

# RELIGIOUS REASONS AND THE LIBERTY OF CITIZENS: THE INTEGRATION OF THE RELIGIOUS AND THE SECULAR IN KENT GREENAWALT'S *RELIGION AND THE CONSTITUTION*

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Kent Greenawalt's *Religion and the Constitution* is rich and wide-ranging, edifying and well argued. This short discussion will simply bring out some problems needing further reflection. This is done with the hope that it will lead to clarifications from Greenawalt, and it will enable me to highlight elements in my view that contrast with parts of his.

## I. THE NOTION OF A RELIGIOUS REASON

Greenawalt's treatment of the definition problem regarding religion is highly plausible. He shows that, in relation to religion and politics, we must govern our thinking largely by paradigms and essentially undisputed cases. Moreover, both in political philosophy and in crafting legislation, we have more to fear from definitions that are too narrow and therefore limit protection of religious exercise than from definitions that are too broad and therefore overextend its protection. Any attempt to explicate the notion of a religious reason will be limited by the clarity of the accompanying conception of religion itself. My points, however, will be independent of differences among plausible characterizations of religion.

In one place Greenawalt says, "When I say that reasons for action are not religious, I mean that the reasons do not connect to religion or that the person making the choice perceives the connection as weak."<sup>1</sup> Earlier he said he is "interested primarily

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1. KENT GREENAWALT, RELIGION AND THE CONSTITUTION: FREE EXERCISE AND FAIRNESS 148 (2006).

in motivations that do not flow from answers to religious questions.”<sup>2</sup> He does not note that reference to reasons for action may also designate considerations that *support* the action or prospective action in question—these considerations have often been called *normative reasons*. They represent the category to which “public reasons” belong, at least when the public reasons are genuine (*see, e.g.*, pp. 498–99). A normative reason for *having* a law might be *that it protects religious liberty*; a motivational reason for *supporting* that law might be *a desire to protect religious liberty*. Since the latter reason may also be expressed by citing an accompanying instrumental belief—say, *that the law will protect religious liberty*—it should be clear that a motivational reason for action can in a sense embody a normative one. This is the content of the belief which, given the desire just cited, can both motivate and explain actions supporting the law.

We must distinguish the religious from the non-religious for *both* kinds of reason.<sup>3</sup> The short characterization quoted does not fill that need. Consider motivational reasons first.

One problem is that the clause “or . . . the person making the choice perceives the connection [to religion] as weak” does not express a sufficient condition for a reason’s being non-religious. People can *mistakenly* think there is only a weak connection between their desire to outlaw same-sex unions and their religion, when in fact that desire rests on a belief that God condemns those unions. I believe Greenawalt actually works with the significant connection criterion, which (apparently intentionally) he leaves open-ended and which I find plausible so far as it goes. What I want to propose is that we not include connections of content. Believing that a law will protect religious liberty expresses a reason that is *contentually religious*, but it is not properly called a religious reason for supporting the law, since endorsing the reason is fully justifiable on non-religious grounds. Suppose, however, that we do call the reason religious. We can still distinguish it from a reason *religiously grounded* in the way a desire to outlaw same-sex unions might be. It is religiously grounded reasons, not contentually religious reasons, that raise, if not the most difficult problems in the normative theory of religion and politics, then those most controversial.

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2. *Id.* at 147.

3. A detailed account of types of religious arguments and religious reasons is offered in Robert Audi, *The Place of Religious Argument in a Free and Democratic Society*, 30 SAN DIEGO L. REV. 677 (1993).

What of normative reasons, which are facts or at least abstract elements like propositions? These can certainly be contentually religious; but, apart from being held or otherwise figuring in someone's psychology, they are not motivational. Such reasons (like certain motivational ones) can be *evidentially religious*, in the sense that justification of the proposition in question depends on knowledge of, or justification for beliefs about, God or another religiously important source. If someone thought that, say, same-sex unions degrade the soul, a case could be made that this claim—which is a *prima facie* reason for action—is evidentially religious. There could, however, be a non-religious metaphysical reason for the position. The claim is not, then, intrinsically evidentially religious, as is the related claim that God punishes anyone who does such things. But by far the most likely basis on which the claim would actually be accepted (at this point in history) is theological.

For Greenawalt, both motivational and normative reasons are important. The former are crucial for appraising the conduct of individual citizens, the latter for framing an adequate ethics of citizenship. Other ways in which both are important may be apparent in the next section.

## II. THE PLACE OF RELIGIOUS REASONS IN POLITICAL CONDUCT

Greenawalt has done much to clarify the notion of a public reason as developed since Rawls made the term prominent.<sup>4</sup> Greenawalt's succinct characterization captures what many intend by the term: Public reasons are those "accessible in the right way to all citizens" (p. 498). The contrast is with "reasons grounded in religious premises" (p. 498)—a kind best understood as intended to be normative and, like virtually any abstract considerations, usable in arguments whether they are motivating or not.

My point here is clarificatory. Greenawalt's next paragraph begins:

People who challenge the injection of religion in politics adopt what we may call an "exclusivist" position. Religion should be excluded from politics. In the politics of pluralist

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4. For an instructive discussion of Rawls's conception of public reasons and related notions, see Kent Greenawalt, *What Are Public Reasons?*, 1 J.L. PHIL & CULTURE 79 (2007).

liberal democracies, decisions (they claim) should be made on grounds that are shared premises of that form of government and on forms of justification and ways of determining facts that are accessible to all citizens (p. 498).

Unwary readers might think the position described in the third sentence is exclusivist in the strong sense implying that religion has *no place* in politics, as the injection metaphor readily suggests. But the position proposes a basis of *decision*, not a constraint on the *content* of discussion.

Since my own view has been called “exclusivist,” I should say that it is not exclusivist in the strong sense in which religion has “no place” in politics and is also much more moderate than the position just described concerning bases of decision. My “principle of secular rationale” (which I now prefer to term “the principle of *natural reason*”) 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” (e.g. for a vote).<sup>5</sup> First, my view does not restrict religious expression in public contexts (though I emphasize the discretion needed for determining when and how to express religious views in politics). Second, it allows religious reasons to play both a justificatory role in political argument and a strong motivational role in political conduct. It overlaps the view just quoted only insofar as that view implies obligation to have adequate secular (*natural*) reason for coercive laws and public policies.<sup>6</sup> Accessibility in the relevant sense does not imply adequacy, but accessibility *and* sufficiency for justification together do, and their combination might be intended in the best statements of the view—call it a *shared premises view*—Greenawalt is describing.

It should be clarifying to note that, drawing from virtue ethics, I have proposed a standard that supplements the principle of secular rationale. This second standard, which is closely related to some positions Greenawalt explores, posits a *prima facie* obligation not to support coercive laws or public policies unless in doing so one is sufficiently motivated by adequate secular (*natu-*

5. This formulation is drawn from ROBERT AUDI, RELIGIOUS COMMITMENT AND SECULAR REASON 86 (2000).

6. In “Natural Reason, Secularity, and Neutrality Toward Religion” (in preparation), I explore Thomas Aquinas’s conception of natural reason, connect it with my conception, and consider the relation of natural reasons to what I have characterized (epistemically) as secular reasons.

ral) reason (hence is not simply rationalizing, e.g. concealing religious motivation). Greenawalt articulates a problem for this kind of standard. "Most people . . . could not disentangle what they believe because of underlying religious convictions from what they would believe if they relied only on premises of liberal democracy and shared techniques of understanding" (p. 505). Does this plausible point undermine the secular motivation standard?

First, the question pertinent to my position is whether some adequate set of secular (natural) reasons is motivating for a particular act; determining this does not require surveying even all one's normative beliefs, much less one's belief system as a whole. It may require considering only a few beliefs. Second, my view does not presuppose an available set of "premises of liberal democracy," and it leaves open many appropriate normative considerations. (Unlike Rawls, I do not rule out all "comprehensive views."<sup>7</sup>) Third, in the normal case in which we offer an adequate reason for something and *take* it to provide adequate support—which is how we normally will view it when we sincerely propose it as a justification—there is a strong psychological presumption (for normal persons) that we are motivated by it.<sup>8</sup> Fourth, in cases where we ought to question whether we are motivated by a secular consideration, we need not ask whether we would believe the conclusion we take it to support if we *did not believe* the religious propositions we regard as supporting it (a point Greenawalt's language suggests he appreciates); the question is whether we *would still believe* that conclusion if we *did not rely* on those propositions. Normally, a positive answer is supported by one's focusing clearly on the secular consideration, reflecting on its relation to the conclusion, and having a sense of holding the latter on the basis of the former. Such self-examination does not require *excluding* the influence of religious considerations: we can and often do hold a view for two or more individually sufficient motivating reasons. This kind of cognitive motivational overdetermination is matched by a similar kind in the psycho-

7. See 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), which provides a conception of comprehensive views on which they are not necessarily objectionable bases for supporting coercive laws or public policies.

8. If we consider only *rational* persons, then a kind of integration is implied such that a stronger thesis is warranted, to the effect that there is a necessary relation between (1) believing a proposition and, with that in mind, focusing on a consideration one considers a reason for believing it, and (2) tending to believing it at least partly *on the basis of* that reason. Similar points apply to reasons for action.

logical grounding of desires and attitudes. Fifth, suppose this *focal reflection test* yields a false positive. An excusability condition for non-compliance with the motivation standard is failure of a conscientious effort to find and be motivated by an adequate natural reason. This kind of effort is salutary in itself in arriving at decisions to pass coercive laws. Sixth, the motivation principle is in any case less important than the rationale principle. If one has, but is not motivated by, adequate secular (natural) reason, at least there *is* such a reason. Hence laws or public policies based on that reason—regardless of who offers it or whether its proponents are motivated by it—will at least be justifiable by it. In those special cases in which one sincerely offers a reason for a view without being motivated by it, it is nonetheless true that, like a bridge support that needs only to be slid into its proper place to sustain the roadway above, the reason stands ready to enter one's motivational system.

### III. LIBERTY AND TOLERATION AS DEMOCRATIC IDEALS

My last topic is the specific place of liberty as a standard of political conduct. In discussing the appropriate grounds for taking something to be sufficiently harmful to warrant restrictions of conduct, Greenawalt says:

[P]eople should be as free to rely on their religious convictions as on nonreligious intuitions in respect to factual questions about which science or social science provide no convincing answers. If the evidence is scanty on what happens to otherwise healthy individuals who happen to engage in sexual relations with animals . . . religion may properly play a role in influencing judgment about harms to voluntary actors . . . (p. 534).

My question here does not concern whether people should be “free to rely on . . . religious convictions” if that means they have a *moral right* to. Like Greenawalt, I think there is such a right. But surely we can act wrongly—say by making no charitable contributions—even if we have a right to act so.<sup>9</sup> Greenawalt might accept this point, but I apparently differ in holding that, without an adequate *natural* reason for coercion, liberty should be the default position in a sense implying that one should ab-

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9. This point (which Greenawalt can accept) is argued in detail, in the context of an account of the notion of a moral right, in Robert Audi, *Wrongs Within Rights*, 15 PHIL. ISSUES 121 (2005).

stain from supporting (e.g.) the law or public policy in question. Let me clarify.

We should ask whether such questions as what constitutes a human person are “factual.” In my view they are—though metaphysical—factual in the sense that they have truth-valued answers, but not “scientific,” in the sense that scientific inquiry is the proper route to answering them (this does not imply that scientifically revealed information is *irrelevant* to them). What Greenawalt says here does not commit him on how we should proceed if, where our evidence accessible to natural reason, say philosophical and scientific evidence, is inconclusive, we want to support legal coercion. My position is to take liberty as the proper default position. This of course allows that purely religious convictions may be an ethically proper basis for *persuading* others to do what one may not coerce them to do.

Let me conclude by suggesting two principles that seem consistent with Greenawalt’s position and support mine. It should add clarity to use the notion of *epistemic peers*: roughly, persons who are (in the matter(s) at hand) equally rational, possessed of the same relevant evidence, and equally conscientious in assessing it. Rational disagreement between epistemic peers can occur, between religious and secular persons, inter-religiously, and intra-religiously. To be sure, if we consider a disputant an epistemic peer and we wish to retain our position, we should seek new evidence for it or at least find a basis for thinking the disputant is not as rational or as conscientious in appraising the issue. But—as Greenawalt realizes—at times the most reasonable conclusion may be that there is epistemic parity and, partly for that reason, the disagreement cannot be readily resolved in one’s favor.

Is the skeptical conclusion that neither party is justified the appropriate response to finding oneself in a situation of persisting disagreement with an apparent epistemic peer? I doubt that. There could be a difference in the disputants’ conflicting justifications that one simply cannot discover. Should we, however, always suppose that this is so and that our own view is rationally preferable? A quite different response is humility: minimally, concluding that we might be mistaken or at least less justified than our peer. In any event, such a response is also supported by the idea that in liberal democracies liberty is the default position. With all this in mind, I propose a

*Principle of rational disagreement:* The justification of coercion in a given instance is inversely proportional to the

strength of the case for epistemic parity among disputants who disagree on whether coercion in that instance is warranted.

It should be evident that this principle is supported, as are other elements in my view, by considerations of reciprocity. The principle is certainly in the spirit of “Do unto others as you would have them do unto you.”

The principle does not specify *how* weak the justification for coercion becomes as the case for parity becomes stronger. I believe the need for toleration becomes dominant if the case is conclusive. This is partly because the justification for coercion in a given instance approaches zero as the strength of the case for epistemic parity among disputants who disagree on whether the relevant coercion in that instance is warranted approaches conclusiveness. In this light, we can formulate a more specific principle:

*The principle of toleration:* is it not reasonable for proponents of coercion in a given matter to consider themselves epistemically superior to supporters of the corresponding liberty, then in that matter the former have a *prima facie* obligation to tolerate rather than coerce.

The value of this principle depends on the conscientiousness of those who would coerce. If unconscientious, they would readily think it reasonable to take defenders of the liberty in question to be less than their epistemic peers. If conscientious, they would be quite wary of taking this view. Indeed, highly conscientious government officials—or virtually any conscientious, rational, and tolerant person with coercive power—will, if unopposed by actual disputants, try to think of the best *hypothetical* defense they can construct in favor of the liberty they would restrict or eliminate.

In politics and law, it is a great merit of honest, sustained rational discussion that it helps its participants to approach parity on the issue in question. The more we rationally discuss an issue in the light of all the considerations we think relevant, the more we can learn from one another. Where disagreement persists, we may possibly be justified in believing that our interlocutor is not our epistemic peer in the matter, but believing this might well be unreasonable, particularly regarding issues on which major thinkers have long labored, taken account of one another’s views, and failed to agree. Liberty is not only a constitutive value of liberal democracy; it also has inherent value, not just instru-

mental worth. The principle of toleration reflects these points, and it supports the view that coercive laws and public policies should be justified by adequate natural reasons. It does this, in part, by supporting the view that liberty should be the default position in a liberal democracy. It does not strictly entail that view, however, nor is it entailed by the view. I find myriad evidences for the principle of toleration in *Religion and the Constitution*. In this and in many other ways, the book contributes not only to political and legal philosophy but also to our understanding of democracy and the ethics of citizenship.