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The Continuing Quest for the Grail: Perry on the Justificatory Role of Religious Reasons

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THE CONTINUING QUEST FOR THE GRAIL: PERRY ON THE JUSTIFICATORY ROLE OF RELIGIOUS REASONS

*Christopher J. Eberle**

AN INITIAL PROTEST

It is with regret that I am compelled to include a protest in my contribution. The *Emory Law Journal* has refused to include one author's contribution to this Festschrift. This was an act of censorship: the editors took issue with the author's discussion of systematic racism, finding his words "hurtful and unnecessarily divisive." By itself, that decision is inconsequential; when aggregated with what appear to be ever greater numbers of comparable editorial decisions in higher education, it is malign. I cannot, therefore, contribute to this Festschrift without expressing my clear dissent. I do so, moreover, with great sadness: I wished to honor Michael Perry without qualification or distraction—the focus should be on him, not on the editors or even on the contributors. The decision on the part of the editors is particularly inapposite given Michael's longstanding commitment to an ecumenical politics, which, as we see in what follows, encourages vigorous debate as between people of goodwill regarding the most contentious topics, an aspiration that would have been furthered by the inclusion of the offending essay.

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AN APPRECIATIVE INTRODUCTION

It is an honor to have been invited to honor Michael Perry. I will take this invitation as an opportunity to reflect on a topic that Michael has described as a “scholarly obsession” for him, viz., the “proper role of religion in the politics and law of a liberal democracy.”¹ I will focus in this paper on one of the main topics that falls under that broad rubric, namely, the justificatory role of religious reasons in a liberal polity. In order to do so, I have worked my way through a number of his publications: *Love and Power: The Role of Religion and Morality in American Politics*,² *Religion in Politics: Constitutional and Moral Perspectives*,³ *Under God?: Religious Faith and Liberal Democracy*,⁴ *The Political Morality of Liberal Democracy*,⁵ and *A Global Political Morality: Human Rights, Democracy, and Constitutionalism*.⁶ Reacquainting myself with Michael’s contributions has been a pleasure, not least because doing so has evoked fond memories of conversations with Michael about the many topics he addressed therein. I first met Michael in 1998 as a result of our shared interest in the public role of religion in liberal polities, and I am most grateful for many subsequent years of mutual collaboration, discussion, and disagreement. His commitment to the inherent dignity of each human being, to the bearing of his faith on difficult practical and theoretical problems, and to a conception of liberalism that welcomes a robust public role for citizens of faith—both secular and religious—has long served for me as a model worthy of emulation.

¹ MICHAEL J. PERRY, *THE POLITICAL MORALITY OF LIBERAL DEMOCRACY* 2 (2010) [hereinafter PERRY, *POLITICAL MORALITY*].

² MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991) [hereinafter PERRY, *LOVE AND POWER*].

³ MICHAEL J. PERRY, *RELIGION IN POLITICS: CONSTITUTIONAL AND MORAL PERSPECTIVES* (1997) [hereinafter PERRY, *RELIGION IN POLITICS*].

⁴ *UNDER GOD?: RELIGIOUS FAITH AND LIBERAL DEMOCRACY* (2003) [hereinafter PERRY, *UNDER GOD?*].

⁵ PERRY, *POLITICAL MORALITY*, *supra* note 1.

⁶ MICHAEL J. PERRY, *A GLOBAL POLITICAL MORALITY: HUMAN RIGHTS, DEMOCRACY, AND CONSTITUTIONALISM* (2017) [hereinafter PERRY, *GLOBAL POLITICAL MORALITY*].

Let me emphasize at the outset one excellence that is strikingly apparent from an assessment of Michael's work as a whole. He has not articulated one conception of the proper political role of religion and then bunkered down to fend off all comers. The trajectory of his thought is less defensive than adventurous. As we will see, Michael searches over a period of decades for a properly ecumenical conception of how the ever more diversely committed and pluralistic population of the United States should conduct its common affairs. As with any real quest, he meets unexpected barriers and hidden obstacles that necessitate course corrections and directional alterations. I greatly prize his willingness to think deeply about the most contentious religious and political matters, to draw clearly articulated and thoughtful conclusions thereabout, and then to revise those conclusions in light of ensuing criticism. Given the inevitable complexity and inherent difficulty of his chosen subject matter, it is the reverse of surprising that his search for a properly ecumenical politics has taken him in a number of different directions. Hence his extended, circuitous quest for a morally plausible and otherwise defensible understanding of the justificatory role of religion in public life.

These personal reflections indicate my aims in this Essay. In Parts I through IV, I delineate the main stages in Michael's scholarly journey, articulating the various constraints on religious reasons for which he has argued over the past thirty years, excavating normative commitments that have guided him throughout that journey and explaining why those guiding commitments led him to different, and in some cases quite distant, destinations. This retrospective, expository aim drives a substantial part of this paper. In Part V, I employ Michael's work to assess one of the best recent discussions of the proper justificatory role of religious reasons, viz., Cécile Laborde's *Liberalism's Religion*.⁷ I take Michael to provide excellent reason substantially to qualify Laborde's claim that state officials ought not appeal to revelatory reasons as grounds for state policies.⁸ Finally, in the conclusion, I assess Michael's most recent work, most particularly his claim that a liberal democracy ought not enact a coercive or discriminatory law for which there exists no plausible secular rationale.⁹ I will do so largely by appealing to Michael against himself: as I see it, his earlier arguments provide reason at least to qualify, if not to abandon, the restrictive position that he has most recently adopted. In pursuing each of these aims, I hope that this paper exemplifies the kind of ecumenical political dialogue

⁷ CÉCILE LABORDE, *LIBERALISM'S RELIGION* (2017).

⁸ *See id.* at 120–21.

⁹ PERRY, *POLITICAL MORALITY*, *supra* note 1, at 100–99.

between diversely committed interlocutors to which Michael has long been devoted. That is the best way that I can think of to honor him.

I. MICHAEL PERRY'S QUEST FOR AN ECUMENICAL POLITICS

The broad topic that I address is a familiar one: the justificatory role that religious reasons properly play in the public life of a liberal democracy like the United States. As I understand it, this topic is not centrally legal or constitutional but moral—having to do with the moral obligations attached to the social role of citizen, state official, and judge.¹⁰ Broadly speaking, when we attempt to ascertain the justificatory role that religious reasons may play in the public life of a liberal polity, we attempt to answer two distinct questions. The first is a matter of political decision-making: in what respects, if any, may a citizen or state official make a political decision (say, to vote for some coercive state policy) that depends for its justification on a religious rationale?¹¹ The second is a matter of public deliberation: in what respects, if any, may a citizen or state official appeal to religious reasons as she deliberates with her compatriots as to which political decision they ought to make (say, to vote against some coercive state policy)?¹² Over the past three decades or so, a great many philosophers, lawyers, political theorists, theologians, and even politicians have articulated various distinct ways to formulate these questions and an ever-greater number of competing answers thereto—various competing justificatory restrictions that specify how citizens and state officials may employ religious reasons in political decision-making and public deliberation. In Perry's idiolect, these competing answers have ranged from very restrictive versions of exclusionism to radically open conceptions of inclusionism.¹³

As I read him, the overall trajectory of Perry's thought is from a moderate exclusionism to a successively more capacious, but not uncritical, inclusionism and then to a somewhat more restrictive inclusionism. What does that mean? Exclusionism is roughly the view that "religious faith has little if any legitimate

¹⁰ MICHAEL J. PERRY, UNDER GOD?, *supra* note 4, at 35–36. Perry does discuss in some detail the bearing of relevant legal or constitutional norms on our topic. See PERRY, LOVE AND POWER, *supra* note 2, at 112–22; PERRY, RELIGION IN POLITICS, *supra* note 3, at 9–42; PERRY, UNDER GOD?, *supra* note 4, at 3–34; PERRY, POLITICAL MORALITY, *supra* note 1, at 100–99. I am happy to leave the law to lawyers. Given that our understanding of the moral propriety of reliance on religious reasons should drive our understanding of the legal propriety thereof, I focus exclusively on the various moral arguments that bear on the proper justificatory role of religious reasons in public life.

¹¹ PERRY, UNDER GOD?, *supra* note 4, at 35.

¹² *Id.*

¹³ *Id.* at x–xiii, 51–52, 124–30.

role to play in American politics”¹⁴ and so “should be excluded, as much as possible, from” the “public life of the nation.”¹⁵ By contrast, inclusionists believe that religious faith may play a robust justificatory role in public advocacy and decision-making: “The inclusionists affirm, and the exclusionists deny, that religion may play a significant role in politics.”¹⁶ So described, the difference between the two views is not categorical but scalar: a conception of the justificatory role of religious reasons will be more or less exclusionist—and less or more inclusionist—as determined by the extent to which a theorist believes that religious faith has a legitimate role to play in public life. The degree to which a justificatory restriction counts as exclusionist is a function of at least two distinct and independently varying factors, viz., scope and stringency.

Consider the following constraint: a citizen or state official may accord no justificatory weight whatsoever to any religious reason, whatever its content or epistemic status, when deciding whether to support or oppose a coercive state policy. This is a highly exclusive restriction. That is, it has universal scope in that it applies to all religious reasons, citizens, and state officials. And it is quite stringent, as it permits religious reasons to play no justificatory role at all in political decision-making, not even an entirely supplementary role when they converge with sufficient secular reasons. Less exclusive is a similarly stringent but considerably less capacious constraint, such as that a citizen or state official may accord no justificatory weight in political decision-making to any revelatory reason, whether biblical, koranic, or otherwise. Less exclusive again is a restriction that has very wide scope, yet is so lax as to preclude reliance on few, if any, important religious reasons—e.g., that a citizen or state official may appeal in public deliberation to only those religious reasons the content of which her compatriots can comprehend. Since nearly every religious reason is comprehensible to others, this constraint, while quite wide in scope, lacks stringency and so would permit reliance on nearly any religious reason. If I understand Perry correctly, such a justificatory constraint falls on the inclusionist end of the spectrum. Even more inclusionary would be the denial of *any* justificatory restrictions that apply to religious reasons—even restrictions that prohibit reliance on reasons that are flatly incompatible with core, ecumenical, liberal commitments. I know of no theorist who affirms such a radically expansive conception. Certainly not Perry—although he moves ever further from his moderately exclusionist origins, he steers clear of the most expansive inclusionist destinations.

¹⁴ *Id.* at 124.

¹⁵ *Id.* at 51.

¹⁶ *Id.*

II. PERRY'S MODERATE EXCLUSIONISM

Let me now turn to Perry's scholarly peregrinations among the various options. His earliest book-length treatment of the justificatory role of religious reasons, *Love and Power*, begins with a clear and concise reconstruction of the core claims of what was then a familiar flavor of liberal political theory—a neutralist liberalism paradigmatically captured in the claim that “[a] citizen should (seek to) justify a political choice to fellow citizens only on the basis of moral premises shared with all to whom she is justifying the choice.”¹⁷ Since no religious reason is shared with *all* citizens, such a stringent conception might be taken to have exclusionist implications on a very wide scope.¹⁸ Perry articulates compelling objections to this kind of conception—not least that its justificatory constraints are “impossibly restrictive,” so stringent as to render us unable to vindicate core liberal commitments.¹⁹ He concludes that neutralist liberalism is a normative dead end: “[T]he quest for the Holy Grail of neutral/impartial political justification is spent.”²⁰ He then embarks on “a different, more promising path.”²¹ The remainder of *Love and Power* pursues an alternative to neutralist liberalism—an “ecumenical” conception of liberalism that enables a diversely committed population to foster the bonds of political community by way of how individuals engage with one another in public.²² Roughly, Perry's understanding of an ecumenical conception of liberalism is one that is acceptable to as many morally decent and epistemically competent citizens as is feasible under conditions of extensive pluralism of belief.

For Perry, a properly ecumenical politics requires citizens and state officials to debate, discuss, and aspire to persuade one another about how to best conduct their common affairs, particularly regarding which coercive policies the state ought to enact. Of course, political “dialogue” can corrode the bonds of political community: as we all know from recent years, we can discuss and debate with one another about our common affairs in ways that drive us apart, alienate others, insult our compatriots, and the like. For Perry, it is axiomatic that we aspire to avoid that kind of destructive, community-corroding dialogical agonism. Rather, we ought to engage in *ecumenical* political dialogue, whereby

¹⁷ PERRY, *LOVE AND POWER*, *supra* note 2, at 9.

¹⁸ It does not actually have any such implication: this formulation specifies nothing in particular about what ought to happen should the required search for the desired rationale ends in failure. Only if we suppress its parenthetical qualifier, as often happens with formulations of this sort, does this formulation have any exclusionary implications.

¹⁹ PERRY, *LOVE AND POWER*, *supra* note 2, at 96–97.

²⁰ *Id.* at 28.

²¹ *Id.*

²² *See id.* at 83–138.

“we continually cultivate the bonds of political community—and in which we sometimes succeed in strengthening those bonds, even, occasionally, in forging new bonds—through dialogue of a certain kind.”²³ By engaging in open, self-critical, mutually respectful discussion and debate about “our life in common,” we can achieve all manner of morally important aims.²⁴ So, for example, we can avoid the leading alternative to the dialogical resolution of our disagreements: “Political violence, or the threat of such violence, is an alternative to political dialogue, but in our culture it is virtually axiomatic that dialogue is preferable to violence.”²⁵ Civil dialogue is the far superior alternative to civil war, and “[c]ivility dies with the death of dialogue.”²⁶ We are thereby able to “come to the truest knowledge of ourselves.”²⁷ We fulfill “our nature as social beings.”²⁸ We satisfy our duty to love one another.²⁹ In short, ecumenical political dialogue is overdetermined by very great moral goods. This aspiration to the ecumenical is at the very heart of Perry’s moral and religious sensibility, and it provides constant normative guidance throughout his reflections on the justificatory role of religious reasons.

Perry’s commitment to ecumenical political dialogue drives his favored constraints on religious reasons: in order to participate in the dialogical engagement that is essential to a healthy, well-functioning liberal democracy, citizens and state officials need to comply with a number of justificatory conditions. I will mention two. First, according to Perry, we may offer only intelligible reasons in public deliberation.³⁰ Intelligibility is a matter of comprehension by others: a reason is intelligible to others when its content can be understood by “those who speak a different religious or moral language.”³¹ As I see it, Perry’s intelligibility constraint is entirely sensible—citizens and state officials in a liberal democracy must engage one another in dialogue about our common affairs, but we cannot engage one another in a genuine dialogue if we cannot understand one another, and so we must offer to one another reasons that our compatriots can understand. I shall say no more about it, other than that even the most “sectarian” religious reasons are comprehensible to others, and so the intelligibility constraint is compatible with a very capacious public role for

²³ *Id.* at 45.

²⁴ *Id.* at 48.

²⁵ *Id.*

²⁶ *Id.* at 106 (quoting JOHN COURTNEY MURRAY, *WE HOLD THESE TRUTHS* 14 (1960)).

²⁷ *Id.* at 49 (emphasis omitted).

²⁸ *Id.* (emphasis omitted).

²⁹ *Id.* at 50.

³⁰ *Id.* at 105.

³¹ *Id.* at 106.

religious reasons. Although universal in scope, the intelligibility constraint is easy to satisfy and so is compatible with a very expansive inclusionism.

Matters are quite different with respect to Perry's second justificatory constraint: accessibility. This is, Perry says, "the essential criterion"—either we abide by "a criterion like that of public accessibility" or we "giv[e] up on the possibility of ecumenical political dialogue or anything like it."³² Public accessibility is a function of intersubjective uptake: a reason is publicly accessible when it is widely regarded as having some normative force.³³ So, says Perry, a publicly accessible reason is neither sectarian nor authoritarian—regarded by others as having little authority beyond the confines of some particular moral or religious community.³⁴ In short, citizens and state officials must engage in discussion, dialogue, and debate about which state policies merit their support. This is possible only if they offer one another reasons that others can acknowledge to have some normative force, and so they must offer one another reasons that those who do not belong to their particular religious community take to have some normative weight, even if they disagree as to the dialectical or justificatory purposes to which those reasons are put.³⁵

Some theorists have claimed that the public accessibility constraint, properly understood, excludes any and all religious reasons from public deliberation and political deliberation. It has global religious scope and is, so far, highly exclusionary. Not so Perry: he understands his accessibility constraint to have differential application to distinct kinds of religious reason. Some religious reasons are accessible, and some are inaccessible.³⁶ By implication, some religious reasons have justificatory force: citizens and state officials may rely on them both to make political decisions and to advocate in favor of their favored public policies. By implication again, some religious reasons lack justificatory force: they are not amenable to assessment by those who do not share their faith, others cannot therefore determine whether those reasons are dispositive, and

³² *Id.* at 140–41.

³³ *Id.* at 106.

³⁴ This is my gloss on Perry's explication of the concept of public accessibility in *Love and Power*. *Id.*

³⁵ Perry denies that public accessibility implies agreement: a citizen or state official can adduce a publicly accessible reason in favor of some state policy even though some of her compatriots may, without any moral or epistemic impropriety, deny that that reason does in fact vindicate that policy. So, political dialogue conducted entirely in the currency of publicly accessible reasons need not generate, and is almost certainly destined not to generate, agreement or consensus. *See id.* at 118. As we will see, Laborde adopts a conception of public accessibility that is strikingly similar to Perry's, both with respect to her understanding and her application of that constraint. *See infra* Part V.

³⁶ PERRY, LOVE AND POWER, *supra* note 2, at 108.

therefore, no citizen or state official may appeal to those religious reasons in political decision-making or public deliberation:

The strategy I have defended . . . largely avoids the difficulty of administering any sharp or strong distinction between “religious” and “nonreligious” moral premises. . . . (1) Religious argument that survives the standard of public accessibility . . . should be admitted to the public square no less than nonreligious, or “secular”, argument that survives that standard, and (2) nonreligious/secular argument that fails the standard of public accessibility should be excluded no less than religious argument that fails the standard.³⁷

Perry forthrightly specifies the profile of such inaccessible religious reasons: “sectarian” appeals to authority, paradigmatically exemplified by reasons that (putatively) depend for their normative authority on divine revelation.³⁸ To appeal to biblical or koranic reasons in public deliberation is to appeal to reasons that have no authority to those outside of the Christian or Muslim community. It is the functional equivalent of providing “outsiders” with no reason at all, thereby excluding them from political dialogue, and so corroding the bonds of political community. Such direct appeals to revelatory reasons, particularly fundamentalist conceptions thereof, are disallowed in ecumenical political dialogue, but they are by no means representative of religious reasons generally.³⁹

So understood, *Love and Power* advocates in favor of a mediating position between a stringent restriction on all religious reasons and a lax permission to appeal to any and all reasons, and thus to any and all religious reasons, no matter how sectarian, dogmatic, or insular:

Ecumenical political dialogue is valuable in itself because it is a principal constituent of a politics neither neutral/impartial nor sectarian/authoritarian but ecumenical: a politics in which citizens meet one another in the public square, sometimes to reach consensus, more often to diminish dissensus, and most often, perhaps, simply to clarify, to better understand, the nature of their disagreement, but always to cultivate the bonds of (political) community, by reaffirming their ties to one another, in particular their shared commitment to certain authoritative political-moral premises.⁴⁰

³⁷ *Id.* at 111.

³⁸ *Id.* at 107.

³⁹ *Id.* at 121–22.

⁴⁰ *Id.* at 125.

Here, I take it, Perry articulates a broadly consequentialist—a communitarian-consequentialist—rationale for his favored justificatory constraints on religious reasons: the restricted justificatory employment of inaccessible, and so revelatory, reasons promotes political community among a diversely committed population. This concern with revelatory reasons persists throughout Perry's corpus; although, as we will see, it is manifest very differently over time, from outright exclusion to a wary permission.

III. PERRY'S MODIFIED MODERATE EXCLUSIVISM

Religion in Politics substantially revises the moderate exclusionism of *Love and Power*. As I read him, Perry's commitment to ecumenical political dialogue retains its guiding normative role, but he alters considerably his assessment of its implications for the justificatory role of religious reasons. It is, Perry argues, inevitable that citizens and state officials will be influenced in their political decision-making by their various faith commitments—whether by directly providing reason to support some state policy or by providing reason to accept a secular rationale that in turn grounds some state policy.⁴¹ If the influence of religious commitment on political decision-making is *inevitable*, then this is a fact with which any communitarian-consequentialist assessment of the justificatory role of religious reasons must contend. Given this inevitability of influence, we should urge citizens and state officials to offer up in public deliberation all of their religious reasons *so that* they may be tested, assessed, modified, or rejected. We must encourage citizens and state officials to offer those reasons up in public deliberation to temper the influence that those reasons have on political decision-making. This includes appeal to the kind of sectarian-cum-revelatory reason that Perry excludes from public deliberation in *Love and Power*:

Because of the role that religiously based moral arguments inevitably play in the political process, then, it is important that such arguments, no less than secular moral arguments, be presented in, so that they can be tested in, public political debate. Ideally, such arguments will sometimes be tested, in the to and fro of public political debate, by competing scripture- or tradition-based religious arguments.⁴²

Bluntly put, Perry's normative conception of ecumenical political dialogue—genuine public deliberation between pluralistically committed citizens regarding their common affairs—provides compelling reason to *include* all religious

⁴¹ PERRY, RELIGION IN POLITICS, *supra* note 3, at 44.

⁴² *Id.* at 45.

reasons in public deliberation, including “sectarian” reasons that have little authority outside of some particular religious or moral community. Gone is the accessibility constraint that Perry affirmed in *Love and Power*, as it improves neither public deliberation nor political decision-making.

I should note that Perry’s inclusionist conception of public deliberation extends not merely to “private” conversations between citizens, and not only to the “quasi-public” deliberations that occur in civil society but also to the public declarations of state officials.⁴³ Although prominent theorists Habermas,⁴⁴ Laborde,⁴⁵ Gaus, and Vallier⁴⁶ have claimed that state officials at least ought to circumscribe public appeal to religious reasons, Perry demurs. If he is correct, then “the truthful disclosure of all the reasons why an elected official stands where she does is an overriding value.”⁴⁷ Unsurprisingly, and unavoidably, there are tradeoffs here: the truthful disclosure is a good for which “most of us citizens of a liberal democracy would be more than willing to endure some feeling of being ‘imposed upon.’”⁴⁸ This comparative axiological assessment leads Perry to affirm a capacious understanding of the kind of public deliberation appropriate for state officials:

Especially because the truthful disclosure of all the reasons why an elected official stands where she does is an overriding value, a much more sensible way to minimize the extent to which some citizens might “feel imposed upon in the sense of being excluded” . . . is for a legislator to feature, in public political debate, not only all the relevant arguments that she takes seriously, including religious arguments, but all the credible and not otherwise inappropriate arguments that might incline a citizen to support the political choice at issue. In that way, a legislator does not conceal the real bases of her support, but neither does she gratuitously marginalize or exclude reasons that might appeal to some of her constituents or to some citizens generally; instead, she “re-presents” all the relevant reasons, both those that are most

⁴³ *Id.* at 52.

⁴⁴ Jürgen Habermas, *Religion in the Public Sphere*, 14 EUR. J. PHIL. 1, 8–9 (2006) (“[T]he liberal state . . . cannot . . . expect of all citizens that they also justify their political statements independently of their religious convictions or world views. This strict demand can only be laid at the door of politicians, who within state institutions are subject to the obligation to remain neutral in the face of competing world views; in other words it can only be made of anyone who holds a public office or is a candidate for such.” (emphasis omitted)). In a marked contrast to Perry’s ecumenical conception, Habermas argues that violations of this strict demand must be expunged from the legislative record. *Id.* at 16.

⁴⁵ LABORDE, *supra* note 7, at 125.

⁴⁶ Gerald F. Gaus & Kevin Vallier, *The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry, and Political Institutions*, 35 PHIL. & SOC. CRITICISM 51, 56 (2009).

⁴⁷ PERRY, RELIGION IN POLITICS, *supra* note 3, at 52.

⁴⁸ *Id.* (emphasis omitted).

important to her and those that might be most important to someone else. She thereby cultivates the bonds of political community even as she forthrightly indicates why she stands where she does.⁴⁹

Here, I take it, Perry affirms the moral value of conscientious engagement by the state officials who serve a diversely committed citizenry: the pursuit, articulation, and mutual criticism of all manner of reasons, some of which a given state official regards as dispositive, others of which she does not, but all of which she offers to provide her compatriots with reasons that they might regard as sufficient grounding for her favored policies.⁵⁰ This kind of open, other-directed, mutually educative, and reciprocally critical engagement is essential to ecumenical political dialogue as Perry here understands it. It is a highly attractive deliberative ideal, not only for citizens in civil society but also for state officials as they carry out their public duties.

Matters are very different with respect to political decision-making. Here, Perry sharply curtails the justificatory role that religious reasons may play.⁵¹ If he is correct, inclusive and public deliberation improves political decision-making by way of *enabling* citizens and state officials to exercise due restraint. How so? Briefly, after distinguishing between claims regarding human worth and human flourishing,⁵² Perry advocates that religious arguments about human flourishing are doubtful unless they enjoy *independent secular corroboration*:

[T]he persuasiveness or soundness of any religious argument about the requirements of human well-being depends, or should depend, partly on there being at least one persuasive secular argument . . . that reaches the same conclusion about the requirements of human well-being as the religious argument.⁵³

All manner of state policies bear on matters of human well-being, and so arguments thereabout will often have clear political importance. Public deliberation makes it possible for citizens and state officials to determine whether their favored religiously grounded claims about human well-being enjoy persuasive secular corroboration. Should a citizen or state official discern through public deliberation that some such claim lacks secular corroboration,

⁴⁹ *Id.*

⁵⁰ This is a position for which I attempted to argue some years after in two works. CHRISTOPHER J. EBERLE, *RELIGIOUS CONVICTION IN LIBERAL POLITICS* (2002) [hereinafter EBERLE, *RELIGIOUS CONVICTION*]; Christopher J. Eberle, "Religious Reasons in Public Life: Let a Thousand Flowers Bloom, But Be Prepared to Prune," 22 *ST JOHN'S J. LEGAL COMMENT.* 431 (2007). It is humbling, and a little disconcerting, to realize now that Perry powerfully articulated it long before I put pen to paper. . .

⁵¹ PERRY, *RELIGION IN POLITICS*, *supra* note 3, at 72–73.

⁵² *Id.* at 66.

⁵³ *Id.* at 72–73.

then she should doubt it and therefore refrain from supporting or opposing any state policy on its basis. In short, radically open, inclusive public deliberation enables citizens and state officials to discern whether the religious reasons that might otherwise influence their political decisions enjoy the secular corroboration that, Perry argues, a wide swathe of religious reasons must enjoy. Perry asserts the following:

[M]y point is not that in making a political choice . . . religious believers ought not to rely on a religious argument about the requirements of human well-being. My point is that they ought not to do so *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.⁵⁴

As Perry sees it, then, a genuinely ecumenical politics requires that citizens and state officials adhere to a principle of restraint that precludes a wide swathe of religious reasons from having justificatory force:

Consider what we may call the “ecumenical” function of the practice I am recommending here. 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 . . . helps American politics to maintain a relatively ecumenical character rather than a sectarian one. Such a practice deemphasizes one of the most fundamental things that divides us—religion—and in that sense and to that extent is one way of cultivating, rather than fraying, the bonds of political community.⁵⁵

IV. PERRY’S CRITICAL INCLUSIONISM

Perry arrives at his most inclusive destination in *Under God?*, a work in which the radical openness to religious contributions in public deliberation for which Perry argued in *Religion in Politics* is extended to political decision-making as well. He reaches this expansive destination by travelling at least two ecumenical routes. We are already familiar with the first: Perry assesses various proposals regarding the justificatory role of religious reasons by whether a given proposal cultivates rather than frays the bonds of political community.⁵⁶ As I see it, the broadly consequentialist-communitarian content of his main arguments helps to explain his movement towards inclusionism. A liberal polity that is as religiously vibrant as the United States will inevitably splinter into “sectarian”

⁵⁴ *Id.* at 100–01.

⁵⁵ *Id.* at 78–79.

⁵⁶ *See supra* Part II.

disagreement about just which principles of restraint foster a genuinely ecumenical political community thereabout. Any restriction on religious reasons with real bite is therefore likely to be just as divisive, alienating, or corrosive of community as the lack of such a restriction and so is likely to engender the very kind of social and political dysfunctions that it is supposed to prevent.⁵⁷ In short, communitarian arguments in favor of exclusionary restraints on religious reasons are bound to lack purchase in liberal polities, like the United States, that are populated by large numbers of citizens and state officials who care deeply about living with faithfulness to God in public life. Hence, we have Perry's ever-weakening constraints on the manner in which believers may employ religious reasons in public.

This trajectory continues in *Under God?*. As I read him, Perry reframes the communitarian considerations on which he long placed great weight by incorporating them into a broader, ecumenical understanding of what makes for a liberal democracy.⁵⁸ This is his second ecumenical route to inclusionism, one that begins at "the heart of the morality of liberal democracy."⁵⁹ Some of us are religious, others secular; some conservative, others progressive; some pro-life, others pro-choice; some optimistic about the possibilities of good government, others quite pessimistic. But Perry insists on the following:

We Americans are all liberals now, because we all affirm the true and full humanity of every person, without regard to race, sex, religion, and so on, and we also affirm, therefore, certain basic human freedoms (e.g., the freedoms of speech, press, and religion). It is this twofold affirmation that makes a democracy a "liberal" democracy, a political morality a "liberal" political morality, and a person a "liberal."⁶⁰

Perry employs this minimalistic conception of the morality of liberal democracy to reframe his assessment of the justificatory role of religious reasons. Rather than attempting to discern which restrictions on religious reasons promote the bonds of political community, Perry asks whether the two claims at the heart of the morality of liberal democracy entail, imply, or even so much as slightly support general, stringent restrictions on the justificatory role of religious reasons.⁶¹

⁵⁷ So, for example, as I noted in Part III above, Perry argues in *Religion in Politics* that the soundness of a religious argument about human well-being depends on there being at least one persuasive secular argument to the same conclusion. See *supra* Part III. Whatever else we might say about Perry's argument (and in my case, there is a great deal), this is at the very least an intensely controversial rationale for a principle of restraint.

⁵⁸ PERRY, *UNDER GOD?*, *supra* note 4, at 37.

⁵⁹ *Id.* at 36 (emphasis omitted).

⁶⁰ *Id.* at 37.

⁶¹ *Id.* at 38.

They do in fact ground two important justificatory constraints. Perry's aim is to articulate a defensible conception of the proper role of religious reasons *in a liberal democracy*.⁶² In articulating that conception, we may take as given moral claims that lie at the normative heart of a liberal democracy. As noted, there are two such claims—to the inherent dignity of each human being and to certain rights grounded thereupon. We may therefore insist that citizens and state officials rely in political decision-making and public deliberation on no reason that denies that inherent worth of any human being, and they ought to rely on no reason that denies certain basic rights, including the right to religious freedom.⁶³ Each of these constraints applies broadly—they constrain the justificatory role of *any* reason, religious or secular. They serve as a thin substantive filter through which any reason must pass to have justificatory force. Even so, they lack justificatory bite: the vast majority of religious reasons are compatible with the two claims that constitute the moral core of liberal democracy and so neither constraint as applied would forbid citizens and state officials from according justificatory weight to religious reasons on which that they might otherwise be inclined to rely.

This naturally raises the question: is there any reason to adopt more demanding, and so more exclusive, restrictions? Not directly. We can see this by reflecting on the content of the two norms that Perry locates at the moral heart of liberal democracy: on any non-tendentious rendering thereof, it is obvious that neither a commitment to human dignity nor to the basic rights grounded on human dignity directly imply any demanding justificatory constraints on religious reasons.⁶⁴ And so Perry concludes, “Nothing in the morality of liberal democracy—nothing in either of liberal democracy’s two constitutive commitments—supports the claim that it is illegitimate for religious believers to introduce religiously grounded moral belief into public political argument.”⁶⁵ Similarly, one might assume the following for political decision-making:

Nothing either in the commitment to the true and full humanity of every person or in the allied commitment to certain basic human freedoms forbids legislators . . . to disfavor conduct on the basis of a

⁶² *Id.* at 38–39.

⁶³ Perry writes that “[i]t is never for one to show respect for another for him to offer her—for example, for a Nazi to offer to a Jew—an explanation to the effect that ‘You are not truly or fully human’ . . . [T]he set of moral beliefs on which government may base a political choice is limited.” *Id.* at 48–49.

⁶⁴ *Id.* at 38–39.

⁶⁵ *Id.*

religiously grounded moral belief *just in virtue of the fact that the belief is religiously grounded*.⁶⁶

So, it seems that there is at least presumptive reason to affirm a very wide inclusionism: if we accept Perry's minimalist conception of what makes for the morality of liberal democracy, then it is plausible to conclude that liberalism *by itself* implies only the most minimal, lax constraints on the justificatory role that religious reasons may play in political decision-making or in public deliberation. Of course, presumptions can be overridden—and so there might, in principle, be some further rationale in favor of more robust restrictions on the justificatory role of religious reasons. Even if we cannot read exclusionist constraints into core liberal norms, is there some more indirect dialectical route to a robust general constraint on religious reasons?

The burden of Perry's argument in *Under God?* is that there is no such rationale. His reasons for rejecting restrictions on religious reasons in public deliberation are familiar. Here, as in *Religion in Politics*, Perry argues that the inclusion of religious reasons in public deliberation improves political decision-making: citizens and state officials will inevitably be influenced in their political decision-making by religious reasons; it is, therefore, particularly important that those religious reasons be critically assessed. So, "we should not merely welcome but encourage the presentation of such [religious] belief in public political argument—so that we can test it there."⁶⁷ I should note, however, that Perry now articulates this argument in a way that helps to ground a most important justificatory principle, viz., a commitment to the equal treatment of religious and secular reasons. Perry argues that we should welcome religious belief into political deliberation not merely because we need to test religious convictions that inevitably (yet, we might think, regretfully) influence political decision-making but also because we might have something of genuine value to learn from such religious contributions: "We should also, in the course of testing such beliefs, 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 positions with which, at the outset, we disagree."⁶⁸ There is an important parity here: secular citizens have as much to learn from religious citizens as religious citizens have to learn from secular citizens. So it is that we have excellent grounds for encouraging all citizens to

⁶⁶ *Id.* at 46. Perry will later dissent from this judgment. See *infra* Conclusion.

⁶⁷ *Id.* at 43 (emphasis omitted).

⁶⁸ *Id.*

articulate in public the reasons, religious or secular, that they take to support their favored state policies.

Perry repeatedly drives this parity claim home: the “intrusion” of religious conviction into public political argument can be divisive, to be sure, but it need not be more so than the “intrusion” of secular conviction.⁶⁹ Again, religious arguments can be sectarian, but they can also be far less sectarian than their secular counterparts.⁷⁰ Once again, religious citizens can be less deliberative than secular citizens, but they need not be.⁷¹ And so on. Given the moral importance of our shared participation in ecumenical political dialogue, and given that there are no morally relevant differences between religious and secular contributions to such dialogue, there is good reason to reject the admonition of those, like Richard Rorty, who aspire to make “it seem bad taste to bring religion into discussions of public policy.”⁷² It is not the case that any and all religious reasons are deliberatively defective conversation-stoppers, as Rorty avers. At least, they need be no more so than are all manner of secular reasons. Parity between the religious and the secular with respect to the manner in which they contribute to ecumenical political dialogue implies parity with respect to the justificatory principles that regulate the role that religious and secular reasons may play in public deliberation.

But what about political decision-making? Perry affirms the expansively inclusionist claim that citizens and state officials in liberal democracies may make political decisions absent any corroboratory secular rationale, so long as their deciding rationale is consistent with the claims that each and every human being enjoys inherent worth and that each thereby enjoys a certain spread of rights.⁷³ How does he reach that conclusion, so different than his earlier claim that a broad swathe of religious reasons must enjoy secular corroboration? As I noted above, reflection on the core, minimal content of liberal democracy indicates a presumption in favor of a very expansive inclusionism, one that permits citizens and state officials to rely in political decision-making and public deliberation on any dignity- and rights-respecting religious reason. If no arguments overcome that presumption, then we should affirm a very wide inclusionism with respect to religious reasons. This frames Perry’s discussion of the proper role of religious reasons in political decision-making: he assesses the

⁶⁹ *Id.* at 40.

⁷⁰ *See id.* at 40–41.

⁷¹ *See id.* at 42.

⁷² RICHARD RORTY, *Religion as a Conversation Stopper*, in *PHILOSOPHY AND SOCIAL HOPE* 168, 169 (1999).

⁷³ PERRY, *UNDER GOD?*, *supra* note 4, at 51.

available arguments and concludes that none is sufficiently compelling to overcome the presumption in favor of a dignity- and rights-cabined inclusionism.⁷⁴ Perry focuses his dialectical attention on one of the most important of such arguments, viz., the argument from respect. As noted above, one of the core claims of liberal democratic morality is that every person, and so each and every citizen, enjoys equal, inherent dignity. To impose a law on our fellow citizens that depends for its justification on some religious rationale is to fail to accord our compatriots the respect that is due them as our equals.⁷⁵ Hence, citizens and state officials ought not to decide to support any state policy that depends for its justification on some religious rationale. To do otherwise, is “to deny to those persons the respect that is their due as persons—or, as John Rawls has put it, as ‘free and equal’ persons.”⁷⁶

Perry is most skeptical of this argument. His skepticism seems to me to be grounded on his understanding that those who make political decisions on religious grounds can respect their compatriots by the manner in which they engage with their compatriots—and more precisely, by engaging in ecumenical political dialogue:

[R]espect counsels not only that we offer others, as explanation, what we take to be our best reasons for acting as we do, but also that we try to discern and then communicate to them whatever reason or reasons *they* might have for supporting . . . the law or policy at issue.⁷⁷

Somewhat more expansively, he writes the following:

It is altogether obscure why we do not show others the respect that is their due, first, “when we offer them, as explanation, what we take to be our best reasons for acting as we do” (so long as our reasons do not assert, presuppose, or entail the inferior humanity of those to whom the explanation is offered) and, second, when we try (even if in the end we fail) to discern and communicate other reasons that might win their consent, or at least diminish their hostility, to the law or policy at issue.⁷⁸

If I understand him correctly, Perry here implicitly denies that we should sharply distinguish between what makes for respectful political decision-making and respectful public deliberation. How we arrive at and communicate with others about our favored political decisions manifests our respect, or the lack thereof,

⁷⁴ See *id.* at 46–49 (assessing the arguments from respect and divisiveness).

⁷⁵ *Id.* at 47.

⁷⁶ *Id.*

⁷⁷ *Id.* at 48.

⁷⁸ *Id.* (quoting EBERLE, RELIGIOUS CONVICTION, *supra* note 50, at 48 n.40).

for our compatriots. Whether our reliance on religious reasons treats our compatriots with due respect is a function of myriad distinct ways in which we treat our fellow human beings—whether we care for their well-being, think them worthy of genuinely dialogical engagement, open ourselves to their objections to our dearest convictions, offer them reasons that we hope will lead them to support our favored state policies, and so on. Otherwise put, those who genuinely engage in Perry’s inclusionist ecumenical political dialogue need not disrespect their compatriots even if they end up deciding to support coercive state policies on the basis of “sectarian” or even revelatory, grounds.

So it is that Perry’s quest for an ecumenical politics leads him to a radically inclusive destination in *Under God?*: citizens and state officials are free to make political decisions and to engage in public deliberation on the basis of any comprehensible dignity- and rights-respecting religious reason that they conscientiously take to be correct. Should some coalition of citizens and legislators have enough political clout to enact some state policy on the basis of religious reasons that satisfy that profile, then there need be nothing morally problematic with that result—even if there exists no plausible or persuasive secular corroboration thereof. Such a state of affairs need not run athwart the normative aspiration that most centrally guides Perry’s scholarly reflections on the justificatory role of religious reasons—respectful, ecumenical political dialogue. Here is Perry reflecting in retrospect on the driving force behind his various scholarly peregrinations:

I first addressed the subject of religion in politics in my book *Love and Power*; I sketched there the ideal of “ecumenical politics,” which, as I explained, comprised both ecumenical political dialogue and ecumenical political tolerance. As I have noted more than once in this book, I have abandoned the exclusionism I defended in *Love and Power*. Nonetheless, ecumenical politics still seems to me the right ideal for those in the United States—indeed, in any liberal democracy—who would bring their religion to bear on their politics. The mirror image of ecumenical politics is sectarian politics. Sectarian politics is precisely the wrong ideal.⁷⁹

In short, Perry’s commitment to an ecumenical rather than a sectarian politics remains constant as he gradually arrives at the conclusion that the least sectarian and most respectful politics available to us is one that eschews the kind of general, exclusive constraints on religious reasons that have been endorsed by so many other theorists—and by Perry early on in his quest.

⁷⁹ *Id.* at 128.

V. A BRIEF EXCURSUS ON LABORDE'S "*LIBERALISM'S RELIGION*"

Let me pause here to discuss the bearing of Perry's arguments on one recent discussion of the justificatory role of religious reasons, viz., Cécile Laborde's *Liberalism's Religion*.⁸⁰ I do so for at least three reasons. First, Laborde's work on that topic is terrific: she articulates a plausible conception of liberalism and its justificatory constraints that is more than worthy of careful attention and critical engagement. Second, Perry and Laborde share an aspiration to articulate and defend a conception of liberalism that is amenable to the robust presence of religion in the public life of liberal democracies. Indeed, in my judgment, the extent to which Laborde is willing to welcome religious contributions in public life is refreshingly generous and quite unusual.⁸¹ Third, Laborde nevertheless affirms a justificatory constraint that applies to a broad swathe of religious reasons, viz., that state officials may not rely on publicly inaccessible reasons in political decision-making or advocacy.⁸² As I noted earlier, Perry once affirmed a version of that 'public accessibility' constraint but subsequently concluded that it "does not survive careful scrutiny."⁸³ So there is an important difference of justificatory principle between the two. As I see it, the shared excellence, the commonality of normative aspiration, and the difference in justificatory principle renders an assessment of Laborde's work in a Festschrift honoring Perry particularly appropriate. My intention is to articulate reasons why Laborde should follow Perry in leaving behind her public accessibility constraint.

One of Laborde's primary aspirations is to ascertain the "minimal secular core of liberal democracy."⁸⁴ A critical component of that secular core is an "epistemic standard[]" through which any and all reasons must pass if they are to have justificatory force.⁸⁵ Laborde argues that a necessary condition of a reason's having justificatory force is that it has the property of being *accessible*.⁸⁶ If a reason lacks that property, if it is *inaccessible*, then no state official may rely on that reason in political decision-making or public deliberation.⁸⁷ So Laborde explains the following:

⁸⁰ LABORDE, *supra* note 7.

⁸¹ See *id.* at 151–52 (depicting "Divinitia," an ideal typical liberal democracy awash in a sea of public faith).

⁸² See LABORDE, *supra* note 7, at 163.

⁸³ PERRY, *UNDER GOD?*, *supra* note 4, at 124.

⁸⁴ LABORDE, *supra* note 7, at 116.

⁸⁵ *Id.* at 120.

⁸⁶ *Id.*

⁸⁷ I should note that Laborde takes her accessibility constraint to bind only state officials, not ordinary citizens, even when the latter engage in public deliberation in civil society: "Because they have representative obligations . . . and because state acts are particularly coercive, public officials . . . are under an obligation of

[S]tate-proffered *reasons* for laws must be articulated in a language that members of the public can understand and engage with. There are epistemic constraints on the inputs into public debate . . . Official justification by the state should not appeal to reasons that actual citizens find inaccessible: that they cannot understand and discuss as reasons. The epistemic theory of public reason explains the widely shared intuition that state officials should not appeal to divine will or to personal revelation to justify exercising coercion on all. This is not, I submit, simply because people *disagree* about whether such sources are authoritative or not. People, after all, reasonably disagree about many things . . . Instead, I submit, some reasons are problematic in public justification because they lack some basic epistemic quality: they are not accessible to common reason.⁸⁸

What does it mean for a reason to be accessible in the respect required for it to have justificatory force for a state official? When it can be assessed by others in light of widely shared normative standards: an accessible reason “can be understood and assessed, but need not be endorsed according to common standards”;⁸⁹ it “can be assessed and evaluated publicly”;⁹⁰ citizens generally “can understand and engage with” it;⁹¹ they “can engage with and continue to criticize” it;⁹² and so on. So, an accessible reason is *assessable by others*.

For example, suppose that *A* takes reason *R* as dispositive support for some state policy. If *R* is accessible, then others must be in a position to evaluate *R* in light of shared normative standards and so to determine whether *R* merits their assent. To be sure, *R* can be assessable by others without its being *positively* assessed: the fact that *R* can be assessed in light of common epistemic standards, that it has been assessed, and that it has been found wanting perhaps even in some crucial respect, does not thereby render *R* inaccessible.⁹³ In short, the justificatory filter through which any reason *R* must pass is not whether others affirm *R*, much less that others concur in the judgment that *R* vindicates the

restraint when they publicly justify their actions and policies. No such obligation falls on ordinary citizens. . . .” *Id.* at 125. I will not here assess this aspect of her minimal secularism, other than to note that Perry compellingly objects to an earlier formulation of this position (as articulated by Kent Greenawalt) in his *Religion in Politics*. See PERRY, RELIGION IN POLITICS, *supra* note 3, at 49–54. As I see it, the central issue of principle is which justificatory constraints apply to political decision-making and public deliberation, not who has to abide by those constraints—citizens, legislators, judges, military officers, and so on.

⁸⁸ LABORDE, *supra* note 7, at 119–20.

⁸⁹ *Id.* at 120.

⁹⁰ *Id.* at 123.

⁹¹ *Id.* at 129.

⁹² *Id.* at 122.

⁹³ Otherwise put, accessible reasons need not be endorsed by others and so need not be shared reasons. See *id.* at 120.

target policy, but that *R* can be evaluated in light of shared normative standards. This, Laborde says, is necessary if we are to respect one another as democratic reasoners.⁹⁴

Laborde's accessibility constraint allows for a differentiated—or as Laborde says, a “disaggregated”—assessment of the justificatory role of religious reasons.⁹⁵ Religious reasons are not “uniquely special” with respect to their justificatory status: Laborde's accessibility constraint does not single out religious reasons for distinctive, discriminatory treatment.⁹⁶ It is not the case that *all and only* religious reasons count as inaccessible: not only is it the case that some secular reasons are inaccessible but it is also the case that some religious reasons are accessible. So, for example, “natural theology arguments . . . can be assessed on their own merits, by reference to ordinary criteria of rationality” and so count as accessible.⁹⁷ *Both* the religious and the secular are internally differentiated: distinct kinds of religious and secular reason possess importantly different epistemic, moral, and sociological properties, so we cannot assess “the” justificatory role of religious reasons as such any more than we can assess “the” justificatory role of secular reasons as such. Much to the contrary, we need to identify the particular properties of distinct kinds of religious and secular reason and accord them differential justificatory weight in light of their distinctive epistemic and substantive profiles.

Laborde's differentiated, disaggregative assessment of the justificatory role of religious reasons does not comport well with the most extreme versions of exclusionism—those that target all religious reasons with highly stringent restrictions. After all, the internal differentiation of both the religious and the secular virtually guarantees that at least some religious reasons will flow through any epistemic filter porous enough to allow a sufficiently robust range of secular reasons to enter the justificatory pool. That said, Laborde's disaggregative assessment is compatible with stringent constraints on particular kinds of religious reason. And so it is that Laborde understands her favored justificatory constraint to preclude reliance on a very important category of religious reason—revelatory reasons. Laborde writes, “A state that makes laws on the basis of the ethical truths contained in a sacred text is in breach of the accessibility condition (nonbelievers and dissidents cannot debate the reasons

⁹⁴ See *id.* at 122.

⁹⁵ See, e.g., *id.* at 2, 130.

⁹⁶ *Id.* at 125.

⁹⁷ Cécile Laborde, *On the Parity Between Religious and Secular Reasons*, 47 *SOC. THEORY & PRAC.* 575, 585 (2021).

for the laws).”⁹⁸ Not all religious reasons are “unsuitable to democratic deliberation,” but many are—most particularly those that are “intelligible exclusively by reference to the source of their authority [i]f they only appeal to a personal experience of revelation, or to extra-human sources of authority.”⁹⁹ In short, although it is not the case that all religious reasons count as inaccessible and so lack justificatory force, it *is* the case that all revelatory reasons count as inaccessible and so lack justificatory force. If Laborde is correct, then no state official may rely on revelatory reasons either in political decision-making or public deliberation.

There is a great deal to admire in Laborde’s disaggregative approach of the proper public role of religion in liberal polities, not least that it enables her to disassociate liberal democracy from the invidious construal of religious reasons that so often seem to me to drive the work of those who incline towards exclusionist constraints. A great many theorists have claimed, or merely assumed, that “religious reasons *as such* are subject to constraints that do not apply to all secular reasons: at least *some* secular reasons possess a justificatory potential that *any and all* religious reasons lack.”¹⁰⁰ This kind of symmetry is deeply embedded in a great deal of contemporary political theory. Moreover, I believe that reliance on this kind of asymmetry—which often, even if unintentionally, trades on one or another invidious contrast between the religious and the secular—accounts for a great deal of the antipathy that many religious citizens discern in the work of liberal theorists. Fortunately, it is *not* embedded in Laborde’s work. She quite clearly affirms what so many liberal political theorists deny, viz., that there is no compelling reason for liberals to privilege secular reasons over religious reasons in public deliberation or political decision-making, and certainly not because religious reasons are epistemically or morally defective in ways that secular reasons are not.

That said, I believe that there is excellent reason for Laborde to relax even further her already expansive understanding of her favored justificatory constraint. More particularly, I believe that we can espy in Perry’s work powerful reason for Laborde to *disaggregate further*: not only do religious reasons generally exhibit crucially different moral, epistemic, and sociological properties so also do revelatory reasons possess importantly different moral, epistemic, and sociological properties. Perry provides excellent reason to deny

⁹⁸ LABORDE, *supra* note 7, at 150.

⁹⁹ *Id.* at 127.

¹⁰⁰ See, e.g., Christopher J. Eberle, *Irreconcilable Disagreement: Supreme Emergency, Respect, and Restraint*, 47 SOC. THEORY & PRAC. 457, 469 (2021).

that revelatory reasons cannot be assessed in light of common critical standards, ordinary standards of rationality, or the like. Even though Perry early on endorsed an understanding of the accessibility constraint that has precisely that application, and even though he has been persistently wary of those who appeal to revelatory reasons in political decision-making and public deliberation,¹⁰¹ he does in fact provide excellent reason to reject Laborde's *blanket prohibition* thereof. Doing so would eliminate what I take to be one component of Laborde's minimal secularism that assumes the kind of invidious construal of religion that so often mars the work of liberal political theorists and thus would enable Laborde better to achieve her aim of articulating a conception of liberalism that accords even-handed treatment to both the religious and the secular.

Let me return to the Michael Perry of *Under God?*. Whereas the first half of *Under God?* comprises his case in favor of an expansive inclusionism (as discussed above), its second half has a very different focus. It turns out that Perry's inclusionism has what we might find an unexpected result: his openness to ever greater religious contributions to political decision-making and public deliberation correlated with his ever more critical attention to the merits and demerits of specific religious arguments.¹⁰² To reject exclusionary constraints on religious reasons is by no means to accord justificatory weight to any and every particular religious reason. Much to the contrary, those who reject general, stringent restrictions on religious reasons may without the slightest incoherence lodge piecemeal, particularized objections to specific religious reasons. And so it is that the second half of *Under God?* is replete with admonitions to citizens and public officials to reflect critically and warily on all manner of particular religious reasons. It is as if Perry's generalized openness to religious contributions to public life impels him to assess the specific arguments that citizens and state officials employ. In short, if all are allowed, then each must be assessed. As a consequence, Perry subjects to critical assessment various arguments regarding abortion and homosexuality—two political issues with respect to which religious arguments have often played a prominent justificatory role. As Perry notes, to discuss the proper public role of religious reasons absent attention to political disputes about abortion and homosexuality is akin to staging *Hamlet* absent the prince.¹⁰³

¹⁰¹ See, e.g., PERRY, UNDER GOD?, *supra* note 4, at 55 (exploring the claim that Christian theology motivates Christians to be wary of relying on certain religious reasons in political decision-making).

¹⁰² PERRY, UNDER GOD?, *supra* note 4, at 55–123.

¹⁰³ *Id.* at 98.

Consider in this regard Perry's discussion of homosexuality.¹⁰⁴ Perry assesses various "secular" arguments in support of the claim that homosexual relations are in some important respect morally objectionable. He concludes that none are sound. He acknowledges, however, that there remain any number of religious arguments in support of that claim. Most particularly, he addresses those who believe that the Bible is an authoritative source of moral truth and who also believe that the Bible teaches that homosexual relations are morally improper.¹⁰⁵ The burden of Perry's argument, as I read it, is to persuade religious believers so committed both to reassess their convictions about homosexuality and to recognize that such reassessment comports well with their deepest theological commitments. That is, it belongs to the religious commitments of those who rely on biblical arguments to grant that their own interpretations of the Bible can be added by sin, corrupted by culture, or distorted by inordinate desire; so, they have reason internal to their own religious tradition to check their interpretations of the Bible in the light of *any* reliable source of evidence, including moral reasons known independently of the Bible.¹⁰⁶ Moreover, powerful intra- and extra-biblical reasons count against the claim that homosexual relations are morally objectionable. There are, therefore, powerful reasons for those who affirm biblical authority to rethink and revise their biblically grounded objections to homosexual relations, not least moral arguments articulated by those who deny that God exists, disavow the divine authorship of the Bible, or anything of the sort. So, Perry explains the following:

If contemporary human experience does indeed disclose that same-sex unions can be truly, deeply fulfilling for some persons, this constitutes a powerful reason, for Christians who believe that whatever the Bible teaches about human well-being is true, to doubt that the Bible really teaches that homosexual sexual conduct is always immoral.¹⁰⁷

In short, reliance on revelatory reasons to ground an assessment of homosexuality is not only consistent with but also comports nicely with a commitment to reassess those revelatory reasons in light of any reliable source of knowledge—in Perry's preferred case, the witness of contemporary human experience.

As I see it, Perry's reflections on biblical arguments regarding homosexuality exemplify in detail a broader truth with clear implications for Laborde's assessment of the justificatory force of revelatory reasons: it is not the case that

¹⁰⁴ See *id.* at 55–97.

¹⁰⁵ See *id.* at 55–85.

¹⁰⁶ See *id.* at 77.

¹⁰⁷ *Id.* at 73.

revelatory reasons *as such* are not amenable to critical assessment in light of commonly shared standards. That is a misimpression that Perry expertly deconstructs as he engages in his piecemeal, case-by-case assessment of biblically grounded arguments regarding homosexuality. He demonstrates in concrete detail that none of us need to stand mute, uncomprehending, or excluded from critical engagement in the face of biblically grounded arguments in favor of controversial political decisions.¹⁰⁸ Moreover, this is generally the case. If God reveals to me, in the privacy of my conscience, that there is an elephant in the room in which you and I are both seated, then you are more than capable of providing me with reason to conclude that something has gone awry with my apprehension of God in this case. This is just to say that my “private revelation” can be assessed in the light of ordinary criteria of rationality: *modus ponens* and everyday sense perception in this case.¹⁰⁹ If I think that the Bible reveals that the world was created less than ten thousand years ago, then that revelatory claim can be assessed in light of the best scientific knowledge now on offer.¹¹⁰ If I insist that God reveals that we are under an exceptionless duty not to intentionally target innocent human beings and therefore reject any state policy that targets innocents with military violence, even in a supreme emergency, then that argument assumes that there is some normatively critical distinction between intending evil and foreseeing evil—an assumption that is the subject of an enormous critical literature among diversely committed

¹⁰⁸ *Id.* at 55–85.

¹⁰⁹ There are many complexities here, which I addressed some time ago. *See generally, e.g.*, Christopher J. Eberle, *Liberalism and Mysticism*, 13 J.L. & RELIGION 189 (1998) (evaluating various epistemic restrictions on religious reasons in light of William Alston’s defense of the rationality of mystical perception); Christopher J. Eberle, *The Autonomy and Explanation of Mystical Perception*, 34 RELIGIOUS STUD. 299 (1998) (defending the claim that religious experience should not be assessed in light of exactly the same standards as sense-perceptual experience); Christopher J. Eberle, *God’s Nature and the Rationality of Religious Belief*, 14 FAITH & PHIL. 152 (1997) (defending the claim that the nature of God constrains the manner in which it is rational to assess belief about God). None of these complexities render appeal to divine revelation—whether experiential or as encoded in written texts—resistant to assessment in light of commonly shared normative standards. Indeed, it is a central part of my argument that they are amenable to such assessment. Were it not so, then they would not count as rationally formed. In this, I follow several epistemologists, including William Alston, Alvin Plantinga, and Nicholas Wolterstorff, among others. I discuss the relevance of their epistemological views to related questions most recently in Christopher J. Eberle, *Religion and Insularity: Brian Leiter on Accommodating Religion*, 51 SAN DIEGO L. REV. 977 (2014) [hereinafter Eberle, *Religion and Insularity*]. Most particularly, I show that there is no salvaging Brian Leiter’s assertion that “[r]eligious beliefs, in virtue of being based on ‘faith,’ are insulated from ordinary standards of evidence and rational justification, the ones we employ in both common sense and in science.” *Id.* at 988 (quoting BRIAN LEITER, WHY TOLERATE RELIGION? 34 (2013)).

¹¹⁰ Compare PERRY, UNDER GOD?, *supra* note 4, at 77 (citing Mark Noll and George Marsden’s argument that biblical interpretation about human origins requires reliance on ‘external’ epistemic resources), with LABORDE, *supra* note 7, at 278 n.20 (arguing that biblical claims about human origins are epistemically inaccessible).

theorists.¹¹¹ Indeed, *any* revelatory reason can be assessed in light of common critical standards: every revelatory reason presupposes that God exists, the claim that God exists is the subject of an extensive critical literature that relies on commonly held logical and epistemic principles, and so, every revelatory reason can be assessed by any human being, theist or otherwise, in accordance with ordinary standards of assessment.¹¹² And on and on. There just is no respect in which revelational reasons, considered merely as such, are not amenable to assessment by others in light of commonly shared standards of assessment.

Of course, there might well be some religious believers who refuse to assess their favored revelatory reasons in light of certain common standards. But that is a contingent fact about those individuals, not a property of their reasons. Again, there might be some revelatory reasons that are insulated from critical assessment by the ordinary canons of rational belief-governance.¹¹³ But I can see no reason to believe that this is invariably, or even ordinarily, the case. It is worth emphasizing that there is a robust scholarly literature that bears on precisely this question.¹¹⁴ And the burden of much of this literature is to show that revelatory reasons satisfy ordinary canons of rationality. For obvious reasons, those who take such reasons seriously want to show that revelatory reasons, which are a critical source for many of their most important theological convictions, not only can be but must be assessed in light of well-established

¹¹¹ This is a case I discuss in Eberle, *supra* note 100. I here refer to Elizabeth Anscombe's reflections on the relation between the doctrine of double effect and absolute moral prohibitions. *Id.* at 460.

¹¹² Consider just one subtheme in the literature—the so-called “evidential problem of evil.” It is clear the main participants in that discussion attempt to articulate shared epistemic criteria regarding how rational agents respond to their inability to discern God's reasons for allowing certain cases of horrendous evil. See Stephen John Wykstra, *Rowe's Noseeum Arguments from Evil*, in *THE EVIDENTIAL ARGUMENT FROM EVIL* 126, 126, 130 (Daniel Howard-Snyder ed., 1996); William L. Rowe, *The Problem of Evil and Some Varieties of Atheism*, in *THE EVIDENTIAL ARGUMENT FROM EVIL*, *supra*, at 1, 1; William L. Rowe, *The Evidential Argument from Evil: A Second Look*, in *THE EVIDENTIAL ARGUMENT FROM EVIL*, *supra*, at 262, 262.

¹¹³ The following indicates what a parody of religious argument this concern involves:

For example, . . . Perkin . . . might adhere to a strange theological system according to which God demands that His followers support a flat tax, and he might simply refuse to consider any alternatives God says it, that settles it, and Perkin therefore will not consider even the slightest progressivity. But I see no reason to believe that Perkin is characteristic of religious believers. . .

Eberle, *Religion and Insularity*, *supra* note 109, at 1013. Nor do I see any reason to believe that reliance on revelatory reasons must, or typically does, involve anything “akin to Perkin's fideistic commitment to confiscatory equality.” *Id.*; see also NIGEL BIGGAR, *BEHAVING IN PUBLIC: HOW TO DO CHRISTIAN ETHICS* 65–67 (2011) (arguing on theological grounds that there ought be no *sheer* appeals to divine authority in public conversations including a diversely committed audience).

¹¹⁴ See, e.g., NICHOLAS WOLTERSTORFF, *DIVINE DISCOURSE: PHILOSOPHICAL REFLECTIONS ON THE CLAIM THAT GOD SPEAKS* 206–07 (1995) (arguing that interpreting Biblical texts requires us to apply basic tests of consistency).

philosophical truths, empirical claims about human history, moral reasons about human sexuality, and the like. Now it might be that their arguments are entirely wrongheaded. But this would at the very least require some defensible conception of rational belief-governance, and some decisive argument that revelatory reasons cannot be rationally governed in the required way. I do not believe that Laborde even attempts to provide that argument.

There is much more to be said by way of assessing Laborde's appeal to accessibility as a basis for denying justificatory status to revelatory reasons and certainly more to be said about her broader effort to identify and defend the minimal secular core of liberal democracy. Although I intend to say more in due course, I cannot do so here. So, let me conclude this brief discussion by noting that the objection that I have articulated to Laborde's views provides the basis for a friendly amendment. How so? Laborde follows many other liberal theorists in denying that liberalism trades on invidious stereotypes about religion: her understanding of the proper political role of religion does "not rely on anti-religious prejudice nor on the view that religious belief is irrational."¹¹⁵ There is excellent reason for this position: restraints on religious reasons are supposed to enable a diversely committed population to "get along" with one another, and they cannot serve this purpose if they depend on the claim that the most important convictions of the religious components of the population are a tissue of irrationality. But Laborde's articulation of her accessibility constraint seems to have something like that implication. And Perry's objection provides a way for Laborde to revise her conception of liberalism so as to avoid it. How so?

Too bluntly put, Laborde's claim that revelatory reasons are inaccessible implies that all manner of religious convictions—formed by several billions of religious believers the world over—are irrational. Although this implication does not apply to all religious beliefs, such as religious claims grounded in "natural theology," it certainly applies to those grounded on some interpretation of the Bible, Koran, or Torah. Why does Laborde's conception of public accessibility have that implication? If the reasons that I derive from the Bible cannot be assessed "by reference to ordinary criteria of rationality," as Laborde avers, then in virtue of what might they count as rationally formed?¹¹⁶ On what coherent and otherwise defensible conception of rational belief-governance could it be the case that reasons that are not assessable in light of common epistemic standards, or the ordinary criteria of rationality—even so—count as rationally formed? The claim that a revelatory reason is not assessable by

¹¹⁵ Laborde, *supra* note 97, at 576–77.

¹¹⁶ *Id.* at 585.

reference to ordinary criteria of rationality is mysterious enough; there is an indefinitely large number of revelatory reasons that seem clearly to be assessable in light of commonly shared standards—consistency with obviously correct moral truths, coherence with well-established and empirically verified facts about the human condition, compliance with the canons of formal and informal inference, compatibility with core liberal norms, and the like. But to that mystery, we must add the further mystery that a reason that is not assessable by reference to the ordinary criteria of rationality might nevertheless be rationally formed. This seems incredible.

Of course, Laborde could bite the bullet and deny that revelatory reasons are rationally formed. In so doing, she would incorporate into her conception of minimal liberalism a most controversial claim about the epistemic status of a whole class of very important religious reasons—one that applies to revelatory reasons, irrespective of whether any state official decides to rely on those reasons in public deliberation or decision-making. It is a claim that many religious believers will find utterly unacceptable. It will, reasonably, verify their suspicion that liberalism does harbor invidious assessments of religious conviction. I cannot see that this serves the overall aims of Laborde's minimal secularism. The best course, as I see it, is to follow the position that Perry so elegantly developed in *Under God?*: replace all general, stringent, exclusionary restraints on religious reasons with substantive restrictions (to dignity and the rights grounded thereon) and then engage in a case-by-case analysis of particular religious reasons, whether revelatory or otherwise.¹¹⁷

A CRITICAL CONCLUSION: PERRY'S EXCLUSIVIST INCLUSIONISM

I will conclude by assessing what I take to be Perry's most recent understanding of the justificatory role of religious reasons. In *The Political Morality of Liberal Democracy*, he argues that no liberal democracy may enact any coercive or discriminatory law for which there exists a religious, but no plausible secular, rationale.¹¹⁸ This is a somewhat surprising destination, given

¹¹⁷ See generally PERRY, *UNDER GOD?*, *supra* note 4 (arguing in favor of a case-by-case assessment of particular religious contributions to public deliberation and decision-making).

¹¹⁸ As I read it, Perry's position in *A Global Political Morality* reinforces but does not differ from, or develop further, his understanding of the moral constraints on the justificatory role of religious reasons as articulated in *The Political Morality of Liberal Democracy*. Compare PERRY, *GLOBAL POLITICAL MORALITY*, *supra* note 6, at 63–87 (arguing that political legitimacy in a liberal democracy precludes government from banning conduct on the basis of a sectarian belief that such conduct is immoral), with PERRY, *POLITICAL MORALITY*, *supra* note 1, at 100–99 (arguing that the morality of liberal democracy precludes state laws for which the only plausible rationale is religious). I should note again that I am interested only in what the morality of liberal democracy implies for the justificatory role of religious reasons, not the more particular commitments

that it targets religious reasons *as such*, and so follows a very different trajectory than Perry's earlier work. That said, this justificatory constraint is, plausibly, one that falls near the inclusionist end of the spectrum of possibilities. How can that be? The requirement that a law must have a plausible secular rationale will almost always be satisfied, at least for any law that has a realistic chance of being enacted in an actual liberal democracy, such as the United States: for any law that citizens or state officials might actually be willing to support on religious grounds, there will almost invariably be some plausible secular rationale. Perry grants that it might have restrictive implications for laws that bear on sexual morality, such as laws having to do with same-sex marriage.¹¹⁹ Other than that, the limits it imposes on actual citizens or state officials are nugatory.¹²⁰ This seems to me a defensible view, although that depends on what we mean by a "plausible" secular reason and whether we remain satisfied with that plausibility qualification.¹²¹ If we replace it with some more stringent variant (for example, the more demanding "persuasive secular corroboration" constraint for which Perry argued, on very different grounds, in *Religion in Politics*), then the aforementioned justificatory constraint will be that much more exclusionary.¹²² However that might be, the issue remains: Why should we accept a constraint that requires state laws to be justified by plausible secular reasons, even should that constraint lack practical effect?

In *The Political Morality of Liberal Democracy*, Perry extends a line of argument which he employed to good effect in *Under God?*. As we saw, Perry specifies two moral claims that constitute the normative core of a liberal democracy, viz., that each human being has inherent dignity and thereby enjoys a certain spread of basic rights, not least a right to religious freedom. Perry denies that the political morality of liberal democracy directly implies exclusionist constraints on religious reasons.¹²³ So, for example, the claim that each human being has inherent dignity by itself implies only a very minimal, moral limitation on religious reasons. Moreover, there is no indirect route from that dignity claim, via some version of the familiar argument from respect, to any more robust constraint on religious reasons. Perry concludes otherwise in

of some liberal democracies, such as the non-establishment norm.

¹¹⁹ See PERRY, POLITICAL MORALITY, *supra* note 1, at 117.

¹²⁰ See *id.* at 118.

¹²¹ A *plausible* rationale, I take it, is roughly one "that rational, well-informed, and thoughtful fellow citizens could affirm." *Id.* at 117.

¹²² It is unclear to me why Perry adopts the "plausible" rather than the more demanding "persuasive" construction for which he argues in Perry, RELIGION IN POLITICS, *supra* note 3, at 100–01.

¹²³ PERRY, UNDER GOD?, *supra* note 4, at 46.

The Political Morality of Liberal Democracy.¹²⁴ If he is correct, then there is a rather direct route from the core claims of liberal democracy to a justificatory constraint that targets religious reasons *as such*: the right to religious freedom is the “sine qua non” of a liberal democracy and, properly understood, that right precludes a liberal democracy from enacting any coercive or discriminatory law that depends for its justification on a religious reason.¹²⁵ Why does Perry think that?

The right to religious freedom includes “not only freedom *to* practice one’s own religion . . . but also freedom *not* to practice someone else’s religion—or indeed, any religion at all.”¹²⁶ That is, the right to religious freedom includes, at its paradigmatic core, a right to be free of religious impositions. But a law for which there exists no plausible secular rationale, one that cannot be justified absent some religious rationale, *is* a religious imposition. It follows, then, that the right to religious freedom precludes a liberal polity from enacting any coercive or discriminatory policy for which there exists no plausible secular rationale. So, Perry explains the following:

For a liberal democracy—*any* liberal democracy, including one not constitutionally committed to “no ‘establishment’ of religion”—to enact, maintain, or enforce a law that is bereft of a plausible secular basis contravenes the right to religious freedom: Such a law unacceptably imposes religion on those the law coerces or against whom it discriminates.¹²⁷

Although Perry does not explicitly say so, it is very plausible to suppose that no citizen or state official may support a state policy that violates the right to religious freedom. And so, I take it, Perry is committed to the following principle of restraint: no citizen or state official may support any state policy for which there exists no plausible *secular* rationale—not even if she rationally believes there to be, and not even if in fact there exists, a sound *religious* rationale in favor of that policy. This is, I have to say, a breathtakingly direct route to Perry’s final destination! What should we make of it? Should we take the short route to religious restraint?

Let me begin by clarifying the concept of a religious imposition. Consider Perry’s claim that there are certain interests that any liberal polity may legitimately protect or pursue: “Although no exhaustive list of such interests is

¹²⁴ PERRY, POLITICAL MORALITY, *supra* note 1 at 100–97.

¹²⁵ *Id.* at 65.

¹²⁶ *Id.* at 119.

¹²⁷ *Id.* at 154–55.

possible, a ban that protects the lives, health, safety, liberty, property, or socioeconomic well-being of the citizenry undeniably serves a legitimate governmental interest, as does a ban on conduct that causes environmental degradation or that abuses animals.”¹²⁸ There are also “certain imaginable governmental interests that cannot count as legitimate under the right to religious freedom,” most particularly, protecting religious truth and “protecting the religious unity of society.”¹²⁹ We might think that a state policy that is exclusively directed at pursuing or promoting an undeniably legitimate governmental interest would not count as a religious imposition. Correlatively, we might think that a state policy that does promote or protect either religious truth or the religious unity of society would count as a religious imposition. In both cases, it is the interests promoted or protected by a given policy, not the reasons for adopting a policy, that determine whether it counts as a religious imposition.

This is not Perry’s view. A policy that pursues an undeniably legitimate interest, but for which there exists no plausible secular rationale, *is* a religious imposition. Otherwise put, the fact that a state policy depends for its justification on a religious rationale makes it the case that that policy is a religious imposition even if it furthers an undeniably legitimate governmental interest. Perry explains, “A coercive and/or discriminatory law for which the only rationale, other than an implausible secular rationale, is religious imposes religion on those the law coerces or against whom it discriminates.”¹³⁰ It seems, then, for Perry, the category of a religious imposition covers two importantly different kinds of law: (1) a coercive law that serves an undeniably legitimate governmental interest yet that depends for its justification on a religious rationale, and (2) a coercive law that serves an illegitimate religious interest such as the protection of religious truth or the religious unity of society.¹³¹ For Perry, both count as religious impositions: the first by virtue of its justifying rationale and the second by virtue of the religious interests it promotes. And both are precluded by the right to religious freedom.¹³²

Perry’s capacious understanding of what makes for a religious imposition is crucial to his religious freedom argument in favor of the claim that citizens and state officials ought not support coercive or discriminatory policies bereft of a plausible secular rationale. But there is reason for skepticism. I grant that any

¹²⁸ *Id.* at 75.

¹²⁹ *Id.* at 75, 78 (emphasis omitted).

¹³⁰ *Id.* at 119.

¹³¹ It would do so even if there was a plausible secular rationale in its favor, I assume.

¹³² *Id.* at 117–19.

liberal state ought to protect the right to religious freedom, properly and robustly understood. I grant as well that the right to religious freedom, properly understood, precludes *religious impositions*—where a religious imposition is a coercive or discriminatory law that promotes or protects the undeniably illegitimate religious interests that Perry specifies, viz., religious truth and the religious unity of society. As I see it, the right to religious freedom precludes a law the purpose of which is to promote or protect religious truth, whatever the reason for doing so, religious or secular (and, of course, there are many secular reasons for the State to do so). But I doubt that the right to religious freedom, properly understood, precludes *religiously justified impositions*—where a religiously justified imposition is a coercive law that promotes or protects undeniably legitimate governmental interests but depends for its justification on a religious rationale. In short, I doubt that we should accept Perry’s claim that a religiously justified imposition is an imposition of the sort that is prohibited by the right to religious freedom. To the contrary, and very roughly, a coercive or discriminatory state policy may be grounded on any rationale—religious or secular—so long as it serves a legitimate state interest and is compatible with a genuinely liberal commitment to human equality and a properly robust understanding of the rights grounded thereupon.

How might we resolve this disagreement? We cannot merely have recourse to the meaning of “religious” and “imposition.” No analysis of ordinary language will resolve the question before us, as we are always free to alter the meaning of the terms we employ as suits our moral and pragmatic imperatives. What we need is some normative argument—some moral rationale in support of claim that we *should* understand the right to religious freedom to preclude coercive or discriminatory laws that lack a plausible secular rationale. As is often the case, articulating why we should affirm a right (in this case, the right to religious freedom) provides us with a principled way to determine which disputed cases fall under that right and which do not.

Perry offers us such a rationale. In fact, he offers a two-pronged rationale for his favored understanding of the right to religious freedom. First, we have excellent reason to deny that political majorities and political authorities are competent to assess religious claims on matters that fall outside of their domain of legitimate authority.¹³³ As I noted above, Perry claims that “[c]ertain governmental interests are undeniably legitimate, and government must be legally free to serve such interests—for example, protecting the lives, health,

¹³³ *Id.* at 77–78.

and safety of the citizenry.”¹³⁴ With respect to matters that engage its legitimate interests, government must act as an arbiter of religious truth: if in pursuit of undeniably legitimate government interests, the State “implicitly reject[s] the position of some religions,” then “in that limited sense,” the State does act as “an arbiter of religious truth.”¹³⁵ With respect to matters that fall outside the scope of the State’s legitimate interests, government is utterly incompetent to judge. We know from our observation of the historical record the State is not competent to judge which religion is true or which religious practices are salvific, and so a political majority ought to refrain from employing its coercive power to impose religious uniformity or salvific practice.

To this first empirical argument in favor of the right to religious freedom, Perry adds a second, equally empirical argument: “[T]he coercive imposition of religious uniformity—if not necessary to serve some other, important governmental interest, such as protecting the lives, health, or safety of the citizenry—is more likely to corrode than to nurture the strength of a democracy,” particularly a pluralistic liberal democracy like the United States.¹³⁶ We know from historical experience that when governments employ their coercive power to shut down churches, compel assent to theological doctrines, humiliate heretics, and on and on, they engender very troubling social and political dysfunctions. Political majorities should therefore refrain from doing so by respecting the right of individuals to practice their faith absent any unnecessary interference.

Perry offers us here a plausible “ecumenical” argument in favor of the right to religious freedom: “[A]ll citizens of liberal democracy—believers no less than nonbelievers—have the same basic reason to embrace the right to religious freedom.”¹³⁷ Even so, I doubt that Perry’s rationale achieves the target result. It provides compelling reason to prohibit religious impositions—coercive or discriminatory measures that protect religious truth or religious unity. But it provides no reason to prohibit religiously justified impositions—coercive or discriminatory measures that serve legitimate state interests for which there exist a religious but no plausible secular rationale. Two points seems particularly worth making here.

¹³⁴ *Id.* at 77.

¹³⁵ *Id.*

¹³⁶ *Id.* at 79.

¹³⁷ *Id.*

First, Perry is careful not to claim that the political authorities are incompetent to judge all religious matters.¹³⁸ And this is a good thing: political authorities must assume that they have the competence to judge religious matters insofar as they bear on some legitimate governmental interest. They cannot avoid doing so. So, for example, every liberal polity must protect its citizenry from aggression by enemies; doing so requires that it form, train, and deploy a military. Forming, training, and deploying its military against enemies is incompatible with the claim that God absolutely forbids military violence, and so a liberal polity must assume not only that this kind of religiously grounded pacifism is false but also that the government is competent to make that judgment.¹³⁹ But then Perry's competence rationale in favor of the right to religious freedom provides insufficient reason to prohibit the state from enacting *any* law for which there exists no plausible secular rationale: he neither claims nor shows that political authorities lack the competence to assess religious claims that bear on undeniably legitimate governmental interests. And if political authorities are competent to assess religious reasons that bear on legitimate state interests, then there seems to be no compelling reason to deny that the State may enact a religiously justified imposition in the sense earlier specified—a coercive law that promotes or protects undeniably legitimate governmental interests but that depends for its justification on a religious rationale.

The second reason that Perry offers in favor of the right to religious freedom is the historical one: that the coercive enforcement of religious uniformity has shown itself to be utterly disastrous: we should affirm the right to religious freedom as a prophylactic for societal dysfunction.¹⁴⁰ But it is unclear that this argument provides us with a sufficient reason to understand that right in such a way as to preclude religiously justified impositions. Plausibly, it is the imposition of religious orthodoxy itself, irrespective of the reasons for that imposition, that engenders societal dysfunction. Similarly, I doubt that religiously justified laws that pursue undeniably legitimate state interests cause societal dysfunction. As Perry argues in *Under God?*, it is not the case that reliance on religious argument in public debate or political decision-making is in general more divisive or controversial than reliance on all manner of secular reasons.¹⁴¹ And so, as long as a coercive policy genuinely bears on undeniably

¹³⁸ *Id.* at 77.

¹³⁹ See Christopher J. Eberle, *Religion, Pacifism, and the Doctrine of Restraint*, 34 J. RELIGIOUS ETHICS 203, 207 (2006).

¹⁴⁰ PERRY, POLITICAL MORALITY, *supra* note 1, at 79.

¹⁴¹ PERRY, UNDER GOD?, *supra* note 4, at 48–49.

legitimate governmental interests, it is doubtful that its lacking a plausible secular rationale is likely to engender political strife or societal dysfunction. In short, we should affirm the right to religious freedom; we should do so as a prophylactic for societal strife; we thereby have reason to understand the right to religious freedom to preclude religious impositions, but we do not thereby have reason to understand the right to religious freedom as a ban on religiously grounded impositions.

Neither of Perry's two arguments in favor of the right to religious freedom provide sufficient reason for us to construe it as banning religiously grounded impositions. There is also independent reason to be skeptical of such a view. Let it be granted that the State may enact only those laws that fall within some jurisdictional space—some secular space, having to do with, as Perry says, “the lives, health, or safety of the citizenry.”¹⁴² Let it be granted, that is, that the State may, and even must, legislate in this area. Let it be granted as well that the State may not legislate in areas outside of its legitimate jurisdiction. So let us consider the moral status only of those laws that fall within the legitimate jurisdiction of a liberal democratic state. On Perry's conception of the right to religious freedom, should some law be enacted that directly bears on the lives, health, or safety of the citizenry and that also depends for its justification on some religious rationale, then that law violates the right to religious freedom. On this understanding, any law that depends for its justification on a religious rationale is discredited—whatever its content, whatever the epistemic bona fides of that rationale, however popular it happens to be, however plausible it seems, and irrespective of its soundness.

Matters are very different with respect to laws that enjoy a plausible secular rationale. Suppose that some coercive law falls within the legitimate jurisdictional space of a liberal democratic state. Suppose that such a law enjoys a plausible secular rationale—some plausible utilitarian or Kantian rationale. Suppose that such a law lacks any plausible religious rationale. Is there anything thereby problematic with respect to such a law? Does the fact that it enjoys a plausible secular, but no plausible religious, rationale discredit it in any way? Not as such. Of course, a plausible secular rationale can be defective in various ways. But not by virtue of its having only a plausible secular and not a plausible religious rationale; not, say, by virtue of its having only a plausible utilitarian but no plausible Christian, Islamic, Jewish, Hindu, or Buddhist rationale. Here, we see an asymmetry of justificatory force: the absence of any plausible secular

¹⁴² PERRY, POLITICAL MORALITY, *supra* note 1, at 79.

rationale discredits, whereas the absence of any plausible religious rationale does not discredit.

That differential treatment between the secular and the religious requires justification: there must be some reason to discriminate between religious and secular reasons, such that the latter enjoy a justificatory potential that none of the former possess. It is hard to imagine what that justification would be.¹⁴³ Here it seems to me that Laborde's disaggregative conception of the religious is most helpful. There is too much internal differentiation as among distinct kinds of religious and secular reasons to single religious reasons out for differential treatment of the sort implicit in Perry's most recent justificatory constraint. We might well object to the liberal bona fides of certain religious reason, such that some particular religious reason cannot serve as a basis for any coercive measure—say a reason that denies, implicitly or explicitly, the equal and inherent worth of all human beings. We might have particularistic objections to select religious reasons, just as we might have particularistic objections to certain secular reasons. This is an assessment of the justificatory role of religious reasons that Perry powerfully demonstrates in his earlier work, particularly *Under God?*. It is an assessment of religious reasons that nicely accords with a commitment to the equal treatment of religious and secular reasons—a principle of parity for which Perry also powerfully argued in *Under God?*. It is an assessment of religious reasons that seems incompatible with his current views on the matter. Which is just to say that there is reason for Perry to continue in his quest for a genuinely ecumenical politics—in this case, by retracing his steps to an earlier destination.¹⁴⁴

¹⁴³ I specify some of the difficulties by reflecting on the morality of war in Eberle, *supra* note 100, at 472, 482.

¹⁴⁴ Despite my disagreement with the *Emory Law Journal's* decision to censor Larry Alexander's contribution to this Festschrift, I want to express my thanks to them for their considerable effort to improve this Essay. It took quite the scrubbing and is far better for their efforts. I should also note that nothing I assert in this Essay reflects any official position adopted by the U.S. Naval Academy, the Department of Defense, or any other federal agency.