

# Rethinking Secularization

Philosophy and the Prophecy  
of a Secular Age

EDITED BY

Herbert De Vriese  
and Gary Gabor

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## CHAPTER ELEVEN

### RELIGION IN THE PUBLIC SPHERE: HOW DELIBERATIVE DEMOCRACY OFFERS A MIDDLE ROAD

#### **I. Introduction: Strong Secularization Theses Rejected**

The goal of this paper is to argue that modest restrictions on the use of revelation-based claims or beliefs in political deliberation, advocacy, and decision-making follow from the normative conception of democratic sovereignty that is best able to address the 'tyranny of the majority' problem. I defend this modest separation thesis in terms of an 'accessibility' requirement for public reason, while still *rejecting* several strong secularization theses. I also suggest that Jürgen Habermas's view is now close to this middle position, although he has actually accommodated more religion-based political action by citizens than he should have. Finally, I will respond to likely objections from 'unlimited religious inclusivists.'

The dubious secularization theses that I reject include the belief that, as modernity develops, revealed religions will lose their existential significance for human life; belief in them will fade away in the face of rational objections and be replaced by forms of reason—scientific and reflective—that do not rely on any alleged revelational source, or even on western-style belief in a personal God in general (call this Strong Secularization Thesis 1). This expectation seems to be refuted by actual historical developments in the late 20<sup>th</sup> century and early 21<sup>st</sup> century, from the growth of religious faith in North America to the increasing strength of Islam in much of Eurasia, and even some glimmers of religious postmodernism in Europe, where profession of faith in biblical religions has been seen as generally declining during the last hundred years.

Habermas furnishes an instructive example here. In his early work through the 1980s, he followed Marxist tradition in exhibiting what Brian Shaw describes as a “regrettable mixture of indifference and contempt for religious belief”<sup>1</sup>; with little argument, he portrayed religion as an anachronism that does not fit into any of the significant types of discourse. Some of his most dismissive statements verged on the old logical positivist canard that religious ideas and propositions are literally meaningless since not empirically verifiable—though Shaw points out that he retracted this extreme claim, which has been subject to withering criticism in the second half of the 20<sup>th</sup> century.<sup>2</sup> But this has changed dramatically in recent years: Habermas now explicitly rejects what he calls “a narrow secularist consciousness” and “scientism” as naturalistic metaphysical dogma, which he thinks is inadequate to address ethical and legal problems arising from the new freedom-determinism debate and problems in bioethics arising from “advances in biogenetics, brain research and robotics (...).”<sup>3</sup> Though he still thinks that philosophy has learned from religion over the centuries since the Axial period by “liberating the cognitive substance from its dogmatic encapsulation” (i.e. translating religious metaphors into secular-rational ideas),<sup>4</sup> and he assumes too quickly that “secular citizens” do not face the same challenges of cognitive dissonance that religious citizens do,<sup>5</sup> Habermas now clearly recognizes that religious faith may perform an existential function that secular reason cannot perform for many people: so liberal democracy should not discourage religion as such, for it might thereby “cut

<sup>1</sup> Brian Shaw, “Habermas and Religious Inclusion: Lessons from Kant’s Moral Theology,” *Political Theory* 27, no. 5 (1999): 634-666, 636.

<sup>2</sup> See my discussion of John Hick’s work on ‘eschatological verification’ in “Eschatological Ultimacy and the Best Possible Hereafter,” *Ultimate Reality and Meaning* 25 (2002): 36-67.

<sup>3</sup> Jürgen Habermas, “Religion in the Public Sphere,” trans. J. Gaines, *European Journal of Philosophy* 14, no. 1 (2006): 1-25, 16.

<sup>4</sup> *Ibid.*, 17. Whereas Kierkegaard, who Habermas seems to admire for recognizing “the opaque core of religious experience” that is “abysmally alien to discursive thought” (17) clearly thought this to imply that the most important religious truths cannot be “translated” in the way Kant and Hegel attempted.

<sup>5</sup> Habermas, “Religion in the Public Sphere,” 13. In my view, Habermas underestimates the cognitive dissonance that should come from thinking through what it means if the universe is just a cosmic accident and all moral heroism is entirely ‘for nothing’ in the end. This, as Shaw notes, is why Kant thought that morality required faith. Kierkegaard also thought that secular life-views were ultimately unstable or liable to despair for this reason.

itself off from key resources for the creation of meaning and identity.”<sup>6</sup> He rejects a “narrow secularist notion of a pluralist society” and even speaks of a “post-secular” cultural situation.<sup>7</sup> In short, Habermas has moved from supporting to rejecting Strong Secularization Thesis 1.

Another position, which one may call Strong Secularization Thesis 2, says that no matter how religion waxes or wanes in actual history, modern reason and natural science will eventually provide a secure and complete foundation for knowledge of the natural world, morality, the nature of life, and human society, based on *a priori* and empirical sources available to us without any theistic implications. This is my caricature of Enlightenment rationalism taken to its limit, though probably not a thesis fairly attributable to any major philosopher in the development of modernity.<sup>8</sup> If not wholly dead, at least the pretension to found all the major branches of human inquiry on bases accessible to natural knowledge is seriously called into question today by moves away from foundationalism in contemporary analytic epistemology, as much as by hermeneutics and more radical postmodern challenges. Leaders of critical modernism such as Habermas always eschewed this rational foundationalist thesis and insisted that their projects (e.g. the justification of basic moral norms) do not depend on any metaphysics of the sort implied by this (straw man) exaggeration of the ‘Enlightenment Project,’ even if they involve a comprehensive conception of reason and personal agency.

A different defense of secularization would be to argue that the origin and development of religious belief can, and one day will, be

<sup>6</sup> Habermas, “Religion in the Public Sphere,” 10. However, I think Habermas does not distinguish adequately here between religious groups playing a robust role in civil society, and thus indirectly affecting the moral sentiments underlying many political views, and religious groups becoming large political lobbies *directly* advocating for various laws on the basis of faith in revealed doctrine alone. The United States is especially vulnerable to the latter kind of radical politicization of religious groups because its public sphere is so dominated by advertising and a ratings-driven media, and thus so distorted by monetary power. See Kevin Phillips, *American Theocracy* (Penguin, 2007).

<sup>7</sup> Habermas, “Religion in the Public Sphere,” 3-4.

<sup>8</sup> I reject the straw men accounts of Enlightenment rationalism painted by authors such as Alasdair MacIntyre, Bernard Williams, Elizabeth Anscombe, and sometimes Jeffrey Stout in favor of the much more nuanced history offered by Charles Taylor, which refuses to lump the many different forms of ‘modern moral philosophy’ into one ‘encyclopediast’ ideal.

satisfactorily explained on an entirely naturalistic basis, such as social evolution, or the unconscious, or pressures to explain mysterious phenomena, without any need to invoke divine design or transcendent sources in the explanation. Call this Strong Secularization Thesis 3: it has gained new life recently from scientific ideologues such as Daniel Dennett and Richard Dawkins.<sup>9</sup> But it is more powerfully defended without scientific bias by Hans Blumenberg in *The Legitimacy of the Modern Age* and *Work on Myth*. In arguing against Karl Löwith's thesis that modern conceptions of progress are all secularized versions of eschatological beliefs derived from historical revealed religions, Blumenberg suggests a naturalistic account of the origins of religion that he develops in further work on mythology.<sup>10</sup> But while this 'naturalistic' thesis is gaining rather than losing adherents lately, we already have good reason in the work of Mircea Eliade to believe that it could not survive a serious critical review of naturalistic mythographies from Freud and Frazer to Blumenberg (although these were actually much stronger challenges to theism and spurs to secularization in the early 20<sup>th</sup> century than anything coming from biology or neuroscience). This is a topic for what we might call critical mythography.

## II. Three Senses of Establishment and Three Separation Theses

I wish to claim that one can reject all these strong secularization theses, yet still have weighty reasons to retain and develop one

<sup>9</sup> See Daniel C. Dennett, *Breaking the Spell: Religion as a Natural Phenomenon* (New York: Penguin, 2007) and Richard Dawkins, *The God Delusion* (Boston: Houghton Mifflin, 2006). Of course, both Dennett and Dawkins have done some great work in philosophy and science, respectively. In calling them 'ideologues' on religion, I mean to indicate that they trumpet with dogmatic confidence conclusions for which their evidence falls embarrassingly short. Their carelessness in this recent work stands in sharp contrast to Habermas, for example.

<sup>10</sup> Blumenberg, *Die Legitimität der Neuzeit* (Frankfurt am Main: Suhrkamp Verlag, 1966), which appeared in English as *The Legitimacy of the Modern Age*, trans. R.M. Wallace (Cambridge, Mass.: MIT Press, 1983). This naturalistic thesis about the origin of all religion is fully developed in Blumenberg, *Arbeit am Mythos* (Frankfurt am Main: Suhrkamp Verlag, 1979), appearing in English as *Work on Myth*, trans. R.M. Wallace (MIT Press, 1985). But see my critique of Blumenberg's account in "A Phenomenology of the Profane: Heidegger, Blumenberg, and the Structure of the 'Chthonic,'" *The Journal of the British Society of Phenomenology* 30, no. 2 (1999): 183-207.

important 'secularizing' development in modern political philosophy, which is commonly called the 'separation of church and state.' If this is right, then cultural secularization is not entailed by church-state separation. But this phrase can mean several things, depending on the kind of government support for religion that it bans or discourages. Here are three ways in which a government can be said to be 'establishing' a particular religious faith.

First, citizens could be required to profess a particular set of religious teachings and practices, and to worship in a particular institution. In such a society, they would be required to train their children in this faith, and forbidden to profess and practice faith in other incompatible religions. This is the strongest sense of 'establishment,' involving abridgement of *free exercise* and *freedom of religious expression*.

Second, members of a particular faith or denomination could be given certain advantages by the state, such as public financial support for their church, promotion of its views in public schools, or even preference for jobs and positions of power. In this case, the state *differentially promotes* particular creeds, church membership, or religious activities, although not necessarily eliminating a citizen's right of free exercise altogether. One or more denominations or theological viewpoints is given legal preference, though others are not outlawed or entirely suppressed.<sup>11</sup>

Third, the people and their government may institute policies, pass statutes, or even create constitutional laws that shape civil society and force all citizens to abide by certain rules governing personal conduct—perhaps including consensual relations between adults—on the basis of religious doctrine. If laws or policies are publicly justified by a majority of citizens *only or primarily* by reference to revealed doctrines of their religion or religions, which they regard as pure articles of faith not defensible by arguments accessible to natural reason, then the majority is establishing its faith in these revealed truths. This imposition of faith-based law or ecclesiastical law, such as *sharia*, *halaka*, or canon law, I call 'procedural establishment.'

It was attempted 'establishment' in the first and strongest sense—the systematic abridgement of free exercise—that caused the

<sup>11</sup> For example, consider the toleration of non-Islamic groups in old Islamic states such as the Ottoman Empire. Obviously differential support can differ greatly in degree.

religious wars of Europe in the 15<sup>th</sup> - 17<sup>th</sup> centuries, and that the American founders were most concerned to outlaw. High levels of 'establishment' in the second, differential, sense have also become highly suspect in American constitutional jurisprudence, though mild establishment of this sort persists in many European nations (for example, the official status of the Church of England in the U.K.), and also exists in Israel. However, it is primarily 'establishment' in the *third*, justificatory and procedural sense that characterizes actual or likely theocracies in the Islamic world; preference for a given religion is then instituted through this faith-based procedure for making law. In such cases, establishment in the first or second sense results from procedural establishment. Past and present regimes, such as the Taliban in Afghanistan and the Sh'ia theocracy in Iran, ban or severely burden the practice of non-Muslim faiths, but this inequality results from faith-based justifications for law. Thus it is establishment in the third sense that primarily worries opponents of theocratic government that might be favored by a majority of citizens in states such as Turkey, Saudi Arabia, Egypt, Algeria, Pakistan, and possibly Indonesia. Even if religious minorities and more secular citizens were still allowed to practice their faiths (or abstain from any worship) under new Islamic theocracies in these nations, these minorities would feel that some of their basic rights were violated by the establishment of *sharia*. This should force us to recognize that establishment in the third, justificatory or procedural, sense involves serious questions of justice, although its morally problematic status is often ignored or minimized by western defenders of religion-based political advocacy and action. The problem about democratic *process* remains the same even if faith-based law made in Western nations retains a more liberal *content*. We should worry if our sense of legitimate bases for making law puts us in *procedural* agreement with the Taliban or the Iranian Ayatollahs, even if the substantive outcome in our laws is very different than theirs—for now.

In American political debates, both conservative and liberal defenders of faith-based political argument and initiatives support a familiar *weak separation thesis*, which says that citizens have a basic right to freedom of worship that would be unfairly burdened by laws directly establishing particular religious denominations, or requiring the teaching of beliefs peculiar to certain historical faiths in public schools, or banning other (peaceful or non-violent)

churches and religious movements, or providing massive public resources to some denominations or faiths rather than others. This sort of separation rules out establishment in the first sense, and is widely found in most contemporary constitutional democracies. It also to a significant extent limits establishment in the second sense, though liberals, conservatives, and communitarians part company on how much total state support for religion in general (as opposed to atheism or agnosticism) is okay, and on whether any differential support for particular religions or denominations is legitimate. For example, Israel gives strong support not only to Judaism in general, but also to its Orthodox denominations in particular—something that would be highly controversial if done (say, for Protestant Christianity) in the U.S.

But American anti-secular defenders of faith-based political action deny that voting (say) for a welfare program solely because one had a dream in which God apparently told one to vote for it, or arguing for a constitutional ban on gay marriage only because one's minister says God requires this, or holding that euthanasia in the last stages of a terminal illness should be illegal because of an infallible decree by the Pope, involves any 'establishment' of religion.<sup>12</sup> They point out that the substance of such proposed legislation does not mention any religious denomination or burden any religious expression, and they recognize 'establishment' only in the *content* of the law, insisting the procedure remains democratic even if the collective outcome is entirely controlled by what the majority takes to be revealed truth. Thus they simply ignore what I call procedural establishment, or see it as on a par with voting and advocating for laws on the basis of any moral outlook or worldview. By contrast, western-style liberals often favor a *strong separation thesis*, holding that citizens and politicians ought to make no appeal whatsoever to any religious convictions in political argument or political decisions, and that churches should avoid endorsing candidates or particular laws, especially laws that would limit individual liberties.

<sup>12</sup> These examples are not fanciful but actually tamer than many real-life cases in American politics. In 2008 Republican primary campaign, for instance, Tricia Farr of Olympia, WA, is quoted as saying, "I prayed and asked God who he would have and it was clear to me that it was Mike Huckabee" (Ralph Thomas of the *Seattle Times*, "Passion putting imprint on presidential race," *NJ Star-Ledger*, Jan. 20, 2008; Sect. One, 13).

However, such a total limit is stronger than is necessary to prevent religious establishment in the third sense. It is sufficient to prevent the procedural establishment of religion if we adopt a *moderate separation thesis* holding that the reasons which citizens and legislators offer each other in public debate and advocacy aimed at justifying laws or supporting coercive policies should not derive (in their advocate's view) *solely or primarily from special revelation* without sufficient independent support from natural epistemic sources generally accessible to educated citizens. In most discursive contexts, we can repeat this standard for the (possibly different) reasons on which citizens themselves actually rely in making judgments and advocating positions on political questions.<sup>13</sup> This moderate procedural separation principle reflects what might be called the 'revelation-excluding conception of public reason.' The proposed limit on considerations that can be raised and relied on in the democratic process is moderate in that it only rules out beliefs or reasons that derive entirely or for the most part from religious authorities or texts without any significant independent support: it does *not* rule out considerations that are 'religious' in the much wider sense that they involve (western-style) theism of any kind, or that they involve comprehensive views of the world and human life in which our relations with a personal God figure prominently. This is because theism and religious worldviews can be defended by natural theology or on the basis of metaphysical and epistemological arguments that are accessible to all reasonable persons (even if many are not all persuaded by such arguments). Nor does moderate procedural separation require churches or citizens to refrain from expressing faith in revealed doctrines that have political implications; it only concerns contexts in which such professions of faith are directly aimed at political

<sup>13</sup> Despite many counterarguments, I am not persuaded that there should be different standards for the reasons that citizens offer to persuade others in political debate and the reasons that actually persuade and motivate them, except in unusual contexts (such as emergencies), or where they clarify that they are *arguing hypothetically* from reasons they do not actually believe or care about. There is nothing wrong with me offering a political argument starting from an interlocutor's assumptions that I do not share, as long as it is clear to others that this is what I am doing. This is the worthy practice (familiar from Socratic *elenchus*) of adopting the other's point of view and reasoning internally within its horizon. But as Audi has argued persuasively, in contexts where this intention is not clear, and the default expectation is non-hypothetical discourse expressing one's own beliefs, values, and motives for political action, anything else is deception, insincerity, or manipulation for political ends.

outcomes.<sup>14</sup> In those contexts, it allows expression of faith in revealed doctrines as an added reason *on top* of adequate non-revealed grounds for the proposed law, policy, or candidate.

Even though it does not rely on any strong secularization thesis, this moderate 'secularist' norm for the process of democratic deliberation and decision-making is still widely rejected today. Especially in the United States, many anti-secularists fervently insist that religious convictions of any sort can enter the public square at any level, or that citizens (and perhaps legislators, officials, teachers, and others in power) have every right to rely on religious beliefs of all kinds in making political arguments and decisions that can invoke the power of the state. The clear willingness of evangelical groups to select presidential candidates mainly on the basis of the candidate's apparent agreement with purportedly revealed doctrine is an alarming indication of this trend. So is the increasing focus on comparatively minor issues like gay marriage rather than a federal debt surpassing 11 trillion dollars, which is largely held by Russian and Chinese creditors. But this social change is not simply a function of rising fundamentalism in the United States; it includes increasingly sophisticated defenses by intelligent, informed liberal political philosophers who argue that there is no principled way to draw lines on what religious convictions citizens (or sometimes officials, church leaders, etc.) may bring into the democratic process widely conceived.

While a fair treatment of their many arguments, which are often subtle and nuanced, would require at least a book, I will sketch three reasons why their roughly similar conclusions must be rejected: (1) if accepted, they would make it impossible in principle to draw a clear procedural distinction between sovereign democratic authority of peoples and *theocracy*; (2) the civic duty to listen to others' reasons for varying political positions would (however widely or narrowly it extends) now include a duty to let others attempt to convert one to their faith; and (3) the revelation-

<sup>14</sup> This distinction has rightly been emphasized by Robert Audi in *Religious Commitment and Secular Reason* (Cambridge, UK: Cambridge University Press, 2000), 43-46. Audi also conceives appropriate restraint on faith-based political argument as an ideal that churches and citizens should follow at their discretion, rather than as grounds for legal restrictions on speech (47, 76). While I largely agree, I think the moderate separation thesis does have some institutional implications—for example that all our schools (public and private) should all teach the duty to offer and act on adequate non-revealed reasons for our political actions. It could also imply limits on faith-based political advertising.



excluding standard follows from the conception of democracy that is best able to explain how majority rule (as part of multiple interconnected processes comprising popular sovereignty) can be legitimate or authoritative for all participants in the process living according to a shared constitution under the rule of law. Objections (1) and (2) are *reductios*, while (3) is a direct argument for an alternative view, which requires more development. Anti-secularists who reject virtually *any* limits to religious arguments in political speech and religious conviction in political action owe us some account of how democracy, on their conception, is normatively distinct from popular theocracy; how it allows responsible participants to refuse unwanted conversion discourses; and how it avoids permitting tyranny of the majority. I do not believe they can provide an adequate answer to any of these objections, though I will focus most on the third.

### III. The Strong Secularist Version of Church-State 'Separation' and its Problems

#### Rawls and Audi

In American political philosophy, the anti-secularist backlash of the last 25 years was provoked largely by two prominent defenses of the strong separation thesis that were in turn at least partly motivated by methodological disagreement about whether it is democratic to lobby and vote on the basis of faith-commitments to make abortion illegal. In 1993, John Rawls argued in *Political Liberalism*<sup>15</sup> that it would be unjust, because contrary to our "duty of civility to fellow citizens" in a legitimate democracy, to decide any question of constitutional essentials (including restrictions significantly burdening privacy rights) on the basis of religious conviction, or more broadly on the basis of any "comprehensive conception" of the human life and reality.<sup>16</sup> Let us call this Rawls's Liberal Principle of Legitimacy:

<sup>15</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

<sup>16</sup> *Ibid.*, 242-43; see esp. note 32 on abortion asserting that "any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right [to abortion] in the first trimester is to that extent unreasonable" and thus cannot be responsibly used as the basis for political argument or discourse.

A citizen's exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essential features of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational [within their comprehensive conceptions of the reality, reason, knowledge, and personhood].<sup>17</sup>

This means that there must be overlapping consensus on the principles by which the fairness of the basic structure of society is judged, resulting in a shareable public story about why the resulting inequalities and burdens are just to differently situated individuals.

Rawls was preceded by Robert Audi's famous argument that the separation of church and state requires more than not directly establishing particular religious practices or using government resources to support some churches over others; it also requires that citizens have a "secular rationale" for their political advocacy and actions and that they act from such reasons as motives, even if they *also* have religious reasons as motives for the policies they support.<sup>18</sup> Audi has continued to hold this principle that citizens have a "prima facie obligation not to advocate or support any law or public policy that restricts human conduct" unless they have and are willing to offer "adequate secular reason for this advocacy or support (...)."<sup>19</sup> However, he has emphasized that the principle of secular rationale only applies to advocacy aimed at laws that would limit liberty, not to religious expression in general. The principle is also compatible with citizens advancing both religious and secular arguments for the same coercive law, as long as they sincerely believe their secular argument to be adequate by itself. Moreover, the principle is an ethical recommendation of civic duty; it is not meant to be enforced by legal restrictions on religious speech.<sup>20</sup>

Audi's argument for these principles is original in at least two ways. First, unlike Rawls, Audi does not rule out direct reliance on one's comprehensive metaphysical worldviews, including concep-

<sup>17</sup> Rawls, *Political Liberalism*, Lecture VI: "The Idea of Public Reason," 217.

<sup>18</sup> Robert Audi, "The Separation of Church and State and the Obligations of Citizenship," *Philosophy and Public Affairs* 18, no. 3 (1989): 259-96. Quite a few critics have argued that the principle of secular motivation is less plausible than the principle of secular rationale, but I think that in a deliberative-democratic perspective, they go together as Audi thought.

<sup>19</sup> Audi, *Religious Commitment and Secular Reason*, 86.

<sup>20</sup> *Ibid.*, 76. Audi makes the same point with respect to his "principle of ecclesiastical political neutrality" (47).

tions of reason, agency, and moral responsibility, in supporting coercive laws; instead he thinks religious beliefs are in a different category than other comprehensive conceptions.<sup>21</sup> Second, Audi's separation thesis is more explicitly procedural, though he does not use this term. Instead, he says that a political argument may be "evidentially" or "epistemically" religious if its premises or inferences from them "cannot be known, or at least justifiably accepted, apart from reliance on religious considerations, for instance scripture or revelation or clerical authority."<sup>22</sup> Thus political argument and acts can be faith-based without mentioning God or any spiritual entity in its conclusion, or in its explicit premises. My revelation-excluding model agrees with this point.

However, in other passages Audi suggests that an argument is also "religious" in the sense relevant for his principles if it has "theistic content" or requires belief in a monotheistic God to motivate it.<sup>23</sup> By contrast, a secular reason is:

one whose normative force, that is its status as a prima facie justificatory element, does not evidentially depend on the existence of God (or on denying it) or on theological considerations, or on the pronouncements of a person or institution qua religious authority.<sup>24</sup>

Thus, like Rawls, Audi does not distinguish between religious convictions in the broadest sense and what I call narrowly revelation-based beliefs that have (in their believers' view) little or no independent defense outside the alleged authority of some sacred text, clerical testimony, or private experience. Some of Audi's formulations mention revelation-based beliefs as paradigmatically

<sup>21</sup> Though Audi sometimes offers inadequate justifications for this distinction—such as that religious disputes are more polarizing or irreconcilable than secular differences of opinion (Audi, *Religious Commitment and Secular Reason*, 39 and 69), or that religious liberty and free exercise are threatened if churches and their members engage in direct political campaigning on faith-bases without limit (ibid., 41 and 84), or that "the support of specific candidates or even parties tends to erode [the] moral authority" of the clergy (47), or that a religious citizen should limit religious zeal in political argument because he would prefer others of different faiths to limit theirs reciprocally (85). I think that religious inclusivists such as Eberle and Weithman have given convincing counter-arguments to these accounts of why religious political advocacy poses a particular threat to democracy beyond the problems of general pluralism in worldviews. Thus I give a different explanation of why a particular kind of religious argument has a special status.

<sup>22</sup> Audi, *Religious Commitment and Secular Reason*, 71.

<sup>23</sup> Ibid., 70.

<sup>24</sup> Ibid., 89.

religious, but his definition includes as religious any convictions that result from natural theology or theism in general. This is a broader conception of the religious than the moderate separation view employs.

### The Backlash: Quinn

Since both Rawls' and Audi's initial arguments seemed to exclude most faith-based argument from the public sphere or at least from political dialogue concerning liberties and other elements of basic justice, it is not surprising that in the United States, they produced a strong reaction leading to what is now a sizeable literature defending the procedural thesis that I call *unlimited religious inclusivism*:<sup>25</sup>

In democracies, citizens may (or even should) vote and advocate publicly for candidates, policy and law based on their conscience, even if their reasons are primarily or solely religious and thus cannot be shared by many citizens who do not profess the same faith.

Unlimited religious inclusivism is the positive complement of the weak separation thesis: it is not compatible with the strong or moderate separation theses, and it expresses the most likely reason for thinking that a weak separation thesis is sufficient. Of course, unlimited religious inclusivism by itself is compatible with thinking that even weak separation of church and state is not necessary for legitimate government; thus someone who holds it must have *other* reasons for endorsing weak separation. For example, unlike their procedural counterparts in the Islamic theocracies, American defenders of procedural religious inclusivism also accept weak separation of church and state and insist that it describes all the protection needed for minority religious groups. They usually base weak separation on the assumption that there are sufficient grounds for basic liberties, including freedom of religious expression, that limit what majorities can legislate—grounds that are logically independent of the reasons for popular sovereignty. Call this the Independent Liberties thesis; I will return to it later.

<sup>25</sup> See Davenport, Review of: *Religion in the Liberal Polity*, ed. Terence Cuneo, in: *Notre Dame Philosophical Reviews* (summer 2005).

For example, in his 1995 Presidential Address to the Central Division of the American Philosophical Association, the late Philip Quinn argued that the two versions of strong separation defended by Rawls and Audi both unjustifiably restrict democratic debate and political action in a way that discriminates against religious citizens. Instead, Quinn maintained that liberals should adopt an ideal of public reason that welcomes even explicitly religious advocacy for laws and public policies—a conception that could at most exclude extreme forms of “public political discourse that express disrespect” for groups or classes of other citizens.<sup>26</sup> Quinn thus advocated a view that accepts as democratically legitimate whatever constitutional institutions and laws result from a process in which even fairly extreme religious doctrines have free play in the public sphere and perhaps control majority opinion—at least within the limits set by independent liberties. The only dialectical burden that popular sovereignty places on citizens is to argue sincerely from beliefs which they reasonably hold in the sense that they violate no *epistemic duties* in holding them (duties that are not very stringent on some epistemic theories).

In particular, Quinn argued that Audi failed to explain why religious reasons are any less reasonable a basis for political conviction and collective political action than are secular reasons. He thought Rawls was more consistent in excluding appeal not just to religious worldviews, but to “any comprehensive ethical theory, including all known secular ethical theories,” since each of these “can be reasonably rejected by some citizens of a pluralistic democracy.”<sup>27</sup> Instead, at least for constitutional law governing the basic structure of society, Rawls hopes that sufficient “public reasons” can be found, meaning reasons on which there is overlapping consensus or “mutuality of endorsement” among “comprehensive religious and philosophical doctrines.”<sup>28</sup> In Rawls’s view, groups of citizens holding these doctrines can have their own distinct grounds for similar conclusions regarding the fairness of the basic structure of society, as long as they recognize shared criteria as a basis for deciding matters of basic justice. But Quinn plausibly objected that

<sup>26</sup> Philip Quinn, “Political Liberalisms and Their Exclusions of the Religious,” Presidential Address, 93rd Central Division Meeting of the APA, April 29, 1995, *Proceedings of the American Philosophical Association* 69, no. 2 (1995): 28.

<sup>27</sup> *Ibid.*, 39.

<sup>28</sup> *Ibid.*, 41, citing Rawls, *Political Liberalism*, 224.

considerations on which there is such an overlapping consensus among reasonable comprehensive conceptions will often be insufficient to resolve many disputes on constitutional essentials, such as privacy rights related to abortion. Referring to public reason in this narrow sense, he wrote,

My suspicion is that public reason will fairly often fail to determine a balance of liberal political values that can be seen to be reasonable by all citizens of a democracy as deeply pluralistic as ours. I have little confidence in its resolving power, its ability to give “guidance where guidance is needed.”<sup>29</sup>

This echoes Kent Greenawalt’s conclusion following several case studies that “any hope that all political issues can be resolved solely on the basis of commonly shared premises about values and commonly shared approaches to factual knowledge must be abandoned.”<sup>30</sup> Like Greenawalt, Quinn drew the conclusion that democratic theory cannot expect people to refrain from relying on their religious convictions when “shared premises of justice and criteria for determining truth” are insufficient to determine uniquely justified answers to many questions involving constitutional essentials, let alone matters to be governed by statute or administrative policy.<sup>31</sup>

I agree with this critique of Rawls’s demand that citizens argue and act politically from what they sincerely think are “political values everyone can reasonably be expected to endorse,” even if they can come to these values from different (but reasonable) comprehensive conceptions of the world and human goods.<sup>32</sup> But Quinn’s point does not entail unlimited religious inclusivism, for as we have already seen, it is not the only alternative to Rawls’s conception of public reason. In particular, the moderate, revelation-excluding conception of public reason is another important option, and I will argue that it follows from deliberative conceptions of democracy. But to see this, we must recognize that interpreting the ‘separation of church and state’ involves addressing fundamental questions concerning the moral and epistemic

<sup>29</sup> Quinn, “Political Liberalisms and Their Exclusions of the Religious,” 44.

<sup>30</sup> Kent Greenawalt, *Religious Convictions and Political Choice* (Oxford: Oxford University Press, 1988), 216.

<sup>31</sup> *Ibid.*, 12; see Quinn, “Political Liberalisms and Their Exclusions of the Religious,” 46.

<sup>32</sup> Rawls, *Political Liberalism*, 241.

presuppositions of democracy as a form of government whose legitimacy does not rest solely on its usefulness in keeping peace among rival interest groups.

### Church-State Separation Goes to the Core of Democratic Theory

Quinn's argument is just the tip of a large iceberg. Starting with an important response to Audi by Paul Weithman, a large literature has arisen defending unlimited religious inclusivism.<sup>33</sup> Yet the debate between defenders of unlimited religious inclusivism and supporters of strong separation who they critique is often inarticulate in a surprising way: authors on both sides write as if this matter were a free-standing problem in political philosophy that can be addressed without answering fundamental questions of democratic theory. Religious inclusivists talk as if it is just obviously unfair to religious persons to ask them to put aside faith-convictions in making political decisions or debating political issues with an intent to persuade others,<sup>34</sup> while those who would exclude

<sup>33</sup> Here is a partial list, including three of Audi's rejoinders: Paul J. Weithman, "The Separation of Church and State: Some Questions for Professor Audi," *Philosophy and Public Affairs* 20, no. 1 (1991): 52-65; Robert Audi, "Religious Commitment and Secular Reason: A Reply to Professor Weithman," *Philosophy and Public Affairs* 20, no. 1 (1991): 66-76; Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square. The Place of Religious Convictions in Political Debate* (Lanham, Md.: Rowman & Littlefield Publishers, 1996); the papers published in the Symposium on "The Role of Religion in Public Debate in a Liberal Society," *San Diego Law Review* 30, no. 4 (1993); the papers in the University of San Diego Law School "Religion Symposium," *Journal of Contemporary Legal Issues* 7, no. 2 (1996); Michael J. Perry, "Toward an Ecumenical Politics" and the other papers in the Symposium on "Religion in Public Life: Access, Accommodation, and Accountability," *The George Washington Law Review* 60, no. 3 (March, 1992); the papers from a 1995 conference at Notre Dame collected in *Religion and Contemporary Liberalism*, ed. Paul Weithman (Notre Dame: University of Notre Dame Press, 1997); Audi, *Religious Commitment and Secular Reason*; Daniel Dombrowski, *Rawls and Religion: The Case for Political Liberalism* (Albany: SUNY Press, 2001); Paul Weithman, *Religion and the Obligations of Citizenship* (Cambridge, UK: Cambridge University Press, 2002, 2004 repr.); Christopher Eberle, *Religious Conviction in Liberal Politics* (Cambridge, UK: Cambridge University Press, 2002); Michael J. Perry, *Under God? Religious Faith and Liberal Democracy* (Cambridge, UK: Cambridge University Press, 2003); Terence Cuneo, ed., *Religion in the Liberal Polity* (Notre Dame: University of Notre Dame Press, 2005); Michael J. Perry, *Towards a Theory of Human Rights: Religion, Law, Courts* (Cambridge, UK: Cambridge University Press, 2007), Chs. 2-3.

<sup>34</sup> Nicholas Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," in *Religion in the Public Square*, 67-120, esp. 77 and 105.

all religion-dependent arguments from political discourse (at least when laws limiting liberties are at stake) talk as if this obviously follows from the fact of pluralism in contemporary multicultural societies, or from state neutrality towards religious creeds as a given—and neither seems to think that they first need a robust normative conception of democracy to decide the acceptable scope of religious arguments in the public sphere. For example, in addressing what he calls "the argument from Bosnia" and "the argument from divisiveness," Chris Eberle follows Richard Rorty's view that the best grounds for excluding religion from political discourse and action are consequentialist: allowing a nation to polarize into religious blocs leads to civil war, or at least to hopeless division and alienation between groups of citizens.<sup>35</sup> But such Hobbesian arguments for strong separation are easy to defeat. Eberle argues that rights assuring free exercise are sufficient to preserve a religiously pluralistic society from religious wars,<sup>36</sup> especially if religiously motivated citizens make a sincere effort to articulate secular reasons for laws and policies for fellow citizens. Like Quinn, he argues that voting and advocating primarily (or even solely) on the basis of faith convictions threatens no instability that only shared public reasons could avoid, because there are too few such reasons. So things are no more unstable with religious inclusivism, for majorities can already control law on the basis of conceptions of justice not shared by those in the minority.

In pressing this point, Quinn and Eberle assume that the issue really concerns *liberalism*, not democracy per se: in other words, it is about whether a just government can be *neutral* towards conflicting values grounded in comprehensive conceptions of the good, or whether it can be based on a conception of the right whose moral justification is accessible to all reasonable persons despite rival comprehensive worldviews. For example, Rawlsian liberals hold that basic civil rights, such as rights to free exercise of religion, have a justification that is independent of thick conceptions of the good (and prior to the considerations that favor popular sovereignty). Yet as noted above, Western advocates of unlimited religious inclusivism who reject this central tenet of liberal political philosophy

<sup>35</sup> Eberle, *Religious Conviction in Liberal Politics*, Ch. 6.

<sup>36</sup> *Ibid.*, 161-62.

still rely on its familiar way of limiting majority rule, namely the Independent Liberties thesis.

For example, Nicholas Wolterstorff's 'consocial' conception agrees with the 'liberal' position that democracy is not a mere competition of private interests, but aims at political justice.<sup>37</sup> He also assumes, following Rawls, that in any version of 'liberal democracy,' citizens accept a duty to respect each other as 'free and equal,' but he argues that this does not require voting on the basis of reasons acceptable to other reasonable citizens. We may have duties of civility sincerely to listen to each other and try to persuade each other, but that is all. For new democracies "begin taking votes on various matters and living with the will of the majority—subject to provisos specifying the rights of minorities."<sup>38</sup> He writes as if the requirements of legitimate democracy can largely be read off familiar actual behavior. Citizens commonly use "ad hoc reasons, tailor-made for one's addressee" to persuade others to support policies and candidates;<sup>39</sup> and "[r]ationality is not among the requirements one must satisfy to be entitled to vote."<sup>40</sup> So it appears that democracy is simply majority rule limited by basic individual rights. Nothing more is required to respect fellow citizens than majority rule with an equal voice for all in the process, and a "guarantee of the rights of minorities (...) against the will of the majority."<sup>41</sup> These rights apparently have some justification quite separate from the grounds for majority rule or rights to popular sovereignty in general, and majorities can rule on whatever basis they like within these limits.

From the perspective of contemporary deliberative conceptions of democracy, these assumptions all seem naive. Wolterstorff just assumes that the ideal requirements of just popular sovereignty cannot be very far from *our actual practices* in the United States; more revisionary ideals are facially implausible. More generally, Quinn, Eberle, and Wolterstorff all seem to take as granted (i) that some independently grounded set of basic liberties is sufficient to constrain pure majority rule, and (ii) that the only remaining

<sup>37</sup> Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," 113-115.

<sup>38</sup> *Ibid.*, 108.

<sup>39</sup> *Ibid.*, 107.

<sup>40</sup> Wolterstorff, "Audi on Religion, Politics, and Liberal Democracy," in *Religion in the Public Square*, 161.

<sup>41</sup> *Ibid.*, 158.

question about legitimate majority rule concerns what is required for mutual respect among citizens in debating political issues before voting. Unlimited religious inclusivists inherit these question-begging assumptions from the liberal thinkers they critique; this is a symptom of their shared failure to focus on the fundamental problems of democratic theory. Rawls, Lawrence Solum, Charles Larmore, and many others have presented theories of public reason as a solution to a problem of mutual respect raised by multiculturalism and religious pluralism, rather than as a solution to the more fundamental problem of why deciding anything by majority rule ever has any legitimacy at all, or what conditions the process of popular sovereignty must meet for majority rule to be legitimate. Thus both sides implicitly presuppose that (iii) whatever the moral grounds are for those rights that majorities cannot contravene, these grounds do not *also* imply limits on considerations that may enter into deliberation about all matters that majorities can legitimately control. For liberals, such limits have another source, e.g. in duties of civility. All three of these assumptions are rejected in most deliberative conceptions of popular sovereignty, as is especially clear in Jürgen Habermas's *Between Fact and Norms*.<sup>42</sup>

That the basic questions of democratic theory bear on the question of religious inclusivism can be seen in two ways. First, note that if the unlimited religious inclusivist conception of public reason were correct, it would be impossible to distinguish in principle between *democracy* and *theocracy*. For theocracy can also take more or less popular forms; it is not necessarily limited to the rule of a small group of clerics, but can also exist in a system in which citizens at large meet and vote—and decide each issue primarily on the basis of religious teaching or scriptural authority or the direction of individuals revealed to have special insight. This is a potential *reductio* of unlimited religious inclusivism: for any conception of democracy that includes popular theocracy as a legitimate form is no conception of democracy in the normative sense at all; it is just a label to indicate that voting of some kind takes place in that system. Adding polite and sincere discussion before voting does not remedy the problem, and could be *ad hoc* (what if the authorities endowed with ongoing revelational author-

<sup>42</sup> Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. W. Rehg (Cambridge, Mass.: MIT Press, 1996).



ity do not advocate or allow polite disagreement?). In principle, on such a view, even constitutional guarantees to free exercise could also legitimately be overturned if a sufficient supermajority decides that this is what their shared faith requires. The unlimited religious inclusivist would apparently still have to call such a nation democratic, though not liberal.

Second, consider the central questions to be answered by a normative conception of democracy. Here are three facets of what is really a single question: What moral presuppositions are involved in the idea of legitimate popular sovereignty, collective autonomy, or moral self-determination by a people? How can this popular sovereignty amount to anything but *tyranny of the majority* or the rule of aggregated brute preferences? Do basic civil rights have a ground prior to and independent of the reasons for popular sovereignty; or do they derive from the same underlying moral ideal, so that accepting either implicitly commits us to the other?

Lincoln forced us to ask the first form of the question in his famous debates with Senator Stephen Douglas; Lincoln argued that a vote to allow slavery contradicted the very presuppositions of the people's right to collective self-rule. Plato posed the second version of the question in the *Republic*; the third formulation comes from the disagreement between Locke and Rousseau, and is the central question in Habermas's *Between Facts and Norms*. Of course, some people think we can have democracy without any principled answers to these questions. A latter-day Sophist account, commonly called the *modes vivendi* conception, just denies any normative ideal of democracy as distinct from tyranny of the majority and defines democracy in realist terms as a system of power politics whose only justification is the pragmatic point that it is better than outright war or monarchy. A tamer version of this view is the 'public choice' model of democracy as simply a mechanism for aggregating individual preferences concerning laws and policies that are no different than any other private consumer preferences (and need no justification beyond being what the individual wants). Law, then, is sold to the highest bidder or to the most powerful lobbying group, and democracy is just an efficient way of maximizing utility understood as subjective preference-satisfaction.

Although Wolterstorff, Eberle, and Weithman reject these anti-normative conceptions of democracy, unlimited religious inclusivism fits well with either of them—as does Douglas's position that

'popular sovereignty' implies that the people of any state can vote for or against allowing slavery as part of their state's basic structure,<sup>43</sup> and the opposing view taken by American abolitionists that basic rights to freedom have a transcendent basis revealed by God, which has nothing to do with collective self-rule. The abolitionists and Douglas held the Independent Liberties thesis and disagreed about who was entitled to such liberties; both considered popular sovereignty to be merely a contest of interest groups within these limits. But the religious outlooks held by contemporary defenders of unlimited religious inclusivism are always strongly opposed to the assumptions about human nature and morality behind the *modes vivendi* and public choice conceptions of democracy, which fit best with a Hobbesian view of human beings as rational egoists with no higher values to justify their collective actions than their shared desires for security and personal property. Hence its defenders need to ask themselves whether unlimited religious inclusivism is compatible with any theory of majority rule that answers the three basic questions in a satisfactory way, i.e. that gives a deep account of the legitimacy of democratic ideals fit for beings who are more than Hobbesian egoists.

#### IV. Deliberative Conceptions of Democracy

The only approach to explaining democracy as a normative ideal of legitimate government that gives sufficiently robust answers to the three central questions is the deliberative ideal according to which citizens should give reasons for laws and policies that refer to common or shared goods, interests, and considerations of justice, and be willing to change their prior preferences in the light of the better arguments. On this view, what rules *through* the majority should be the most persuasive set of practical reasons in a process designed to elicit the best evidence and free exchange of ideas about the common good guided by the ideal of truth or warrant as valuable for its own sake. Duties of civility such as listening sincerely, offering one's own reasons honestly, and giving each an equal voice in the process all follow from the ideal, but its central requirement

<sup>43</sup> See Harry Jaffa, *Crisis of the House Divided* (Chicago: University of Chicago Press, 1999 repr. ed.).

is to give arguments that should be accessible to all persons affected by the law or policy in question.

There are today at least three largely distinct lines of scholarship supporting this answer to the 'tyranny of the majority' problem: (a) American scholars of constitutional law have defended the *civic virtue* conception of democracy by appeal to classical republican ideals;<sup>44</sup> (b) similarly, political philosophers in the analytic tradition have advanced deliberative explanations of democracy in the wake of the failure of economic aggregation models and public choice theory;<sup>45</sup> and (c) continental philosophers such as Habermas have advanced a public discourse theory of popular sovereignty grounded in a communicative reconception of Kantian moral law.<sup>46</sup>

<sup>44</sup> For example (for full references see the bibliography at the end of this chapter): David Epstein, *The Political Theory of the Federalist* (1984); Bruce Ackerman, "The Storrs Lectures: Discovering the Constitution," (1984); Joyce Appleby, *Capitalism and the New Social Order: The Republican Vision of the 1790s* (1984); Morton J. Horwitz, "Republicanism and Liberalism in American Constitutional Thought," (1987); Frank Michelman, "Law's Republic," (1988); Michelman, "Conceptions of Democracy in American Constitutional Argument: Voting Rights," (1989); Cass R. Sunstein, *The Partial Constitution* (1993); Sunstein, "Beyond the Republican Revival," (1988); Michael Schudson, "The Public Sphere and Its Problems: Bringing the State (Back) In," (1994); Emily Calhoun, "Voice in Government: The People," (1994); James L. Hyland, *Democratic Theory: The Philosophical Foundations* (1995).

<sup>45</sup> Including (for full references see bibliography): John Greville Agard Pocock, *The Machiavellian Moment* (1975); Patrick Riley, *The General Will Before Rousseau* (1986); Joshua Cohen and Joel Rogers, *On Democracy* (1983); Cohen, "Deliberation and Democratic Legitimacy," (1989); Cohen, "An Epistemic Conception of Democracy," (1986); Cohen, "The Economic Basis of Deliberative Democracy," (1989); David Miller, "Deliberative Democracy and Social Choice," (1992), reprinted in David Held, ed., *Prospects for Democracy* (1993); David M. Estlund, "Democracy Without Preference," (1990); Estlund, "Who's Afraid of Deliberative Democracy? On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence," (1993); Brian Barry, *Democracy, Power, and Justice* (1989); James Fishkin, *Democracy and Deliberation* (1991); Charles Stewart Goodwin, *A Resurrection of the Republican Ideal* (1995); Leif Lewin, *Self-Interest and Public Interest in Western Politics* (1991); Paul Hirst, *Representative Democracy and Its Limits* (1990); John Dryzek, *Discursive Democracy* (1990); David Copp, Jean Hampton and John Roemer, eds., *The Idea of Democracy* (1995); Thomas Christiano, *The Rule of the Many* (1996). For several of these references, I am indebted to a reader compiled by Paul Weithman for a graduate course at the University of Notre Dame.

<sup>46</sup> Including (for full references see bibliography): Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification," in *Moral Consciousness and Communicative Action* (1990) [*Moralbewußtsein und kommunikatives Handeln* (1983)]; Habermas, *Between Facts and Norms* (1996); Habermas, "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," (1995); Benjamin Barber, *Strong Democracy* (1984); Richard Bernstein, ed., *Habermas and Modernity* (1985); Claude Lefort, *Democracy and Political Theory* (1988); Georgia Warnke, *Justice*

Although these three traditions approach the question from different angles, and their participants frequently disagree on details of the deliberative ideal, they have converged on the basic theme that democratic rule cannot amount only to a mechanism for discovering and codifying the desires of the majority without modification of these desires by practical arguments concerning whether they are right or wrong, justifiable or groundless, express only pure preferences or express judgment about shared public goods, aim at private advantage or at collective well-being, and so on. In short, democracy would be ethically impoverished if it were nothing more than a market-like system for arbitrating the competition between groups of Hobbesian agents, each seeking to satisfy their own group interests, or a mere *modus vivendi* regulating group strategic action short of a 'war of all against all.' Kent Greenawalt outlines the basic alternatives at stake quite well:

To oversimplify (...), there are two competing models of how a liberal democracy should work: one is that citizens should, or will inevitably, seek to have their own preferences satisfied in the political process; the other is that citizens and governments should seek to advance political positions that are right for the general public.<sup>47</sup>

It is only the second 'civic virtue' model of democracy, as Greenawalt calls it, that requires popular legislative assemblies to search for common goods that are potentially different from personal preferences (or any average of group interests), and that therefore must be identified by judgment on the basis of *reasoned deliberation* about public goods rather than mere registration of private taste, opinion and wants. As Cass Sunstein argues, the limits that American law puts on the 'right to instruct' one's representatives on how to vote and the closure of the 1787 Constitutional Convention in Philadelphia reflect the idea that

and *Interpretation* (1993), 89-107; Thomas McCarthy, *Ideals and Illusions* (1991), Chs. 6-7; Kenneth Baynes, *The Normative Grounds of Social Criticism: Kant, Rawls, and Habermas* (1992), Ch. 5; Iris M. Young, *Justice and the Politics of Difference* (1990), esp. 30-38, 91-95; Young, "Social Groups in Associative Democracy," (1992); Hiro Aragaki, "Communicative Ethics and the Morality of Discourse," (1993); Seyla Benhabib, ed., *Democracy and Difference* (1986) [see the essays by Benhabib, Cohen, Young, and others]; William Rehg, *Insight and Solidarity: The Discourse Ethics of Jürgen Habermas* (1994); James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (1996).

<sup>47</sup> Greenawalt, *Religious Convictions and Political Choice*, 223.

"In the process of discussion, there is no effort simply to aggregate existing private preferences, or to treat them as given. Representatives should not mechanically translate the desires of their constituents into law."<sup>48</sup> Furthermore, our Constitution was designed to embody the 'impartiality principle' for legislation, which "requires government to provide reasons that can be intelligible to different people operating from different premises," rather than simply referring to the political power or will of the majority.<sup>49</sup>

Above all, the American Constitution was designed to create a deliberative democracy. Under that system, public representatives were to be ultimately accountable to the people, but they would also be able to engage in a form of deliberation without domination through the influence of factions. A law based solely on the self-interest of private groups is the core violation of the deliberative ideal. The minimal condition of deliberative democracy is a requirement of reasons for governmental action. A republic of this sort is opposed equally to outcomes grounded on self-interest and to those based solely on 'nature' or authority.<sup>50</sup>

It follows from this deliberative ideal that democratic law through majority rule is not legitimate if it is simply a way of letting the 'naked preferences' or discursively unmodified interests of a majority prevail over others. This contrasts diametrically with what Sunstein calls 'pluralist' theories of law "as a kind of commodity, subject to the usual forces of supply and demand."<sup>51</sup> The same limit, I will suggest, applies to essentially private convictions that cannot be touched by rational critique for the believer who experiences or appropriates them as revealed truth. As Sunstein notes, inscrutable 'authority' does not count as a rational basis for democratic law.

## V. Public Accessibility and Reason versus Revelation

In short, Sunstein recognizes that only the deliberative conception of democracy provides adequate grounds for the "requirement of

<sup>48</sup> Cass R. Sunstein, *The Partial Constitution* (Cambridge, Mass.: Harvard University Press, 1993), 22-23.

<sup>49</sup> *Ibid.*, 24.

<sup>50</sup> *Ibid.*, 19-20.

<sup>51</sup> *Ibid.*, 59.

justification by reference to public-regarding explanations that are intelligible to all citizens."<sup>52</sup> This requirement of *public accessibility*, however, should not be interpreted—as it frequently has been in the liberal arguments to which religious inclusivists mainly respond—as allowing only reasons on which there is or should be *actual agreement* or probable overlapping consensus in public debate aimed at political outcomes. Citizens introducing legitimate considerations into debate about changes to law or policy may not themselves know in advance, or reasonably be expected to know, whether these considerations can persuade on the merits or hold up when tested against other points that may be raised by their interlocutors: this is exactly what responsible participants hope to find out. Rather, under the deliberative conception, we should understand the requirement of public accessibility to mean that:

A member of society is free, in their nonofficial capacity *as citizen or addressee of the laws*, to introduce into the deliberative process any claim or reason that seems relevant, as long as that claim is such that other citizens (with sufficient education and reasonably expectable effort and civility) are able in principle to understand (a) its supportive illocutionary force for political positions,<sup>53</sup> i.e. how it would meaningfully serve as a *reason* for or against the policies or laws in question (rather than as a mere expression of approval or registration of preference), and (b) how on some theory of reason and knowledge that distinguishes sufficiently between natural reason and revelational warrant, there could be natural warrant for accepting such a reason.

It must be emphasized that this principle gives us a much wider field than Rawls's conception of public reasons, and thus it helps answer Quinn's accurate point that reasons for constitutional law to which all citizens can rationally agree in overlapping consensus may not be enough to decide key questions about the basic struc-

<sup>52</sup> *Ibid.*, 59.

<sup>53</sup> For a reinterpretation of the Austinian idea of the "illocutionary character of speech acts," see Jürgen Habermas, "Towards a Critique of the Theory of Meaning," in Habermas, *Postmetaphysical Thinking*, trans. W.M. Hohengarten (Cambridge, Mass.: MIT Press, 1992), 64 and 72-81. There are different illocutionary *modes*: "the illocutionary portion [of a speech act] establishes the sense in which the propositional content is being employed" (64), and "the mode is defined according to the type of claim put forth" (75). The one that matters for the discourse theory of norms is the regulative mode (77), which implies a performative attitude "which demands an orientation toward reciprocally raised, criticizable validity claims" (80). Note that by a "validity claim," Habermas does not mean inferential validity (as this term is used in analytic philosophy) but rather a *truth-claim* or its analog in the practical realm.



ture. The requirement of public accessibility that follows from the deliberative account of democratic legitimacy allows citizens to argue and act politically from reasons with which they expect other citizens to disagree because of differences between their world-views, as long as they can *understand* each other's way of supporting their claims on the basis of their comprehensive conception of natural reason. They can then rely on the possibility of assessing each other's substantive claims, if necessary, by debating the methodological reasons for their variant conceptions of knowledge and reason. This allows public discourse to include a very broad range of arguments for various public institutions that will be backed with the coercive force of state sanction; in particular, it will allow arguments that depend on natural theology (which meet the public accessibility requirement) and arguments from moral convictions learned in a broadly religious context that can be defended as naturally knowable or as part of natural law. But the restriction on revealed doctrines is not empty; it provides a clear sense in which some claims are not 'secular,' and a workable basis for distinguishing among one's reasons for political action.<sup>54</sup>

Thus moderate procedural separation leaves wide room for churches to play positive roles in bringing excluded voices into the public sphere, reforming society by providing moral bearings that help citizens overcome biases and material self-interest in political decision-making, and generally promoting ethical enlightenment. As Habermas writes, "Religious traditions have a special power to articulate moral intuitions, especially with regard to vulnerable forms of communal life."<sup>55</sup> I emphatically agree with defenders of procedural religious inclusivism such as Quinn, Wolterstorff, and Paul Weithman, that religious groups have often played such positive roles in American political history and have great potential to help poor and marginalized people become more visible to the wider society. They are absolutely right that through political activism, religious leaders have sometimes helped many citizens outside their own faiths come to ethical and political insights that would not otherwise have been possible, occasionally even raising the prevailing level of moral understanding in our nation. But that is because the rational force of the ideas and facts they brought to

<sup>54</sup> See Wolterstorff, "Audi on Religion, Politics, and Liberal Democracy," 162-63.

<sup>55</sup> Habermas, "Religion in the Public Sphere," 10.

attention could be appreciated without having to convert others to their revealed creeds. Thoreau, for example, persuaded Emerson to join him in vigorous political campaigns to end slavery by moral argument rather than by getting Emerson to share his faith in the special authority of prophets and apostles.

According to moderate separation, then, religious advocacy in political deliberation is limited only by the requirement to abstain from arguments drawing solely or primarily from special revelation. When a citizen introduces a reason for some collective political action, she has sincerely to believe that this reason is supported within her comprehensive conception by sources of knowledge, warrant, or evidence that are independent of special revelation—and this conception cannot completely deny the distinction between special revelation and natural knowledge or warrant.

For, like pure preferences for which no reason can be given, a claim to revealed knowledge (either directly or via some authority) is not something that is rightly understood as making any objective validity-claim on others, or as a reason that they can be expected to assess and accept on its merits. Revelation is held to be miraculous and requires a faith-response going beyond natural evidence (the inspiration to trust in revelation is also held to involve grace, on some creeds). This is why political arguments on such bases are especially alienating to citizens who do not share faith in the alleged revelations in a way that arguments based on other controversial premises need not be. My faith in revealed truths is not even intelligible to outsiders as a reason in the relevant sense. Lacking the same transformative experience, they have no way to inspect the authenticity of the alleged revelation; short of undergoing religious instruction and hoping for grace, they have to take it entirely on someone else's say-so alone.

Revelation-based argument is on a par in *this respect* with person A saying to his neighbor B, who wants to own red balloons, that red balloons should be outlawed because A has a *little black box* that told him so. If B is to give up his red balloons, he would like to know what is inside the black box and why A takes its deliverances as normative or reason-giving. "Ah," A says, "that's a mystery: for this box is such that we can't conduct controlled experiments on it to assess its accuracy" (it does not make falsifiable predictions, for example): "we simply have to trust it!" It should be obvious that this will not satisfy A's democratic duties to B any

more than if A had said, "You know, I just hate red balloons, so tough."

Suppose that A rejects this comparison and insists that he is not expressing any private desire: rather, he is expressing a belief (based on faith in the box); the box is sacred or holy, while brute preferences are not. Nevertheless, his act is still *performatively* on par with uttering a near-tautology like "red balloons are bad, so let's outlaw them." To B, who has no way to be initiated into the mysteries of the black box, reference to its deliverances merely expresses A's conclusion rather than offering any distinct reasons for it. Of course, brute preferences, tautologies, and faith in special revelation do differ in very important ways, but as *dialectical* contributions to argument, they are similar: none of them operate performatively as reasons distinct from the intended conclusion, and thus all of them fail to meet the burden of offering publicly accessible reasons for a proposed law. Put more bluntly, in a context where reasons are normatively expected, introducing any point of these types counts as an *informal fallacy*. But popular sovereignty is precisely such a context: reasons accessible to all are normatively expected if the outvoted minority is to live under the resulting laws. Otherwise we have mere tyranny of the majority, *even if* the law does not violate some independently grounded set of civil liberties.

The revelation-excluding model of public discourse and political action, which embodies moderate separation of church and state, is thus the right way to develop Audi's original idea that a citizen should have factual and "moral considerations not (epistemically) dependent on religious considerations" that are sufficient for whatever political measures she is advocating.<sup>56</sup> Audi was on the right track, but he did not narrowly define the kind of 'religious considerations' that are illegitimate in public discourse by focusing on revelation, and he did not ground this limit in a full deliberative

<sup>56</sup> See Robert Audi, "Religious Commitment and Secular Reason: A Reply to Professor Weithman," 71. Audi himself does not spell out the secular motivation requirement this way, because he takes a "religious consideration" to be one that is evidentially dependent "on the existence of God (for example (...) appeals to divine command) or on theological considerations (such as interpretations of a sacred text)" (ibid). But while sacred texts and divine commands are (like eschatological beliefs) paradigm cases of *revelatory* sources of motivation, the existence of 'God' as creator and moral ideal (e.g. Plato's divinity) could be derived from rational grounds on some theories of reason that do distinguish between rational and revelatory sources of warrant.

conception of democracy. When we approach the question from the deep theory of democratic legitimacy, we can see that it is only claims based primarily on special revelation that need to be ruled out. As long as this requirement is met, then a citizen operating out of a different comprehensive worldview can, with reasonable effort, understand why another citizen's claims might provide warrant for his political conclusions; even if she disagrees with his claim, she can see how it constitutes evidence according to an interpretation of natural knowledge or warrant different than her own. If citizen A can understand citizen B's reasons for supporting laws and policies in this sense, then A has *access* to B's justifying grounds, even though A may not agree with them or with B's inferences from them. By contrast, if B only cites an alleged revelation, or if B offers grounds that can only *count as reasons* on an epistemic theory that assimilates all rational warrant to revelational origins, then B's putative 'reasons' are *opaque* or unintelligible to anyone not sharing her faith.<sup>57</sup> Even if A can understand what B's claims literally *mean*, A cannot see them as making any dialectical contribution towards supporting B's political conclusions.

This distinction is based on the basic hermeneutic insight that with reasonable effort, human understanding can extend to conceptions of knowledge, and reason, and being incommensurable with our own, but cannot extend to others' revelations; these are accessible only through singular *experiences* of the divine, directly or through testimony, that are embraced in decisions of faith that amount to acts of conversion. The revelational content of religion thus has a certain ultimate privacy that alternate conceptions of natural reason do not have: access to revealed truth is 'privileged access' in a highly distinctive sense. Revelational grounds of political conviction, however powerful for believers, are not publicly accessible because those unconverted to the revelation cannot meaningfully grasp why these grounds should have any evidential weight for *normative* conclusions, even for their adherents. Such reasons cannot be understood by outsiders to the faith as having the illocutionary significance of supporting normative claims that a proposed policy or law is right or just for all. In many cases, with

<sup>57</sup> This is one of Kierkegaard's many insights in *Fear and Trembling*, where in "Problema III," the content of Abraham's faith in Isaac's miraculous survival by God's power cannot be "communicated" to others in the sense that it cannot be made rationally intelligible to them; it is based on a divine promise that was revealed to Abraham alone.

their best efforts, unbelievers would presumably not even be able to imagine what it would be like to be moved by revelational reasons that move some religious citizens, or to give credence to what they regard as inspired testimony.

Paul Weithman has written that, in political advocacy, "If someone offers what she should know cannot be good reasons for others, those she addresses may feel insulted, condescended to or patronized."<sup>58</sup> But in political discussion, offering allegedly revealed truths to someone who does not share faith in them is offensive in just this way. There may well be a legitimate place for evangelism or calls to conversion (and there are interesting questions about the ethics of such discourse), but surely citizens in a democracy cannot be *obligated* to let others try to convert them, and should be under no *risk* if they choose not to listen or respond to conversion appeals. This basic component of religious freedom is threatened if even moderate procedural separation is rejected and the majority can rule on the basis of revealed religion. If speech that could tend to persuade *only* by first converting were legitimate in democratic deliberation, then in adhering to a democratic social contract and participating in the political process, we would be accepting both a civic duty and a strategic need to allow all major religious groups in our society ongoing opportunities to convert us. Like its failure to distinguish democracy procedurally from popular theocracy, this is a *reductio* of unlimited religious inclusivism.

Wolterstorff ignores this crucial point when he argues that the ideal for democratic discourse should include inviting others "in their particularity" to explain their viewpoint on legal questions and candidates, where that includes attending to their faith-convictions and theological arguments concerning the political issues at stake.<sup>59</sup> In general, deliberative conceptions of popular sovereignty agree with Wolterstorff, against Rawls, that civility or respect for others as citizens requires "listening to the other person with a willingness to learn and to let one's mind be changed,"<sup>60</sup> even when this involves attending sincerely to her comprehensive conception of life and value. But my democratic duty to listen and be willing to learn from you, and perhaps discern how I might persuade you by

<sup>58</sup> Weithman, *Religion and the Obligations of Citizenship*, 128.

<sup>59</sup> Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," 110-11.

<sup>60</sup> *Ibid.*, 112-13.

my reasons,<sup>61</sup> *cannot* include a duty to expose myself to the full psychological impact of the revelations in which you have faith, or to permit you to initiate me into these mysteries, or to learn how to respond to you in these theological terms. Deep personal friendship might include such a duty; but even in this context, friends recognize that religious conversion is usually a profoundly emotional experience reaching to the deepest aspects of one's psyche. Nothing this existentially intense can be required for participation in democratic politics—just as democracy could not require us to mind-meld with other citizens if that became neurologically possible.

By contrast, if they participate in popular sovereignty, citizens are obligated to consider at least a representative sample of sincerely offered non-revelational arguments for conclusions other than their own on relevant political issues (or trust experts to help them with this task). They are also at risk if they refuse, because they have accepted that the most rationally persuasive arguments introduced into the public sphere should control legislative outcomes that will affect their liberties and other interests. This may involve considering arguments that shake us to our core, but it still leaves us a zone of psychological privacy that does not require disclosing and risking our innermost religious convictions.

## VI. Radical Inclusivist Objections and the Possibility of Theocracy

Although my proposed restriction on revelation-based advocacy is less exclusive than Rawls's or Audi's different principles, some radical inclusivists such as Weithman or Wolterstorff may still insist that any moral restraint on revelation-based claims "infringes on the free exercise of religion" and that we should give up "the quest for an independent source" of moral and political justification beyond revealed truth.<sup>62</sup> It must be conceded that there are some comprehensive religious conceptions, such as Shi'ia Islamic theology and the 'reformed epistemology' advocated by some contemporary Calvinists, on which the distinction between revelational and nonrevelational sources of warrant breaks down. However, I

<sup>61</sup> Wolterstorff, "Audi on Religion, Politics, and Liberal Democracy," 160.

<sup>62</sup> Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," 115.

am not arguing here that these conceptions are wrong, or that there are sufficient practical, moral, and political sources of warrant independent of revelation for democracy to work. Rather, I have only defended three much weaker theses.

First, for the democratic process rightly conceived as collective practical deliberation rather than as pure majority rule, the sources of practical warrant on which citizens rely only need to be independent of *special revelation*; they need not avoid all reference to the existence of God or theological ethics in general.<sup>63</sup>

Second, to be sufficient for the needs of democratic popular sovereignty, such independent sources do not need to be universally accepted and rich enough to 'resolve' all major political disputes, as Wolterstorff assumes.<sup>64</sup> They only need to be *accessible* to others as rationally intelligible grounds for the proposals considered in public deliberation, which may or may not gain actual consensus. As long as other citizens can, with basic education and effort (sometimes with expert help if necessary) understand why the agent takes the purported reason to be warrant-giving on criteria *available to all*, then they can assess this purported warrant for themselves—just as scientists can check each other's claims by repeating their experiments and observations. Efforts to persuade one another can continue in a civil way even after laws are made for the present and citizens can see existing disagreements as reasonable even when they are in the minority.

Third, democracy *presupposes* that there are such epistemic sources independent of revealed religion: if there are none, or not enough (e.g. if reformed epistemology is right), then we should in all honesty stop claiming legitimacy for democratic popular sovereignty and instead institute a popular *theocracy*. Thus it is no objection to my normative account of legitimate democracy to point out, as Greenawalt does, that some religions consider natural reason "radically incapable of reaching moral truth" and that arguing from such ineffective grounds would in their believers' eyes be a kind of perversion:<sup>65</sup> for historically, this has been the chief

<sup>63</sup> For example, much of St. Thomas Aquinas's analyses of moral responsibility, good and evil, and virtue in the *Summa Theologiae* I-II and II-II are arguably developed on rational grounds held to be universal in human nature and independent of revealed truth beyond any rational demonstration.

<sup>64</sup> Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," 102 and 114.

<sup>65</sup> Greenawalt, *Religious Convictions and Political Choice*, 39.

argument for theocracy. Those whose comprehensive conceptions entail that only theocratic rule can have legitimacy should openly admit this result—and perhaps form a new theocratic state with like-minded citizens, rather than trying to institute it under the deceptive label of a 'democracy' that is in principle radically inclusive of all religious claims and in practice often ruled by them. Such a theocracy might well become a tolerant and good republic that offered an important option in the community of nations; it might improve the human condition. But it would clearly not be a democracy.

This conclusion should not seem surprising: the legitimizing force of democratic deliberative procedures presupposes the possibility of drawing *some* epistemological distinction between natural reason and divine revelation, even if parts of the boundary are vague. If there is no such distinction, we would have to ask ourselves why theocracy would not be much more likely to make legitimate law. History confirms this analysis: for example, when Calvin's theology was accepted by most of Switzerland, that nation was run as a *de facto* theocracy. Similarly, although they were in favor of the Revolutionary War for the sake of defending religious liberty, the Calvinist colonies of Massachusetts Bay and Connecticut were originally founded as theocratic oligarchies whose "civil and ecclesiastical arms of government cooperated to restrain all inhabitants from temptation."<sup>66</sup> After 1708, when the Saybrook Platform was enacted, even the limited autonomy previously enjoyed by congregational leaders was replaced with a "centralized authority in a set of ministerial councils called *consociations*."<sup>67</sup> Notice that this is the same term that Wolterstorff selects for his model. Democratic theory cannot decide basic questions of epistemology, but it can explain why no system of government is a 'democracy' if it does not meet the moral and epistemic presuppositions of legitimate popular sovereignty. If it is God who is politically sovereign through special revelation beyond what is known or warrantable from natural sources, then even if the people

<sup>66</sup> See the fascinating history of the clash between Calvinism and Jeffersonian movement for democratic popular sovereignty in the early United States detailed by Stephen Berk in his *Calvinism versus Democracy: Timothy Dwight and the Origins of American Evangelical Orthodoxy* (Hamden, Conn.: Archon Books, 1974), 6.

<sup>67</sup> *Ibid.*, 8 (my italics). Wolterstorff calls his view the "consocial position" (see Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," 114).

unanimously trust in this revelation, the resulting government is properly called a theocracy.

In conclusion, deliberative democracy offers an intermediate position that is more religiously inclusive than 'political liberalism' as conceived by Rawls or Audi, but which maintains a principled distance from unlimited religious inclusivism. Its moderate revelation-excluding model of publicly accessible reasons depends on certain epistemic presuppositions, which help distinguish democracy from theocracy. For this approach, the next steps would be to explain in detail why, against first appearances, Habermas's discourse theory supports the moderate separation principle, and to consider whether we should hold elected officials and ordinary citizens to different standards on the best deliberative conception of democracy. These steps are left for further work.

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