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What is This?
Religion, respect and Eberle’s agapic pacifist

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Abstract
Christopher Eberle has developed a powerful critique of justificatory liberalism. According to Eberle, justificatory liberalism’s doctrine of restraint, which requires religious citizens to refrain from publicly advocating for policies that can be supported only by their religious reasons, is illiberal. In this article, I defend justificatory liberalism against Eberle’s critique.

Keywords
Christopher Eberle, justificatory liberalism, public reason, religion

It is safe to assume general familiarity with the ongoing controversies concerning the role of religious reasons in the style of liberal theory known as justificatory liberalism.1 To put the matter most bluntly: justificatory liberalism holds that ‘A legitimate regime is such that its political and social institutions are justifiable to all citizens – to each and every one’ (Rawls, 2007: 13). Yet as liberal democracies feature a reasonable pluralism of moral, religious and philosophical views, there is deep disagreement among reasonable people over what kind of reasons can supply the justifications required for legitimacy. Consequently, a vast and ever-growing literature has emerged concerning the nature of public justification and the kind of reasons that provide it. Despite all that divides justificatory liberals, there is agreement among them that reasons which derive exclusively from particular religious doctrines are not publicly justificatory. This view has prompted serious objections from liberal religious philosophers and others.

In the article I want to stand back from these broader debates and attend to a particular argument proposed recently by Christopher Eberle (2009). According to Eberle, strictly religious reasons are, under certain conditions, sufficient to publicly justify coercive public policy. His argument employs the example of a member of a fictional Christian

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sect, the Agapic Pacifists. It seems to me that if Eberle is correct about the agapic pacifist, then justificatory liberalism is probably wrong, and the ongoing arguments concerning the finer details of public justification are irrelevant. My objective is to defend justificatory liberalism in Eberle’s artificial case in order to show that it is still a viable view in the real-world cases.

Before turning to the argument, though, I should emphasize one preliminary consideration: the arguments to be discussed are internal to liberalism. The issue is not whether liberalism is an appropriate framework for thinking about politics; nor is it whether authentic religious conviction is consistent with liberalism. So the arguments of anti-liberal religious philosophers and radically orthodox theologians are, for our purposes, irrelevant. The issue is whether justificatory liberalism is the right liberalism. Eberle thinks that justificatory liberalism is not properly liberal (2009: 157); I think Eberle is wrong.

To begin, let us quickly review the terrain. Justificatory liberals hold that coercive laws must be publicly justifiable in order to be legitimate. What this requirement comes to is a matter of dispute. However, justificatory liberals seem agreed on at least this: strictly religious reasons are not publicly justificatory. By strictly religious reasons, I mean reasons that derive exclusively from some particular religious perspective. Accordingly, the justification for a law prohibiting torture that draws from considerations of human dignity need not run afoul of the justifiability requirement, because the idea that we are morally required to recognize such dignity is not exclusive to any particular religious perspective, but is in fact common to many perspectives, religious and secular. By contrast, laws forbidding homosexual sodomy fail to be publicly justifiable because there is no case for forbidding homosexual sodomy that does not depend ultimately upon some sectarian religious doctrine. That is, in order to appreciate the reasons for prohibiting homosexual sodomy – in order to see the proposed reasons as even relevant – one must be committed to a religious view which, in a liberal society, citizens are free to reject. This has led some justificatory liberals to claim that public reasons are secular reasons.2

So the justificatory liberal holds that the exercise of the coercive force of the state is improper when it cannot be justified by the right kind of reason, and strictly religious reasons are reasons of the wrong kind. Difficulties emerge when we consider cases in which the state offers as its reason for law L a strictly religious reason, but L also is supported by reasons that are not strictly religious. But we can bracket this: justificatory liberals agree that coercive laws that are supportable only by strictly religious reasons are illegitimate.

To feel the force of this view, consider a law forbidding the eating of pork on certain specified days of the year. It is hard to imagine a justification for such a law that is not strictly religious. And this seems to render the law illegitimate in a way that even vegetarians should recognize. But why? The justificatory liberal’s reply is intuitive: the only reasons that count in favor of the law are reasons that don’t count.
the legitimacy of a law to turn on the question of which religion is correct. We want a way to object to the law’s legitimacy that does not require us to argue the merits of the religious perspective which recommends it. We want to avoid having to say to our fellow citizens that their deepest religious convictions are false, yet we also want to retain the means by which we can reject the idea that everyone should live in accordance with those convictions. Justificatory liberalism seems to fit the bill.

The claim is not simply that laws based upon only strictly religious reasons make for inconvenient or messy politics. The justificatory liberal holds that such laws are disrespectful of those who must live under them. What drives this view of disrespect is another staple commitment of justificatory liberalism, namely, acknowledgement of what Rawls called ‘the fact of reasonable pluralism’ (2005: 36). Deep disagreement over fundamental moral, religious and philosophical commitments is not necessarily due to ignorance, foolishness, or wickedness; rather, responsible and intelligent persons doing their epistemic best may nonetheless disagree deeply about fundamental matters. A liberal polity must recognize that there are several comprehensive doctrines which are consistent with responsible citizenship, despite being opposed to each other. Laws which can be supported only by strictly religious reasons disrespect citizens – they coerce solely on the basis of reasons that citizens may reject.3

On almost any liberal view this much is commonplace. Things get tricky when we examine the political activity of citizens.4 Consider: Abby votes for a coercive law L on the basis of her strictly religious reasons, knowing that no other kind of reason supports L. Has Abby acted wrongly?

The justificatory liberal claims that Abby has acted wrongly. The reasoning runs as follows. In a democracy, citizens share political power equally – they vote, campaign, lobby and engage in other activities designed to direct the state. Let us use the term ‘advocacy’ to cover all of these varied activities. If a coercive law is illegitimate when it is not justifiable, then advocacy on the basis of strictly religious reasons is morally suspect, especially when the policy is supportable only by strictly religious reasons. When citizens engage in advocacy of this kind, they exercise their meager share of political power in a way which directs the state to coerce unjustifiably. If it is wrong for the state to enact laws that are not justifiable, then it is wrong for citizens to exercise their political power such that, were the effort successful, the state would unjustly coerce.

The analogy between legislation and advocacy is imperfect. Whereas state coercion is illegitimate when it is not justifiable, Abby’s advocacy coerces no one and so is simply immoral. When a state coerces for reasons of the wrong kind, it commits an injustice; when Abby advocates for a law that can be supported only by the wrong kind of reason, she violates a duty of citizenship. However, the justificatory liberal maintains that in both cases, the kind of wrong is the same: the state disrespects its citizens when it enacts coercive policy that is unjustifiable, and a citizen who advocates for an unjustifiable coercive law disrespects her fellow citizens.

Hence the justificatory liberal contends that citizens are under a moral duty to withhold advocacy in the case of coercive laws which are supportable only by strictly religious reasons. To do otherwise is to disrespect one’s fellow citizens; it is, to use the Rawlsian term, to be uncivil. The duty of civility is a moral one, not a legal one (Rawls, 2005: 217); citizens who violate it are subject to blame, not sanction. Furthermore, the
duty constrains one’s political advocacy, not one’s speech per se. There is no duty of citizenship which precludes citizens from publicly expressing or discussing the strictly religious reasons which support their favored laws. The duty of civility applies only in cases where we exercise our powers of citizenship to direct the state to coerce others.⁵

Civility becomes problematic once we consider the nature of religious conviction. Religious citizens often see their religious convictions not only as beliefs they have, but also as what they are.⁶ Accordingly, for many citizens, their religious convictions specify what justice is, what deserves toleration, and what proper citizenship consists of. In short, many religious citizens take their obligations to God to be overriding; it is part of their religious conviction that religious obligations trump all other obligations (Eberle, 2002: 145).

In requiring citizens to withhold advocacy from laws that can be supported only by their strictly religious reasons, justificatory liberalism imposes on religious citizens serious conflicts of conscience: they are required to recognize a political obligation which overrides what they take to be their religious obligations. In some cases, this seems to interfere with the free exercise of religion: some believers claim to have a religious obligation to engage politically in a way that manifests their faith. To endorse an ethic of citizenship that would require violations of conscience seems disrespectful.⁷

The potential for disrespect that lies within the duty of civility is often downplayed. And, as Eberle rightly observes (2009: 152), this no doubt has to do with the fact that in the literature, the religious opponent of justificatory liberalism is most frequently found advocating for laws which liberals have independent reasons to think odious. The badness of the desired policy output is projected on to the input (Weithman, 2002: 1).

So let us turn to an example proposed by Eberle (2009) which helps to focus on the inputs. Betty is an agapic pacifist. Agapic pacifists hold, for strictly religious reasons, that ‘waging war is always morally prohibited’, even in self-defense, even in order to save innocent lives (2009: 153). Moreover, agapic pacifists hold that they are morally obligated to politically prevent war, and so they advocate for a 28th Amendment to the US Constitution which would strip the federal government of the power to wage war (ibid.: 154). Let us suppose that this extreme pacifism can be supported only by the strictly religious reasons provided by the agapic pacifist’s unique brand of Christianity.

Thus the issue: the justificatory liberal contends that in advocating for Amendment 28, Betty disrespects her fellow citizens. Is the justificatory liberal correct?

This is a conceptual question. Some have suggested that it is a misguided question since there is, in fact, no real-world policy proposal which is supportable solely by strictly religious reasons (Perry, 2009: 114). Indeed, the familiar cases of conflict between religion and politics seem to be cases in which citizens advocate on the basis of strictly religious reasons for policies that are supportable by other reasons as well. Now, I happen to believe that a citizen who advocates solely on the basis of strictly religious reasons is morally blameworthy as a citizen, regardless of whether her favored policy also enjoys the support of accessible reasons; yet this is, again, a complicated matter which I set aside. One thing is clear: if Betty’s advocacy is morally aboveboard, then strictly religious advocacy will be aboveboard in the real-world cases. That is, if Betty’s advocacy is permissible, then it will be difficult to make the case that strictly religious reasons against same-sex marriage, abortion, euthanasia and contraception are non-
justificatory. So it is important to begin with the artificial but more clearly defined case. If it can be shown that Betty’s advocacy is disrespectful, there is still an argument to be had concerning the real-world cases.

II

Eberle has launched a sophisticated two-stage attack on justificatory liberalism (2001; 2002; 2007; 2009). The first stage exposes a flaw in the structure of justificatory liberalism. The second stage presents a compelling conception of respect which can be satisfied even by citizens advocating for laws which are supportable only by strictly religious reasons. To be sure, Eberle’s view is not radically inclusive, because it declares certain kinds of religious advocacy disrespectful. Crucially, it permits Betty’s advocacy.

Let us look more carefully at Eberle’s criticisms of justificatory liberalism. First, the structural objection. Eberle correctly observes that the core of justificatory liberalism consists of which almost always run together. The first is the Principle of Pursuit:

A citizen should pursue public justification for his favored coercive laws.

The second is the Doctrine of Restraint:

A citizen should not support any coercive law for which he lacks a public justification.

Eberle’s charge is that justificatory liberals treat the Doctrine of Restraint as logically equivalent to the Principle of Pursuit, often moving from the one to the other without any argument at all. A canvass of the justificatory liberal literature confirms Eberle’s observation. Gerald Gaus captures what seems to be the official view on the matter: ‘the reverse side of our commitment to justify imposing our norms on others is a commitment to refrain from imposing norms that cannot be justified’ (1996: 162).

A lot more needs to be said about the relation between the Principle Pursuit and the Doctrine of Restraint. To be sure, Pursuit does not entail Restraint (Eberle, 2009: 168; 2001: 313). The two commitments are distinct, and there is a gap between them. A survey of the justificatory liberal literature reveals little by way of convincing argument which would close the gap; this has led Michael Perry to conclude that the gap cannot be closed (2003: 48).

I will return to this issue in a moment. Eberle’s positive strategy is to show that respect requires Pursuit but not Restraint. Eberle contends that ‘a citizen respects his compatriots … only if he accords due moral weight to the fact that they are persons, which in turn requires this fact to make a moral difference to the way he acts’ (2002: 86). This requires that we regard our compatriots as ‘having great and equal worth’ (2007: 437). From this he develops a view of what respect requires of citizens when they politically advocate, what he calls the ‘ideal of conscientious engagement’ (2002: 104 ff.). According to this ideal, a citizen must ‘pursue a high degree of rational justification for the moral propriety’ of her or his favored coercive laws, and ‘withhold support’ if he or she cannot achieve such justification (2009: 165). Furthermore, respect requires a
Eberle claims that Betty, our agapic pacifist, could satisfy the demands of the ideal of conscientious engagement and yet fail to discern a public reason for her favored law. If she has achieved a high level of rational justification for her favored law and has done her level best to find accessible reasons for it, Betty has, according to Eberle, done everything respect requires. And so with all religious believers: provided that they have achieved a high level of rational justification for their view, and done their level best to discern accessible reasons for the laws they favor, they may advocate on the basis of strictly religious reasons, even when no other reasons are available. Eberle takes himself to have reconciled the two liberal commitments that justificatory liberals place in opposition, namely, respect for fellow citizens and freedom of conscience. The justificatory liberal’s Doctrine of Restraint is not necessary from the point of view of respect, and thus is, Eberle says, ‘illiberal’ (2009: 157).

Eberle thinks that the agapic pacifist case is especially compelling, because Betty is ex hypothesi motivated by a doctrine which accords to every human life an unusually high degree of basic worth (2009: 159), and she advocates for policy which she rationally believes is required if we are to respect that worth (ibid.: 160). Betty advocates for Amendment 28 precisely because she holds human life in especially high regard. Consequently, Eberle finds the justificatory liberal’s claim that Betty disrespects her compatriots ‘incredible’ (ibid.).

III

I propose two lines of response on behalf of justificatory liberalism. First, the ideal of conscientious engagement is not sufficient to avoid serious conflicts of conscience, and in fact may prove to be more burdensome than the Doctrine of Restraint. The success of this line of response of course should give no great consolation to the justificatory liberal; it is a tu quoque, and so provides no support for justificatory liberalism. A second line of response sketches a conception of respect available to the justificatory liberal that requires both Pursuit and Restraint. I shall take these up in order.

Eberle’s ideal of conscientious engagement may seem an attractive alternative to the Doctrine of Restraint when we consider conflicts between religious reasons and accessible reasons; however, things become dicey when we consider conflicts between religious believers of different faiths. Consider: Stan, the local Satanist, has achieved a high level of rational justification for the moral propriety of a law calling for government-sanctioned hedonism festivals involving public orgies, blood rituals, alcohol consumption and animal sacrifice. To avoid difficulties concerning the constraint that we treat others as having ‘great and equal worth’ (Eberle, 2007: 437), let us say that the festival involves no compulsory acts of worship and no forced interpersonal contact; we are thinking of something more like state-sanctioned public frat parties than compulsory church attendance. Though Stan supports this law on the basis of his strictly Satanic reasons, he has done his level best to find accessible reasons, and he has engaged
sincerely with his opponents; yet no accessible reasons have surfaced. On Eberle’s view, Stan has satisfied his duty to respect his fellow citizens and may now advocate for his law.

Stan’s advocacy is unlikely to succeed politically. However, note that Eberle’s view requires citizens to recognize the in principle legitimacy of a law that enjoys no other justification than a Satanic one. And this alone can create a severe conflict of conscience. On Eberle’s view, respect requires Christian citizens to place themselves under political conditions which would morally permit coercion on the basis of reasons that they not only do not recognize the moral force of, but are religiously committed to denying the moral force of. By accepting the ideal of conscientious engagement as the entirety of what respect requires, religious citizens make themselves vulnerable to justified coercion on the basis of reasons they, from their religious perspectives, must deny are reasons at all.

Let us imagine that Stan prevails. On Eberle’s view, the Christian citizen has no principled objection to the legitimacy of Stan’s law; Stan has satisfied the ideal of conscientious engagement, hence there is nothing defective about the law at all. More importantly, if Stan prevails, Christian citizens would have a moral obligation to do what they are religiously obliged to deny they could ever have a moral reason to do. I must confess that this seems utterly untenable, bordering on incoherent; at the very least, it places a far heavier burden on the religious believer than the Doctrine of Restraint would.

But the case of Stan is not ideal. One could argue, for example, that Stan’s law is not really coercive, since it requires citizens merely to allow the festivals, or at most be complicit in them. Now, I think the law is coercive, but let us not get sidetracked by this issue. There is a different case which seems more clear-cut. Marco is a Marx-inspired Christian Liberation theologian. Marco believes with a high degree of rational justification that violent conflict is inevitable in the pursuit of justice, and sees compulsory conscription into military combat forces as a necessary solidarity-building and conscience-purifying measure. Marco conscientiously engages, but finds no public reason for his law; he advocates on the basis of his strictly religious reasons for universal conscription into combat forces.

Suppose that Marco prevails. Where does that leave Betty? She now must consider herself as under a moral obligation to participate in military combat, despite the fact that she must also regard all military action as impermissible. She could of course argue for an exemption from the law, but note that in making her case, she would not be able to complain that in imposing the law, the state would be disrespecting her. Yet this is precisely what Betty should want to say.

It seems to me, then, that religious citizens have good reason to reject the idea that conscientious engagement is sufficient for respect. Where does that leave the justificatory liberal? Let us return to the gap Eberle identified between Pursuit and Restraint. Although it is true that Pursuit does not entail Restraint, it seems to me that there is a case to be made for thinking that a properly liberal conception of respect requires both.

A central liberal commitment has it that, in addition to the kind of respect persons owe to each other qua persons, there is a distinctive kind of respect that liberal citizens owe to each other qua citizens. Call this citizen respect. Citizen respect involves the recognition of fellow citizens as political equals, equal sharers in political power and
responsibility. Two points are crucial. First, what it is to be a proper citizen in a liberal democracy is to recognize the moral force of certain reasons when making collectively binding coercive laws. For liberal citizens deliberating about some proposed law L, considerations regarding L’s impact on equality, liberty, freedom, dignity, autonomy and civil peace must count. Of course, citizens may disagree about how the values referenced in reasons of this kind are to be understood and how such reasons are to be prioritized; there are, after all, many different liberal conceptions. But to deny that reasons of these kinds matter is to call into question one’s fitness for liberal citizenship.

Hence we can identify a collection of reasons that citizens qua citizens must recognize as relevant when deciding policy. Appropriating a term from Bernard Williams (1981), we may say that these are reasons which must count as internal reasons for citizens in their role as citizens. I take it as nearly definitional that, in a liberal society, strictly religious reasons cannot be internal reasons for citizens as such. To say that considerations such as ‘The Bible dictates that p’ or ‘Saturday is the Sabbath’ must count for citizens in their role as citizens is no longer to be talking about a liberal regime.

Second, liberalism of nearly any stripe holds that legitimate laws place moral obligations on citizens; therefore, when a citizen breaks a legitimate law, we hold him or her morally blameworthy, and not simply legally sanctionable. In this way, imposing coercive laws is analogous to imposing moral obligations generally. Like moral blame in general, blame for violating a law is morally appropriate only when we can say that those who break the law have an internal reason to acknowledge the law. To take others to be morally required to acknowledge obligations that they have no reason to acknowledge is not to treat them as moral agents, but, in Gaus’ apt term, to browbeat them (1996: 124); and to browbeat fellow moral agents is to disrespect them.

Pulling these two considerations together, we can say that liberal citizens are required to recognize – for the purposes of citizenship, at least – certain kinds of reasons. In addition, citizens are in the business of placing moral obligations on each other in the form of laws. As laws state moral obligations, citizens who violate the law are morally blameworthy for their non-compliance. But assigning moral blame for violating a law is disrespectful when the violator has no internal reason for acknowledging the law. And liberal citizens are not required to regard strictly religious reasons as internal reasons. Accordingly, to impose on Carol a law which she qua citizen has no internal reason to acknowledge, is to treat her as a mere subject of legislation, not a citizen; and this is to disrespect her.

This kind of disrespect is precisely what is involved in the law favored by Betty. Amendment 28 would impose on some citizens a moral obligation which they, qua citizens, have no reason to acknowledge. No matter how well-intentioned Betty is, no matter how high her regard for human life, no matter how much she respects her fellow human beings, the law she proposes fails to recognize the political equality of all citizens; hence it is disrespectful to her fellow citizens. If it would be disrespectful for the state to enact a given law, it is disrespectful for a citizen to direct the state to enact it. Hence advocacy for laws that are supportable only by strictly religious reasons is disrespectful.
We may say, then, that citizenship respect requires us not only to pursue accessible justifications for the laws we advocate, but to succeed at finding such justifications. To do otherwise would be to permit ourselves to impose on our fellow citizens moral requirements that they need have no reason to acknowledge. Again, that would be to treat our compatriots as mere subjects of legislation, not as citizens. In short, respect requires Restraint.

Eberle has addressed this kind of view. Gaus runs a version of the argument above, claiming that:

In order to make genuine moral demands on others... you must show that, somehow, their system [of beliefs] yields reasons to embrace your demand. (1996: 129)

Against Gaus, Eberle denies that moral blame is appropriately assigned only when the purportedly blameworthy agent could be regarded as having a reason of his own for satisfying the moral obligation in question.

Eberle argues by means of two cases. First, Jeffrey is ‘incapable of controlling his urge to torture his fellow human beings’ (2002: 133). Jeffrey thus is unable to resist violating the moral demand to not torture. Eberle claims that we should not blame Jeffrey for torturing, but we nonetheless ‘should impose on Jeffrey and others like him our moral demand that citizens not be tortured’ (ibid.). Second, Jill is ‘incapable of forming the concept of genocide’ (ibid.). Consequently, moral obligations not to participate in genocide cannot be justified to Jill. Eberle contends that we nonetheless ought to hold Jill to the moral obligation not to engage in genocide (ibid.).

Eberle takes the case of Jeffrey to show that it can be appropriate to impose a moral requirement on someone who cannot satisfy it; he then takes the case of Jill to show that it can be morally appropriate to impose a moral requirement on another who is incapable of appreciating the reasons which support it. Eberle takes himself to have provided counter-examples to the view that the imposition of moral requirements is appropriate only when they are justifiable to those upon whom they are imposed.

I do not see how these are counter-examples. Consider Jill. Eberle claims that but for her ‘serious moral blind spot’, she is ‘an ordinary moral agent’ (2002: 133). It is hard to see how someone lacking the ability to form the concept of genocide could be ‘an ordinary moral agent’; in fact, it is hard to see what we are being asked to imagine. Does Jill have the concept of mass murder? Does she have the concept of an ethnic or cultural group? Does she have the concept of mass murder for the purpose of ridding a particular location of a particular group? It seems that someone having these further concepts would be able to form the concept of genocide. But if she does lack these concepts, it is hard to see how Jill could be ‘an ordinary moral agent’. At the very least, Jill is not a moral person with respect to genocide. We impose the requirement to not participate in genocide, and this requirement indeed has moral content, but, for Jill, it cannot be a moral requirement; with respect to genocide, Jill is rightly regarded as a mere subject of legislation. The same goes for Jeffrey. Insofar as Jeffrey and Jill are impaired moral agents, they do not serve as counter-examples.18
Perhaps Eberle does not mean for these cases to be taken as counter-examples, but to function simply as examples of a different view of how agency and blame are related.\textsuperscript{19} Maybe there is a viable view of these matters which permits us to impose moral requirements on those who cannot abide by them or cannot grasp the justification for them. But it is difficult to imagine how a conception of justified state coercion which denied this could be a \textit{liberal} conception.

To conclude: I have argued that Eberle’s ideal of conscientious engagement would engender conflicts of conscience that are perhaps more severe than those occasioned by the Doctrine of Restraint. Moreover, I have proposed an identifiably liberal conception of respect that requires both Pursuit and Restraint. I have not provided arguments for citizen respect in this article. But arguments are easy to anticipate: citizen respect captures core liberal thoughts about citizenship, equality and democracy; and it also comports well with familiar Strawsonian (2008[1960]) intuitions about moral responsibility, agency and blame. Perhaps more importantly, citizen respect accommodates the liberal thought that respect is internally tied to representative and accountable government; that is, citizenship respect is able to capture the core liberal commitment that there is something \textit{intrinsically} disrespectful about, say, monarchy.\textsuperscript{20}

Under justificatory liberalism, citizens like Betty will suffer terrible conflicts of conscience. But liberalism does not guarantee a life of moral serenity. Yet justificatory liberalism permits quite a lot: it allows Betty publicly to express her agapic pacifism, publicly to condemn war, and to participate in Peace movements. She may organize, demonstrate, protest and petition against war; she may argue for special accommodation concerning how her taxes are spent, and so on. But she must refrain from advocating for Amendment 28. If Betty simply cannot abide this requirement, one wonders whether she would be able to regard any democratic law which conflicts with her agapic pacifism as morally binding (Gaus, 2003). Perhaps in the end Betty is incapable of responsible citizenship. But even so, if she confines her behavior to what is \textit{legally permitted}, there is really nothing the justificatory liberal can do beyond holding her morally blameworthy. And surely from Betty’s perspective that is not the end of the world.

Admittedly, I have left many crucial matters hanging. I have simply identified a viable justificatory liberal strategy for defending the Doctrine of Restraint in cases of laws for which only strictly religious reasons exist. This does not settle any real-world issue; it shows only that there is a real-world argument to be had.

\textbf{Notes}

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1. The term \textit{justificatory liberalism} was introduced by Gaus (1996) as the name of his own view; Eberle (2002: 339, n. 34; 2009) applies the term to the full range of recent liberalisms inspired
by the later Rawls. Gaus now uses the term in this broad way; see Gaus and Vallier (2009). For a fair representation of the views in currency, see the articles collected in Philosophy & Social Criticism 35 (1–2) (2009). See also Habermas (2006), Yates (2007), Bohman and Richardson (2009), Hoskins (2009); and the materials cited below.


4. Things get trickier still when we consider the activity of public officials; I leave these complications to the side.

5. It may apply only in certain cases of this kind; Rawls held that the constraints of public reason applied only where ‘matters of basic justice’ and ‘constitutional essentials’ are at stake (2005: 214).

6. Hence Wolterstorff: ‘It belongs to the religious convictions of a good many religious people in our society that they ought to base their decisions concerning fundamental issues of justice on their religious convictions’ (1997: 91). See also Greenawalt, ‘the implicit demand that people try to compartmentalize beliefs that constitute some kind of unity in their approach to life is positively objectionable’ (1988: 155); and Dworkin, ‘[For many Americans] their religious convictions are political principles’ (2006: 64).

7. Furthermore, the justificatory liberal appears to have ‘fixed’ the rules of democratic legislation in favor of certain outcomes. As many have observed, the force of the pro-life case is greatly diminished when strictly religious reasons are deemed non-justificatory. And so, to many religious believers, the restrictions imposed by justificatory liberalism seem unfair and dismissive of religious conviction. In a fateful footnote, Rawls contends that ‘it would go against the ideal of public reason if we voted from a comprehensive doctrine which denied the rights specified in Roe v. Wade (2005: 244). Naturally, this has drawn fire from Thomists, like Robert George and Christopher Wolfe, who liken the task of public justification to ‘playing a game with loaded dice’ (2000: 66). Feminist and radical democrats have joined with the Thomists on this issue; they claim that the Rawlsian constraints codify existing arrangements and thereby exclude more radical views (Benhabib, 1996; Frazer, 1992; Young, 2000).

8. Similar arguments can be found in Lott (2006).


10. I will not supply the documentation here. See Eberle (2002: 68 ff.).

11. It is hard to formulate a plausible intervening deontic principle which would license an inference from a duty to try to a requirement concerning what to do if the attempt fails. Cliffordian evidentialism may seem to propose something like this; but the justificatory liberal’s view is stronger than evidentialism. For the justificatory liberal holds that even when a law is fully rationally justified from your own point of view, you may be required to refrain from advocating for it simply because you are not able to justify it to others. Were evidentialism this strong, it would surely be the kind of view only a skeptic could love.


13. Rational justification is, according to Eberle, a ‘radically perspectival phenomenon’; ‘whether a citizen is rationally justified in adhering to B depends, at least in part, on his point of view — on
the evidence to which he has access by pursuing the appropriate procedures, on the assumptions
with which he conducts his inquiry, and so on’ (2002: 62). Citizens who cannot achieve a
sufficient degree of rational justification for their favored law must exercise restraint; thus
Eberle’s view is not radically inclusive.

15. Eberle (2002: 250) concedes that Satanists could achieve a sufficiently high level of rational
justification for their religious beliefs; he says it would be ‘bad faith’ to deny that they could.
17. Similar arguments can be found in Gaus (1996) and Sterba (1999).
18. Moreover, if the suggestion is that Betty must see her non-agapic pacifist compatriots as per-
sons who are impaired as moral agents, then the proper conclusion seems to be that Betty is
incapable of seeing her fellow citizens as equals.
19. Eberle claims that his understanding of the ‘relations between moral impositions, culpability,
and justification’ is ‘very different from Gaus’s’ (2002: 132).
20. Note that it is easy to imagine a dictator meeting Eberle’s ideal of conscientious engagement.

References

Audi, Robert (1997) ‘Liberal Democracy and the Place of Religion in Politics’, in Robert Audi and
Press.
Boettcher, James (2005) ‘Strong Inclusionist Accounts of the Role of Religion in Political Deci-
Bohman, James and Richardson, Henry (2009) ‘Liberalism, Deliberative Democracy, and “Rea-
sons that All can accept”’, Journal of Political Philosophy 17(3): 253–74.
Press.
bridge: Cambridge University Press.
Criticism 35: 151–81.
Frazer, Nancy (1992) ‘Rethinking the Public Sphere’, in Craig Calhoun (ed.) Habermas and the


