

The Construction Of The Secular In Rawls And Hegel: Religion, Philosophy And Public Reason

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It is nothing but a modern folly to try to alter a corrupt moral organization and code of laws without changing the religion, – to make a revolution without having made a reformation, to suppose that a political constitution opposed to the old religion could live in peace and harmony with it and its sanctities, and that stability could be procured for the laws by external guarantees.¹ – Hegel

John Rawls' *Political Liberalism* is among the most profound contemporary reflections on the relation between the secular and the religious or metaphysical, on the separation of church and state.² Rawls attempts to draw citizens of diverse religious, moral and philosophical beliefs, what he calls comprehensive doctrines, into a consensus on a political conception of the basic constitution of liberal democracy and its principles of justice. What is challenging in the Rawlsian view is that it sees this consensus as itself resolutely non-comprehensive, comprised of publicly acceptable secular ideas. After its own lights the Rawlsian position tries to draw together the secular and the non-secular and to demonstrate the inclusive nature of the modern democratic state.

In reading *Political Liberalism* one is struck that Rawls is in certain respects guided by Hegel in his account of the genesis of the modern state though at the same time he sees himself to be answering central Hegelian criticisms of enlightenment liberalism, devoting a section to his "Reply to Hegel's Criticisms".³ It is instructive that the leading political philosopher of the twentieth century finds it necessary to respond to the Hegelian view and it is of interest to

1. G.W.F. Hegel, *The Philosophy of Mind*, A.V. Miller (Tr.), (Oxford: Clarendon Press, 1973) § 551, pp. 287-88.

2. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993). While many moral and philosophical views are themselves secular, this essay is focused on a subset of these views, that is, those which see human existence as fundamentally spiritual. What is most striking in the Rawlsian account is his attempt to secure a consensus on a secular conception among citizens with non-secular beliefs.

3. Cf. Rawls 1993: for Hegel on the modern state, p. xxiv; for reply to Hegel, pp. 285-288. Cf. also my response to Rawls in "Hegel's Political Ideal: Civil Society, History and Sittlichkeit," (Animus 2000, <<http://www.swgc.mun.ca/animus/2000vol15/peddle5.htm>>).

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investigate the political thought of each thinker in the light of the other.

Section one of this essay, 'Secularity and Public Reason', discusses the role the concept of public reason has in the Rawlsian construction of a secular political realm.

Section two, 'Excluding the Non-Secular: Public Reason and Abortion', explores the limitations of Rawls' account of the relation of secular and non-secular, by showing that even the sympathetic expansion of his view by Amy Gutmann and Dennis Thompson fails adequately to include certain reasonable moral, religious or philosophical views, as exemplified in their consideration of the abortion debate.

Section three, 'Concluding Hegelian Post-Script', considers Hegel's account of the relationship between church and state as a more philosophical account of contemporary secularity than obtains on the Rawlsian view. Both Rawls and Hegel argue that modern secularity cannot be adequately conceptualized solely from a religious standpoint and agree that the modern state emerged out of Reformation Christianity. Their accounts of precisely how this development occurred are substantially distinct however.

On the central issue of the relation between religion, philosophy and the state, the present argument indicates, following Hegel, that liberal secularity presupposes a far greater dependence on comprehensive doctrines, specifically the Christian religion, than Rawls allows. The difficulty with the Rawlsian view is that it is based on a merely subjective view of history and philosophy. Rawls assumes a too immediate liberation of individuals from the historical development they presuppose. It is insufficient to assert the subjective allegiances of individuals to a political conception of justice. In the United States, for example, the possibility of such allegiance assumes the predominance of the Christian religion and its own historical movement. The relationship between the individual and religious or philosophical doctrine has its locus not simply in conscience and will but in the objective history of institutional life; such a relationship is made intelligible from a Hegelian perspective.⁴

The Hegelian account of secularity clarifies the basis of pluralism in liberal democracies and goes beyond the Rawlsian perspective in showing how individuals from varying religions might gain allegiance to liberal values, precisely because these values express in certain respects the principles implicit in all religions. The Hegelian reply to Rawls shows that pluralism is in fact grounded in a deeper connection between political life and comprehensive doctrine than Rawls is able to suggest.

1. Secularity And Public Reason

Rawls recognizes in the contemporary liberal state the emergence of a political life that

4. Here the term 'objective' does not represent a reified facticity which stands over and against subjectivity but rather the determinate historical and institutional correlate of the inner lives of individuals.

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has been liberated in certain ways from its original relation to the Christian religion. It is a matter of history that American liberalism has deep roots in Puritanism and in the Enlightenment Christianity to which Puritanism gave way. In its Enlightened form, best represented philosophically by John Locke, there emerged a political toleration of religions from the standpoint of the free conscience of the individual. Rawls portrays the history of the United States as a process whereby individuals gained allegiance to the political realm and its underlying constitution and as a result tempered the dogmatic and exclusivist tendencies in the way they related religion to the state. Rawls' *Political Liberalism* is, in a certain light, a sustained reflection on the separation of Church and state in the U.S. constitution. This separation gives constitutional recognition to the ethical pluralism of American life. Such a division gives expression immediately to two distinctive ethical arenas, religious association and government. And following this division there emerges, from the political standpoint, a plurality of acceptable religions.

Rawls conceives this pluralism and that of moral and philosophical views not simply as a brute fact but rather as the offshoot of the free rationality of individuals.⁵ For Rawls, the independent use of reason will give rise to differences of opinions which express moral individuality and which can be overcome only through oppression.⁶ He contends therefore that cooperative persons see that there are limits on what can be reasonably justified to others and thus they endorse some form of liberty of conscience and freedom of thought.⁷ Moreover, he contends that no citizen when considered as free and equal can grant the political authority to another citizen or association to decide constitutional essentials on the basis of a comprehensive doctrine and he concludes that such authority is without grounds in public reason.⁸ In this light he focuses not simply on the fact of disagreement but on its underlying morality. From this legitimate and permanent pluralism of comprehensive views, he draws the conclusion that such views are too diverse to serve as the basis of "lasting and reasoned political agreement".⁹

Rawls argues that the fundamental tensions which derive from cultural pluralism in liberal democracy are exacerbated by a longstanding conflict in liberal theory as to how the basic rights and freedoms of citizens may best express the values of liberty and equality. He contrasts the Lockean tradition which emphasizes "freedom of thought and conscience, certain basic rights of person and of property and the rule of law" with the Rousseauian tradition which emphasizes "the equal political liberties and the values of public life".¹⁰ In the public culture of the United States, this difference is found in the dichotomous approaches of liberalism and republicanism.

5. Rawls 1993: 58.

6. Rawls states: "we are not so much adjusting that conception to brute forces of the world but to the inevitable outcome of free reason" (Rawls 1993: 37). He argues that conflicts among reasonable persons inevitably arise because of "the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life" (Rawls 1993: 56).

7. Rawls 1993: 61, 162.

8. Rawls 1993: 226.

9. Rawls 1993: 220.

10. Rawls 1993: 4-5.

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Liberals traditionally assume the rights of the individual as prior to political life and conceive the task of politics as the aggregation of the desires of individuals within a system that respects this prior right. By contrast, republicans, while likewise emphasizing individual freedom, find in political participation the correction and completion of individual freedom, through the inculcation of civic virtues. Thus, on Rawls's view, not only is the background culture of the United States characterized by conflict among various comprehensive standpoints, but also the public political culture is "of two minds at a very deep level".¹¹

Still these tensions have not rendered American liberal democracy inherently unstable because even a pluralistic democracy presupposes certain common values and procedures. Rawls thus draws his basic conceptions from: "Society's main institutions and their accepted forms of interpretation [which he sees] as a fund of shared ideas and principles."¹² *Political Liberalism* then is a reconstruction of these basic ideas of citizenship and a well-ordered society. Rawls constructs a justification of a secular political realm in an attempt to overcome what he sees as the impasse in liberal democratic theory.¹³ However, because on Rawls' view no moral, metaphysical, or religious viewpoint can in principle hope to become a commonly agreed upon basis for deriving principles of justice, he must ground his account of justice in a non-comprehensive conception, that is in a *political* conception. But what precisely does he mean by political here?

According to Rawls, a political conception of justice will focus on political, social and economic institutions: "Society as a fair system of cooperation over time from one generation to the next."¹⁴ Central to this conception will be two other fundamental ideas: "the idea of citizens as free and equal persons" and the "idea of a well-ordered society effectively regulated by a political conception of justice."¹⁵ Essentially these fundamental ideas express the core tenets of a left-leaning liberalism focused on ensuring that the constitution conceived as basic structure does not systematically prevent the fair distribution of social goods.

Also the political conception must be defined in terms of its relation to comprehensive doctrines. He represents the political conception as a distinctively secular standpoint, what he calls a 'free-standing view'. He states: "a political conception tries to elaborate a reasonable conception for the basic structure alone and involves, so far as possible, no wider commitment to any other doctrine".¹⁶ The political conception will thus be liberated from reliance on traditional religious, metaphysical or moral views. For Rawls: "This means that it can be presented without saying, or knowing, or hazarding a conjecture about, what such doctrines it may belong to, or be supported by."¹⁷

11. Rawls 1993: 9.

12. Rawls 1993: 14.

13. Rawls 1993: 300.

14. Rawls 1993: 14.

15. Rawls 1993: 14.

16. Rawls 1993: 13.

17. Rawls 1993: 13.

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On the Rawlsian view, then, political secularity is concerned with the individual as citizen and as such the individual is viewed as having an independence from whatever religious, metaphysical or moral beliefs he might hold. For Rawls, citizens are able to form, pursue and revise their conceptions of the good and so long as such conceptions are not unreasonable, the state has no direct interest in their content. Religious conversion, for example, has no political relevance: “When citizens convert from one religion to another, or no longer affirm an established religious faith, they do not cease to be, for questions of political justice, the same person they were before. There is no loss of what we may call their public or institutional identity, or their identity as a matter of basic law.”¹⁸ However, while Rawls’ political conception of justice clearly distinguishes between the secular and the non-secular, this distinction is not to be conceived as a mere opposition. He argues, for example, that his view does not criticize: “religious, philosophical or metaphysical accounts of the truth of moral judgments and their validity.”¹⁹ Further he conceives the political conception as: “a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it.”²⁰

Rawls’s conception of a secular public political realm, then, has a twofold relation to traditional religious and metaphysical views. On the one hand, he finds the source of secularity in the general post-metaphysical ethos characteristic of the era from the late nineteenth century to the present. It is in this light that Rawls will assert that: “political liberalism applies the principle of toleration to philosophy itself.”²¹ This toleration is based on an emergent public sphere which has liberated itself from the conflicts among moral, religious and philosophical standpoints. He wishes to liberate political philosophy itself from such divisions and develops a uniquely liberal post-modern conception of the secular; post-modern because it rests on neither empiricist, rationalist, nor idealist accounts of knowledge and human nature. Rather, it is constructivist and pragmatic, eschewing metaphysical debate for political consensus. Thus the sort of reasoning appropriate to political discourse (what Rawls calls *public reason*) will be explicitly secular, drawing from common sense judgments and the uncontroversial conclusions of the natural and social sciences.²² One might say, however, that Rawlsian public reason is more judicial than political. According to Rawls: “Public reason is the sole reason the court exercises.”²³ Further, for Rawls, the Court is the institutional exemplar of public reason.²⁴ While he does allow that

18. Rawls 1993: 30.

19. Rawls 1993: 127.

20. Rawls 1993: 12.

21. Rawls 1993: 10.

22. Hence, for Rawls, the values of public reason are as follows: (1) Appropriate use of fundamental concepts of judgment, inference, and evidence; (2) Reasonableness and fair-mindedness (as shown in (3) below); (3) Adherence to the criteria, procedures and generally accepted beliefs of commonsense knowledge; (4) Acceptance of non-controversial methods and conclusions of science (Rawls 1993: 66-67,139,162,224).

23. Rawls 1993: 235.

24. Rawls 1993: 235-240. One example he provides concerns: “public financing of elections and restraints on private funding that achieves the fair value of political liberties, or at least significantly move the political process in that direction” (Rawls 1993: 235n.22). Also he states: “while the Court is special in this respect, the other branches of government can certainly, if they would do so, be forums of principle along with it in debating constitutional

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other institutions may exemplify public reason, he nevertheless holds that non-judicial debates are to be measured in judicial terms. He states: “To check whether we are following public reason we might ask: how would our argument strike us presented in the form of a Supreme Court opinion?”²⁵

But on the other hand and by contrast with the post-metaphysical tenor of his thought, he pays homage to the lingering hangover from the religious and philosophical tradition of the west and insists that his conception of the secular not oppose the remnants of such a tradition in the beliefs of liberal individuals. So, at the same time as he emphasizes distinctively secular characteristics of public reason, he does not entirely exclude non-secular or comprehensive doctrines from the public sphere. Whereas, most of *Political Liberalism* (up to VI,7) relies on an exclusive view of public reason which disallows all reference to comprehensive doctrines, Rawls introduces an inclusive view at VI,8 which allows reference to comprehensive doctrines when they support public reason. Further in response to criticism, Rawls has expanded the notion of public reason to be even more inclusive of comprehensive doctrines. Whereas in the first edition of *Political Liberalism* he permitted appeal to comprehensive moral reasons in public deliberation only where there is reason to believe that it would help make society more just, in the paperback edition of the book, he explicitly revises this view. There he argues that reasonable comprehensive doctrines may be introduced in public reason at any time to support a law or policy, provided that in due course reasons which may be justifiable to all may be presented to support the same law or policy.²⁶

Significantly Rawls also contends that the allegiance which many citizens have to the political realm will be drawn in part from their moral, metaphysical and religious views, that is, from non-secular sources. He argues that only an *overlapping consensus* on a political conception of justice, can justify the basic structure and public policies to all citizens.²⁷ In an overlapping consensus: “all those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides.”²⁸ He hopes to make it possible for: “all to accept the political conception as true or reasonable from the standpoint of their own comprehensive view whatever it may be.”²⁹ Because the political conception of justice is not derived in any determinate way from any single comprehensive conception, it is available to all; it “may be shared by all citizens as a basis of a reasoned, informed and willing political agreement. It expresses their shared and public reason.”³⁰

questions” (Rawls 1993: 240).

25. Rawls 1993: 254.

26. John Rawls, *Political Liberalism* (Paperback Edition), Int. Sect. 5 and his reply to Habermas, same edition, pp. 372-434.

27. Rawls 1993: 224.

28. Rawls 1993: 147.

29. Rawls 1993: 150.

30. Rawls 1993: 9.

2. Excluding The Non-Secular: Public Reason And Abortion

Rawls's theory envisages a secular political order constructed in part by the avoidance of intractable moral, metaphysical and religious disagreements. Its principles are those of a pragmatic liberal humanism which sees itself as liberated from traditional philosophical disputes much as the New World might conceive itself as beyond the Old World and its religious wars. There is in his view an attempt to develop a conception of political life which can articulate the tolerant stability which seems, at least in part, the product of U.S. history. For all its social upheaval, culture wars, etc. a reasonably civil political life persists and it is this persistent public political culture which Rawls wishes to raise to self-consciousness of its own historically embedded principles. The Rawlsian view in its meditation on the division of Church and state sees political consensus as distinctively secular yet defensible from non-secular standpoints, what he calls an *overlapping consensus*. This is an interesting attempt to articulate the concrete ethical life of the American polis but it remains strikingly ambiguous in its portrayal of this ethical life. First the consensus itself is meant to find in practical life a union of subjective moral universality (what each individual happens to believe is right and wrong) with an objective political particularity, a specific order. But morality itself, as Hegel brings out most forcefully, is in principle abstract, that is, unable to resolve itself into a specific social order on its own moral grounds: "In morality self-determination is to be thought as the pure restlessness and activity which can never arrive at anything that is."³¹ What follows is that no specific social order will be able to meet the requirements of conscience moralistically conceived. From this standpoint it follows that the overlapping consensus cannot adequately comprehend the moral viewpoints on which its supposed justification depends.

The position articulated by Gutmann and Thompson expresses in part the limitations of the basis structure of the overlapping consensus and the unresolved difference it conceals.³² Though following a fundamentally Rawlsian paradigm, they nevertheless recognize that political life cannot thereby eschew moral conflict. Implicit in their account is the recognition that conscience remains independent of any mere consensus. By contrast then with the Rawlsian view of an overlapping consensus which attempts to secure political stability and independence by avoiding comprehensive dispute, Gutmann and Thompson argue that there may be reasonable disagreement about both constitutional essentials and matters of basic justice.³³ By contrast with the Rawlsian view, they accept that moral conflict will permeate the public political realm. Thus, for Gutmann and Thompson, "accommodating" this pervasive conflict requires "a more favourable attitude toward and constructive interaction with the persons with whom one disagrees".³⁴ They stress the development of political virtues which permit public life to flourish

31. G.W.F. Hegel, *Philosophy of Right*, Trans. T.M. Knox (Oxford: Clarendon Press, 1967) § 108A, p. 248.

32. Amy Gutmann and Dennis Thompson, *Democracy and Disagreement*, (Cambridge, Mass.: Harvard University Press, 1996).

33. Gutmann and Thompson 1996: 377n.44.

34. Gutmann and Thompson 1996: 79.

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in the face of deep-seated and intractable disagreement. They argue for three principles of *moral accommodation*: (1) the principle of civic integrity; (2) the principle of civic magnanimity; (3) the principle of the economy of moral disagreement. What do they have in mind with these three principles?

The principle of civic integrity calls for consistency in speech, consistency between speech and action, and integrity of principle. What is required is that citizens support a moral position independent of *circumstance*, that their public and private actions mirror their publicly espoused principles and that citizens accept the broader implications of their principles.³⁵ Civic magnanimity requires that citizens acknowledge in their speech the moral status of the positions they oppose.³⁶ Further it requires open-mindedness, the attempt to break habits that discourage modification in one's position.³⁷ Finally the economy of moral disagreement requires that citizens should "seek the rationale that minimizes rejection of the position they oppose".³⁸ Gutmann and Thompson recognize more clearly than Rawls the persistence of moral independence and attempt to accommodate it. However, while their account indicates the limits of overlapping consensus, because their own principles of moral accommodation likewise presuppose a radical division between morality and political life, their position like that of Rawls is unable to unify morality and public life. A consideration of the approach to abortion in the thought of Rawls and Gutmann and Thompson is instructive here.

While, in *Political Liberalism*, Rawls limits his comments on abortion to a footnote, they are intended to illustrate how public reason expresses a reasonable balance of political values and they thus provide an important example of the application of public reason. He considers the ideal case of a well-ordered society in which a mature adult woman requests an abortion. He asserts that any reasonable balance of the political values of: "the due respect for human life, the ordered reproduction of political society over time, including the family, in some form, and finally the equality of women as equal citizens" requires that the woman has "a duly qualified right to decide whether or not to end her pregnancy during the first trimester".³⁹ However, here Rawls merely asserts the overriding political value of the equality of women, at least for the first trimester, and fails to show how this assertion might be convincing to proponents of the pro-life position.⁴⁰

Gutmann and Thompson's discussion of *Roe v. Wade* illuminates the practical application of their view of moral accommodation and their expansion of Rawlsian public reason. While the Court did not accept the pro-life argument that the fetus was a person, they did acknowledge that the state has a "compelling interest in protecting human-life once the fetus is

35. Gutmann and Thompson 1996: 81.

36. Gutmann and Thompson 1996: 82.

37. Gutmann and Thompson 1996: 83.

38. Gutmann and Thompson 1996: 84-5.

39. Rawls 1993: 243-4n.32.

40. For further criticisms of Rawls' argument cf. Miriam Galston, "Rawlsian Dualism and the Autonomy of Political Thought," *Columbia Law Review*, vol.94 (Oct. 1994): 1854-5n.43.

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viable.”⁴¹ Gutmann and Thompson see in the decision “moral and legal consideration both for the woman and for the fetus”.⁴² They argue further that the Court would have better fulfilled the principle of moral accommodation had it followed the logic of the decision to its conclusion: increased protection for fetal life as medical advances extend viability to earlier stages of pregnancy.⁴³

However, in their further discussion of the moral economy of the abortion debate, Gutmann and Thompson run into significant problems which indicate the difficulty of conceiving the secular realm in fundamentally Rawlsian terms. Consider the following statement: “a pro-life advocate might argue that, although in a democracy she may have to perform actions that violate her fundamental moral principles (even acts she regards as murder), she should not be forced to contribute to those actions with her own funds through taxes. If her fellow citizens truly acknowledge the moral seriousness of her views, they should find some way to reduce her complicity in actions she regards as murder.”⁴⁴ While, in this section, Gutmann and Thompson are clearly attempting to accommodate the moral interests of pro-lifers, they underestimate the depth of the pro-lifers’ stance. For many pro-lifers, the legalization of abortion calls into question the moral basis of liberal democracy itself. Supporting a system which they believe allows the murder of fetal life, is anathema and it is thus highly questionable whether it is possible for one who holds such a view to cooperate with those who disagree. But, is it actually consistent to hold that abortion is murder and to accept that those who uphold abortion as a woman’s right have a moral view? Is the principle of “civic magnanimity” realistic

41. Lawrence Tribe expresses the strength of the decision: “Indeed, Roe at its core rests on a vision that seems compatible in broad outline, with the views of most Americans about abortion. Most Americans who look at the abortion issue see both a fetus and a pregnant woman. Laurence H. Tribe, *Abortion: The Clash of Absolutes*, (New York: W.W. Norton and Co., 1990): 136.

42. Gutmann and Thompson 1996: 86. Cf. also Tribe 1990: 138.

43. Gutmann and Thompson 1996: 88. This point is likewise expressed by Justice Sandra O'Connor who in 1983 said that the trimester approach of *Roe v. Wade* was on a collision course with itself. Quoted in Tribe 1990: 220.

44. Gutmann and Thompson 1996: 89.

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here?

Gutmann and Thompson argue that reasonable citizens will recognize that, “reason itself does not point in either direction: it is *we* who must point it, and *we* who are led by it. If you are led in one direction rather than the other, that is not because of logic, but because you respond in a certain way to certain facts [about the fetus].”⁴⁵ However, here Gutmann and Thompson suggest that a rational person will see that neither side has refuted the other. They state: “the effect of reading and listening to the arguments on both sides, at least for citizens who are open to opposing views, has been to conclude that neither side has refuted its rival”⁴⁶ Yet in the absence of further argument, the position of Gutmann and Thompson is not rationally convincing. Proponents of either side in the abortion debate can either argue directly against such agnosticism or state that it too is an existential attitude towards the debate. Further, this existential interpretation of the positions in the abortion debate clearly conflicts with the view of those for whom the belief in the personhood of the fetus is a matter of conscience and natural law. On this view, a pro-life stance is grounded not in an existential response to a question which does not admit of a rational or reasonable solution but in natural law and the God-given light of reason. From such perspectives the failure to be moved by conscience to protect the fetus is not a result of the burdens of judgment but rather the product of a sinful and disordered will. In this light, the exhortation to open-mindedness is mere temptation to sin, a call to follow the weakness of the human will in the face of the unmistakable requirements of conscience. To suggest that the opponents of abortion acknowledge the moral status of the pro-choice position is thus in effect to require that they deny the morality of their own position: the burdens of judgment and civic “magnanimity” here require the negation of conscience.

A pro-lifer can admit that pro-choice advocates support a morally just value, the freedom and equality of women. But this is not the issue. The issue is one of priority, of whether the burden placed on the mother overrides the sanctity of fetal life. On this issue, the pro-life Roman Catholic must hold that the pro-choice position is immoral because it valorizes “undue burden” at the expense of life itself. Gutmann and Thompson’s integrity requirements are thus strained. There would be no conflict if abortion was not considered a matter of conscience. But on the terms of accommodation it is hard to imagine that a conscience-bound pro-life advocate, even if he could acknowledge the moral status of his opponent’s position in the public realm, which is doubtful, could avoid telling his children that abortion is murder. In this case “civic magnanimity” is likely to conflict with “integrity”.

It is not enough, therefore, for Gutmann and Thompson to state: “Deliberative reasoning is not correctly represented if it is described as giving more weight to the value of mutual respect or deliberation than to the sanctity of life. A citizen may believe that sanctity of life is more important but recognize that under current conditions her understanding of the value is not yet sufficiently appreciated by her fellow citizens and therefore cannot become the basis of public

45. Gutmann and Thompson 1996: 75. Here they quote Wertheimer's, "Understanding the Abortion Argument" from Cohen, Marshall et al. (ed), *The Rights and Wrongs of Abortion*, (Princeton: Princeton University Press, 1974): 41.

46. Gutmann and Thompson 1996: 75.

policy that is justified from a reciprocal perspective.”⁴⁷ Deliberation in this instance is defined by recognition of the burdens of judgment and acceptance of the description of the conflicting standpoints on the abortion issue as matters of choice. Such an account valorizes deliberation over conscience and mutual respect over the sanctity of life. While Gutmann and Thompson are correct that Rawlsian strictures on public reason are not adequate to the issue of abortion, it is not apparent that their conception of accommodation solves the problem, because it cannot guarantee the integrity of the pro-life position. A pro-life advocate who sincerely conceives abortion to be murder can accept legalized abortion, if at all, only as a *modus vivendi*. No ‘moral’ acceptance is possible, because legalized abortion compromises the moral standpoint of pro-life. From this perspective, Gutmann and Thompson fail to preserve a moral basis for accommodation when it comes to abortion. It is overly optimistic to believe that the civility which might reign over the discussion of abortion will be based on moral accommodation. The pro-life and pro-choice positions are entrenched on a matter of life and death and it is no surprise that the abortion issue strains the bounds of civility. From the pro-life standpoint, abortions are murder and the abortion issue itself cannot be constrained within the confines of the economy of “moral disagreement”. Thus so long as we remain within a Rawlsian paradigm which draws together the secular and the non-secular in a merely external fashion, many citizens will accept the legitimacy of the public political realm as a *modus vivendi* only, but not as an overlapping consensus. The Rawlsian concept of public reason does not adequately unify the secular and the non-secular.⁴⁸

3. Concluding Hegelian Post-Script

The preceding argument has attempted through immanent critique to indicate certain tensions in the Rawlsian approach to public reason. But a further and perhaps deeper question has to do with the historiography upon which his version of the divide between secular and the religious (*cum* comprehensive) is based. It is inadequate to see the historical relationship between the Christian religion and the contemporary North American state as resulting in either the Rawlsian overlapping consensus or in the *modus vivendi* which appears in the wake of its failure.

Once the divide between the religious and the secular has in Rawlsian fashion been established along private and public lines, a deep consensus between the two can be achieved only by shredding the integrity of the other. Rawlsians will argue that surely this is not the case because of the sociological fact of the existence of liberal constitutions variously supported from differing comprehensive positions and its result in a reasonably peaceful public realm. But the reason for public peace is not so much the separation of the public and the private or the secular

47. Gutmann and Thompson 1996: 93.

48. The interest of the foregoing argument (section two) is to show that neither Rawls nor Gutmann and Thompson can adequately accommodate the views of pro-lifers within their paradigm of overlapping consensus. In what follows, I present no solution to the abortion debate as a moral issue but wish to indicate the authority of the political realm in this and other matters as having a religious ground philosophically speaking.

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and the religious, but a secularity that is itself a product of the country's religious life given shape in a public political secular realm.

As Mark De Wolfe Howe and Michael W. McConnell have argued, the “wall of separation” between church and state admits not only of secular but also of religious interpretation.⁴⁹ Thomas Jefferson, for example, was critical of “enthusiastic” religions, favoring the rationalism of the Unitarian Church. He advocated the separation of church and state, and the establishment clause of the First Amendment to protect individuals from religious irrationalism.⁵⁰ By contrast evangelical churches, for example, Baptists, Quakers, Presbyterian and Lutherans saw in the “wall of separation” a protection of the purity and supremacy of the claims of religious conscience.⁵¹ What is equally significant is that the secularity which thus emerges is not in opposition to the religious, moral and metaphysical views of citizens nor is it reflective of a weakened attachment to these views. Rather it reflects the immanent pluralism present in the Christian religion in the wake of the Reformation and the Enlightenment; here Christianity gives birth to its own enlightened secularity.⁵² In light of the historical and cultural dominance of Christianity it is only through ideology or abstraction that one fails to recognize it as a constitutive moment of the public political realm. The separation of church and state or of the secular and the non-secular is in important ways a Christian separation. Awareness of this point is important in order not to make too rigid and restrictive a distinction between the secular and non-secular but also in order to recognize difficulties which can emerge from what amounts in certain respects to a de facto establishment of the Christian religion.⁵³

Rawls's conception of political life exploits a richly ambiguous conception of the relation of secularity to religion and metaphysics; of the separation of church and state. On the one hand, secularity consists of individuals liberated from absolute adherence to comprehensive doctrines: “It is left to citizens individually – as part of liberty of conscience – to settle how they think the values of the political domain are related to other values in their comprehensive doctrine.”⁵⁴ From the standpoint of the Rawlsian state, freedom of conscience is both freedom to believe and freedom not to believe. On the other hand, Rawls recognizes an important historical and normative relation between the secular and the non-secular: “The history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be congruent with, or supportive of, or else not in conflict with, the values appropriate to the social domain of the political as specified by a political conception of justice.”⁵⁵ In a certain precise sense, moral, religious, and metaphysical views are seen as a

49. Mark DeWolfe Howe, *The Garden and the Wilderness*, (Chicago: University of Chicago Press, 1965): Ch. 1 and Michael W. McConnell, "The Origins and Historical Understanding of Free Exercise of Religion," *Harvard Law Review* 103,7 (1990): 1437-43.

50. McConnell 1990: 1449-50.

51. McConnell 1990: 1439.

52. Cf. my “Puritanism, Enlightenment and the U.S. Constitution” (*Animus* 1998).

53. Cf. DeWolfe Howe 1965: 11.

54. Rawls 1993: 140.

55. Rawls 1993: 140.

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positive ground of political liberalism by securing public reason in an overlapping consensus.⁵⁶ Further, Rawls allows the possibility that the ‘grounding’ of the political conception in comprehensive doctrines guarantee the rightness of the political conception: “if any of those reasonable comprehensive doctrines supports only true moral judgments, the political conception itself is correct, or close thereto, since it is endorsed by a true doctrine.”⁵⁷ And: “Whatever our specific view of the truth, or the reasonableness, of moral judgments may be, must we not suppose that at least the way to truth, or reasonableness, is to be found in one of the reasonable doctrines (or some mix thereof) arising under those conditions?”⁵⁸

But while Rawls recognizes the relationship between liberalism and moral, religious and metaphysical views he does so in primarily external and somewhat negative terms. Consider his comments on Christianity. He states: “The historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the 16th and 17th centuries. Something like the modern understanding of liberty of conscience and freedom began then. As Hegel saw, pluralism made religious liberty possible, certainly not Luther and Calvin’s intention.”⁵⁹ For Rawls: “Luther and Calvin were as dogmatic and intolerant as the Roman Church had been.”⁶⁰ He thus sees political liberalism as born in a criticism of religious intolerance and yet as depending on religion and other comprehensive doctrines for its ground.

One might say that Rawls provides a correct account of the relation between the secular and the non-secular, here the religious, but that his account is not therefore a true account. In his *Logic*, Hegel states: “Correctness is only a matter of the formal agreement of our representation with its concept.” However truth by contrast: “consists in the agreement of the object with itself, i.e., with its concept.”⁶¹ The truth of the Christian religion (and of the Reformation specifically), for Hegel, is that it is itself, in concept, a religion of freedom and equality. He states: “It was through Christianity that this idea [that the human being is actually free] came into the world. According to Christianity, the individual as such has an infinite value as the object and aim of divine love, destined as mind to live in absolute relation with God himself, and have God’s mind dwelling in him, i.e., man is implicitly destined to supreme freedom.”⁶² This is likewise the religious basis of equality: “Under Christianity slavery is impossible; for man is man – in the abstractest essence of his nature – is contemplated in God; each unit of mankind is an object of

56. Rawls 1993: 169.

57. Rawls 1993: 128.

58. Rawls 1993: 129. This might be conceived as Rawls’ pragmatic post-modern re-statement of Hegel’s view that: “Since ethical principles and the organization of the state in general are drawn into the domain religion and not only may but also should be established by reference thereto, this reference gives religious credentials to the state itself” (*Philosophy of Right*, §270z, p. 172).

59. Rawls 1993: xxiv.

60. Rawls 1993: xxiii.

61. G.W.F. Hegel, *The Encyclopaedia Logic*, Trans. T. Geraets, et. al., (Indianapolis: Hackett Publishing Inc., 1991), §172, pp. 249-50.

62. *The Philosophy of Mind*, §482, pp. 239-40. Cf. also *The Philosophy of History*, p. 417: “This is the essence of the Reformation: Man is in his very nature destined to be free.”

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the grace of God and of the divine purpose: ‘God will have all men to be saved’. Utterly excluding all speciality, therefore man in and for himself – in his simple quality as man – has infinite value; and this infinite value abolishes *ipso facto*, all particularity attaching to birth or country.”⁶³ Christianity thus asserts in religious form what becomes the principle of the modern state. Hegel states: “The idea of the state in modern times has a special character in that the state is the actualization of freedom.” Further: “The essence of the modern state is that the universal is bound up with the complete freedom of its particular members and with private well-being.”⁶⁴

But this does not entail that the state is religious *per se*. On the Hegelian view the relation of church and state is in certain respects identical in structure to the relationship between religion and philosophy. For Hegel the religious expression of freedom occurs fundamentally through *representation*. He argues that representation is a thinking activity which establishes intuition not as the ground of thought but as a moment in thought’s own self-differentiation.⁶⁵ F.L. Jackson indicates that for Hegel, representation in all its forms is a free self-reciprocal activity: “in which some immediately given content is transformed into an object posited as the subject’s own product.”⁶⁶ The content of representation may have its source in sensation but likewise according to Hegel: “Apart from the sensible representation also has material that has sprung from self-conscious thinking as its content, such as the notion of what is right, of what is ethical or religious, and also of thinking itself.”⁶⁷

Nevertheless, according to Hegel, representation: “whatever be its content (from image, notion or idea) has always the peculiarity of being in respect of its content given and immediate.”⁶⁸ Further, in the *Logic* he states: “If I represent God to myself, then certainly the content is purely something thought but the form is still sensible, just as I already find it immediately within me.”⁶⁹ While the content in the representation of God is produced by thought its form is merely given and thus representation occupies an intermediate stage between intuition (in which thought is relatively determined) and thinking proper (in which thought is explicitly free).⁷⁰

Over and against this element of immediacy in representation, philosophy brings to religion both mediation and logical necessity, transforming it from a merely received into an explicitly rational spiritual life.⁷¹ Philosophy liberates itself from religious representation in

63. *The Philosophy of History*: 334.

64. G.W.F. Hegel, *Philosophy of Right*, Trans. T.M. Knox (Oxford: Clarendon Press, 1967) §260-A, p. 280.

65. *Philosophy of Mind*, §450z, p. 201.

66. F.L. Jackson, “Hegel’s Psychology of Freedom,” (*Animus* 2000, <http://www.swgc.mun.ca/animus/2000vol5/jackson5.htm>).

67. *Logic*, §20, p. 49.

68. *Philosophy of Mind*, §455, p. 207.

69. *Logic*, §24, p. 58.

70. *Philosophy of Mind*, §451, p.201.

71. G.W.F. Hegel, *Lectures on the Philosophy of Religion, Vol. I*, Ed. P.C. Hodgson, Trans. P.C. Hodgson et. al., (Berkeley: University of California Press, 1984), pp. 404-6.

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articulating its own conceptual form, yet the content of religion is in its essence maintained and expressed more adequately. Hegel states: “Philosophy, [which gives the form of thought to the content of faith] does not thereby place itself above religion but only above the form of faith as representation.”⁷² The liberation of philosophy from religious representation, therefore, is not an abstract liberation or mere negation of the religious content. Hegel states: “There cannot be philosophy without religion because philosophy includes religion within it.”⁷³

The modern state is explicitly the objective expression of the philosophical principle of freedom and demands of religion in the public political sphere that it be, in certain respects, beyond representation, that is, that it be reasonable. While Hegel recognizes that religion is the groundwork of the state, including genuine ethical content and expressing the fundamental nature of the state in terms of the divine will, he contends: “it is at the same time only a groundwork; and it is at this point that state and religion begin to diverge.”⁷⁴ Further: “If the state is to come into existence as the self-knowing actuality of mind, it is essential that its form should be distinct from the authority of faith.” And: “the distinction between their forms of consciousness should be externalized as a distinction between their special modes of existence.”⁷⁵ Rawls rightly indicates that for Hegel the modern state emerges out of the divisions in Christianity that became explicit in the Reformation. Hegel states: “So far from having been a misfortune for the state that the church is disunited, it is only as a result of that disunion that the state has been able to reach its appointed end as a self-consciously rational and ethical organization.”⁷⁶

Here the state obtains distinction from faith because in it freedom and reason have become concrete as “the actual shape and organization of a world”.⁷⁷ In terms of ethical practice then, the state, for Hegel, is more explicit and developed than the church, including as it does responsibility for welfare, law, external affairs, public works etc., and we might now add the environment. It is an ethical life, with all its tensions and compromises, made actual in the face of the obstacles of privilege and power, contingency and corruption. Thus for Hegel: “In contrast with the church’s faith and authority in matters affecting ethical principles, rightness, laws, institutions, in contrast with the church’s subjective conviction, the state is that which knows. Its principle is such that its content is in essence no longer clothed with the form of feeling and faith but is determinate thought.”⁷⁸ Further: “The state retains the right and the form of self-conscious, objective, rationality, the right to make this form count and to maintain it against pretensions springing from truth in a subjective dress, no matter how such truth may girdle itself with certitude and authority.”⁷⁹

72. *Lectures on the Philosophy of Religion*, Vol. III: 374.

73. *Logic*, Preface 2nd. Ed., p. 12.

74. *Philosophy of Right*, §270z, p. 166.

75. *Philosophy of Right*, §270z, p. 173.

76. *Philosophy of Right*, §270z, p. 174.

77. *Philosophy of Right*, §270z, p. 166.

78. *Philosophy of Right*, §270z, p. 171.

79. *Philosophy of Right*, §270z, p. 172.

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The self-conscious reconciliation of these realms, however, is strictly speaking philosophical: “It is philosophic insight which sees that while church and state differ in form, they do not stand opposed in content, for truth and rationality are the content of both.”⁸⁰ The citizen, then, so far as he is enculturated in the traditions and laws of a liberal state, is engaged by an explicitly philosophical ethical project, the actualization of the principles of freedom and equality. In the liberal state citizens from all walks of life are as a matter of course drawn into all manner of debate about the relation of religion and state, the nature of ethical institutions (marriage, for example), and indeed the nature of personhood (as in the controversy over abortion). They bring with them the moral and religious resources with which they have been raised but they are called in democratic forums, so far as they wish to engage the sensibilities of their fellow citizens, to relate to and express such resources in a manner beyond the particularities of the sects from which they originate; they are called by democratic debate and criticism to transform *representation* into political concept. In this determinate ethical life citizens are moved from the simple givenness of their religious beliefs to reflection upon them in light of the philosophical principle of freedom. In principle liberal public reason is not related to philosophy and religion in a merely contingent or subjective manner, that is in terms of the choices and opinions of citizens. Rather it is fundamentally philosophical: in the separation of powers, for example, judicial universality and legislative particularity are drawn into relation as fundamental components of a determinate and free world, unified and made concrete in the direction given by the executive branch. The whole constitution, then, as the articulate practical expression of modern freedom, is the institutional exemplar of an inherently philosophical public political discourse.

By contrast with the Rawlsian view, then, it is not simply in an a-religious toleration that liberal secularity emerges but rather as an expression of principles which take shape in Christianity. To understand the Hegelian view of the relation between liberal pluralism and Christianity, one must see that, for Hegel, by virtue of its expression of freedom, Christianity is the *consummate* religion: “the religion in which religion has become objective to itself.”⁸¹ He states: “The freedom of self-consciousness is the content of religion and this content is itself the object of the Christian religion, i.e., Spirit is its own object.”⁸² Thus Christianity reveals the core of all religions, that is, the spiritual freedom of all humans. The differences among religions, then, are transformed in the Hegelian account to differences of representation; philosophically speaking all religions are moments of the concept of religion: “These determinacies are the moments, the becoming of the concept, and their resolution and return [to itself] are what constitute the concept itself.”⁸³ From the religious standpoint the differences of Islam, Christianity, Judaism and Hinduism etc. might appear absolute. However, for Hegel such an appearance is sustainable only so far as individuals and cultures fail adequately to develop a free

80. *Philosophy of Right*, §270z, p. 171.

81. G.W.F. Hegel, *Lectures on the Philosophy of Religion*, Vol. III, Ed. P.C. Hodgson, Trans. P.C. Hodgson et. al. (Berkeley: University of California Press, 1985), p. 163.

82. *Lectures on the Philosophy of Religion*, Vol. III: 165.

83. *Lectures on the Philosophy of Religion*, Vol. II: 94.

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philosophical spirit and awareness of the historical development of religion itself; objectively speaking, on the Hegelian account, modern freedom is in principle beyond these divisions.

For Hegel, then, all major religions are related to the fundamental principle of modern political life through Christianity and the modern state is thus the objective practical expression of the basic concept of all religions. It is not in religious life as such, where differences of representation predominate, that pluralism is grounded and sustained but in political life which is founded not on representation but on the principles implicit in all representation. On Hegel's view, the secular state not only allows the sectarian claims of various religions but also disciplines them in light of the spiritual core of religion itself, that is, in terms of freedom and equality. But the spiritual core of religion in its philosophical expression is shorn of its representational image and dogma. Secularity has a philosophical basis only in the freedom and equality which the liberal state offers to all faiths and their adherents suitably conformed to reason. The liberal state is conceived, in this light, as freed from the particularities of religion precisely because it has its ground in the underlying principle of *all* religion; it is, therefore, open to comprehensive doctrines at its root. The speculative cat is out of the representational bag and it is only through reaction or sentimentality that one desires a more 'authentic,' pre-modern, pre-political religiosity. For Hegel, the state is the objective end of religion: "The true realization of religion in the worldly sphere is the inward realization, namely, that a just and ethical life should be instituted."⁸⁴

Nevertheless, for Hegel religion belongs to absolute spirit and is not exhausted in its practical determination, though it is fundamentally informed by it. Rather modern ethical life becomes a deeper finite ground of religion in which humans are educated beyond the mere subjectivity of opinion and selfishness of desire. He states: "Genuine religion and genuine religiosity only issue from the ethical life: religion is that life rising to think, i.e., becoming aware of the free universality of its concrete essence. Only from the ethical life and by the ethical life is the Idea of God seen to be free spirit: outside of ethical spirit therefore it is vain to seek for true religion and religiosity."⁸⁵ For Hegel while the state is the objective end of religion it is not the absolute end. However, by liberating the secular from the religious in this light and by the self-limiting of religion at the hands of its own secularity, so far as the political sets certain guidelines for religious life and itself educates the human heart, there exists the potentiality of the recognition of a deeper faithfulness, more fully expressive of the universality of our determinate ethical life. Rawls' vision of the public political realm, while correct in fundamental ways, grasps the dynamic of secular and non-secular in its externality only, that is, focused for example on the intolerance and dogmatism of the Reformation by contrast with the inner freedom it announces. Liberalism, conceived philosophically, is precisely the political expression of the spiritual truth of the Christian religion, that is, the freedom and equality of all humans.

84. *Lectures on the Philosophy of Religion, Vol. III*: 374.

85. *Philosophy of Mind*, §552, p. 283.