

THE ROLE OF RELIGIOUS CONSIDERATIONS IN THE PUBLIC DISCOURSE OF PLURALISTIC DEMOCRACIES[†]

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I will begin first with background assumptions. I assume that an appropriate church-state separation is a protection of religious liberty and governmental autonomy. Three principles I defend are a liberty principle that requires the government to protect religious liberty, an equality principle requiring its equal treatment of different religions, and a neutrality principle requiring its neutrality toward religion.¹ The equality principle implies non-establishment. The neutrality principle is not entailed by the other two nor, so far as I can tell, clearly required by the Constitution. In political philosophy, it is also more controversial.² I also assume that there is a moral right to maximal freedom of expression in public discourse and that here, as in other realms of conduct, liberty is the default position in free democracies.

Secondly, I would like to comment regarding standards for freedom of expression versus standards for advocacy of laws and public policies. Free expression may have many purposes other than advocacy. Those engaging in it need not even aim at persuasion. By contrast, advocacy of laws or public policies normally is intended to persuade and most of those are also coercive. For coercion, as opposed to free expression, there are higher standards, both moral and legal. We are free to persuade others to do things we ought not to coerce them to do. Related to this, in the moral realm it is essential to distinguish *rights* from *oughts*. There are things many of us ought to do, such as give to charity, which we nonetheless have a moral right not to do. No one may coerce charitable contributions.

[†] This Address was presented as part of a panel discussion, "Religious Liberties: the Role of Religion in Public Debate," at the Federalist Society for Law & Public Policy Studies 2007 National Lawyers Convention, November 15, 2007. The panelists included: the Honorable Michael W. McConnell, United States Court of Appeals for the Tenth Circuit; Professor Robert Audi, University of Notre Dame; Professor Kent Greenawalt, Columbia Law School; Dr. James W. Skillen, President, The Center for Public Justice; moderated by the Honorable Diane S. Sykes, United States Court of Appeals for the Seventh Circuit.

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¹ See ROBERT AUDI & NICHOLAS WOLTERSTORFF, RELIGION IN THE PUBLIC SQUARE: THE PLACE OF RELIGIOUS CONVICTIONS IN POLITICAL DEBATE 3–8 (1997); Robert Audi, *Moral Foundations of Liberal Democracy, Secular Reasons, and Liberal Neutrality Toward the Good*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 197 (2005).

² See AUDI & WOLTERSTORFF, *supra* note 1, at 6–8 (discussing the kind of religious neutrality appropriate to liberal democracy).

Given our moral rights, free expression and advocacy should be legally limited only by a harm principle, roughly a principle to the effect that the liberty of competent adults should be restricted only to prevent harm to other people, animals, or the environment. Ethically, however, both free expression and advocacy should meet higher standards than this very permissible one.

Third, there are some major principles governing advocacy of laws and public policies. Regarding good citizenship, I have defended a standard I call the principle of *secular rationale*.³ This principle is that citizens in a free democracy 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; for instance, for a vote.⁴ This principle has been widely misunderstood. Here are a few of the needed qualifications and an indication of its basis:

One, a prima facie obligation is defeasible and may be overridden. Suppose appeal to religious considerations is necessary to enact laws that will prevent a Nazi from coming to power. Then one should appeal to them.

Two, the prima facie obligation here, like many others, such standards are compatible with a right to do otherwise. The secular rationale standard is for good citizenship, not for merely permissible socio-political functioning.

Three, a secular reason for an action is roughly one whose status as a potential justifier of action does not evidentially depend on, but also does not deny, the existence of God, nor does it depend on theological considerations or the pronouncements of a person or institution as a religious authority. But secular reasons, say considerations of public safety, will typically accord with reasons that are supported by at least some major religions.

Four, an adequate reason is one that, in rough terms, evidentially justifies the belief, act or other element it supports. The notion is objective but complex and non-quantitative. In many applications it is controversial, but no plausible legal or political philosophy can do without it.

Five, excusability. A person who does not live up to the principle of *secular rationale* is not *ipso facto* a bad citizen. Like other failures, this one may be fully excusable.

³ Audi, *supra* note 1, at 216.

⁴ *Id.*; see also Robert Audi, *Religiously Grounded Morality and the Integration of Religious and Political Conduct*, 36 WAKE FOREST L. REV. 251, 268 (2001); Robert Audi, *Religious Values, Political Action, and Civic Discourse*, 75 IND. L.J. 273, 276–80 (2000).

Six, the principle of *secular rationale* is non-exclusive. A) It does not rule out having religious reasons for legal coercion or imply that such reasons cannot justify it. B) It does not even rule out having only religious reasons for lifting oppression or expanding liberty. It concerns coercion. C) It does not imply that religious reasons should be privatized. Indeed, one might quite properly indicate publicly that one supports, say, banning assisted suicide not from a religious ground, such as reverence for God's gift of life, but for secular reasons such as protection of vulnerable patients.

Seven, as to the basis of the principle, here I will suggest only that A) it supports free democracy and religious liberty; B) it helps to prevent religious strife; and C) it is needed to observe the "do unto others" principle⁵ since clearly rational citizens may properly resent coercion based on someone else's religious convictions.

I should add that I could have called it the principle of *natural reason*. This would highlight both its central stress on our natural rational endowment and its continuity with elements in the natural law tradition as expressed by Aquinas.⁶ Note that we can take our natural endowment as God-given even if we regard the knowledge it makes possible, notably including moral knowledge, as attainable even without appeal to theology or religion.

This is a good place to stress a principle I have more recently introduced as a complement to the secular rationale principle. It is the principle of religious rationale.⁷ It says that religious citizens in liberal democracy 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, an adequate religiously acceptable reason for this advocacy or support. The underlying idea is that the ethics of good citizenship calls on religious citizens to constrain their coercion of fellow citizens by seeking a rationale from their own religious perspective.⁸

This perspective would be hypocritical or worse to ignore in such a weighty matter. Given the common coincidence between religious reasons for basic legal constraints on freedom and natural reasons, which are secular for the same constraints, the principle of religious rationale is an important complement to its secular counterpart for the wider question of the place of religious considerations in public discourse.

⁵ *Matthew* 7:12 (NIV) ("So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets.").

⁶ See 2 ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* pt. I-II Q. 94, art. 1–6 (Fathers of the English Dominican Province trans., Christian Classics rev. ed. 1981) (1911).

⁷ Audi, *supra* note 1, at 217.

⁸ *Id.*

Let me conclude with some comments on some of the standards for religious expression, whether argumentative or simply expressive, in public discourse. These are, in effect, standards for non-privatization. The uses of religious language are unlimited. Think not just of advocacy and persuasion but of self-expression, self-description, and information. I may need to tell you my religious position to say in any depth who I am. I may want to persuade an audience of physicians and attorneys not to violate our relation to God by facilitating assisted suicide, even though I have voted to legalize it for natural reasons based on respect for the liberty of others with different religions, or none.

What are some of the standards of good citizenship for the socio-political use of religious discourse? One is simply judiciousness. Will what we say be illuminating or alienating, unifying or divisive, clarifying or obfuscating? There are myriad considerations here, both of ethical sensitivity and of prudence. A second consideration is the spirit of reciprocity based partly on the sense of universal standards available to all rational, minimally educated adult citizens. An appeal to a biblical narrative, for instance, can be clarifying with regard to such secular questions as whether prosperous nations are obligated to give more than they do to poor ones. Consider, also, the “do unto others” rule.⁹ The wording is biblical. The content is a call for reciprocity, even universalizability.

I see no conflict between being religious, indeed expressively so in public, and adhering to both the principle of secular rationale and that of religious rationale. This integration is most likely to be well reasoned and stable if it is supported by a theo-ethical equilibrium. This is roughly a rational integration between religious deliverances and insights concerning moral matters and, on the other hand, secular ethical considerations. There are theological reasons, at least from the point of view of natural theology, for thinking that a high degree of theo-ethical integration is possible at least for those who conceive God as omniscient, omnipotent, and omni-benevolent. Religious citizens who achieve the theo-ethical equilibrium will typically have both natural and religious reasons for their standards governing freedom and coercion.

I close with a suggestion that public discourse in a free democracy is best served by citizens having and, in a wide range of important matters, using an appropriate civic voice. Such a voice is a matter of intonation and manifest respect for others’ points of view and convictions. It may reflect religious elements, but in citizens adhering to the principle of natural reason, it will also indicate a respect for standards that simply, as rational persons, we do or can have in common and should take as a basis for setting proper limits on our, may I say, sacred liberty.

⁹ See *Matthew* 7:12.