Religious Arguments in the Public Sphere:
Rethinking A Free Speech Controversy

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Abstract

The political philosopher John Rawls has argued for a principle of constraint upon the use of religious arguments in the public sphere. His model of public reason requires that we deliberate with one another only on a common set of terms that no citizen can reasonably reject, therefore excluding religious arguments from the domain of democratic discourse. Rawls later amended this position, allowing religious arguments in the public sphere, but only on the condition that they be supplemented by secular reasons. A number of critics, however, have challenged the argument for constraint. These critics argue that such constraint not only places an undue burden upon religious citizens, but that it also amounts to an assault on freedom of speech. They defend the right to invoke religious arguments in public moral discourse, even in the arena of formal deliberation. This paper reviews the controversy concerning the use of religious arguments in the public sphere. It argues that the disagreement between Rawls and his critics hinges on certain problematic assumptions, not least of which are Rawls' concepts of freedom, religion, and truth. It further argues that what is needed is a rethinking of the problem itself.

Keywords: Free Speech; Freedom; Public Sphere; Rawls; Religion; Right to Communicate.

Introduction

We are accustomed to thinking of freedom of speech as the right to communicate in different arenas of public expression. We think, for example, that freedom of speech entails the right to express one's views in the op-ed pages of a major national newspaper, on a debate program on public television or radio, or perhaps through open discussion on an online forum. In addition, freedom of speech is thought to include the right to express one's views in public settings that do not require the use or aid of a mass medium, such as a town hall meeting or public protest. Moreover, freedom of speech is commonly conceived as a basic right of all people, regardless of ethnicity, gender, sexual orientation, or religion, and regardless of whether one's views accord with prevailing public opinion or the policies of the state. Depending on the particular arena of expression, of course, we might accept, and even insist upon, certain communicative constraints, such as imposing time limits, prohibiting profanity, or restricting the number of people who can participate in a discussion.[1] Regardless of the constraints that are sometimes needed to facilitate communication, however, we have come to think of freedom of speech as a basic human right upon which no authority, formal or informal, can impinge.[2]

What we are not accustomed to thinking about, however, is a type of constraint that might be placed upon at least one type of expression, namely, religious arguments, in a certain type of discourse, namely, public moral discourse. Such discourse concerns matters of general public concern: laws, policies, and public institutions. The liberal theorist John Rawls, arguably the most influential political philosopher of the twentieth century, has presented a case for imposing constraints upon the use of religious arguments in public moral discourse. There are two types of public moral discourse. On the one hand, there are the informal public discussions afforded by the mass media as well as by public gatherings; discussions in which laws and policies can be discussed freely and openly, but the outcomes of which are not publicly binding. On the other hand, there are the formal arenas of public deliberation, such as courts, parliaments, and election debates, the deliberative outcomes of which are quite often publicly binding. Rawls focuses on the latter type of public discourse, given its potentially strong legal, political, and economic implications for the general public. He holds the view that it is improper to invoke religious premises when debating social and political matters in the public realm.

One might not ordinarily expect a liberal theorist purportedly devoted to the maximization of freedom and liberty to call for this type of constraint upon speech. Freedom of speech is, after all, conceptually and institutionally inseparable from freedom of religion and therefore entails the freedom to express religious opinions. Such opinions would presumably include support for or opposition to a given law or policy on the basis of religious premises. However, Rawls' argument against the use of religious reasons in public moral discourse is based on the secular principle of not according privilege to any one religion or comprehensive moral system and thereby ensuring that all citizens are free to pursue their own conception of the moral life. Put simply, a certain type of constraint preserves a certain type of freedom. The question, however, is whether this type of constraint is really justified.

Not surprisingly, Rawls' call for constraint upon the use of religious arguments in public moral discourse has been severely criticized by a number of prominent intellectuals, including Nicholas Wolterstorff (1997), Stephen Carter (1994), and Jeffrey Stout (2004). These critics variously hold that although the secular principle of neutrality purportedly operates impartially in the face of competing conceptions of the moral life—many, though not all, of which are defined by religious traditions—this principle is in fact used to support one particular, and quite substantive, conception of the moral life, namely, secular liberalism. They argue, moreover, that the call for constraint upon the use of religious arguments places an undue burden upon people of faith to conform to secularized modes of expression and therefore does not treat all citizens equally. To put the point rather crudely, the Rawlsian view privileges secular over religious citizens.

The controversy over whether to permit religious arguments in public moral discourse reveals a certain tension in modern liberal democracies between the twin secular commitments to freedom from religious coercion and freedom of religious expression.[3] On the one hand, the principles of a secular democracy would seem to prohibit the justification of any law or policy on the basis of religious premises. On the other hand,

those very same principles would seem to guarantee the right of people of faith to express their support for, or opposition to, a given law or policy by appeal to religious premises, regardless of the arena of expression. It is important to ask, however, whether this tension is inescapable and, if not, how might it be overcome.

What follows is an overview of the controversy concerning the use of religious arguments in public moral discourse. I focus on the principal argument for constraint as developed by Rawls in his concept of public reason. I then review some common criticisms of his arguments, not all of which, it will be shown, are leveled by religious intellectuals. As will become clear, many of Rawls' critics treat the argument for constraint as a threat to freedom of religious expression, and not without good reason. In this essay, however, I will argue that the controversy between Rawls and his critics rests on certain problematic assumptions, not least of which are the undertheorized concepts of freedom and religion. In addition, what is largely missing from Rawls' argument is a serious reflection upon the concept of truth. Without an adequate theory of truth and an appreciation for the place of truth in ordinary linguistic practice, the project of public moral discourse will remain deficient. It is the absence of these considerations that, in my view, threatens to perpetuate the controversy. What is needed is not a solution based on the existing terms of the discussion—a solution that would choose between one side and the other—but rather a rethinking of the problem itself.

John Rawls and the Idea of Public Reason

In his landmark 1971 book *A Theory of Justice*, John Rawls developed a pioneering and highly influential model of justice based on the principles of fairness and equality. Rawls famously departed from earlier utilitarian models of justice, historically developed by David Hume, Adam Smith, Jeremy Bentham, and John Stuart Mill, to defend a deontological model in the tradition of Immanuel Kant. The deontological model affirms a broad set of inviolable universal rights for all citizens and accords a priority to those rights over substantive conceptions of the good. Such conceptions, what Rawls later came to call "comprehensive doctrines," provide individuals and communities with a systematic guide to living a moral life. Religions are well known for providing such guides to life; Judaism, Christianity, and Islam are only a few notable examples. In addition, Rawls includes nonreligious systems of ethics, such as those based on philosophical traditions, in the category of comprehensive doctrines. Utilitarianism is perhaps the most notable example of a nonreligious ethical system. The deontological model remains neutral in the face of rival and competing comprehensive doctrines, whether religious or non-religious. In the event that a comprehensive doctrine clashes with the rights of the individual, however, the deontological model accords a priority to the latter. Hence, the oft-repeated Rawlsian principle of the priority of the right over the good.

Rawls' theory of justice does not merely affirm a catalogue of inviolable rights, however. It also provides a positive basis for the impartial adjudication of rival and competing moral claims. That positive basis evolved considerably from the initial articulation of the theory. Initially, Rawls (1971) suggested the principle of an "original position" as the

basis of adjudication. The original position was intended to be a neutral point of view, one sufficiently divested of subjectivity and particularity so as to "nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage" (Rawls, 1971: 136).[5] To achieve this neutral point of view, Rawls proposed a thought experiment involving a conceptual tool he termed "the veil of ignorance." We are to reason, the argument goes, from an imaginary standpoint in which we are ignorant of "certain kinds of particular facts" (Rawls, 1971: 137), such as the ethnicity, gender, class, culture, and religion of those involved in moral disagreement. In short, we are to reason without any knowledge of our substantive differences. The only knowledge we have available to us is knowledge of the general principles of justice. According to Rawls, reasoning from behind the veil of ignorance amounts to reasoning from a common basis of agreement. As he puts it, "since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments" (Rawls, 1971: 139). Rawls even likens the original position to that which would be assumed by a neutral referee arbitrating between rival parties engaged in communication. It is important to note, however, that the veil of ignorance does not require actual practices of communication.

Rawls later offered a partly revised account of his liberal theory in response to a broad range of critics. In his 1993 book *Political Liberalism*, he introduced the concept of public reason to address objections concerning the original theory. In particular, Rawls acknowledged that modern democracies are now characterized by "a diversity of opposing and irreconcilable religious, philosophical, and moral doctrines" (1993: 3–4), not all of which can be dismissed as unreasonable. In a free and open society, it is inevitable that reasonable people will arrive at different and incompatible comprehensive doctrines; hence, Rawls' acceptance of what he calls "reasonable pluralism." The challenge, however, is to secure the "grounds of toleration . . . [that will sustain] a just and stable society of free and equal citizens" (Rawls, 1993: 3–4). Again, Rawls insists upon a neutral method of adjudication between rival and competing comprehensive doctrines. In the revised version, however, he offers a model of public discourse and communication based on the concept of public reason.

According to Rawls, the diversity of comprehensive doctrines requires that we deliberate with one another on the basis of shared principles. Without an "overlapping consensus," we cannot hope to resolve our very real and legitimate differences of moral opinion. Deliberation must proceed on the basis of shared premises and we need therefore to "arrange our common political life on terms that others cannot reasonably reject" (Rawls, 1993: 124). What are the terms or reasons that no citizen could reasonably reject? Rawls here draws a sharp distinction between private and public reasons. Private reasons are those over which we are bound to disagree, as well as those that have no bearing upon the general public. They include the "nonpublic reasons" of "churches and universities, scientific societies and professional groups" (Rawls, 1993: 213). The question of which god we ought to worship, for example, or which theory of history is the most plausible would count as a decidedly private matter.

Public reasons, on the other hand, are "characteristic of a democratic people." As such, they have three principal features:

as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public, being given by the ideals and principles expressed by society's conception of political justice, and conducted open to view on that basis. (Rawls, 1993: 213)

Reasonable citizens are those who would put private reasons aside and deliberate solely on the basis of public reasons. Rawls presents public reason as a fundamental component of his "freestanding political conception of justice" (1993: 145), which, while acknowledging the diversity of comprehensive doctrines, is not derived from any one of them. Unlike many comprehensive doctrines, especially religious systems of belief, a freestanding conception of justice is political, not metaphysical. It does not rest on metaphysical foundations or appeal to metaphysical reasons. Public reason and metaphysics are, on this view, mutually exclusive.[6]

One of the consequences of the use of public reason, then, is the exclusion of religious reasons from public moral discourse. In a pluralistic society, especially one characterized by religious diversity, it is unfeasible to base the social contract on, or resolve disagreements concerning basic principles of justice by appeal to, religious reasons. We can and do disagree about the validity of such reasons and we can expect reasonable citizens to reasonably reject them. Such disagreement occurs not just between theists and nontheists, but also and just as importantly between theists themselves.[7] As no law or policy can realistically be justified by appeal to religious reasons, we must refrain from invoking such reasons in our public moral deliberations. Rawls justifies this constraint not on legal grounds, but rather by appeal to the moral principle of civility. As he puts it,

the ideal of citizenship imposes a moral, not a legal duty—the duty of civility—to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason. (Rawls, 1993: 217)

Put simply, our public moral discourse cannot be conducted according only to formal rules or procedures of deliberation. They require a nonformal ethic of communication by which we take the effort to expunge from our speeches and discussions all normative religious content. Civility demands that we not disrespect or offend each other by appealing to religious reasons.

Aware of the difficulties that this argument for constraint raises for his conception of justice, Rawls further revised the argument in his 1997 essay "The Idea of Public Reason Revisited." Here, he includes what he terms "the proviso," which allows for the expression of religious arguments in public moral discourse, but only on the condition that it be supplemented at some later point by public reasons. As Rawls puts it,

Reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever comprehensive doctrines introduced are said to support. (Rawls, 1997: 784)

Rawls acknowledges two obvious methodological challenges faced by the proviso. First, it is not simple to determine when these supplementary "proper political reasons" must be provided. Second, it is unclear who must provide them. Rawls states that these questions cannot be answered "by a clear family of rules given in advance . . . [but rather] must be worked out in practice" (Rawls, 1997: 784).

Despite such difficulties, however, Rawls suggests that the inclusion of religious arguments, provided they are indeed eventually supplemented by public reasons, can ultimately reinforce our collective commitment to constitutional democracy. Although public reason "aims for public justification" (Rawls, 1997: 786) and thereby fulfills the duty of civility, there are two additional types of expression that not only fulfill this duty, but also reinforce "the ties of civic friendship" (Ibid). The first is what Rawls terms "declaration," whereby we candidly declare our moral commitments and articulate the comprehensive doctrines that have led us to those commitments. The point of this type of expression is to "declare to others who affirm different comprehensive doctrines that we also each endorse a reasonable political conception belonging to the family of reasonable such conceptions" (Ibid). Declaration is a means by which we achieve a type of discursive equality. It places the theist and the nontheist on an equal footing, assuming of course the nontheist adheres to a comprehensive doctrine. It moreover allows us to see whether and how our moral commitments might be formulated in more general political terms. The second type of expression is what Rawls terms "conjecture." To conjecture is to perform a kind of immanent critique.[8] We take what we believe to be the comprehensive doctrines of our rivals and attempt to reason from within them. Although we do not accept the premises of those doctrines, we nonetheless try to show that they can yield moral and political judgments that meet the demands of public reason. Rawls acknowledges that conjecture requires an ethic of sincerity, which, like the duty of civility, cannot be formally instituted, but nonetheless serves as a means to achieve mutual understanding.

Regardless of the accommodating intent of the proviso, however, it should be clear that the final version of Rawls' theory places restrictions on what can be expressed in public moral discourse. In the final version, the theist who is unable or unwilling to express an argument in nonreligious terms must refrain from expressing that argument altogether. Such restrictions seem inescapable for Rawls, given the commitment to the principle of neutrality that lies at the heart of the veil of ignorance and its successor concept of public reason.

Responses to Rawls

Carter (1994) captures the general feeling of many critics by arguing that the liberal call for constraint upon the use of religious arguments has the effect of trivializing the core moral beliefs of religious citizens. Carter identifies Rawls as one of the most prominent liberal theorists to have "craft[ed] rules to govern dialogue in the public square, rules, generally, that force religious citizens to restructure their arguments in purely secular terms before they can be presented" (1994: 216). He finds the Rawlsian argument for constraint not only unfeasible, but also deeply offensive—unfeasible because it asks too much of religious citizens and offensive because it seems to target them for negative treatment. Rather than permitting what he believes is liberalism's imperial tendency to dictate the terms of public moral debate, Carter holds that liberalism must "develop a politics that accepts whatever form of dialogue a member of the public offers" (1994: 230), including religious arguments not supplemented by secular reasons.

Carter concurs with Perry's (1988) contention that conformity to secular modes of expression can amount to a division of the self. According to Perry, the self is constituted in large part by moral beliefs. To require of religious citizens that they bracket the beliefs on which their identity is based is, in effect, "to bracket—to annihilate—essential aspects of one's very self." Moreover, to participate in public moral discourse according to Rawlsian standards is "not to participate as the self one is but some one—or, rather, some thing—else" (Perry, 1988: 181). Yates (2007) refers to this as the "split-identity" objection. Religious citizens are expected to maintain two identities: one for the public sphere and one for the private sphere. They carry the burden of having to traverse between two identities, a burden not faced by the nontheist; hence the saying, now something of a cliché, that religion has become a Sunday affair.

Eberle (2002) similarly argues that Rawls' conception of reasonableness is itself unreasonable. According to Eberle, Rawls classifies the theist in advance of any actual communicative exchange as unreasonable and therefore precludes a large number of citizens—easily the majority of citizens in the case of the United States—from public moral discourse, an outcome at odds with Rawls' egalitarianism. To require that the theist refrain from expressing religious reasons in public moral discourse is to "violate his deepest convictions" and "impede him from living a meaningful life" (Eberle, 2002: 150). Eberle offers instead an ideal of "conscientious engagement," which shares with the Rawlsian project a commitment to public moral justification, but does not impose conversational constraint upon religious citizens.

Another objection concerns what Habermas (2005) calls the "asymmetrical burdens" of citizenship. According to Habermas, Rawls' proviso creates an imbalance between the democratic responsibilities of the theist and those of the nontheist. The theist is forced by the proviso to translate his or her religiously based moral convictions into secular moral terms. As Habermas notes, though, this is not a straightforward task. It requires that

religious communities self-modernize and thereby develop a secular moral vocabulary appropriate for the pluralism characteristic of the modern world. In Rawls' model, the translation requirement is not imposed upon the nontheist, who has the advantage of speaking through a native secular vocabulary. As a committed secularist, though, Habermas is cautious about untranslated religious arguments in what he calls the "political public sphere." He attempts to redress this imbalance by demanding that a similar burden of translation be placed upon secular citizens, whose moral vocabularies are often suffused with the metaphysical pretensions of scientistic reason. Habermas calls for a shift on the part of secular citizens toward a post-metaphysical vocabulary, one that acknowledges the historical contingency of secular moral claims. The translation requirement is thus "a cooperative task in which the non-religious citizens must likewise participate" (Habermas, 2005: 11). That Habermas should feel so compelled to impose a translation requirement upon secular citizens underscores just how seriously he takes the problem of asymmetrical burdens of citizenship evident in Rawls' model of justice.

Other critics have interpreted Rawls' argument for constraint as a threat to communicative freedom. Wolterstorff (1997), for example, argues that it is unreasonable to expect all citizens to unite around a single conception of justice. Reasonable citizens can reasonably disagree about the terms of justice itself, including the validity of the deontological model. Wolterstorff believes the search for common principles upon which moral discourse ought to be conducted is bound to fail. He affirms the communitarian argument that all moral beliefs are rooted in one or another historically situated social tradition or authority and therefore challenges the supposed universality of the deontological model. Wolterstorff offers what he calls a "consocial" approach to public moral deliberation, which "repudiates the quest for an independent source and imposes no moral constraint on the use of religious reasons" (1997: 115). In his view, citizens should feel free to express whatever moral arguments they want in public moral discourse, regardless of the source of those arguments. Wolterstorff goes so far as to argue that even lawmakers should feel free to incorporate religious arguments into the legislative process.

However, Stout (2005) has offered what is perhaps the strongest critique of Rawls. Stout shares Wolterstorff's concern for freedom of religious expression. He argues that Rawls' liberal model of justice is too restrictive and therefore gives liberalism a bad name. That model leads certain influential religious intellectuals in the United States, such as Stanley Hauerwas and Alasdair MacIntyre, to adopt a fundamentally negative stance toward liberalism, democracy, and modernity. If religious citizens interpret the dominant political culture as hostile or intolerant towards religion, they are more likely to heed the call by Hauerwas and MacIntyre to retreat into self-described (and self-contained) communities of virtue, thereby threatening to dismantle the fabric of American democratic culture. Stout argues instead for a communicative liberalism inclusive of religious voices, including the many great religious moral voices of American history. He refers in particular to the celebrated public speeches of Abraham Lincoln, the Abolitionists, and Dr. Martin Luther King, Jr. In *Political Liberalism*, Rawls claims that these speeches, though replete with arguments derived from comprehensive doctrines, did nonetheless employ public reasons and therefore qualify, albeit marginally, as legitimate public discourse. Stout, however finds it particularly disturbing that the speeches that

have played so great a role in shaping America's moral culture should "just barely squeak by" (2005: 69) on Rawls' stringent standards. He points out, for example, that the religious arguments of the Abolitionists have shaped our contemporary understanding of such moral concepts as slavery and justice. There is something wrong, Stout believes, in placing constraints upon certain types of speech that have historically shaped and influenced the very moral vocabulary with which we speak today.

Stout's model of a communicative liberalism inclusive of religious voices is theoretically complex. He draws heavily from Robert Brandom's (1994) pragmatic theory of semantic inferentialism, which accounts for the meaning of sentences by their inferential role in the discursive practice of exchanging reasons. Stout uses Brandom's theory to develop a Hegelian model of communicative freedom as an alternative to the Kantian model on which Rawls bases his account of public reason. As Stout sees it, Hegel shares Kant's goal of achieving freedom through constraint, but does not treat those constraints as timeless and ahistorical. By treating norms, both conceptual and moral, as objects to be discovered through monological abstraction, Kant in effect places limits on the possibilities of expression. According to Stout, it was Hegel's merit to have seen this limitation and to have recognized the genesis of norms, both conceptual and moral, in the very process of communication itself. To use Hegel's terminology, norms arise through the unfolding of the dialectic: the ongoing interactive process of thesis, antithesis, and synthesis. To treat conceptual norms as fixed is to prevent the possibility of creative synthesis. It is to prevent the possibility of new forms of expression and therefore of true communicative freedom.

Stout uses this Hegelian insight to offer a richer model of moral discourse than the one allowed by Rawls. In particular, he encourages religious citizens to articulate their moral views frankly and openly in the public sphere, including views with overtly religious content. Where agreement on the basis of common norms is not possible, Stout encourages the practice of immanent critique as a valid and respectful method of democratic reasoning. As stated earlier, immanent critique need not entail the acceptance of religious premises. It may, in fact, be inadequate to the task of resolving moral disagreements. It does, however, offer the opportunity for religious voices to be heard and accords religious citizens *qua* citizens the respect of being recognized as reasoning agents. Mutual recognition is core to the Hegelian notion of expressive freedom. It not only shows respect to the Other, but also and perhaps more importantly allows for the possibility of self-critique. Put simply, immanent critique with religious citizens allows for the possibility of new moral insights. Such insights could only be the outcome of expressive freedom. As Stout sees it, then, the issue at hand is very much one of freedom, though of a kind not considered by Rawls.

Questioning Key Concepts in the Rawlsian Project

In this section, I would like to present some additional arguments for why I believe Rawls is largely vulnerable to the above lines of criticism. These arguments stem in part from Stout's critique of Rawls, which I think is the strongest of the above critiques. By highlighting the issue of expressive freedom, Stout gets to what I believe is the heart of

the matter, namely, the meaning of certain concepts critical to the Rawlsian project. It should be clear, for example, that the concept of freedom plays a central role in Rawls' deontological model. As Rawls (1971) states in *A Theory of Justice*,

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. (1971: 3–4)

The concept of freedom appears repeatedly throughout the text, as well as throughout *Political Liberalism* and, given the description of justice above, not without good reason. However, the concept of freedom is not very well theorized. In fact, it might not be overstating the case to say that Rawls does not actually offer a theory of freedom at all. To be fair, he does offer, in language that seems rather antiquated, specific conceptions of freedom, including "freedom of speech and assembly," "liberty of conscience and freedom of thought," "the right to hold property," and "freedom from arbitrary arrest" (Rawls, 1971: 61). Rawls does not, however, delve into the concept of freedom itself. This would seem a rather odd omission. He does elsewhere distinguish between the concept of justice and specific conceptions of justice (see Rawls, 1971: 5). The same, however, cannot be said for his understanding of freedom. Without a viable theory of freedom, it is unclear how Rawls could defend himself against the charge that the argument for constraint threatens a particular conception of freedom, namely, the expressive freedom defended by Stout. It leaves Rawls defenseless against the charge that, under his model, "the loss of freedom for some is made right by a greater good shared by others."

One can also question the concept of religion in Rawls' work. For just as freedom is an undertheorized concept in his theory of justice, so, too, is religion an undertheorized concept in his argument for constraint. The failure to offer a clear and viable concept of religion and the absence of clear criteria by which a religion can be identified would seem to pose a serious methodological difficulty for his political project. As Charles Taylor (2007) writes in *A Secular Age*,

But what is "religion"? This famously defies definition, largely because the phenomena we are tempted to call religious are so tremendously varied in human life. When we try to think what there is in common between the lives of archaic societies where "religion is everywhere", and the clearly demarcated set of beliefs, practices and institutions which exist under this title in our society, we are facing a hard, perhaps insuperable task. (2007: 15)

Taylor raises a valid point. Defining religion by example, as Rawls seems to do, or by reference to a particular speech-act suffers, from a certain arbitrariness that has the effect of targeting specific communities.[9] Without a viable, overarching concept of religion, the argument for constraint would seem unable to defend itself against the charge of arbitrary selectiveness. One would rightly want to know who would have the authority to

determine what counts as a religion.[10] The very haziness of the concept only seems to demand this kind of authority.[11]

Perhaps the most critical concept that remains undertheorized in Rawls' account of public reason is that of truth. In "The Idea of Public Reason Revisited," Rawls (1997) proposes that "comprehensive doctrines of truth or right be replaced by an idea of the politically reasonable addressed to citizens as citizens" (3). He describes critics of constitutional democracy as those who regard their fellow citizens as either allies or enemies in a win-or-lose battle for the truth. As Rawls puts it, "Political liberalism does not engage those who think this way. The zeal to embody the whole truth in politics is incompatible with an idea of public reason that belongs to democratic citizenship" (1997: 2–3). Elsewhere, Rawls employs the term "true" to describe simpler claims to moral truth, claims of the kind that political liberalism is prepared to engage. However, as with the concepts discussed above, certain difficulties arise for Rawls' concept of truth. First, to continue the previous point, there is no valid reason not to see political liberalism as a "comprehensive doctrine of truth." Rawls claims a special epistemic superiority for political liberalism that he is not willing to allow for rival conceptions of justice. In asserting the priority of the right over the good, he presumes that the deontological model captures "the whole truth" in political theory. He therefore seems to have implicated his theory by its own standards.

Second, a theory of truth is required to account for the possibility of the rational justification of moral claims. If public moral discourse is to be something other than "mere rhetoric or persuasion" (Rawls, 1993: 111), it requires an explanation for why one moral argument can be true and a rival argument false. Rawls wants a cognitivist model of public moral discourse, in which moral claims are susceptible to proof or disproof. As he puts it, "We are concerned with reason, not simply with discourse" (Rawls, 1993: 220). He does offer an account of objectivity, based again on Kant, which allows for the possibility of moral justification within a broadly deontological framework. However, it is precisely the validity of such a framework that leaves his conception of objectivity vulnerable to a wide—and by now familiar—range of critiques.[12] A cognitivist model of the kind Rawls wishes to defend requires a theory of truth adequate to the task of answering such critiques. Failure to provide such a theory of truth leaves any model of public moral discourse helpless to deal with the problem of incommensurability and arbitrary judgment. A theory of truth is necessary not only to allow for the possibility of valid moral claims across competing moral frameworks, but also to allow for some point of contact—real epistemic contact—between people of different worldviews engaged in moral discourse.

The concern being expressed here is that Rawls' model of public discourse is not developed to this end. There is something preclusive in imposing the condition that dialogue be conducted only according to a shared set of explicit terms. Conducting dialogue in this way not only limits what Stout defends as expressive freedom, but also fails to appreciate the points of epistemic contact implicit in the very use of language itself. This includes, first and foremost, the speech-act of assertion, or the making of a claim to truth. One could argue that a viable theory of truth would take into account the

place of truth in ordinary human communication and build a model of inquiry out of the norms implicit in actual linguistic practice. Such a theory and its corresponding model of inquiry would pursue the program of public moral discourse on shared terms to which we are already implicitly committed and thereby ensure the sort of continuity and basic conceptual and normative overlap necessary for comparative evaluation.[13] More importantly, it would be inclusive of all claims to truth and not bar, in a manner that can be deemed unreasonable, a certain class of claims before the process of inquiry. Such inclusiveness would show those who make religious arguments the respect of having their voices heard and engage them on terms to which they are, implicitly or explicitly, committed. It could only be on such terms that religious arguments, however we choose to conceive them, could be rationally vindicated or defeated. The existing model rightly calls for an overlapping consensus, but seems misguided in imposing that consensus on terms reasonable people could reasonably reject. It seems misguided, that is, to conduct public moral discourse on the basis of a false consensus.

Conclusion: Rethinking the Controversy

In conclusion, it can be argued that a rethinking of the concepts discussed above would amount to a rethinking of the controversy itself. This would, first of all, entail expanding the concept of freedom to include the sort of expressive freedom defended by Stout. There is much to be said about the idea expressive freedom, although the present essay would not be the place to go into it.[14] Needless to say, if one can appreciate the legitimacy of new and hitherto unrecognized conceptions of freedom, then we will be compelled to consider whether the existing catalogue of freedoms requires expansion and revision. Furthermore, if an expanded and revised catalogue turns out not to be entirely coherent—that is, if certain articles of freedom clash with others, as might seem to be the case here—then we will also be compelled to consider a hierarchy in which certain articles of freedom are accorded a greater priority than others. This is a question that remains to be answered.

Second, if the concept of religion is so vague as to be defined only by example, then perhaps it would better serve the project of public moral discourse to discard the concept altogether and appeal instead to specific conceptual criteria adequate to the task of addressing the object of Rawls' core concern. Stout seems to have handily identified that core concern by referring to what Brandom calls a faith-based claim: claims to which one is committed, but for which one cannot offer justifying reasons. This category might be expanded to include claims one is absolutely unwilling to revise in the light of counter reasons. As Stout, citing Brandom, rightly notes, religious citizens are not the only ones who make faith-based claims. Such claims are routinely made by non-theists as well. Leaving aside the concept of religion and focusing instead on faith-based claims would have the merit of not singling out religious claims, as well as of making clear precisely what types of claims pose a problem for justification, namely, those claims that are not amenable to revision in the light of counter reasons.[15]

Third, developing a viable theory of truth in such a way as to ensure a minimum of what MacIntyre (1990) calls "logical, ontological, and evaluative commitment," (46) would be

a first step in avoiding the preemptive charge of unreasonableness from either side.[16] For if it were made clear and if it were appreciated that such commitments are implicit in ordinary language use, then the point of contention would, it is here being argued, shift from the issue of free speech to a concentration on attributions and normative assessments of one another's moral claims. This would be precisely the point of public moral discourse. Such a shift in focus would effectively redefine the controversy.

Endnotes

[1] The actual list of potential restrictions is obviously much longer. For a comprehensive overview of these restrictions, see Cram (2006).

[2] There are notable exceptions to this view. See, for example, Fish (1994).

[3] In the United States, this tension arises from the formal separation of church and state as first articulated by the Virginia Statute for Religious Freedom and subsequently by the First Amendment to the United States Constitution. These early American documents guarantee freedom of religion by prohibiting an official state religion. There are, of course, other notable modern examples of church–state separation, including those of France and Turkey. Unlike the American model, however, these latter models are rather notorious for imposing formal restrictions upon public forms of religious expression. In particular, the French tradition of *laïcité* has been used to ban members of the Islamic, Christian, and Jewish faiths from adorning religious symbols in public institutions. In Turkey, a similar ban has been placed on the Islamic headscarf in public institutions. It can be said that the meaning of secularism varies from one country to another. For a general theory of secularism and its implications for public space, see Taylor (2007).

[4] For an elaboration of this principle, see Rawls (1988).

[5] An impartial standpoint is central to deontological models of justice. For similar concepts, see Baier (1958), who argues for the "moral point of view," and Habermas (1990), who appropriates George Herbert Mead's concept of the generalized other to develop a dialogical theory of impartiality.

[6] For further discussion on the distinction between the political and the metaphysical, see Rawls (1985).

[7] In fact, Rawls advocates the use of public reason precisely because of disagreements between people of faith. As he puts it, "This becomes clear once we change our example and include the views of Catholics and Protestants in the sixteenth century. At that time there was not an overlapping consensus on the principle of toleration. Both faiths held that it was the duty of the ruler to uphold the true religion and repress the spread of heresy and false doctrine" (Rawls, 1993: 148). Rawls argues that a *modus vivendi*, in which both sides self-servingly suspend hostility towards each other, is insufficient for a modern liberal society.

[8] It is quite possibly the case that by conjecture Rawls intends something like the Hegelian method of immanent critique. That method has been commonly associated in the twentieth century with the German intellectual tradition of critical theory. Immanent critique is not merely an attempt to understand, but also a method for change. In its Marxist form, its purpose is to seek the possibility of revolution. For a historical overview of the method of immanent critique, see Antonio (1981). Rawls clearly does not have in mind anything as strong as the Marxist version of immanent critique. However, it may fairly be said that he considers conjecture a method for potentially defeating one's rival in rational argument.

[9] This is not, of course, to say that it is always wrong or in poor taste to refer to a particular group or expressive act as religious. It is, however, to say that if restrictions are to be placed on certain types of speech on the grounds that they are religious, then a certain burden of proof imposes itself. One would need to be clear as to what it is about untranslated religious speech that disqualifies it from the public arena.

[10] Taylor (2007) does offer a loose working definition of religion as that which aims "beyond" human life. That is, he accepts the now-familiar transcendental/immanent distinction. As a working definition of religion, however, it seems too loose to serve as a methodological concept in the Rawlsian project.

[11] The matter is not helped or clarified by the concept of a comprehensive doctrine. It does not treat the theist and the nontheist as being on an equal footing by having both adhere to comprehensive doctrines and that both therefore equally share the burden of meeting the demands of public reason. For one thing, one would be hard-pressed to expect a liberal to object to the principle of constraint on the grounds that such constraint obstructs his or her right to express moral and political opinions derived from liberalism, for according to Rawls (1993), liberalism is a political conception and therefore overrides its status as a comprehensive doctrine.

[12] See, for example, Foot (1978), MacIntyre (1984, 1988), and Williams (1985) for critiques of the deontological model.

[13] For a good example, see Misak (2000, 2004a, 2004b), who develops a pragmatist theory of truth and deliberation based on the thought of Charles S. Peirce. See also Talisse (2005, 2007), who develops Misak's model further.

[14] See Brandom (1979, 2003) for a detailed elaboration of the idea of expressive freedom.

[15] As Misak (2004) puts it, inquiry is driven by curiosity, that is, it is an "activity animated by the desire to know something" (64). The desire to discover is quite incompatible with dogmatic claims that are expected to be believed prior to any inquiry into their truth or falsity.

[16] A case in point concerns moral controversies about Islam. It is characteristic of such controversies that they typically feature accusations of misrepresentation and the illegitimate appeal to Western moral standards—standards that are unsurprisingly rejected as false universals that do not provide a valid basis for moral critique (see Jackson, 2003 for an example of this type of argument). The argument against false universals often amounts to an argument for the incommensurability of rival and competing systems of belief. Insofar as it denies the possibility of common standards of evaluation, it precludes or obstructs the possibility of rational discourse between people of different worldviews. However, a pragmatic theory of truth of the kind being endorsed here would regard truth not in terms of abstract principles, forever liable to charges of falsity and ethnocentrism, but rather as a nonmetaphysical feature of ordinary linguistic practices. Such practices would be seen as common to us all as language users and therefore point the way to precisely the type of continuity and normative overlap that effectively binds together all language users as such. For a development of this type of theory, see Brandom (1994).

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