized that the political community has its own legitimate interest in public morality, education, the family, etc. in so far as these are elements of, and contribute to, public order. Legislators and citizens have responsibility for that order. It was precisely in the terms of concerns appropriate to legislators and the state, given their responsibilities, and therefore in terms of public justification, that Catholic Bishops offered their opinion on what was good for the country. In the face of misunderstanding and misrepresentation they clarified their position:

Those who insist on seeing the issue purely in terms of the State enforcing Catholic moral teaching, are therefore missing the point. ... What the legislators have to decide is whether a change in the law would, on balance, do more harm than good, by damaging the character of the society for which they are responsible.⁴⁸

It must be admitted that the Catholic Church has been slow to recognize the value of liberalism and human rights. But history shows that the Church has been learning about how to be a good citizen in a liberal polity. This learning has fed in to its teaching. Being a good citizen

is to take responsibility for public order and for the quality of political existence. This means supporting candidates whom one judges will serve and promote the common good, and it means supporting policies which will promote public order. A clear example was the proposal, twice put before the Irish electorate in a referendum, to remove the constitutional ban on divorce legislation. The Catholic Bishops formulated their position clearly. They did not argue in terms of the nature of marriage or of marriage vows, they did not argue from authority, and they explicitly ruled out a deduction from the wrongness of divorce on the moral level to its inappropriateness as a legal measure. Instead they based all their arguments on practical experience and on estimations of the likely consequences of changes in the law.⁴⁹ They were aware of the differences in the interpretation of experience among serious and responsible commentators, and they were aware of the inconclusive nature of all prognoses. In other words, they participated in the public discussion within the terms of public reason. To be emphasized here, however, is that they did not interpret their restraint as a limitation imposed by an inhospitable liberal polity. Rather, it was on their view the appropriate form of participation, given their theological understanding of the role of the Church in the political realm.

This review of Church teaching from the Second Vatican Council and of Church practice in concrete cases indicates that the Catholic Church commits itself to restraint when it comes to those matters of public reason in Rawls' sense in which citizens have to take a stance on questions which involve law backed by coercion. I suggest, therefore, that the Catholic cannot be listed under the rubric of 'theist' as Eberle has attempted to construct it.

Eberle's discussion of the original position device from the perspective of the theist reveals a weakness in Rawls' justification of the requirement of restraint, even if not one sufficiently fatal to undermine the conclusions. Perhaps that weakness is rooted in Rawls' reliance on the model of the rationality of the individual pursuing her interests. That model of rationality is common to liberal positions. The discussion of the issue of restraint, relying on a distinction between the common good and public order, rather than on the interests of individuals, might be better able to deal with Eberle's challenge.

On the traditional Thomist and Aristotelian understanding, those with authority in the state held responsibility for the common good. Traditionally, the 'common good' was understood to include the complete flourishing of every human being. And since moral integrity is an element of complete flourishing; therefore the concern for the common good would require of the state to see to it that its citizens achieve complete flourishing including moral uprightness. This echoes Aristotle's dictum that the political community has concern for the goodness of its citizens, and this distinguishes it from other forms of association such as

mutual non-aggression pacts, or contracts for the supply of goods and services.⁵⁰ The development in the Church's position in relation to liberty required a refinement also in this view of the duty of the state with regard to the common good. The implication of the new understanding is that although the state does have its own interest in the flourishing of individuals as part of its responsibility, this is not to be understood as an unrestricted interest. The state's interest is not in the 'common good' in the full sense, but in 'public order', that dimension of the common good which is of particular relevance to the well-being of society, and which it is able to affect through its appropriate instruments, including coercive law.

In conclusion, it would seem that Rawls' understanding of public reason, coupled with his recognition of the related roles of the background culture and the wide view of public political culture is hospitable to the kind of public participation which Catholic citizens at least might wish to make. The challenge to this position presented by Christopher Eberle on behalf of theists, while revealing an interesting weakness in Rawls' theory – already identified by other commentators in other ways – does not succeed. The distinctive position of the Catholic Church which is the outcome of a process of learning, enables it both to support a political conception in the overlapping consensus on the basis of its comprehensive doctrine, and to participate in the discourse in public political culture, understood both widely and narrowly. Perhaps what this discussion most interestingly reveals is the way in which religious traditions have very different understandings of their relationship to the realm of politics.

Notes

1 John Rawls, 'The Idea of Public Reason Revisited', *University of Chicago Law Review*, 64 (Summer 1997), subsequently reprinted in John Rawls, *Collected Papers* (Cambridge MA: Harvard University Press, 1999) and in John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999). Citations are from this last edition.

2 Rawls, 'The Idea', p. 166 n. 75.

3 For instance, Martin E. Marty, *Politics, Religion, and the Common Good: Advancing a Distinctly American Conversation About Religion's Role in our Shared Life* (San Francisco: Jossey-Bass, 2000); Michael J. Himes, 'Public Theology in Service to a National Conversation', in Edith L. Blumhofer (ed.), *Religion, Politics, and the American Experience. Reflections on Religion and American Public Life* (Tuscaloosa: University of Alabama Press, 2002), pp. 123–40; and the literature discussed by David Hollenbach in *The Common Good and Christian Ethics* (Cambridge: Cambridge University Press, 2002), especially chapters 4 and 5.

4 For instance, John Milbank, *Theology and Social Theory: Beyond Secular Reason* (Oxford: Blackwell, 1990).

5 Thomas Hobbes, edited by Richard Tuck, *Leviathan* (Cambridge: Cambridge University Press, 1996), 'The Third Part: Of a Christian Common-Wealth'; 'The Fourth Part: Of the Kingdome of Darknesse'. See Patricia Springborg, 'Hobbes on Religion' in Tom Sorrell (ed.), *The Cambridge Companion to Hobbes* (Cambridge: Cambridge University Press, 1996), pp. 346–80.

6 John Locke, 'An Essay on Toleration', in Mark Goldie (ed.), *Political Essays* (Cambridge: Cambridge University Press, 1997), pp. 151ff.

- 7 John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996).
- 8 Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge University Press, 2000), pp. 100–3.
- 9 Rawls, ‘The Idea’, p. 132.
- 10 In *Political Liberalism* (pp. 220–2) Rawls distinguished between ‘public reason’ and ‘non-public reason’ corresponding to public political culture and the background culture.
- 11 Rawls, ‘The Idea’, p. vi.
- 12 *Ibid.*, p. 149.
- 13 Caution is advisable when using the term ‘model’ in this context. Rawls typically introduces distinctions as his argument requires, and his subsequent structuring of the discussion is not necessarily the deliberate outlining of a model.
- 14 David Hollenbach, S.J., ‘Civil Society: Beyond the Public-Private Dichotomy’ *The Responsive Community* 5 (1994/95), p.22, quoted by Rawls, ‘The Idea’, p. 135.
- 15 Rawls, ‘The Idea’, p. 133.
- 16 *Ibid.*, pp. 133–4.
- 17 *Ibid.*, pp. 136–7.
- 18 *Ibid.*, p. 172.
- 19 *Ibid.*, p. 143.
- 20 *Ibid.*, p. 141.
- 21 *Ibid.*, p. 142.
- 22 *Ibid.*, pp. 143–44.
- 23 *Ibid.*, p. 152.
- 24 *Ibid.*, p. 154.
- 25 *Ibid.*, pp. 136–37.
- 26 Michael J. Perry, ‘Religious Morality and Political Choice’, in *The Catholic Church, Morality and Politics. Readings in Moral Theology No. 12* (New York: Paulist Press, 2001), pp. 351–67.
- 27 I think here of discussions such as those of Raymond Plant, *Politics, Theology and History* (Cambridge: Cambridge University Press, 2001), and John M. Rist, *Real Ethics. Rethinking the Foundations of Morality* (Cambridge: Cambridge University Press, 2002).
- 28 Christopher J. Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002).
- 29 *Ibid.*, p. 11, emphases in the original.
- 30 *Ibid.*, p. 12.
- 31 Audi, *Religious Commitment*, pp. 163–64.
- 32 *Ibid.*, p. 104.
- 33 Eberle, *Religious Conviction*, p. 10, emphasis in original.
- 34 *Ibid.*, p. 143.
- 35 *Ibid.*, p. 146.
- 36 *Ibid.*, pp. 141f.
- 37 *Ibid.*, pp. 104f.
- 38 *Ibid.*, pp. 61–63.
- 39 *Ibid.*, p. 62.
- 40 *Ibid.*, p. 64.
- 41 *Ibid.*, p. 145.
- 42 Quoted *ibid.*, p. 145.
- 43 *Ibid.*, p. 149.
- 44 ‘Human laws do not forbid all vices from which the virtuous abstain but only the more grievous vices from which it is possible for the majority to abstain and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained; thus human law prohibits murder, theft, and suchlike’. Aquinas, *Summa Theologiae*, translated by Dominicans of Blackfriars (London: Eyre and Spottiswoode, 1966), Vol. XXVIII, Ia IIae.96.2.
- 45 Austin Flannery, O.P., ed., *Vatican Council II. The Conciliar and Post Conciliar Documents* (Dublin: Dominican Publications, 1975), p. 801.
- 46 Cf. Patrick Hannon, *Church, State, Morality & Law* (Dublin: Gill and Macmillan, 1992) especially chapter 7.
- 47 Terence McGoldrick, ‘Episcopal Conferences Worldwide on Catholic Social Teaching’, *Theological Studies* 59 (1998), pp. 22–50, offers a helpful survey.
- 48 *Love is for Life: A Pastoral Letter issued on behalf of the Irish Hierarchy* (Dublin: Veritas Publications, 1985), p. 94. The second Appendix to this letter provided excerpts from statements

by the Irish Bishops regarding civil law and morality, including a passage from a submission to the New Ireland Forum, 1984:

The Catholic Church in Ireland totally rejects the concept of a confessional state. We have not sought and we do not seek a Catholic State for a Catholic people. We believe that the alliance of Church and State is harmful for the Church and harmful for the State. We rejoiced when the ambiguous formula regarding the special position of the Catholic Church was struck out of the Constitution by the electorate of the Republic. The Catholic Church in Ireland has no power and seeks no power except the power of the Gospel it preaches and the consciences and the convictions of those who freely accept that teaching (ibid. p. 96).

49 *Love is for Life*, pp. 190–212.

50 Aristotle, *The Politics*, Book III, chap. 9.

The dissertation establishes that, while Meilaender often discusses public policy issues directly or indirectly from a distinctively Christian perspective, he argues that such discussions are unavoidable, appropriate and consistent with toleration for other views in a pluralistic society. | CONTINUE READING. digitalcommons.liberty.edu. Save to Library. Create Alert. Cite.Â Permission to speak: religious arguments in public reason. Patrick Riordan. Political Science, Sociology.