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LIBERAL DEMOCRACY AND RELIGIOUS MORALITY*

Michael J. Perry**

It would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society, such that those who would bring these convictions to bear upon your nation’s public life would be denied a voice in debating and resolving issues of public policy. The original separation of church and state in the United States was certainly not an effort to ban all religious conviction from the public sphere, a kind of banishment of God from civil society. Indeed, the vast majority of Americans, regardless of their religious persuasion, are convinced that religious conviction and religiously informed moral argument have a vital role in public life.

—Pope John Paul II¹

* This essay, which was the basis of the 1998 Annual Lecture of the DePaul University Center for Church/State Studies (April 16, 1998), draws on, clarifies, and develops some arguments originally presented in my book, Religion in Politics: Constitutional and Moral Perspectives (Oxford Univ. Press, 1997). For a fuller treatment of some of the issues presented in this essay, the reader should consult Religion in Politics. I am grateful to the Oxford University Press for permission to include material from Religion in Politics in this essay. I am also grateful to the DePaul University Center for Church/State Studies for the invitation to deliver the lecture and for its gracious hospitality; in particular, I am grateful to Craig Mousin, Executive Director of the Center.

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This essay is dedicated to the memory of a beloved, exceptional young man, son of Fred and Nicea Gedicks, who died in the first semester of his freshman year at Wake Forest University: Alexander Philip Gedicks, 1978-1997.

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1. John Paul II on the American Experiment, First Things, Apr. 1998, at 36-37 (quoting Pope John Paul’s speech that was delivered on December 17, 1997).
The political community we call the United States of America is, whatever else it may be, a democracy. The United States is, moreover, a liberal democracy: a democracy committed—in the case of the United States, constitutionally committed—to certain basic human freedoms, understood both as constitutive of “genuine democracy” and as limits on the laws a political majority may enact, the policies it may pursue, and the actions it may take. I have discussed one such freedom elsewhere: freedom of religion, which in the United States is, famously, a constitutional freedom.

The general question I want to address here is this: In a liberal democracy, like the United States, what role is it proper for religion to play in politics? More precisely, what role is it proper for religious arguments about the morality of human conduct to play in politics?

2. More precisely, the United States is, in the main, a representative rather than a direct democracy.


   [The third major impetus towards a Convention [was] the desire to bring the non-Communist countries of Europe together within a common ideological framework and to consolidate their unity in the face of the Communist threat. “Genuine democracy” (to which the Statute of the Council of Europe commits its members) or the “effective political democracy” to which the Preamble of the Convention refers, had to be clearly distinguished from the “people’s democracy” which was practiced and promoted by the Soviet Union and its allies.]

4. See Amy Gutmann, Democracy, Philosophy, and Justification, in Democracy and Difference: Contesting the Boundaries of the Political 340 (Seyla Benhabib ed., 1996):

   Polyarchies, or what we might call nonideal democracies, are characterized, at minimum, by guarantees of free political speech, press, association, and equal suffrage for all adults, the right of all adults above a certain age to run for political office, the rule of law, and frequent, competitive elections that are procedurally fair.


   There has been a flurry of writing recently about the philosophical foundations of democracy. See, e.g., Democracy and Difference, supra note 4, at 333-59 (including essays by Richard Rorty, Robert A. Dahl, Amy Gutmann, and Benjamin R. Barber all addressing the question Does Democracy Need Foundations?). I agree both that “[t]he great democratic movements of the nineteenth century were less concerned to implement an abstract democratic ideal than, as John Dewey observed, ‘to remedy evils experienced in consequence of prior political institutions,’” Ian Shapiro, Elements of Democratic Justice, 24 Pol. Theory 579 (1996) (quoting John Dewey, The Public and Its Problems 84-85 (1927)), and that, “as the Pope affirms, ... democracy is uniquely valuable because it embodies more fully than any alternative system the principle of the fundamental moral equality of citizens.” Robert P. George, The Tyrant State, First Things, Nov. 1996, at 39, 39. Dewey’s observation anticipated Winston Churchill’s statement in the British House of Commons on Nov. 11, 1947:

   Many forms of government have been tried, and will be tried in this world of sin and woe. No onepretends that democracy is perfect or all wise. Indeed, it has been said that democracy is the worst form of government, except all those other forms that have been tried from time to time.
More precisely still: first, is it proper for religious believers to present such arguments in public political debate; and second, is it proper for religious believers to rely on such arguments as a basis of political choice?

Two phrases appear throughout my discussion: “religious arguments” and “political choices.” The political choices with which I am concerned in this essay are those that ban or otherwise disfavor one or another sort of human conduct based on the view that the conduct is immoral. A law banning abortion is a prime example of the kind of political choice I have in mind; a legislature’s refusal to grant legal status to same-sex unions is another. The religious arguments with which I am concerned here are arguments that one or another sort of human conduct, like abortion or homosexual sexual conduct, is immoral. By a “religious” argument, I mean an argument that relies on, *inter alia*, a religious belief: an argument that presupposes the truth of a religious belief and includes that belief as one of its essential premises. A “religious” belief is, for present purposes, either the belief that God exists—“God” in the sense of a transcendent reality that is the source, the ground, and the end of everything—or a belief about the nature, the activity, or the will of God. This definition of a “religious” argument covers, for example, the claim that the Bible is God’s revealed word, and the claim that when speaking *ex cathedra* on mat-

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[M]uch legal enforcement of morality is uncontroversial and rarely discussed. Disagreement arises only when the law enforces aspects of morality that do not involve protecting others from fairly direct harms. More precisely, people raise questions about legal requirements (1) to perform acts that benefit others, (2) to refrain from acts that cause indirect harms to others, (3) to refrain from acts that cause harm to themselves, (4) to refrain from acts that offend others, and (5) to refrain from acts that others believe are immoral.

7. A belief can be “nonreligious” in one of two senses. The belief that God does not exist is nonreligious in the sense of “atheistic.” A belief that is about something other than God’s existence, nonexistence, nature, activity, or will is nonreligious in the sense of “secular.” In addition to religious arguments, we can imagine both “atheistic” arguments and “secular” arguments. One who is “agnostic” about the existence of God—who neither believes nor disbelieves that God exists—will find only some secular arguments persuasive. Cf. KENT GREENAWALT, PRIVATE CONSCIENCES AND PUBLIC REASONS 63 (1995) (“assuming that a principle of restraint against reliance on religious grounds would also bar reliance on antireligious grounds”) (endnote omitted).

Although some Buddhist sects are theistic, Buddhism—unlike Christianity, for example—is predominantly nontheistic, in the sense that Buddhism does not affirm the meaningfulness of “God”-talk. Nonetheless, Buddhism does seem to affirm the existence of a transcendent reality that is the source, the ground, and the end of everything else. See THE EMPTYING GOD: A BUDDHIST-JEWISH-CHRISTIAN CONVERSATION (John B. Cobb, Jr. & Christopher Ives eds., 1990); David Tracy, *Kenosis, Sunyata, and Trinity: A Dialogue With Masao Abe*, in THE EMPTYING GOD, supra, at 135.
ters of faith or morals the Pope speaks infallibly. Both claims are based on a belief about the activity of God.

I. RELIGIOUS ARGUMENTS IN PUBLIC POLITICAL DEBATE

Let us turn first to this question: Is it proper for religious believers to present, in public political debate—in public debate about what political choices to make—religiously-based arguments about the morality of human conduct? I want to begin by disaggregating the question into two distinct but related inquiries; the first of which concerns the politics of the United States, the second, the politics of any liberal democracy, including the United States. First, as a matter of American constitutional law, *may* religious believers present religiously-based moral arguments in public political debate? Second, not as a matter of constitutional law but only of what we may call, for want of a better term, political morality, *should* religious believers present such arguments in public political debate; that is, is it proper, as a matter of (nonconstitutional) political morality, for them to do so?

I have addressed the former question elsewhere. The question is not difficult, and the answer I have given is not controversial: Neither citizens nor legislators or other governmental policymakers would violate the constitutional requirement that government not “establish” religion were they to present religiously-based moral arguments in public political debate. Hereafter, when I say policymakers, I mean governmental policymakers, like the President of the United States or the governor of a state.\(^8\) Indeed, although government would almost certainly violate the constitutional requirement that it not “abridge the freedom of speech” were it to ban or otherwise restrain political speech because of the content of the speech, the government would violate, in addition, the constitutional requirement that it not “prohibit the free exercise of religion” were it to ban or otherwise restrain political speech because the content of the speech was religious.\(^9\)

However, that citizens and even legislators or other policymakers *may*, as a matter of constitutional law, present religious arguments about the morality of human conduct in public political debate—that they are constitutionally free to present such arguments in public political debate—does not mean that as a matter of political morality

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8. I often refer, in this essay, to legislators and other governmental policymakers. What about judges? Are they a special case? *See* Perry, RELIGION IN POLITICS, *supra* note 5, at 102-04.

they *should* do so. Is it proper for them to do so?¹⁰ I have addressed that question at length elsewhere;¹¹ here I will be brief.

Imagine that it is proposed to make, or to maintain, a political choice banning or otherwise disfavoring a particular sort of human conduct—for example, the political choice not to grant legal recognition to same-sex unions. Imagine, too, that a widely accepted religious argument supports the claim that the conduct is immoral; for example, the argument that God reveals in the Bible that each and every instance of homosexual sexual conduct is immoral. It is inevitable, in the United States, that some citizens and legislators and other policymakers will support the political choice at least partly on the basis of the religious argument. It is also inevitable that some citizens and legislators, because they accept the religious argument, will take more seriously than they otherwise would, and perhaps accept, a secular argument that supports the political choice; for example, the argument that homosexuality, like alcoholism, is a pathology that ought not be indulged,¹² or the argument that granting legal recognition to same-sex unions would threaten the institution of heterosexual marriage and other “traditional family values.” Because of the role that religiously-based moral arguments inevitably play in the political process, it is important that such arguments, no less than secular moral arguments, be presented in public political debate, *so that they can be tested there.*¹³

¹⁰ It bears emphasis that the question I am about to address, about the role of religious arguments in public political debate, is about political morality, not political strategy.

¹¹ The distinction between principle and prudence should be emphasized. The fundamental question is not whether, as a matter of prudent judgment in a religiously pluralist society, those who hold particular religious views ought to cast their arguments in secular terms. Even an outsider can say that the answer to that question is clearly, “Yes, most of the time,” for only such a course is likely to be successful overall.


¹⁴ Jeffrey Siker, a Christian ethicist and ordained minister of the Presbyterian Church (USA), has persuasively criticized the effort to analogize homosexuality to alcoholism. See Jeffrey S. Siker, *Homosexual Christians, the Bible, and Gentile Inclusion: Confessions of a Repenting Heterosexist, in Homosexuality in the Church: Both Sides of the Debate* 178, 181-83 (Jeffrey S. Siker ed., 1994).

¹⁵ Moreover, it is sometimes fitting that such an argument be tested, in the to and fro of public political debate, by a competing religious argument of the same genre—for example, a scripture-based argument. Scripture scholar Luke Timothy Johnson’s admonition is relevant here:

If liberal Christians committed to sexual equality and religious tolerance abandon these texts as useless, they also abandon the field of Christian hermeneutics to those whose fearful and—it must be said—sometimes hate-filled apprehension of Christianity will lead them to exploit and emphasize just those elements of the tradition that
All of this is obvious; at least, all of this seems obvious to me. Nonetheless, some persons want to keep religiously-based moral arguments out of public political debate as much as possible. For example, American philosopher Richard Rorty has written approvingly of "privatizing religion—keeping it out of... 'the public square,' making it seem bad taste to bring religion into discussions of public policy."14

One reason for wanting to "privatize" religion is that religious debates about controversial political issues can be quite divisive.15 But American history does not suggest that religious debates about controversial issues—racial discrimination, for example or war—are invariably more divisive than secular debates about those or other issues.16 Some issues are so controversial that debate about them is inevitably divisive without regard to whether the debate is partly religious or, instead, only secular.


It is easy to anticipate the reply that public political debate is simply too debased to serve as a context for serious critical discussion of religiously-based moral arguments. My response is twofold. First, if public political debate is too debased to serve as a context for serious critical discussion of religiously-based moral arguments, then it is too debased to serve as a context for serious critical discussion of secular moral arguments as well, and of much else too. Second, the issue that engages me in this essay is the proper role of religion, not in a politics too debased for serious critical discussion of moral arguments, but in a politics fit for such discussion.


That public debate of religious ideas, like any other, may arouse emotion, may incite, may foment religious divisiveness and strife does not rob it of constitutional protection . . . . The mere fact that a purpose of the Establishment Clause is to reduce or eliminate religious divisiveness or strife, does not place religious discussion, association, or political participation in a status less preferred than rights of discussion, association and political participation generally . . . .

The State's goal of preventing sectarian bickering and strife may not be accomplished by regulating religious speech and political association . . . .

In short, government may not as a goal promote "safe thinking" with respect to religion and fence out from political participation those, such as ministers, whom it regards as over involved in religion . . . . The Establishment Clause, properly understood, . . . may not be used as a sword to justify repression of religion or its adherents from any aspect of public life.

(footnotes and citations omitted).
16. Cf. Michael W. McConnell, Political and Religious Disestablishment, 1986 BYU L. REV. 405, 413 (1986): "Religious differences in this country have never generated the civil discord experienced in political conflicts over such issues as the Vietnam War, racial segregation, the Red Scare, unionization, or slavery."
To be sure, religious discourse in public—whether in public political debate or in other parts of our public culture—is sometimes quite sectarian and therefore divisive. But religiously-based moral discourse is not necessarily more sectarian than secular moral discourse. It can be much less sectarian. After all, certain basic moral premises common to the Jewish and Christian traditions, in conjunction with the supporting religious premises, still constitute the fundamental moral horizon of most Americans, much more so than do Kantian (or neo-Kantian), Millian, or Nietzschean premises, and so forth.\(^\text{17}\)

Another reason for wanting to keep religiously-based moral arguments out of public political debate focuses on the inability of some persons to gain a critical distance on their religious beliefs, the kind of critical distance essential to truly deliberative debate. But in the United States and in other liberal democracies, many persons are able to gain a critical distance on their religious beliefs;\(^\text{18}\) they are certainly as able to do so as they are able to gain a critical distance on other

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17. According to John Coleman, “the tradition of biblical religion is arguably the most powerful and pervasive symbolic resource” for public ethics in the United States today. JOHN COLEMAN, AN AMERICAN STRATEGIC THEOLOGY 192 (1982). “[O]ur tradition of religious ethics seems . . . to enjoy a more obvious public vigor and availability as a resource for renewal in American culture than either the tradition of classic republican theory or the American tradition of public philosophy.” Id. (footnote omitted). Coleman reminds us that “the strongest American voices for a compassionate just community always appealed in public to religious imagery and sentiments, from Winthrop and Sam Adams, Melville and the Lincoln of the second inaugural address, to Walter Rauschenbusch and Reinhold Niebuhr and Frederick Douglass and Martin Luther King.” Id. at 193. As Coleman explains, “The American religious ethic and rhetoric contain rich, polyvalent symbolic power to command commitments of emotional depth, when compared to ‘secular’ language, . . . [which] remains exceedingly ‘thin’ as a symbol system.” Id. Coleman emphasizes that “when used as a public discourse, the language of biblical religion is beyond the control of any particular denominational theology. It represents a common American cultural patrimony. . . . American public theology or religious ethics . . . cannot be purely sectarian. The biblical language belongs to no one church, denomination, or sect.” Id. at 194 (footnote omitted). In Coleman’s view, the genius of the public American theology . . . is that it has transcended denominations, been espoused by people as diverse as Abraham Lincoln and Robert Bellah who neither were professional theologians nor belonged to any specific church and, even in the work of specifically trained professional theologians, such as Reinhold Neibuhr, has appealed less to revelational warrant for its authority within public policy discussions than to the ability of biblical insights and symbols to convey a deeper human wisdom. . . . Biblical imagery . . . lies at the heart of the American self-understanding. It is neither parochial nor extrinsic. Id. at 194-95.

fundamental beliefs. Undeniably, some religious believers are unable to gain much, if any critical distance on their fundamental religious beliefs. As so much in the twentieth century attests, however, one need not be a religious believer to adhere to one’s fundamental beliefs with closed-minded or even fanatical tenacity.

Although no one who has lived through recent American history should believe that religious contributions to the public discussion of controversial moral issues are invariably deliberative rather than dogmatic, there is no reason to believe that religious contributions are never deliberative. Religious discourse about the difficult moral issues that engage and divide us citizens of liberal democratic societies is not necessarily more monologic (or otherwise problematic) than resolutely secular discourse about those issues. Because of the religious illiteracy—and, alas, even prejudice—rampant among many nonreligious intellectuals, we probably need reminding that, at its best, religious discourse in public culture is not less dialogic—not less

19. In my opinion, David Tracy speaks for many religious believers when he writes:

For believers to be unable to learn from secular feminists on the patriarchal nature of most religions or to be unwilling to be challenged by Feuerbach, Darwin, Marx, Freud, or Nietzsche is to refuse to take seriously the religion’s own suspicions on the existence of those fundamental distortions named sin, ignorance, or illusion. The interpretations of believers will, of course, be grounded in some fundamental trust in, and loyalty to, the Ultimate Reality both disclosed and concealed in one’s own religious tradition. But fundamental trust, as any experience of friendship can teach, is not immune to either criticism or suspicion. A religious person will ordinarily fashion some hermeneutics of trust, even one of friendship and love, for the religious classics of her or his tradition. But, as any genuine understanding of friendship shows, friendship often demands both critique and suspicion. A belief in a pure and innocent love is one of the less happy inventions of the romantics. A friendship that never includes critique and even, when appropriate, suspicion is a friendship barely removed from the polite and wary communication of strangers. As Buber showed, in every I-thou encounter, however transient, we encounter some new dimension of reality. But if that encounter is to prove more than transitory, the difficult ways of friendship need a trust powerful enough to risk itself in critique and suspicion. To claim that this may be true of all our other loves but not true of our love for, and trust in, our religious tradition makes very little sense either hermeneutically or religiously.


To his credit, Richard Rorty insists that there is “hypocrisy . . . in saying that believers somehow have no right to base their political views on their religious faith, whereas we atheists have every right to base ours on Enlightenment philosophy. The claim that in doing so we are appealing to reason, whereas the religious are being irrational, is hokum.” Rorty, supra note 14, at 4.

20. As David Tracy has written, religion is

the single subject about which many intellectuals can feel free to be ignorant. Often abetted by the churches, they need not study religion, for “everybody” already knows what religion is: It is a private consumer product that some people seem to need. Its former social role was poisonous. Its present privatization is harmless enough to wish it well from a civilized distance. Religion seems to be the sort of thing one likes “if that’s the sort of thing one likes.”
open-minded, not less deliberative—than is, at its best, secular discou


discourse in public culture. Nor, at its worst, is religious discourse more monologic—more closed-minded and dogmatic—than is, at its worst, secular discourse.²¹ David Hollenbach’s work has developed this impor


tant point:

Much discussion of the public role of religion in recent political thought presupposes that religion is more likely to fan the flames of discord than to contribute to social concord. This is certainly true of some forms of religious belief, but hardly of all. Many religious communities recognize that their traditions are dynamic and that their understandings of God are not identical with the reality of God. Such communities have in the past and can in the future en-

gage in the religious equivalent of intellectual solidarity, often called ecumenical or interreligious dialogue.²²

David Tracy, The Analogical Imagination 13 (1981). See also Kent Greenawalt, Reli-

gious Convictions and Political Choice 6 (1988): “A good many professors and other intellec-
tuals display a hostility or skeptical indifference to religion that amounts to a thinly disguised contempt for belief in any reality beyond that discoverable by scientific inquiry and ordinary human experience.” Cf. Special Issue—Religion and the Media: Three Forums, Commonweal, Feb. 24, 1995, at 3 (discussing the relation between religion and the media; and noting that news treatment of religion is often “incomplete or inadequate, and sometimes incompetent or biased.”).

David Tracy has lamented that:

For however often the word is bandied about, dialogue remains a rare phenomenon in anyone’s experience. Dialogue demands the intellectual, moral, and, at the limit, religious ability to struggle to hear another and to respond. To respond critically, and even suspiciously when necessary, but to respond only in dialogical relationship to a real, not a projected other.

David Tracy, Dialogue With the Other 4 (1990). Steven Smith, commenting wryly that “‘dialogue’ seems to have become the all-purpose elixir of our time,” has suggested that “[t]he hard question is not whether people should talk, but rather what they should say and what (among the various ideas communicated) they should believe.” Steven D. Smith, The Pursuit of Pragmatism, 100 Yale L.J. 409, 434-35 (1990). As Tracy’s observation suggests, however, there is yet another “hard” question, which Smith’s suggestion tends to obscure. It is not whether but how people should talk; what qualities of character and mind should they bring, or try to bring, to the task.

²². David Hollenbach, S.J., Civil Society: Beyond the Public-Private Dichotomy, 5 The Re-

sponsive Community, Winter 1994-95, 15, 22. One of the religious communities to which Hol-

lenbach refers is the Catholic community. See David Hollenbach, S.J., Contexts of the Political Role of Religion: Civil Society and Culture, 30 San Diego L. Rev. 877, 891 (1993):

For example, the Catholic tradition provides some noteworthy evidence that discourse across the boundaries of diverse communities is both possible and potentially fruitful when it is pursued seriously. This tradition, in its better moments, has experienced considerable success in efforts to bridge the divisions that have separated it from other communities with other understandings of the good life. In the first and second centuries, the early Christian community moved from being a small Palestinian sect to active encounter with the Hellenistic and Roman worlds. In the fourth century, Augustine
A central feature of Hollenbach’s work is his argument, which I accept, that the proper role of “public” religious discourse in a society as religiously pluralistic as the United States is a role to be played, in the main, much more in public culture—in particular, “in those components of civil society that are the primary bearers of cultural meaning and value—universities, religious communities, the world of the arts, and serious journalism”—than in public debate specifically about political issues.23 He writes: “[T]he domains of government and policy-formation are not generally the appropriate ones in which to argue controverted theological and philosophical issues . . . .”24 But, as Hollenbach goes on to acknowledge, “it is nevertheless neither possible nor desirable to construct an airtight barrier between politics and culture.”25

There is, then, this additional reason for not opposing the presentation of religiously-based moral arguments in public political debate: In brought biblical faith into dialogue with Stoic and Neoplatonic thought. His efforts profoundly transformed both Christian and Graeco-Roman thought and practice. In the thirteenth century Thomas Aquinas once again transformed Western Christianity by appropriating ideas from Aristotle that he had learned from Arab Muslims and from Jews. In the process he also transformed Aristotelian ways of thinking in fundamental ways. Not the least important of these transformations was his insistence that the political life of a people is not the highest realization of the good of which they are capable—an insight that lies at the root of constitutional theories of limited government. And though the Church resisted the liberal discovery of modern freedoms through much of the modern period, liberalism has been transforming Catholicism once again through the last half of our own century. The memory of these events in social and intellectual history as well as the experience of the Catholic Church since the Second Vatican Council leads me to hope that communities holding different visions of the good life can get somewhere if they are willing to risk conversation and argument about these visions. Injecting such hope back into the public life of the United States would be a signal achievement. Today, it appears to be not only desirable but necessary.

23. Hollenbach, Civil Society, supra note 22, at 22.

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

Id.

24. Hollenbach, Contexts of the Political Role of Religion, supra note 22, at 900. See also Kent Greenawalt, Religious Convictions and Political Choice: Some Further Thoughts, 39 DePaul L. Rev. 1019, 1034 (1990) (expressing skepticism about “the promise of religious perspectives being transformed in what is primarily political debate”).

25. Hollenbach, Contexts of the Political Role of Religion, supra note 22, at 900.
a society as overwhelmingly religious as the United States, we do present and discuss—and we should present and discuss—religiously-based moral arguments in our public culture. Rather than try to do the impossible—maintain a wall of separation ("an airtight barrier") between the religiously-based moral discourse that inevitably and properly takes place in public culture ("universities, religious communities, the world of the arts, and serious journalism") on the one side and the discourse that takes place in public political debate ("the domains of government and policy-formation") on the other side—we should simply welcome the presentation of religiously-based moral arguments in all areas of our public culture, including public debate specifically about contested political choices. Indeed, we should not merely welcome but encourage the presentation of such arguments in public political debate, so that we can test them there.

But we can and should do more than test religiously-based moral arguments in public political debate. We should also, in the course of


 electrically and intelligently exercise our freedom of choice on fundamental matters having to do with our own individual ideals and conceptions of the good only if we have access to an unconstrained discussion in which the merits of competing moral, religious, aesthetic, and philosophical values are given a fair opportunity for hearing.

28. See Hollenbach, Contexts of the Political Role of Religion, supra note 22, at 900 and accompanying text.

29. See Hollenbach, Civil Society, supra note 22, at 22 and accompanying text.

30. See Hollenbach, Contexts of the Political Role of Religion, supra note 22, at 900 and accompanying text.

31. No one suggests that presenting religious arguments in nonpublic political debate—political debate around the kitchen table or at a meeting of the local parish’s Peace and Justice Committee—is morally problematic. A practical difficulty with the position that presenting religious arguments in public political debate is morally problematic is that it might sometimes be difficult to say when “nonpublic” political debate has crossed the line and become “public.” Moreover, it is no more possible to maintain “an airtight barrier,” see Hollenbach, Contexts of the Political Role of Religion, supra note 22, at 900, between the religiously-based moral discourse that takes place in nonpublic political debate and that which takes place in public political debate than it is to maintain “an airtight barrier,” see id., between the religiously-based moral discourse that takes place in “universities, religious communities, the world of the arts, and serious journalism,” see Hollenbach, Civil Society, supra note 22, at 22, and that which takes place in “the domains of government and policy-formation.” See Hollenbach, Contexts of the Political Role of Religion, supra note 22, at 900. Why not, then, just welcome the presentation of religiously-based moral arguments in public as well as in relatively nonpublic political debate?
testing such arguments, let ourselves be tested by them. In a political community that aspires to be not merely democratic but deliberatively democratic, there is surely virtue in allowing ourselves to be tested by arguments with which we, at the outset, disagree. About ten years ago, in my book *Morality, Politics, and Law*, I wrote:

If one can participate in politics and law—if one can use or resist power—only as a partisan of particular moral/religious convictions about the human, and if politics is and must be in part about the credibility of such convictions, then we who want to participate, whether as theorists or activists or both, must examine our own convictions self-critically. We must be willing to let our convictions be tested in ecumenical dialogue with others who do not share them. We must let ourselves be tested, in ecumenical dialogue, by convictions we do not share. We must, in short, resist the temptations of infallibilism.²²


Even if people are exposed in argument to ideas over which they are bound to disagree—and how could any doctrine of public deliberation preclude that?—it does not follow that such exposure is pointless or oppressive. For one thing, it is important for people to be acquainted with the views that others hold. Even more important, however, is the possibility that my own view may be improved, in its subtlety and depth, by exposure to a religion or a metaphysics that I am initially inclined to reject... I mean to draw attention to an experience we all have had at one time or another, of having argued with someone whose world view was quite at odds with our own, and of having come away thinking, “I’m sure he’s wrong, and I can’t follow much of it, but, still, it makes you think...”. The prospect of losing that sort of effect in public discourse is, frankly, frightening—terrifying, even, if we are to imagine it being replaced by a form of “deliberation” that, in the name of “fairness” or “reasonableness” (or worse still, “balance”) consists of bland appeals to harmless nostrums that are accepted without question on all sides. This is to imagine open-ended public debate reduced to the formal trivia of American televisions networks... [This] might apply to any religious or other philosophically contentious intervention. We do not have (and we should not have) so secure a notion of public consensus, or such stringent requirements of fairness in debate, as to exclude any view from having its effect in the marketplace of ideas.


It is always possible that learning more about a moral or religious doctrine will lead us to like it less. But the respect of deliberation and engagement affords a more spacious public reason than liberalism allows. It is also a more suitable ideal for a pluralist society. To the extent that our moral and religious disagreements reflect the ultimate plurality of human goods, a deliberative mode of respect will better enable us to appreciate the distinctive goods our different lives express.

Kent Greenawalt and John Rawls have each defended a position (though not the same position) less congenial to the airing of religiously-based moral arguments in public political debate than the position I have defended here. I have explained elsewhere why I disagree with both Greenawalt’s and Rawls’s positions. *See Perry, Religion in Politics, supra* note 5, at 49-61.
Again, Richard Rorty thinks that it makes sense to “privatize[e] religion—[to] keep[ ] it out of . . . ‘the public square,’ making it seem bad taste to bring religion into discussions of public policy.”\textsuperscript{33} Rorty should think again. Not only are the reasons for wanting to privatize religion weak, there is also, as I have explained, a strong countervailing case for wanting to “public-ize” religion, not privatize it. We should make it seem bad taste to sneer when people bring their religious convictions to bear in public discussions of controversial political issues, like homosexuality and abortion. It is not \textit{that} religious convictions are brought to bear in public political debate that should worry us, but \textit{how} they are sometimes brought to bear (e.g., dogmatically) in public political debate that should. But we should be no less worried about how fundamental secular convictions are sometimes brought to bear in public political debate. We should encourage the presentation of religiously-based moral arguments in the public square for the reasons I have given here:

\begin{itemize}
\item We cannot maintain an airtight separation between religiously-based moral argument in public culture, which is not merely unproblematic but important, and such argument in public political debate.
\item Religiously-based moral argument is not necessarily more sectarian or divisive than secular moral argument.
\item Religiously-based moral argument is not necessarily less deliberative than secular moral argument.
\item Given the influential role that religiously-based moral argument inevitably plays in our politics, it is important that we test such argument in public political debate.
\item Moreover, if our political culture is to be truly and fully deliberative, it is important that we let ourselves be tested by religiously-based moral argument; it is important, at least, that we not exclude such argument from public political debate and thereby diminish the possibility that we will be tested by it.
\end{itemize}

II. Religious Arguments as a Basis of Political Choice

Now, let us turn to a different but related inquiry: Is it proper for religious believers to rely on religious arguments as a basis of political choice? Again, by religious arguments, I mean religiously-based moral arguments, religious arguments about the morality of human conduct. I want to disaggregate this inquiry, too, into two distinct

\textsuperscript{33}. See Rorty, \textit{supra} note 14, at 2 and accompanying text.
questions, the first of which concerns the politics of the United States: As a matter of American constitutional law, may religious arguments serve as a basis of political choice? I have addressed this question elsewhere.\textsuperscript{34} Here I want only to report my answer, not defend it. In my judgment, the constitutional requirement that government not “establish” religion means that no political choice outlawing or otherwise disfavoring one or another sort of human conduct believed to be immoral may be made \textit{unless a plausible secular argument or rationale supports the claim that the conduct is immoral}\.\textsuperscript{35} There is an important exception to this rule, as I will explain in subsection B of this section.\textsuperscript{36} That there be a plausible secular rationale is not a very consequential requirement, as a real-world matter, because there are few if any significant political controversies where there is not a plausible secular rationale for a political choice outlawing or otherwise disfavoring human conduct believed on religious grounds to be immoral.

The second question concerns the politics not just of the United States but of any liberal democracy: As a matter not of constitutional law but only of political morality—or perhaps I should say, as a matter of nonconstitutional political morality—is it proper for religious believers to rely on religious arguments as a basis of political choice? Whether or not I am right about the question of constitutional law,\textsuperscript{37} the question of political morality remains. One possible answer to the political-moral question is that neither citizens nor, especially, legislators or other policymakers should rely on a religious argument in making a political choice (i.e., a political choice outlawing or otherwise disfavoring human conduct) \textit{unless, in their view, a secular rationale supports the choice, a secular rationale that they themselves find persuasive}\.\textsuperscript{38} A more restrictive answer is that neither citizens nor legislators or other policymakers should rely on a religious argument in making a political choice \textit{even if, in their view, a secular rationale sup-

\textsuperscript{34} See Perry, Religion in Politics, supra note 5, at 33-37.

\textsuperscript{35} Id.

\textsuperscript{36} See infra pp. 20-25 and accompanying notes.

\textsuperscript{37} Douglas Laycock, a leading scholar of religious liberty, has written an essay explaining why he disagrees with my position that according to the “nonestablishment” norm, there must be a plausible secular rationale for a political choice outlawing or otherwise disfavoring human conduct believed to be immoral. See Laycock, supra note 9, at 811-13. In response, I have explained why I believe Laycock’s position to be problematic. See Perry, Religion in Politics, supra note 5, at 35-36.

\textsuperscript{38} I have suggested that those with the principal policymaking authority and responsibility—in particular, legislators—should ask themselves whether they find a secular rationale persuasive. See Perry, Religion in Politics, supra note 5, at 123 n.97. By contrast, the issue for a court evaluating the constitutionality of the choice under the nonestablishment norm is only whether a plausible secular rationale supports the choice.
ports the choice. A more permissive answer is that citizens and even legislators and other policymakers may rely on a religious argument in making a political choice even if, in their view, no secular rationale supports the choice.

My answer to the political-moral question is different from, and is more complicated than, any of the three answers I just listed.

A. False Starts

Why might one be inclined to conclude that government—in particular, legislators and other policymakers, acting collectively—should not rely on religious arguments in making political choices about the morality of human conduct (even if, in their view, a secular rationale supports the choice; or, at least, unless a secular rationale supports the choice)? Two reasons come to mind, one of which is moral in character, the other of which is practical. Although the moral reason might be directed specifically at religiously-based moral arguments, it is typically directed at moral arguments without regard to whether they are religious or secular. According to the moral reason, for government, in making a political choice (or, at least a coercive political choice), to rely on a moral argument that some persons subject to the choice reasonably reject is for government to deny to those persons the respect that is their due as human beings, or as Rawls has put it, as "free and equal citizens."39 Variations on this claim appear frequently in essays presenting "liberal" political-philosophical views. For example, Stephen Macedo has recently written that "[t]he liberal claim is that it is wrong to seek to coerce people on grounds that they cannot share without converting to one's faith."40

This moral position is deeply problematic. The following comment by William Galston, though it somewhat misconceives the position, goes to the heart of the matter:

[Charles] Larmore (and Ronald Dworkin before him) may well be right that the norm of equal respect for persons is close to the core of contemporary liberalism. But while the (general) concept of equal respect may be relatively uncontroversial, the (specific) conception surely is not. To treat an individual as person rather than object is to offer him an explanation. Fine; but what kind of explanation? Larmore seems to suggest that a properly respectful explanation must appeal to beliefs already held by one's interlocutors; whence the need for neutral dialogue. This seems arbitrary and implausible. I would suggest, rather, that we show others respect

when we offer them, as explanation, what we take to be our true reasons for acting as we do.\textsuperscript{41}

Let me offer two friendly amendments to Galston’s comment. First, it is never to show respect for a human being for one person to offer to another—for example, for a Nazi to offer to a Jew—a reason to the effect that “You are not truly or fully human,” even if the Nazi sincerely takes that to be his best reason for acting as he does. Second, Larmore’s position, which Galston somewhat misconceives, is that political “justification must appeal, not simply to the beliefs that the other happens to have, but to the beliefs he has on the assumption (perhaps counterfactual) that he affirms the norm of equal respect.”\textsuperscript{42} Nonetheless, it remains altogether obscure why we do not give to others the respect that is their due as human beings “when we offer them, as explanation, what we take to be our true reasons for acting as we do”\textsuperscript{43} (so long as our reasons do not assert, presuppose, or entail the inferior humanity of those to whom the explanation is offered). According to Robert Audi, “If you are fully rational and I cannot convince you of my view by arguments framed in the concepts we share as rational beings, then even if mine is the majority view I should not coerce you.”\textsuperscript{44} But why? As Gerald Dworkin has observed:

There is a gap between a premise which requires the state to show equal concern and respect for all its citizens and a conclusion which rules out as legitimate grounds for coercion the fact that a majority believes that conduct is immoral, wicked, or wrong. That gap has yet to be closed.\textsuperscript{45}

\textsuperscript{43} Galston, supra note 41, at 109. See text accompanying note 41.
\textsuperscript{44} Robert Audi, The Place of Religious Argument in a Free and Democratic Society, 30 San Diego L. Rev. 677, 701 (1993). I wonder what it might mean for one to be “fully rational,” and also what “concepts we share as rational beings.”

A related argument for disfavoring sole reliance on religious arguments in making political choices about the morality of human conduct is that citizens who do not subscribe to the relevant religious premise or premises will be, or will feel, politically alienated in consequence of such reliance. I have explained elsewhere why, in my judgment, this argument is implausible. See Perry, Religion in Politics, supra note 5, at 50-52. Cf. Steven D. Smith, Foreordained Failure: The Quest for a Constitutional Principle of Religious Freedom 164-65 n.66 (1995):

[T]he very concept of “alienation,” or symbolic exclusion, is difficult to grasp. . . . How, if at all, does “alienation” differ from “anger,” “annoyance,” “frustration,” or “disap-
According to a second, practical reason for wanting government to forgo reliance on religiously-based moral arguments, the social costs of government relying on such arguments in making political choices (or, at least, coercive political choices)—costs that mainly take the form of increased social instability—are too high. It is implausible to believe that in the context of a liberal democratic society like the United States, governmental reliance on religiously-based moral arguments in making political choices (even coercive ones) is invariably destabilizing, or that it is invariably more destabilizing than governmental reliance on controversial secular moral arguments. Some imaginable instances of political reliance on a religiously-based moral argument might, with other factors, precipitate social instability. However, "[c]onditions in modern democracies may be so far from the conditions that gave rise to the religious wars of the sixteenth century that we no longer need worry about religious divisiveness as a source of substantial social conflict."46 John Courtney Murray warned against "project[ing] into the future of the Republic the nightmares, real or fancied, of the past."47 As Murray's comment suggests, a rapprochement between religion and politics forged in the crucible of a time or a place very different from our own is not necessarily the best arrangement for our time and place. "[W]hat principles of restraint, if any, are appropriate may depend on time and place, on a sense of the present makeup of a society, of its history, and of its likely evolution."48

In my view, neither of the two reasons just examined—neither the moral reason nor the practical reason—bears the weight of the proposition" that every person who finds himself in a political minority is likely to feel? "Alienation" might refer to nothing more than an awareness by an individual that she belongs to a religious minority, accompanied by the realization that at least on some kind of issues she is unlikely to be able to prevail in the political process. . . . That awareness may be discomforting. But is it the sort of phenomenon for which constitutional law can provide an efficacious remedy? Constitutional doctrine that stifles the message will not likely alter the reality—or a minority's awareness of that reality.

Smith quotes Mark Tushnet: [N]onadherents who believe that they are excluded from the political community are merely expressing the disappointment felt by everyone who has lost a fair fight in the arena of politics." Id. (quoting Mark Tushnet, The Constitution of Religion, 18 CONN. L. REV. 701, 712 (1986)).


47. JOHN COURTNEY MURRAY, WE HOLD THESE TRUTHS 23-24 (1960).

48. GREENAWALT, PRIVATE CONSCIENCES AND PUBLIC REASONS, supra note 7, at 130.
position that government should not rely solely on religious arguments in making political choices about the morality of human conduct (much less the proposition that it should not rely even partly on such arguments). More generally, nothing in the morality or ethics of liberal democracy—at least, nothing I can discern—requires religious believers, in making political choices about the morality of human conduct (or other political choices), to forgo sole reliance on religious arguments just in virtue of the fact that the arguments are religious. I agree with Nicholas Wolterstorff and others, like Douglas Laycock and Michael McConnell, that liberal-democratic morality, properly understood, requires no such thing. I therefore disagree with John Rawls and others, like Robert Audi, on this important point, as I have explained elsewhere. According to Wolterstorff:

[T]he ethic of the citizen in a liberal democracy imposes no restrictions on the reasons people offer in their discussion of political issues in the public square, and likewise imposes none on the reasons they have for their political decisions and actions. If the position adopted, and the manner in which it is acted on, are compatible with the concept of liberal democracy, and if the discussion concerning the issue is conducted with civility, then citizens are free to offer and act on whatever reasons they find compelling. I regard it as an important implication of the concept of liberal democracy that citizens should have this freedom—that in this regard they should be allowed to act as they see fit. Liberal democracy implies, as I see it, that there should be no censorship in this regard.

Although I agree that liberal-democratic morality does not require religious believers, in making political choices about the morality of human conduct, to forgo sole reliance on religious arguments just because the arguments are religious, I do not stop there. After all, religious believers might have one or more reasons to forgo sole reliance on religious arguments, or some religious arguments, other than a reason rooted in liberal-democratic morality. And, as it happens, many religious believers do have such a reason. In making a political choice about the morality of human conduct, and in the absence of an independent secular rationale for the choice—a secular rationale that they themselves accept—many legislators and other policymakers and even ordinary citizens have good reason to forgo reliance on one sort of religious argument about the morality of human conduct: religious arguments about the requirements of human well-being.


50. See Perry, Religion in Politics, supra note 5, at 54-61.

51. Wolterstorff, supra note 45, at 147.
Religious arguments about the morality of human conduct typically address one or both of two fundamental moral issues. First, are all human beings sacred (or "inviolable")\(^5\) or only some; does the well-being of every human being merit our respect and concern, or the well-being only of some human beings? (There is a related question, but it is really just a variation on the question about the sacredness *vel non* of all human beings: Who is a human being; that is, what members of the species *Homo sapiens* are truly, fully human? Women? Non-whites? Jews?)\(^5\) Second, what are the requirements of human well-being; what is friendly to human well-being, and what is hostile to it; what is good for human beings, and what is bad?\(^5\) There are, correspondingly, two basic kinds of religious arguments about the morality of human conduct: religious arguments about who among all human beings are sacred and religious arguments about the requirements of human well-being.

52. Dworkin writes:

Some readers ... will take particular exception to the term "sacred" because it will suggest to them that the conviction I have in mind is necessarily a theistic one. I shall try to explain why it is not, and how it may be, and commonly is, interpreted in a secular as well as in a conventionally religious way. But "sacred" does have ineliminable religious connotations for many people, and so I will sometimes use "inviolable" instead to mean the same thing, in order to emphasize the availability of that secular interpretation.


53. Cast as the claim that only some persons are human beings, the claim that only some human beings are sacred has been, and remains, quite common. According to Nazi ideology, for example, the Jews were pseudohumans. See Johannes Morsink, *World War Two and the Universal Declaration*, 15 HUM. RTS. Q. 357, 363 (1993). There are countless other examples, past and present.

Serbian murderers and rapists do not think of themselves as violating human rights. For they are not doing these things to fellow human beings, but to Muslims. They are not being inhuman, but rather are discriminating between the true humans and the pseudohumans. They are making the same sort of distinction as the Crusaders made between the humans and infidel dogs, and the Black Muslims make between humans and blue-eyed devils. [Thomas Jefferson] was able both to own slaves and to think it self-evident that all men were endowed by their creator with certain inalienable rights. He had convinced himself that the consciousness of Blacks, like that of animals, "participates more of sensation than reflection." Like the Serbs, Mr. Jefferson did not think of himself as violating human rights.

The Serbs take themselves to be acting in the interests of true humanity by purifying the world of pseudohumanity.


54. The first question is about who has full moral status: Who is sacred (inviolable, etc.)? The second question is about what is good for those with full moral status, or about what is bad for them—about what is friendly to their well-being, or about what is hostile it. Thanks to Laura Underkuffler for suggesting this clarification.
The claim I want to develop and defend here is that in making a political choice about the morality of human conduct, legislators and other policymakers and even ordinary citizens should forgo reliance on a religious argument about human well-being—at least, they should be exceedingly wary about relying on such a religious argument—unless an independent secular argument that they themselves accept, that they themselves find persuasive, reaches the same conclusion about the requirements of human well-being as the religious argument. As I am about to explain, however, religious argument of the first sort—religious arguments about who among all human beings are sacred, which I will call simply “religious arguments about human worth”—merits separate treatment. There is finally no good reason why legislators, other policymakers, or citizens, in making a political choice about the morality of human conduct, should be wary about relying on the claim that each and every human being is sacred even if in their judgment the only persuasive argument (i.e., persuasive to them) that supports the claim is religious.

B. Religious Arguments about Human Worth

The only claim about human worth on which government in the United States constitutionally may rely is that all human beings (or, at least, all born human beings), and not just some (e.g., white persons, men, Christians), are truly, fully human and, as such, are sacred.\(^5^5\) Moreover, the only claim about human worth consistent with the international law of human rights is that each and every human being is sacred.\(^5^6\) Claims to the effect that all human beings are sacred are quite common in the United States, where the most influential religious traditions teach that all human beings are children of God and sisters and brothers to one another. As Hilary Putnam has noted, the moral image central to what Putnam calls the Jerusalem-based religions “stresse[s] equality and also fraternity, as in the metaphor of the whole human race as One Family, of all women and men as sisters and brothers.”\(^5^7\) The opening passage of a statement, in 1995, by the

\(^5^5\) See Michael J. Perry, The Judicial Usurpation of Politics?: The Supreme Court and the Fourteenth Amendment, (forthcoming, Oxford Univ. Press 1999) (manuscript at ch. 3 on file with author).

\(^5^6\) That every human being (or, at least, every born human being) is sacred is represented in the Universal Declaration of Human Rights (Article 2) by this language: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Universal Declaration of Human Rights, G.A. Res. 217 A(III), U.N. Doc. A/810, at 71 (1948).

Catholic bishops of Florida, on the controversial political issue of welfare reform, is illustrative:

The founding document of our nation says that all are endowed by their Creator with unalienable [sic] rights, including the right to life, liberty and the pursuit of happiness. And as Jesus has told us: “Amen, I say to you, whatever you did for the least of these brothers and sisters of mine you did for me.”

Moreover, claims that all human beings are sacred are quite common not just in the United States, but throughout the world. Indeed, the first part of the idea of human rights—an idea that has emerged in international law since the end of World War II and that is embraced by many persons throughout the world who are not religious believers as well as by many who are—is that each and every human being is sacred.

The proposition that all human beings are sacred is, for many persons, a religiously-based tenet. However, many persons who are not religious believers embrace the proposition as a fundamental principle of morality. The proposition is an axiom of many secular moralities as well as a fundamental principle, in one or another version, of many


This letter is a personal invitation to Catholics to use the resources of our faith, the strength of our economy, and the opportunities of our democracy to shape a society that better protects the dignity and basic rights of our sisters and brothers, both in this land and around the world.

(Emphasis added). By “our sisters and brothers,” the Catholic bishops meant, not “our fellow Catholics” or even “our fellow Christians,” but “all human beings.”

59. The second part of the idea is that, because every human being is sacred, there are certain things that ought not to be done to any human being and certain other things that ought to be done for every human being. I have discussed the idea of human rights at length elsewhere. See Michael J. Perry, The Idea of Human Rights: Four Inquiries (1998).

60. In an essay on the spirituality of the Talmud, Ben Zion Bokser and Baruch M. Bokser wrote: “From this conception of man’s place in the universe comes the sense of the supreme sanctity of all human life. ‘He who destroys one person has dealt a blow at the entire universe, and he who saves or sustains one person has sustained the whole world.’” Ben Zion Bokser & Baruch M. Bokser, Introduction: The Spirituality of the Talmud, in THE TALMUD: SELECTED WRITINGS 7, 30 (1989) (quoting Mishnah Sanhedrin 4:5). They continue:

The sanctity of life is not a function of national origin, religious affiliation, or social status. In the sight of God, the humble citizen is the equal of the person who occupies the highest office. As one talmudist put it: “Heaven and earth I call to witness, whether it be an Israeliite or pagan, man or woman, slave or maidservant, according to the work of every human being doth the Holy Spirit rest upon him.” . . . As the rabbis put it: “We are obligated to feed non-Jews residing among us even as we feed Jews; we are obligated to visit their sick even as we visit the Jewish sick; we are obligated to attend to the burial of their dead even as we attend to the burial of the Jewish dead.”

Id. at 30-31.
religious moralities. The widespread secular embrace of the idea of human rights is conclusive evidence of that fact. As Ronald Dworkin has written: "We almost all accept . . . that human life in all its forms is sacred . . . For some of us, this is a matter of religious faith; for others, of secular but deep philosophical belief."\(^6\) Indeed, the proposition that every human being is sacred is axiomatic for so many secular moralities that many secular moral philosophers have come to speak of "the moral point of view" as that view according to which "every person [has] some sort of equal status."\(^6\) Bernard Williams has noted that it is often thought that no concern is truly moral unless it is marked by this universality. For morality, the ethical constituency is always the same: the universal constituency. An allegiance to a smaller group, the loyalties to family or country, would have to be justified from the outside inward, by an argument that explained how it was a good thing that people should have allegiances that were less than universal.\(^6\)

I reported earlier in this essay that, in my judgment, the "nonestablishment" norm of the United States Constitution forbids government to rely on a religious argument in making a political choice outlawing or otherwise disfavoring human conduct believed immoral unless a plausible secular rationale supports the choice.\(^6\) That report was not entirely accurate; let me now amend it. I have elsewhere called attention to the possibility that there is no plausible or even intelligible secular argument that every human being is sacred.\(^6\) The only intelligible arguments to that effect are religious in character. (That an argument is intelligible does not mean that it is persuasive or even plausible.) Let us assume, for the sake of argument, that no plausible secular argument supports the claim that every human being is sacred. It would be silly to insist that because no plausible secular argument supports the claim that every human being is sacred, the nonestablishment norm forbids government, in making a political choice about the morality of human conduct, to rely on the claim that every human

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\(^6\) Ronald Dworkin, Life is Sacred. That's the Easy Part, N.Y. Times, May 16, 1993, (Magazine), at 36. Cf. Dworkin, Life's Dominion, supra note 52, at 25 (acknowledging that "sacred" is often used in a theistic sense, but it can be used in a secular sense as well). I have criticized Dworkin's conception of "sacred." See Perry, The Idea of Human Rights, supra note 59, at 25-29.

\(^6\) JAMES GRIFFIN, WELL-BEING: ITS MEANING, MEASUREMENT, AND MORAL IMPORTANCE 239 (1986).


\(^6\) See supra p. 14 and notes 34-35.

being is sacred. After all, the proposition that all human beings (non-white as well as white, women as well as men, etc.) are truly, fully human and, as such, are sacred is a fundamental part of the Constitution itself, in particular, the Fourteenth Amendment. In a review of my book, *Religion in Politics*, Kurt Lash has written: “[Perry] never explains why *this* religious belief [i.e., that every human being is sacred], but not others, constitutionally may be imposed on nonbelievers.”66 I hope the explanation is now clear: The proposition that every human being is sacred is a fundamental part of the Fourteenth Amendment to the Constitution of the United States.67 The Constitution not only does not forbid government in making political choices to rely on the proposition, it forbids government to rely on the contrary proposition that some persons are not sacred.

Similarly, it would be silly to insist that (apart from what the Constitution might or might not forbid), citizens, legislators, and other policymakers should therefore forgo reliance on the claim that every human being is sacred unless, in their judgment, a persuasive (to them) secular argument supports the claim. Whether or not a persuasive secular argument supports the claim—and so, even if none does—the proposition that all human beings are sacred is a fundamental constituent of the moral culture of the United States. It is a fundamental moral conviction of Americans that, in the words of our Declaration of Independence, all human beings “are created equal, and endowed by their Creator with certain inalienable rights . . . .”68 Therefore, we must conclude that, in making a political choice outlawing or otherwise disfavoring human conduct believed immoral, government may, under the nonestablishment norm, and legislators and others may, as a nonconstitutional matter, rely on the claim that every human being is sacred *whether or not any persuasive or even plausible secular argument supports the claim about the true and full humanity and sacredness of every human being.*69 This conclusion should trouble few if any persons who are committed to liberal democracy, however, even if

67. For a defense of this claim, see PERRY, JUDICIAL USURPATION OF POLITICS, supra note 55 (manuscript at ch. 3) (entitled *The Fourteenth Amendment: What Norms Did “We the People” Establish*).
69. As a nonconstitutional matter, may legislators or others, in making a political choice outlawing or otherwise disfavoring human conduct believed immoral, rely on a claim that only some human beings are sacred—or, equivalently, that only some human beings (e.g., white persons) are truly, fully human—even if, in their view, no persuasive secular argument supports the claim? Such a claim is flatly inconsistent with the morality of liberal democracy, according to which each and every human being has equal moral status. *See infra* note 70 and accompanying text.
they are religious nonbelievers, because the proposition that each and every human being is sacred is not only embedded, in one form or another, in many different religious traditions; it is also axiomatic for most persons, including most religious nonbelievers, who are committed to liberal democracy as the morally best form of government and, more broadly, to the idea of human rights. Any argument, including any religious argument, that only some human beings are sacred (inviolable, etc.) is contrary both to liberal democracy and to the idea of human rights.

[P]erhaps the litmus test of whether the reader is in any sense a liberal or not is Gladstone's foreign-policy speeches. . . .

In [one such speech,] taken from the late 1870s, around the time of the Midlothian campaign, [Gladstone] reminded his listeners that "the sanctity of life in the hill villages of Afghanistan among the winter snows, is as inviolable in the eye of almighty God as can be your own . . . that the law of mutual love is not limited by the shores of this island, is not limited by the boundaries of Christian civilization; that it passes over the whole surface of the earth, and embraces the meanest along with the greatest in its unmeasured scope." By all means smile at the oratory. But anyone who sneers at the underlying message is not a liberal in any sense of that word worth preserving. 71

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It remains the case, however, that the nonestablishment norm of the United States Constitution forbids government to rely on a religious argument of the other basic sort—a religious argument about human well-being—in making a political choice outlawing or otherwise disfavoring human conduct believed immoral unless a plausible secular rationale supports the choice. 72 That, at least, is my position about how

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72. A qualification is needed here. As I have explained elsewhere, the nonestablishment norm forbids government to base political choices on secular arguments of a certain sort, namely, secular arguments that one or more religious tenets are more authentically American, more representative of the sentiments of the community, or otherwise "better," than one or more competing religious or nonreligious tenets. See PERRY, RELIGION IN POLITICS, supra note 5, at 14-16. When I refer, in describing the requirements of the nonestablishment norm, to a "secular" argument or rationale, I do not mean to include arguments of the sort described in the preceding sentence, but only those that do not in any way value one or more religious tenets,
we should understand, in the present context, the implications of the nonestablishment norm. In the next section of this essay, I inquire whether, apart from what the Constitution might forbid, citizens and, especially, legislators and other policymakers should forgo reliance on a religious argument about the requirements of human well-being in making a political choice outlawing or otherwise disfavoring human conduct believed immoral if, in their view, no secular argument that they themselves find persuasive reaches the same conclusion about those requirements as the religious argument.73

C. Religious Arguments about Human Well-Being

Again, arguments about the requirements of human well-being are the second basic kind of religious argument about the morality of human conduct: in particular, arguments about what is truly good for human beings, whether all human beings or only some, or about what is truly bad for them; about what is conducive to or even constitutive of authentic human well-being, or about what impedes or even destroys authentic human well-being; about what must not be done to, or about what must be done for, a human being (including oneself) if one is to achieve well-being. (Achieving well-being is not an either/or matter, but rather a matter of degree.) In making a political choice outlawing or otherwise disfavoring human conduct believed immoral, should legislators and other policymakers and even ordinary citizens refrain from relying on a religious argument about the requirements of human well-being absent a persuasive (to them) secular argument that reaches the same conclusion about those requirements?

As I am about to explain, for most religious believers in the United States, at least, and probably for most religious believers in other liberal democracies, especially liberal democracies that are religiously

73. In the United States, the political controversy about abortion—the debate about what public policy regarding abortion should be—looms large in the background, it looms large as a subtext, of the debate about the proper role of religion in politics. As much as any other contemporary political controversy, and more than most, the abortion controversy is a principal, if often unspoken, occasion of the debate about religion in politics. See Elizabeth Mensch & Alan Freeman, The Politics of Virtue: Is Abortion Debatable? (1993).

It is noteworthy that were a government to choose to outlaw abortion, it would not have to rely on a religious argument about the requirements of human well-being. (Therefore, the nonestablishment norm, at least, does not stand in the way of restrictive abortion legislation.) This is illustrated by the fact that the most influential religious voice in the United States on the “pro-life” side of the debate about what public policy regarding abortion should be—the voice of the National Conference of Catholic Bishops—does not rely on a religious argument about the requirements of human well-being.

See Perry, Religion in Politics, supra note 5, at 70-72.
pluralistic, the persuasiveness or soundness of any religious argument about human well-being depends, or should depend, partly on there being at least one persuasive secular argument (i.e., one secular argument that they themselves find persuasive) that reaches the same conclusion about the requirements of human well-being as the religious argument. (Some theologically conservative Christians—in particular, “fundamentalist” Christians and some “evangelical” Christians—will disagree. I address such Christians in the next section of this essay.) A qualification is necessary here. Imagine a religious argument according to which perfect human well-being consists, at least in part, in union with God and therefore requires, among other things, prayer or other spiritual practice conducive to achieving such union. By definition, no “secular” argument can reach such a conclusion about the nature or requirements of human well-being. But, as I have explained elsewhere, no government committed to the ideal of nonestablishment will take any action based on the view that a practice is or practices are, as religious practice—as practice embedded in and expressive of one or more religious beliefs—truer or more efficacious spiritually or otherwise better than one or more other religious or nonreligious practices or than no religious practice at all.74 The United States is constitutionally committed to the ideal of nonestablishment. Moreover, no government committed to freedom of religion, as a liberal democracy is, will coerce its citizens to engage in any religious practices. Nonetheless, to be as precise as possible: The persuasiveness of any religious argument about human well-being—any religious argument, that is, on which a government committed not to discriminate in favor of religious practice would be prepared to rely—should depend in part on there being at least one sound secular argument that reaches the same conclusion as the religious argument. At least, no religious argument about human well-being should be deemed sufficiently strong to ground a political choice, least of all a coercive political choice, unless a persuasive secular argument reaches the same conclusion about the requirements of human well-being.

Why should the persuasiveness of every religious argument about human well-being (on which a government committed not to discriminate in favor of religious practice would be prepared to rely) depend partly on there being at least one sound secular route to the religious argument’s conclusion about the requirements of human well-being? A “religious” argument about human well-being—like a religious argument about anything—is, as I wrote earlier, an argument that relies

74. See Perry, Religion in Politics, supra note 5, at 20-21.
on (among the other things it relies on) a religious belief: an argument that presupposes the truth of a religious belief and includes that belief as one of its essential premises. (Again, a “religious” belief is, for present purposes, either the belief that God exists—“God” in the sense of a transcendent reality that is the source, the ground, and the end of everything else—or a belief about the nature, the activity, or the will of God.) The paradigmatic religious argument about human well-being relies principally on a claim about what God has revealed. Such an argument might be made by someone who believes that we human beings are too fallen (too broken, too corrupt) to achieve much insight into our own nature and that the safest inferences about human nature, about the requirements of human well-being, are based on God’s revelation. However, religious believers—even religious believers within the same religious tradition—do not always agree with one another about what God has revealed. Moreover, many religious believers understand that human beings are quite capable not only of making honest mistakes, but even of deceiving themselves about what God has revealed, including what God might have revealed about the requirements of human well-being.

Therefore, and as many religious believers understand, an argument about human well-being—about what is truly good for (all or some) human beings, or about what is truly bad for them—that is grounded on a claim about what God has revealed is highly suspect if there is no secular route to the religious argument’s conclusion about the requirements of human well-being. So long as no persuasive secular argument supports the conclusion about the requirements of human well-being reached by a religious argument of the kind in question, the religious argument is problematic. (This is not to say either that the existence of a persuasive secular argument entails the persuasiveness

75. See infra note 111 and accompanying text. For a description of the religious mindset that yields such a religious argument, see JAMES DAVISON HUNTER, CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA 120-21 (1991).

76. Charles Curran, the eminent Catholic moral theologian, has raised a helpful question, in correspondence, about my “emphasis on human well-being and human nature. Some people might criticize that [emphasis] as being too anthropocentric and not theocentric enough for a truly Protestant position. . . . The primary question perhaps even in the reformed tradition is what is the will of God and not what is human flourishing or human nature.” Letter to Michael J. Perry, Aug. 7, 1995. However, given two assumptions that few Christians would want to deny, the distinction between doing “what God wills or commands us to do” and doing “what fulfills our nature” is quite false. The two assumptions are, first, that human beings have a nature—indeed, a nature fashioned by God—and, second, that it is God’s will that human beings act so as to fulfill or perfect their nature. As Bernard Williams has observed, “[preferred ethical categories] may be said to be given by divine command or revelation; in this form, if it is not combined with a grounding in human nature, the explanation will not lead us anywhere except into what Spinoza called ‘the asylum of ignorance.’” WILLIAMS, supra note 63, at 96.
of the religious argument or that the nonexistence of a persuasive secular argument entails that the religious argument is incorrect.) Indeed, in the absence of any persuasive secular argument, the religious argument is of doubtful soundness for anyone who believes, as do most Christians, for example, that no fundamental truth about the basic requirements of human well-being is unavailable to any (rational) human being—that every such truth, even if available only to some human beings by the grace of “supernatural” revelation, is nonetheless available “in principle” to every human being by virtue of so-called “natural” reason. The Roman Catholic religious-moral tradition has long embraced that position:

[St. Thomas] Aquinas remained... convinced that morality is essentially rational conduct, and as such it must be accessible, at least in principle, to human reason and wisdom... In the teaching of Aquinas, then, the purpose of Revelation, so far as morality is concerned, appears to be essentially remedial, not absolutely necessary for man... The Christian revelation contains in its moral teaching no substantial element over and above what is accessible to human reason without such revelation... Revelation as such has nothing in matters of moral behaviour to add to the best of human thinking.

Aquinas’s enormous influence on the Christian religious-moral tradition extends far beyond just Catholic Christianity. Christians generally, and not just Catholics, would “want to argue (at least, many of them would) that the Christian revelation does not require us to interpret the nature of man in ways for which there is otherwise no warrant but rather affords a deeper understanding of man as he essentially is.”

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77. “In principle,” because [t]he participation by man in God’s eternal law through knowledge... can be corrupted and depraved in such a way that the natural knowledge of good is darkened by passions and the habits of sin. For Aquinas, then, not all the conclusions of natural law are universally known, and the more one descends from the general to the particular, the more possible it is for reason to be unduly influenced by the emotions, or by customs, or by fallen nature.

78. For an illuminating recounting, see id. at 103-15.

79. Id. at 106-07, 109. Mahoney then adds: “[B]ut such human moral thinking is by no means always or invariably at its best.” Id. at 109.

80. Basil Mitchell, Should Law Be Christian?, LAW & JUST., No. 96/97 (1988), at 12, 21. Moreover, as the American philosopher Robert Audi (who identifies himself as a Christian) has explained, “good secular arguments for moral principles may be better reasons to believe those principles to be divinely enjoined than theological arguments for the principles, based on scripture or tradition.” Audi, Liberal Democracy and the Place of Religion in Politics, in RELIGION IN THE PUBLIC SQUARE, supra note 45, at 1, 20-21. This is because the latter—in particular, scripture-based and tradition-based religious arguments—“seem (even) more subject than the former
No religious argument about human well-being—indeed, no religiously-based moral argument of any kind—is a persuasive basis of political choice for religious nonbelievers. But even for religious believers—in particular, for religious believers, whether Christian or not, who accept what has been the dominant Christian understanding of the relation between “revelation” and “reason”—any religious argument about human well-being should be a highly suspect basis of political choice if no persuasive secular argument reaches the same conclusion about the requirements of human well-being as the religious argument. Given the demonstrated, ubiquitous human propensity to be mistaken and even to deceive oneself about what God has revealed, the absence of a persuasive secular argument in support of a claim about the requirements of human well-being fairly supports a presumption that the claim is probably false, that it is probably the defective yield of that demonstrated human propensity. At least, it fairly supports a presumption that the claim is an inappropriate ground of political choice, especially coercive political choice.

A religious community might try to insulate itself from such a presumption by means of one or more doctrines about its own privileged and perhaps even infallible insight into God’s revelation, including God’s revelation about the requirements of human well-being. But any such doctrine is destined to seem to outsiders to the community—and, depending on the degree of historical self-awareness among the members of the community, even to some insiders, and perhaps to many of them—as little more than a prideful and self-serving stratagem. In any event, no such doctrine can be politically effective in a

to cultural influences that may distort scripture or tradition or both; more vulnerable to misinterpretation of religious or other texts or to their sheer corruption across time and translation; and more liable to bias stemming from political or other non-religious aims.” Id. at 21. (Christianity’s acceptance of slavery comes to mind here—an acceptance that persisted for most of the two millennia of Christianity. See infra note 81.) Audi concludes that: “[g]ranting, then, that theology and religious inspiration can be sources of ethical insight, we can also reverse this traditional idea: one may sometimes be better off trying to understand God through ethics than ethics through theology.” Audi, supra, at 22 (footnote omitted). (One can accept Audi’s point and nonetheless believe that there is no intelligible secular argument for the foundational moral proposition that each and every human being is sacred. See supra note 65.)

81. Discussing usury, marriage, slavery, and religious freedom, John Noonan has demonstrated:

Wide shifts in the teaching of moral duties, once presented as part of Christian doctrine by the magisterium, have occurred. In each case one can see the displacement of a principle or principles that had been taken as dispositive—in the case of usury, that a loan confers no right to profit; in the case of marriage, that all marriages are indissoluble; in the case of slavery, that war gives a right to enslave and that ownership of a slave gives title to the slave’s offspring; in the case of religious liberty, that error has no rights and that fidelity to the Christian faith may be physically enforced. . . . In the course of this displacement of one set of principles, what was forbidden became lawful (the cases
society as religiously pluralistic as the United States. Indeed, no religious community that fails to honor the ideal of self-critical rationality can play a meaningful role in the politics of a religiously pluralistic democracy like the United States. As Richard John Neuhaus has warned, "So long as Christian teaching claims to be a privileged form of discourse that is exempt from the scrutiny of critical reason, it will understandably be denied a place in discussions that are authentically public." Listen, too, to J. Bryan Hehir, who, as the principal drafter of the U.S. Catholic Bishops’ 1983 letter on nuclear deterrence, has some experience in the matter:

[R]eligiously based insights, values and arguments at some point must be rendered persuasive to the wider civil public. There is legitimacy to proposing a sectarian argument within the confines of a religious community, but it does violence to the fabric of pluralism to expect acceptance of such an argument in the wider public arena. When a religious moral claim will affect the wider public, it should be proposed in a fashion which that public can evaluate, accept or reject on its own terms. The [point] . . . is not to banish religious insight and argument from public life[, but only to] establish[ ] a test for the religious communities to meet: to probe our commitments deeply and broadly enough that we can translate their best insights to others.

of usury and marriage); what was permissible became unlawful (the case of slavery); and what was required became forbidden (the persecution of heretics).

John T. Noonan Jr., Development in Moral Doctrine, 54 Theological Stud. 662, 669 (1993). See also Seán Fagan, S.M., Interpreting the Catechism, 44 Doctrine & Life 412, 416-17 (1994): A catechism is supposed to “explain,” but this one does not say why Catholics have to take such a rigid, absolutist stand against artificial contraception because it is papal teaching, but there is no reference to the explicit centuries-long papal teaching that Jews and heretics go to hell unless they convert to the Catholic faith, or to Pope Leo X, who declared that the burning of heretics is in accord with the will of the Holy Spirit. Six different popes justified and authorised the use of slavery. Pius XI, in an encyclical at least as important as Humane Vitae, insisted that co-education is erroneous and pernicious, indeed against nature. The Catechism’s presentation of natural law gives the impression that specific moral precepts can be read off from physical human nature, without any awareness of the fact that our very understanding of “nature” and what is “natural” can be coloured by our culture.

82. On self-critical rationality, see Michael J. Perry, Love and Power: The Role of Religion and Morality in American Politics, at 52-65 (1991). I suppose that few if any traditions, religious or otherwise, fail to practice self-critical rationality to some extent. The question is whether and to what extent, in a particular tradition, the ideal of self-critical rationality is central or marginal, is vigorously affirmed or vigorously repressed.


85. Perry, Religion in Politics, supra note 5, at 78 (quoting Bryan Hehir). The Dutch theologian, Edward Schillebeeckx, who is Catholic, has written: “Even when their fundamental inspiration comes from a religious belief in God, ethical norms . . . must be rationally grounded.
The drafters of *The Williamsburg Charter*, a group that included many prominent religious believers, have articulated a similar contention: "Arguments for public policy should be more than private convictions shouted out loud. For persuasion to be principled, private convictions should be translated into publicly accessible claims. Such public claims should be made publicly accessible . . . because they must engage those who do not share the same private convictions. . . ."\(^86\)

Richard Neuhaus, who was instrumental in the drafting of *The Williamsburg Charter*, has cautioned that "publicly assertive religious forces will have to learn that the remedy for the naked public square is not naked religion in public. They will have to develop a mediating language by which ultimate truths can be related to the penultimate and prepenultimate questions of political and legal contest."\(^87\)

Again, any religious community that would play a meaningful role in the politics of a religiously pluralistic democracy like the United States must honor the ideal of self-critical rationality. Insisting on a persuasive secular argument in support of a claim about human well-being is obviously one important way for the members of a religious community to honor the ideal of self-critical rationality; it is one important way for them to conform their practice to the ideal. Moreover, it is one important way—and, indeed, a relatively ecumenical way—for the citizens of a religiously pluralistic democracy, including citizens who are religious believers, to test the various statements about what God has revealed, including statements about God’s revealed will, that are sometimes articulated in public political debate; for example, statements that certain biblical passages ‘‘prove’ that heterosexuality is God’s exclusive intention for human sexuality and that homosexuality is an abomination before God.’’\(^88\)

None of the participants in [religiously-based moral discourse] can hide behind an ‘I can see what you don’t see’ and then require [the] others to accept this norm straight out." Edward Schillebeeckx, *The Schillebeeckx Reader* 263 (Robert Schreiter ed., 1984). Even if we assume for the sake of argument that Schillebeeckx’s principle should not govern moral discourse in all contexts—for example, in the context of a small, monistic, charismatic religious community—the principle should certainly govern moral discourse in some contexts, especially in the context of a large, pluralistic, democratic political community like the United States.


88. Siker, *supra* note 12, at 184. For Siker’s criticism of such interpretations, see *id.* at 184-91.
I have just indicated why, in making political choices about the morality of human conduct, legislators, other policymakers, and even ordinary citizens should not rely on—at least, they should be exceedingly wary about relying on—a religious argument about human well-being if, in their view, no secular argument that is persuasive to them reaches the same conclusion about the requirements of human well-being. Should we go further and conclude that legislators and others should not rely on a religious argument about human well-being even if, in their view, a persuasive secular argument does reach the same conclusion? Should legislators and others rely only on the persuasive secular argument? Our historical experience teaches us to be deeply skeptical about government—about politics, about the politically powerful—acting as an arbiter of religious truth.⁸⁹ Politics is not a domain conducive to the discernment of theological truth; it is, however, a domain extremely vulnerable to the manipulative exploitation of theological controversy. (Theologically conservative Christians should know this as well as anyone else.) Nonetheless, it seems unrealistic to insist that legislators and others support a political choice about the morality of human well-being only on the basis of a secular argument they find persuasive if they also find persuasive a religious argument that supports the choice. How could such a legislator be sure that she was relying only on the secular argument, putting no weight whatsoever on the religious argument? She could ask whether she would support the choice even if the religious argument were absent, solely on the basis of the secular argument. However, trying to ferret out the truth by means of such counterfactual speculation is perilous at best and would probably be, as often as not, self-deceiving and self-serving.⁹⁰

More fundamentally, the relevant question for a legislator (or other policymaker or citizen) is not whether she would find persuasive a secular argument about human well-being if she did not already find persuasive a religious argument that reaches the same conclusion as the secular argument. To ask herself that question would be for the legislator to ask herself whether she would find the secular argument persuasive if she were someone other than the person she is, someone without the particular religious beliefs she has. Such a counterfactual

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⁸⁹. History teaches us to be skeptical as well about government acting as an arbiter of moral truth, but there is no way that even a government of very limited powers can avoid making some moral judgments. By contrast, there is simply no need for government to make religious judgments about the requirements of human well-being.

⁹⁰. Thus, I am skeptical that Robert Audi’s requirement of adequate secular motivation could often be implemented. For a recent critique of Audi’s position, see Jeff Jordan, Religious Reasons and Public Reasons, 11 PUB. AFF. Q. 245 (1997).
inquiry is not only often hopelessly difficult, but, more importantly, beside the point. The proper question is not whether someone else would find the secular argument persuasive, but whether, on reflection, she finds it persuasive. The question she should ask herself is whether, in addition to the religious argument she accepts, she finds persuasive a secular argument that reaches the same conclusion about the requirements of human well-being. True, one might be more inclined to find persuasive a secular argument if one already accepts a religious argument that reaches the same conclusion. But there's nothing to be done about that.

That a legislator or other policymaker or citizen cannot reach a judgment about the soundness of the relevant secular argument or arguments on her own is not disabling, because she can seek the help of those whose judgment she respects and trusts; she can, in the end, rely on their judgment. After all, relying on the judgment of those we respect and trust is one quite ordinary way we decide whether to accept propositions that for one reason or another we are not competent or otherwise in a position to evaluate by ourselves. The judgment of others we respect and trust is typically a fundamental criterion of the persuasiveness of such propositions. This is true with respect to propositions about, say, subatomic reality or the performance of the stock market. It is no less true with respect to propositions about the requirements of human well-being.

The principle of self-restraint I am recommending here is quite modest if and to the extent it would not be difficult for a religious believer to locate an independent, corroborating secular argument about the requirements of human well-being that she could accept as sound. Indeed, if one believes that it would rarely if ever be difficult for a religious believer to locate such an argument, one might wonder whether my principle of self-restraint is not modest to the point of being inconsequential and scarcely worth defending. Moreover, one might wonder why it should matter if some policymakers were to make a political choice about the morality of human conduct solely on the basis of a religious argument about human well-being, if it is extremely unlikely that in a country like the United States, any such political choice would be established (or maintained) as law or public policy unless supported by a widely accepted secular argument about the requirements of human well-being?

My response to such thoughts relies on the value of maintaining a pervasively and vigorously "ecumenical" politics.\[^{91}\] I have written at

\[^{91}\] Thanks to Laura Underkuffler for helping me to see this.
length in support of ecumenical politics. Consider the ecumenical function of the practice I am recommending here; consider the ecumenical political culture such a practice can help to cultivate. For citizens and, especially, their elected representatives to decline to make a political choice about the morality of human conduct unless a persuasive secular argument supports the choice, and, concomitantly, for them to rely at least partly on a secular argument in public political debate about whether to make the choice, helps American politics to maintain a relatively ecumenical character rather than a sectarian one. It does so by deemphasizing one of the most fundamental things that divides us—religion—and in that sense and to that extent is one way of reinforcing, rather than tearing, the bonds of political community. Note, too, that having to present and defend a secular argument in public political debate is at least somewhat constraining. But even if the practice is not, for some, very constraining, secular political arguments, once presented in public political debate, are available for testing there; they are not immune to counterargument. At the end of the day, such an argument may be less credible—and therefore less widely influential—than it was at the beginning. Consider, in that regard, how well secular arguments about the (im)morality of same-sex marriages are faring. It is difficult to understand why any religious community that honors the ideal of self-critical rationality (as any religious community should) would object to the “ecumenizing” practice I am recommending here, given that, as I said, insisting on a persuasive secular argument in support of a claim about the requirements of human well-being is one important way for a religious community to honor the ideal. It is especially difficult to understand why any religious community that values ecumenical dialogue with those outside the community would object to such a practice, which can only serve to facilitate such dialogue. Only a historically naive religious (or other) tradition

92. See Perry, Love and Power, supra note 82, at 83-127.

93. I have discussed the nature of political community, understood as a “community of judgment,” elsewhere—and I have explained why political community, thus understood, is a good. See id.

94. See Siker, supra note 12, at 181-83.

95. I have discussed the value of ecumenical political dialogue elsewhere. See Perry, Love and Power, supra note 82, at 83-127. See also David Lochhead, The Dialogical Imperative: A Christian Reflection on Interfaith Encounter 79 (1988):

In more biblical terms, the choice between monologue and dialogue is the choice between death and life. If to be human is to live in community with fellow human beings, then to alienate ourselves from community, in monologue, is to cut ourselves off from our own humanity. To choose monologue is to choose death. Dialogue is its own justification.
would doubt the value of ecumenical dialogue, which is, among other things, a profoundly important project for anyone committed to the ideal of self-critical rationality.

There is, of course, much to gain by sharpening our understanding in dialogue with those who share a common heritage and common experience with us. Critical understanding of the [religious] tradition and a critical awareness of our own relationship to it, however, is sharpened by contact with those who differ from us. Indeed, for these purposes, the less they are like us, the better.96

Defending the moderate style of his participation in public discourse about abortion and other issues implicating what he famously called "the consistent ethic of life," the late Joseph Cardinal Bernardin, Archbishop of Chicago, wrote:

The substance of the consistent ethic yields a style of teaching it and witnessing to it. The style should . . . not [be] sectarian. . . . [W]e should resist the sectarian tendency to retreat into a closed circle, convinced of our truth and the impossibility of sharing it with others. . . .

The style should be persuasive, not preachy. . . . We should be convinced we have much to learn from the world and much to teach it. . . . A confident church will speak its mind, seek as a community to live its convictions, but leave space for others to speak to us, help us grow from their perspective . . . 97

For the sake of clarity, let me restate the basic position I am defending here: In making a political choice about the morality of human conduct, especially a coercive political choice, legislators and other policymakers and even ordinary citizens have good reason to forgo reliance on a religious argument about human well-being unless, in their view, a persuasive secular argument reaches the same conclusion about the requirements of human well-being as the religious argument.98 Now, someone might conclude that according to this position,

96. Perry, Religion in Politics, supra note 5, at 79 (quoting Robin W. Lovin, Why the Church Needs the World: Faith, Realism, and the Public Life (1988 Sorenson Lecture at the Yale Divinity School)).


98. Consider a religious argument to the effect that the human fetus is a human being in the relevant sense—for example, the argument that God has "ensouled" the human fetus, and that therefore the human fetus should be treated with the same respect and concern with which born human beings should be treated. Such an argument is not the argument that all born human beings are sacred, nor is the argument about the requirements of human well-being. How should such an argument be treated under the regime I am recommending here? As a practical matter, the question seems unimportant. Even if we assumed, for the sake of argument, that political reliance on such an argument should be constrained in the way that political reliance on a religious argument about the requirements of human well-being should (in my view) be constrained, it is nonetheless the case that anyone who accepts such an argument—a religious argument that
the moral insight achieved over time by the various religious traditions, by the various historically extended religious communities, has at most only a marginal place in public political debate about the morality of human conduct. (Consider, in that regard, the statement by Pope John Paul II that I have put at the beginning of this essay, the statement the Pope made in December 1997, in receiving the credentials of Lindy Boggs as Ambassador to the Holy See.99) But such a conclusion would be mistaken—for four reasons.

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the fetus is a human being in the relevant sense—will almost certainly also accept, and can also always rely on, an additional argument that is not problematic under the regime I am recommending here: the argument, which is not religious, that there is no nonarbitrary way to draw the bounds of the human community short of conception. See, e.g., Robert F. George, Book Review, 88 Am. Pol. Sci. Rev. 445 (1994) (reviewing Ronald Dworkin, Life’s Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom (1993)): “Opponents of abortion . . . view all human beings, including the unborn . . . , as members of the community of subjects to whom duties in justice are owed . . . . The real issue of principle between supporters of abortion . . . and opponents . . . has to do with the question of who are subjects of justice.” Id. In George’s view, “[t]he challenge to the orthodox liberal view of abortion . . . is to identify nonarbitrary grounds for holding that the unborn . . . do not qualify as subjects of justice.” Id. at 445-46. George then adds: “Frankly, I doubt that this challenge can be met. In any event, Dworkin here fails to make much progress toward meeting it.” Id. at 446. Cf. Amy Gutmann & Dennis Thompson, Democracy and Disagreement: Why Moral Conflict Cannot Be Avoided in Politics, and What Should Be Done About It 75 (1996): “Although pro-life advocates sometimes invoke a religious conception of human life, the belief that the fetus is a human being with constitutional rights does not depend on a distinctly religious conception of personhood.”

How should a religious argument that only some human beings are sacred be treated under the regime I am recommending here? Any argument to that effect, including a religious one, is contrary both to liberal democracy and to the idea of human rights. See Brittan, supra note 71 and accompanying text.

What about a religious argument that animals, too, are sacred—or that they are not? (Thanks to Mayer Freed for raising this question.) Or a religious argument that fetuses are not sacred? How should such arguments be treated under the regime I am recommending here? Are there plausible secular arguments about who or what is or is not sacred (inviolable, etc.)? I’m skeptical. See Perry, The Idea of Human Rights, supra note 59, at 3-9. This is not to deny that there are very plausible secular (i.e., nonreligious) arguments to the effect that claiming that members of set A are sacred while denying that members of set B are, is, or seems to be, arbitrary.

99. See supra text accompanying note 1. The Pope has made other, similar statements. In October 1995, for example, during a homily delivered at a mass in Baltimore, John Paul asked:

Can the biblical wisdom which played such a formative part in the very founding of your country be excluded from the [political] debate [about the morality of human conduct]? Would not doing so mean that America’s founding documents no longer have any defining content, but are only the formal dressing of changing opinion? Would not doing so mean that tens of millions of Americans could no longer offer the contribution of their deepest convictions to the formation of public policy?

Words of Faith and Freedom: The Text of the Homily Delivered in Baltimore, N.Y. Times, Oct. 9, 1995, at B5 (quoting Pope John Paul II). Two months later, in the Vatican newspaper L’Osservatore Romano, the Pope recurred to the same theme:

I am thinking here of the claim that a democratic society should relegate to the realm of private opinion its members’ religious beliefs and the moral convictions which derive
First, as I emphasized earlier in this essay, there are good reasons not merely for tolerating but for encouraging the airing—and testing—of religiously-based moral arguments in public political debate. There is no need to rehearse the point here.

Second, unlike religious arguments about human well-being, religious arguments about human worth—in particular, religious arguments that each and every human being is sacred—are not covered by the position I am defending here.

In his review of Religion in Politics, Kurt Lash writes that “[Perry’s] vision of reasonable religious dialogue seems but a shadow of the impassioned rhetoric that [has] characterized” religious participation in debates about such matters as slavery and abortion. Lash continues:

[T]o remove, or “civilize,” the religious voice whenever it is based on controversial religious assumptions seems to me to remove what is simultaneously most valuable and most dangerous about religious rhetoric. “Dogmatic” religious arguments may, of course, lead to holy wars, crusades, and the burning of heretics. But they may also lead to the abolition of slavery, prod a national conscience into passing civil rights legislation, or shame us into consideration of the poor, the infirm, and the untouchable. In other words, religious rhetoric is capable of radical evil and radical good. For every William Lloyd Garrison there is a John Brown.

Lash’s point is misdirected. The fundamental religious argument that the issues Lash mentions all implicate—the issues of slavery, abortion, racial discrimination, the condition of the poor, the infirm, and other from faith. At first glance, this appears to be an attitude of necessary impartiality and “neutrality” on the part of society in relation to those of its members who follow different religious traditions or none at all. Indeed, it is widely held that this is the only enlightened approach possible in a modern pluralistic State.

But if citizens are expected to leave aside their religious convictions when they take part in public life, does this not mean that society not only excludes the contribution of religion to its institutional life, but also promotes a culture which re-defines man as less than he is? In particular, there are moral questions at the core of every great public issue. Should citizens whose moral judgments are informed by their religious beliefs be less welcome to express their most deeply held convictions? When that happens, is not democracy itself emptied of real meaning? Should not genuine pluralism imply that firmly held convictions can be expressed in vigorous and respectful public dialogue?


100. Lash, supra note 66, at 1101.

101. Id. at 1119. In support of his position, Lash quotes Mark Tushnet: “When faced with an issue of transcendent importance—slavery in the nineteenth century, or abortion (for some) in the twentieth—, people can reasonably say, ‘Getting the right answer to this question is more important than preserving a stable moral order in which injustice prevails.’” Id. at 1120 (quoting Mark Tushnet, The Constitutional Law of Religion Outside the Courts (unpublished manuscript, on file with author)).
marginalized ("untouchable") groups—is the argument that each and every human being is sacred. But it is precisely that argument that is not covered by the position I am defending here. (It is not covered for the reasons I have presented in Section IIB of the essay.) Therefore, it simply misconceives my position to say that “the impassioned religious rhetoric” that has characterized religious participation in debates about such matters as slavery and abortion would be, if my prescription were followed, reduced to a shadow of itself. For example, nothing that Martin Luther King, Jr. said about the fundamental equality of each and every human being in the eyes of the Creator God would be in the least bit problematic according to the position I am defending in this essay.

Third, my point is not that in making a political choice about the morality of human conduct, religious believers ought not to rely on a religious argument about human well-being; my point is only that they ought not to do so unless a persuasive (to them) secular argument reaches the same conclusion as the religious argument on which they are inclined to rely. In other words, in making a political choice about the morality of human conduct—a political choice that rests on a claim about the requirements of human well-being—religious believers should rely at least partly on a secular argument about the requirements of human well-being. This is not even to say that a believer's principal reliance should always be on the secular argument.

Thus, there could be, under my position, “impassioned religious rhetoric” even about an issue, like the morality of same-sex marriage, that implicates religious beliefs about the requirements of human well-being. My argument, in this essay, is only that in making a policy choice about the morality of human conduct, Christians and other religious believers have their own reasons—reasons internal both to their own religious (theological) tradition and to their own historical experience—to forgo reliance on a religious argument about human well-being in the absence of an independent, corroborating secular argument. Again, this is not even to say that a believer’s principal reliance should always be on the secular argument. I amplify this point, about the kind of reasons (“internal” reasons) that Christians and others have, in the next section of this essay.

102. See supra pp. 20-25 and accompanying notes.
103. Similarly, nothing that any “pro-life” religious believer might say about the sacredness of each and every human life—and about the absence of any nonarbitrary reason for drawing the boundaries of the human community in a way that excludes the unborn—would be problematic under the regime I am recommending here. See supra note 98.
Fourth, the moral insight achieved over time by a religious tradition—the insight into the requirements of human well-being—because it is the yield of the lived experience of an historically extended human community, might well have a resonance and indeed an authority that extends far beyond just those who accept the tradition’s religious claims. Put another way, many of the most basic claims about human well-being made by one or another religious tradition are often made, and in any event can be made, without invoking any religious claim (i.e., any claim about the existence, nature, activity, or will of God). What Catholic moral theologian James Burtchaell has explained about the nature of moral inquiry or discernment in the Catholic religious tradition is true of any religious tradition, although not every religious tradition will accept it as true:

The Catholic tradition embraces a long effort to uncover the truth about human behavior and experience. Our judgments of good and evil focus on whether a certain course of action will make a human being grow and mature and flourish, or whether it will make a person withered, estranged and indifferent. In making our evaluations, we have little to draw on except our own and our forebears’ experience, and whatever wisdom we can wring from our debate with others.

... Nothing is specifically Christian about this method of making judgments about human experience. That is why it is strange to call any of our moral convictions “religious,” let alone sectarian, since they arise from a dialogue that ranges through so many communities and draws from so many sources.104

The fourth reason merits elaboration. Many religious believers and nonbelievers alike seem to overlook the overwhelming extent to which both the development of insight into human well-being and the debate that attends such development is, inside religious traditions as much as outside them, nonrevelational and even nontheological. Because the moral insight achieved over time by the various religious traditions is substantially nonrevelational and even nontheological, bringing that insight to bear in a politics in which religious believers’ participation is self-restrained in the way I am recommending here (or


And when debate and dialogue and testimony do fructify into conviction, and conviction into consensus, nothing could be more absurd than to expect that consensus to be confined within a person’s privacy or a church’s walls. Convictions are what we live by.

Do we have anything better to share with one another?

Burtchaell, supra, at 21. (For a revised version of Burtchaell’s essay, and for several other essays by Burtchaell, see *James Tunstead Burtchaell, The Giving and Taking of Life* (1989).)
in a politics restrained by the ideal of nonestablishment) is not the problem some religious believers and nonbelievers imagine it to be. The Jesuit priest and sociologist John Coleman has observed, in a passage that reflects Aquinas’s influence: “[M]any elements and aspects of a religious ethic . . . can be presented in public discussion in ways that do not presume assent to them on the specific premises of a faith grounded in revelation. Without being believing Hindus, many Westerners, after all, find in Gandhi’s social thought a superior vision of the human than that of ordinary liberal premises.”

Martin Marty has commented, in much the same spirit, that “religionists who do not invoke the privileged insights of their revelation or magisterium can enhance and qualify rationality with community experience, intuition, attention to symbol, ritual, and narrative.”

Indeed, to embrace a religious premise—a biblical premise, for example—about what it means to be human, about how it is good or fitting for human beings to live their lives, and then to rely on the premise in public discourse, one need not be a participant in the religious tradition that has yielded the premise; indeed, one need not even be a religious believer. One certainly does not have to be Jewish to recognize that the prophetic vision of the Jewish Bible is profound and compelling, any more than one has to be Catholic or Presbyterian or Baptist or even Christian to recognize that the Gospel vision of what it means to be human is profound and compelling. Gandhi was not a Christian, but he recognized the Gospel vision as profound and compelling. As the eminent Catholic theologian David Tracy has emphasized:

Some interpret the religious classics not as testimonies to a revelation from Ultimate Reality, . . . but as testimonies to possibility itself. As Ernst Bloch’s interpretations of all those daydreams and Utopian and eschatological visions that Westerners have ever dared to dream argue, the religious classics can also become for nonbelieving interpreters testimonies to resistance and hope. As Mircea Eliade’s interpretations of the power of the archaic religions show, the historian of religions can help create a new humanism which retrieves forgotten classic religious symbols, rituals, and myths. If the work of Bloch and [Walter] Benjamin on the classic texts and symbols of the eschatological religions and the work of Eliade and others on the primal religions were allowed to enter into the contemporary conversation, then the range of pos-

105. Coleman, An American Strategic Theology, supra note 17, at 196.
107. Tracy, Plurality and Ambiguity, supra note 19, at 88 (citations omitted).
sibilities we ordinarily afford ourselves would be exponentially ex-
panded beyond reigning Epicurean, Stoic, and nihilistic visions.108

* * * *

So, there are four main reasons why it is simply not true that ac-
cording to my position, the moral insight achieved over time by the
various religious traditions has at most only a marginal place in public
political debate about the morality of human conduct. These reasons
include the point I have just been emphasizing: If, as the comments by
Burtchaell, Coleman, and Tracy suggest, religious-moral insight can
speak with a powerful resonance even to nonbelievers, and thereby
play a central role even in a thoroughly secularized politics, then such
insight can certainly play a central role in American politics, which is
far from being thoroughly secularized.109

III. Theologically Conservative Believers

Again, most Christians in the United States today—including
Catholics, Lutherans, Episcopalians, Methodists, and “reformed”
Christians (e.g., Presbyterians)—have no basis in their religious-moral
traditions for doubting that any religious argument about the require-
ments of human well-being is of questionable soundness unless a per-

108. Id. at 88-89.
109. “But, the objection may be pressed,” writes Basil Mitchell,
can a religious body argue its case in a secular forum (i.e., one that is not already
antecedently committed to the religion in question)? Either, it may be said, it will rely
on Christian premises, which ex hypothesi opponents will not accept; or it will employ
purely secular premises, in which case the ensuing law will not be Christian. In neither
case will any genuine debate have taken place between Christians and non-Christians.
The dichotomy, however, is altogether too neat to be convincing. It presupposes that
there is and always must be a complete discontinuity between Christian and secular
reasoning. Certainly this can occur—if, for example, the Christian is an extreme funda-
mentalist and the secular thinker regards individual preferences as the sole basis for
morality. . . . But, . . . Christians would presumably want to argue (at least, many of
them would) that the Christian revelation does not require us to interpret the nature of
man in ways for which there is otherwise no warrant but rather affords a deeper under-
standing of man as he essentially is. If that is so, there is room for a genuine exchange
of ideas.

Mitchell, supra note 80, at 21.

Assume that one believes that God is, for all things, including all human beings, the beginning
and the end, the Alpha and the Omega. That God is, for all human beings, the Alpha and the
Omega does not entail that the world God has created is one in which knowledge about human
well-being is not “in principle” achievable by those who do not believe in God. That is, it does
not entail that the world is one in which knowledge of the politically relevant sort about the
requirements of human well-being—knowledge of the sort relevant to the sorts of coercive polit-
ical choices a liberal democracy committed to nonestablishment is free to make—is not achieve-
able by those who do not believe in God (Buddhists, for example).
suasive secular argument reaches the same conclusion about those requirements as the religious argument. Nor, in particular, do they have a basis in their traditions for doubting that any argument about the requirements of human well-being that is grounded on a claim about what God has revealed is highly suspect if no persuasive secular route reaches the religious argument’s conclusion about the requirements of human well-being. Such Christians understand that they do not have to choose between “faith” and “reason”; for them, faith and reason are not in tension, they are not incompatible. To the contrary, faith and reason are, for such Christians, mutually enriching. David Hollenbach explains:

Faith and understanding go hand in hand in both the Catholic and Calvinist views of the matter. They are not adversarial but reciprocally illuminating. As [David] Tracy puts it, Catholic social thought seeks to correlate arguments drawn from the distinctively religious symbols of Christianity with arguments based on shared public experience. This effort at correlation moves back and forth on a two-way street. It rests on a conviction that the classic symbols of Christianity can uncover meaning in personal and social existence that common sense and uncontroversial science fail to see. So it invites those outside the church to place their self-understanding at risk by what Tracy calls conversation with such “classics.” . . . At the same time, the believer’s self-understanding is also placed at risk because it can be challenged to development or even fundamental change by dialogue with the other—whether this be a secular agnostic, a Christian from another tradition, or a Jew, Muslim, or Buddhist.¹¹⁰

Predictably, some Christians—in particular, “fundamentalist” Christians and some “evangelical” Christians—will be skeptical that an argument about human well-being that is grounded on a claim about what God has revealed is highly suspect if there is no secular route to, if there is no argument “based on shared public experience” for, the religious argument’s conclusion about the requirements of human well-being. For such Christians, faith—including faith in what God has revealed—and reason are often incompatible; in their view, human reason is too corrupted to be trusted. For example, David Smolin, a law professor who identifies himself as an evangelical Christian, has written that

even our intellectual capacities have been distorted by the effects of sin. The pervasive effects of sin suggest that creation, human nature, and human reason are often unreliable means for knowing the law of God. . . . Thus, scripture and Christian tradition have come to have a priority among the sources of knowledge of God’s will. Indeed, these sources of revelation are considered a means of mea-

¹¹⁰ Hollenbach, Contexts of the Political Role of Religion, supra note 22, at 894-95.
suring and testing claims made on behalf of reason, nature, or crea-
tion, in order to purify these now subsidiary means of the distortive
effect of sin.\textsuperscript{111}

However, theologically conservative Christians should not overlook
that, as the history of Christianity discloses, sin can distort, and indeed
has often distorted, “scripture and Christian tradition,” not to mention
what human beings believe about “scripture and Christian tradi-
tion.”\textsuperscript{112} Given their belief in the “fallenness” of human nature—
which is, after all, \textit{their} nature, too—Christians should be especially
alert to this dark possibility. Smolin privileges religiously-based moral
arguments over secular moral arguments, but \textit{both} sorts of arguments
are, finally, human arguments. Why, then, doesn’t a truly robust sense
of “the distortive effect of sin” counsel that religious believers test
religious arguments about the morality of human conduct—in particu-
lar, religious arguments about human well-being, both those based on
scripture and those based on tradition—not only with competing reli-
gious arguments about the morality of human conduct, but also with
secular arguments about the morality of human conduct? Under-
standably, a religious believer might want to move in the other direc-
tion as well: One might want to test secular arguments about the
morality of human conduct with religiously-based moral arguments as
well as test the latter with the former.\textsuperscript{113}

Few religious believers, after all, will want to argue that secular ar-


\textsuperscript{112} See Audi, \textit{supra} note 80.

\textsuperscript{113} The “asymmetry” that characterizes Robert Audi’s position also characterizes mine. \textit{See} Robert Audi, \textit{Wolterstorff on Religion, Politics, and the Liberal State, in Religion in the Public Square}, \textit{supra} note 45, at 121, 123:

\[\text{[T]he chief asymmetry in my treatment of secular and religious reasons is in the ab-
sence of a counterpart condition regarding religious reasons—one requiring an eviden-
tially adequate and motivationally sufficient religious reason in the same cases. To}
require this would not only make theological assumptions that are inappropriate to}
liberalism, but would also require some sort of religious attitude on the part of citizens}
who conscientiously take part in the full range of democratic decisions open to them as}
participants in the business of government.\]

\textsuperscript{114} \textit{MARK NOLL, THE SCANDAL OF THE EVANGELICAL MIND} (1994).
Wheaton College (Illinois), one of the foremost Christian (Protestant) colleges in the United States—is himself a committed evangelical Christian. Noll comments critically, in one chapter of his book, on the emergence of “creation science” in evangelical Christianity:

[If the consensus of modern scientists, who devote their lives to looking at the data of the physical world, is that humans have existed on the planet for a very long time, it is foolish for biblical interpreters to say that “the Bible teaches” the recent creation of human beings.]

Noll explains:

This does not mean that at some future time, the procedures of science may shift in such a way as to alter the contemporary consensus. It means that, for people today to say they are being loyal to the Bible and to demand belief in a recent creation of humanity as a sign of obedience to Scripture is in fact being unfaithful to the Bible, which, in Psalm 19 and elsewhere, calls upon followers of God to listen to the speech that God has caused the natural world to speak. It is the same for the age of the earth and for all other questions involving the constitution of the human race. Charles Hodges’s words from the middle of the nineteenth century are still pertinent: “Nature is as truly a revelation of God as the Bible, and we only interpret the Word of God by the Word of God when we interpret the Bible by science.”

Consider, too, the Protestant historian George Mardsen’s observations:

Some [historical] knowledge cuts across all theories and paradigms, and it provides all people of good sense a solid reality basis for testing some aspects of theories. So in practice there is a common ground of historical inquiry. When we look at the past, if we do it right, what we find will in large measure correspond to what other historians find.

From a Christian perspective, we may explain this phenomenon simply by observing that God in his grace seems to have created human minds with some ability to experience and know something of the real world, including the past. Furthermore, these structures are substantially common to all normal people so that, despite the notorious theoretical problems of subjectivism and point of view, we can in fact communicate remarkably well and be assured that we are talking about the same things. It may be difficult to explain, except as a matter of faith, what basis we have for reliance on these common abilities; but the fact remains that only philosophers and crackpots can long deny that often they are reliable.

115. Id at 207.
116. Id. at 207-08 (quoting Charles Hodges) (footnote omitted).
Why should we believe that what Noll says about the proper relation between religious faith and secular inquiry into the origins of human beings is not also true about the proper relation between religious faith and secular inquiry into the conditions of human well-being? Why should we believe that what Marsden says about historical inquiry is not also true about inquiry into the conditions of human well-being? Why should we not say, with Anthony of the Desert, a fourth-century Christian monk: “My book, O philosopher, is the nature of created things, and any time I wish to read the words of God, the book is before me.”\footnote{118}{\textit{The Wisdom of the Desert} 62 (Thomas Merton ed., 1960) (quoting Anthony of the Desert).}

Two clarifications are in order at this point. First, and as I have already emphasized, my point is not that in making a political choice about the morality of human conduct, religious believers ought not to rely on a religious argument about human well-being; my point is only that they ought to forgo reliance on such an argument unless a persuasive (to them) secular argument reaches the same conclusion about the requirements of human well-being as the religious argument on which they are inclined to rely. In other words, in making a political choice about the morality of human conduct—a political choice that rests on a claim about the requirements of human well-being—religious believers should rely at least partly on a secular argument about those requirements.

Second, the principle of political self-restraint I recommend here does not presuppose that in making political choices about the morality of human conduct, Christians should forget that they are Christians, it does not presuppose that they should “bracket” their Christian identity, that they should act as if they are persons who do not have the religious beliefs that they in fact do have.\footnote{119}{I have contended against such “bracketing” elsewhere: One’s basic moral/religious convictions are (partly) self-constitutive and are therefore a principal ground—indeed, the principal ground—of political deliberation and choice. To “bracket” such convictions is therefore to bracket—to annihilate—essential aspects of one’s very self. To participate in politics and law . . . with such convictions bracketed is not to participate as the self one is but as [someone else]. } Rather, it is \textit{because} they are Christians—it is because they are, \textit{as Christians}, painfully aware of the fallenness, the brokenness, of human beings—that they should be extremely wary about making a political choice, least of all a coercive political choice, on the basis of a religious argument about human well-being in the absence of any independent, cor-
roboring secular argument. This is not to suggest that persons other than Christians cannot or do not have their own powerful reasons to insist on what Christians call the fallenness or brokenness of human beings.

Thus—and I want to underscore this—my position is not of the sort that Nicholas Wolterstorff has recently criticized; my position is not that the morality or ethics of liberal democracy requires Christians to forgo reliance on a religious argument about human well-being in the absence of an independent, corroborating secular argument.\textsuperscript{120} Again, I agree that liberal-democratic morality, properly understood, requires no such thing. Rather, my position, as I said earlier, is that Christians have \textit{their own reasons}—\textit{reasons internal both to their own religious (theological) tradition and to their own historical experience}—to forgo such reliance in making a policy choice about the morality of human conduct. In that sense, my argument is not that a commitment to liberal democracy somehow entails or otherwise supports the principle of self-restraint that I have recommended here—though, as I have argued elsewhere, the American constitutional ideal of “nonestablishment” does, in my judgment, warrant such a principle.\textsuperscript{121} Rather, my argument is that without regard to what a commitment to liberal democracy entails or otherwise supports, Christians—at least some Christians—have their own reasons for embracing the principle of self-restraint recommended here. (Though some others, it must be admitted, have their own reasons for rejecting it.)

It scarcely seems radical, much less unfaithful, to suggest that Christians, too, like other religious believers, must be alert to the possibility that a scripture-based or a tradition-based religious argument about the morality of human conduct—about the requirements of human well-being—no less than a secular argument, is mistaken or worse. (The Christian argument for the permissibility of slavery was worse than mistaken; it was sinful.)\textsuperscript{122} Indeed, the theological and experiential reasons that Christians have, as Christians, for embracing the principle of self-restraint that I have recommended here are also reasons that they have, as Christians, for being alert to the dark possibility that one of their religious arguments about the morality of human conduct is mistaken or worse. I think here of the argument, which I have criti
cized elsewhere,\textsuperscript{123} that all homosexual sexual conduct is immoral,

\textsuperscript{120.} See Wolterstorff, \textit{Audi on Religion, Politics, and Liberal Democracy, in Religion in the Public Square, supra} note 45, at 147.
\textsuperscript{121.} See \textit{supra} text accompanying note 35.
\textsuperscript{122.} See Noonan, \textit{supra} note 81.
\textsuperscript{123.} See Perry, \textit{Religion in Politics, supra} note 5, at 82-96.
even homosexual sexual conduct that is embedded in and expressive of a lifelong, monogamous relationship of faithful love—indeed, that is a generative matrix of such a relationship, of such love.\textsuperscript{124} There is no virtue in adhering to a position uncritically, so that one is unable to discern whether the position is, or might be, mistaken. Again, "[w]e must be willing to let our convictions be tested in ecumenical dialogue with others who do not share them. We must let ourselves be tested, in ecumenical dialogue, by convictions we do not share. We must, in short, resist the temptations of infallibilism."\textsuperscript{125} Although some might think that my point here is obvious—even banal—the point is too often neglected in debates about the proper role of religion in politics and, so, bears emphasis.

At any stage in history all that is available to the Church is its continual meditation on the Word of God in the light of contemporary experience and of the knowledge and insights into reality which it possesses at the time. To be faithful to that set of circumstances . . . is the charge and the challenge which Christ has given to his Church. But if there is a historical shift, through improvement in scholarship or knowledge, or through an entry of society into a significantly different age, then what that same fidelity requires of the Church is that it respond to the historical shift, such that it might be not only mistaken but also unfaithful in declining to do so.\textsuperscript{126}

IV. A Concluding Comment

I have occasionally been asked about the "voice" that informs my conception of the proper role of religion in politics. I am a Chris-

\textsuperscript{124} See id. at 83.
\textsuperscript{125} \textit{Perry, Morality, Politics, and Law}, supra note 32, at 183.
\textsuperscript{126} \textit{Mahoney}, supra note 79, at 327 (emphasis added) (footnote omitted). John Noonan's eloquent plea bears quotation here:

One cannot predict future changes; one can only follow present light and in that light be morally certain that some obligations will never alter. The great commandments of love of God and of neighbor, the great principles of justice and charity continue to govern all development. God is unchanging, but the demands of the New Testament are different from those of the Old, and while no other revelation supplements the New, it is evident from the case of slavery alone that it has taken time to ascertain what the demands of the New really are. All will be judged by the demands of the day in which they live. It is not within human competence to say with certainty who was or will be saved; all will be judged as they have conscientiously acted. In new conditions, with new insight, an old rule need not be preserved in order to honor a past discipline.

\ldots

In the Church there can always be fresh appeal to Christ, there is always the possibility of probing new depths of insight. . . . Must we not, then, frankly admit that change is something that plays a role in [Christian] moral teaching? . . . Yes, if the principle of change is the person of Christ.

\textit{Noonan}, \textit{supra} note 83, at 676-77.
tian,\textsuperscript{127} in particular, a Catholic Christian thoroughly imbued with the spirit of the Second Vatican Council (1962-65).\textsuperscript{128} But I am a Christian who is extremely wary of the “God”-talk in which most Christians (and many others) too often and too easily engage; in that sense, my Christianity tends toward the apophatic.\textsuperscript{129} Thus, I stand between, on

\textsuperscript{127} See David Tracy, \textit{Approaching the Christian Understanding of God}, in 1 \textit{SYSTEMATIC THEOLOGY: ROMAN CATHOLIC PERSPECTIVES} 131, 147 (Francis Schüssler Fiorenza & John P. Galvin eds., 1991): “[According to Christian belief,] God, the holy mystery who is the origin, sustainer, and end of all reality . . . is disclosed to us in Jesus Christ as pure, unbounded love.” \textit{See also} John Dominic Crossan, \textit{Jesus: A REVOLUTIONARY BIOGRAPHY} 200 (1994): “Christian belief is (1) an act of faith (2) in the historical Jesus (3) as the manifestation of God.”


For Christian believers, it is a challenge to recognize that their faith in God and the way of life it entails is a historical reality—it is rooted in historically particular scriptures and symbols and it is lived and sustained in historically particular communities. This historicity means that the task of interpreting the meaning of their faith will never be done as long as history lasts. The God in whom they place their faith can never be identified with any personal relationship, social arrangement, or cultural achievement. God transcends all of these. Though Christians believe that in Jesus Christ they have been given a definitive revelation of who this God is, they cannot claim to possess or encompass God in any of their theologies or understandings of the ultimate good of human life. Thus, in the words of Avery Dulles, “The Christian is defined as a person on the way to discovery, on the way to a revelation not yet given, or at least not yet given in final form.”

\textsuperscript{129} On apophatic Christianity, see \textit{WILLIAM C. PLACHER, THE DOMESTICATION OF TRANSCENDENCE: HOW MODERN THINKING ABOUT GOD WENT WRONG} (1996). I concur in David Tracy’s statement:

In and through even the best speech for Ultimate Reality, greater obscurity eventually emerges to manifest a religious sense of that Reality as ultimate mystery. Silence may be the most appropriate kind of speech for evoking this necessary sense of the radical mystery—as mystics insist when they say, “Those who know do not speak; those who speak do not know.” The most refined theological discourse of the classic theologians ranges widely but returns at last to a deepened sense of the ultimate mystery: the amazing freedom with all traditional doctrinal formulations in Meister Eckhart; the confident portrayals of God in Genesis and Exodus become the passionate outbursts of the prophets and the painful reflections of Job, Ecclesiastes, and Lamentations; the disturbing light cast by the biblical metaphors of the “wrath of God” on all temptations to sentimentalisate what love means when the believer says, “God is love”; the proclamation of the hidden and revealed God in Luther and Calvin; the \textit{deus otiosus} vision of God in the Gnostic traditions; the repressed discourse of the witches; the startling female imagery for Ultimate Reality in both the great matriarchal traditions and the great Wisdom traditions of both Greeks and Jews; the power of the sacred dialectically
the one side, all religious nonbelievers and, on the other, many Christian and other religious believers, especially theologically conservative believers.

Religious nonbelievers, many of whom (like Richard Rorty) would like to marginalize the role of religious discourse in public political debate, are the principal addressees of my argument that it is not merely permissible but important that religious arguments about the morality of human conduct be presented in public political debate. (This point seems obvious enough in any political community committed—as any genuine liberal democracy is committed—to freedom of

TRACY, PLURALITY AND AMBIGUITY, supra note 19, at 108-09. See also HANS KÜNG, DOES GOD EXIST? AN ANSWER FOR TODAY 508 (1980) (quoting Martin Buber) (footnote omitted):

[“God”] is the most loaded of all words used by men. None has been so soiled, so mauled. But that is the very reason I cannot give it up. Generations of men have blamed this word for the burdens of their troubled lives and crushed it to the ground; it lies in the dust, bearing all their burdens. Generations of men with their religious divisions have torn the word apart; they have killed for it and died for it; it bears all their fingerprints and is stained with all their blood. Where would I find a word to equal it, to describe supreme reality? If I were to take the purest, most sparkling term from the innermost treasury of the philosophers, I could capture in it no more than a noncommittal idea, not the presence of what I mean, of what generations of men in the vastness of their living and dying have venerated and degraded. . . . We must respect those who taboo it, since they revolt against the wrong and mischief that were so readily claimed to be authorized in the name of God; but we cannot relinquish it. It is easy to understand why there are some who propose a period of silence about the “last things,” so that the misused words may be redeemed. But this is not the way to redeem them. We cannot clean up the term “God” and we cannot make it whole; but, stained and mauled as it is, we can raise it from the ground and set it above an hour of great sorrow.

For a powerful and acclaimed recent reflection on “God”-talk, see ELIZABETH A. JOHNSON, SHE WHO IS: THE MYSTERY OF GOD IN FEMINIST THEOLOGICAL DISCOURSE (1992).
expression.) Religious nonbelievers are also the principal addressees of my argument that the premise that all human beings are sacred is an unproblematic basis of political choice in the United States—and, more broadly, in any liberal democracy—even if, as I have suggested elsewhere, no plausible or even intelligible secular argument supports the premise.

By contrast, religious believers—in particular, Christians, who, as the twentieth century draws to a close, still constitute the largest group, by far, of religious believers in the United States—are the principal addressees of my argument that in making a political choice about the morality of human conduct, especially a coercive political choice, we believers have good reason to forgo reliance on, at least we have good reason to be exceedingly wary about relying on, a religious argument about human well-being unless, in our view, a persuasive secular argument reaches the same conclusion about the requirements of human well-being as the religious argument. Because theologically conservative Christians are more likely than other Christians to be skeptical about that final aspect of my position—the aspect in which my wariness about “God”—talk is most engaged—I have spoken especially to them in the preceding section of this essay. I want to underscore that in speaking to such Christians, I have addressed them not imperially, from the outside, as a enlightened religious nonbeliever speaking to benighted religious believers about what the morality of liberal democracy proscribes. Rather, I have sought here to address them fraternally, from the inside, as a religious believer speaking to fellow believers, to fellow Christians, about what our shared religious (theological) tradition and our shared historical experience suggest about the proper role of religion in politics. I hope that in speaking to such Christians, my comments also speak, if only indirectly, to theologically conservative members of other religious traditions as well.