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Public Reason

Julian Rivers

The Nature and Grounds of Public Reason

Over the last decade, political theorists have shown considerable interest in the idea of public reason. In brief, the suggestion is that when arguing for particular government policies and laws, people should not appeal to their comprehensive belief-systems, or worldviews, but only to arguments which could be rationally assented to by all people. Conscientious citizens do not appeal to 'religious' arguments in public.

Much of the debate has taken place against the background of US American politics and, at one level, is simply an attempt to silence the growing political voice of the 'religious right'. It can also be seen as a next stage in the progressive secularisation of public life promoted by the Supreme Court. John Rawls suggests that the Supreme Court is the exemplar of public reason. On the other hand the vast majority of Americans are proud of certain elements in their political heritage which adopted explicitly Christian arguments, such as the anti-slavery and civil rights movements.

This tension is played out at a theoretical level by a range of positions in the debate about public reason. Robert Audi argues that when it comes to the advocacy of laws, or voting for parties and policies, conscientious citizens will only offer secular rationales and will only be motivated by secular arguments: a Christian engaging in politics must leave their faith at home. Kent Greenawalt thinks that although there are principles which restrain judges and other public officials in the reasons they rely on, there are very few for citizens. There is only an obligation to avoid religious impositions, i.e. coercion simply on the grounds that my faith is true and yours false. John Rawls thinks that restrictions only apply when debating basic political structures, i.e. constitutional essentials, not individual policies, and, in a later modification to his original argument, he suggests that it is acceptable to put forward religious justifications to start with, so long as ultimate decisions are made on a secular basis. Michael Perry – a liberal Roman Catholic – contrasts arguments for human worth with arguments for human well-being. He thinks that the first are inescapably religious in some sense, but that the latter should be determined in the well-ordered polity on secular grounds alone. This allows him to prove his catholic credentials by opposing abortion on religious arguments as to the worth of a foetus; and his liberal credentials by supporting gay marriage because there is no adequate secular argument that a gay sexual relationship is not a legitimate form of human well-being. Or so he says.

Whatever the precise boundaries any particular theorist sets to public engagement, the grounds for restraint generally reduce to two: what Eberle calls 'the argument from Bosnia' suggests that religious arguments are particularly divisive and need to be restrained in order to preserve civil order. More plausibly in modern liberal democracies, the argument from respect suggests that we only show respect for our fellow-citizens as our equals if we refrain from appealing to grounds they cannot share.

Conservative Christian Critiques

The response from conservative Christian commentators has been critical. David Smolin is an evangelical constitutional theorist who thinks that no argument for restraint ultimately works. He argues that many political issues are inescapably religious, and that it is not possible to lift the political debate out of the broader cultural debate as to what is true. Arguments for public reason tend to benefit secular liberals and make life harder for conservative religious people; that is simply unfair. Given a very strong commitment to basic rules of dialogue and decision-taking, allowing people to articulate their religious reasons for political positions will not threaten civil order.

Similarly, Jonathan Chaplin argues that secular ethical beliefs can be just as exclusionary of those who don't agree with them as religious beliefs; that in any case it may not be possible to identify distinct and separable religious and secular arguments, and that the very attempt to formulate principles to govern political speech is hopeless. Nicholas Wolterstorff argues in response to Robert Audi that it is utterly unreasonable to expect that all people will accept any given set of principles, secular or religious. Finally, Christopher Eberle establishes an ideal of conscientious engagement which *requires* citizens to set out their full reasons for a particular moral position and ultimately to act according to conscience – whether religiously informed or not.

The general form of these critiques is quite simple: they seek to undermine the distinctions liberal theorists try to use to mark off an identifiable domain of public reason. Since the domain is non-identifiable, our commitment to freedom of speech suggests that all arguments as to the proper content of law and public policy are permissible.

However, such critiques fail to show how they cohere with some of the critic's own basic assumptions. It is assumed that political decisions should be taken according to certain democratic procedures, and that judges and other public officials should defer to conventionally recognised sources. In other words, it is assumed that a liberal constitutional framework is already in place. And the assumption is not entirely unreasonable, since the critics are focusing on the behaviour of citizens, not officials. But if a religious citizen has no rea-

son for restraint in argument, why then a religious official? Why should a Christian judge not decide a case by reference to the Bible? And if there are good reasons for official restraint, might that not impact back onto civic argumentative behaviour too?

The Doctrine of the Two

The history of Christian political thought should make us open to the possibility of some principle of restraint when we argue in public. In chapter 6 of *The Desire of the Nations* Oliver O'Donovan notes that one of the political legacies of Christianity is what he calls 'the Doctrine of the Two'. This started out as an opposition between church and secular government, as 'distinct structures belonging to distinct societies and, indeed, distinct eras of salvation history'. Very quickly after Constantine it became subverted into a homogeneous Christian society ruled by two sources of authority: kings and bishops. Mediaeval political theory is characterised by arguments about which is superior – contrast the papalists with the imperialists. And the Reformers found yet another way of understanding the Two: Luther turned it into an inner-outer distinction, the spiritual against the social, giving Lutheran ethics its distinctive paradoxical cast. So, the question of public reason is really part of the much broader and older question of how we are to conceive of the duality which characterises the intermediate age between Christ's ascension, but before his kingly rule is fully realised in heaven and on earth.

The first possibility to consider is that the duality is ethical, based on a distinction between a universally-binding ethic of mutual rights and duty and a Christian ethic of perfection. This resonates with much liberal political theory which suggests that politics should not concern itself with controversial conceptions of human flourishing, but only with a basic moral minimum.

However, in reading the counsel of perfection in Christ's interpretation of the moral law we should take care to distinguish what is normatively binding from what is humanly achievable or even legally enforceable. We may all sin in anger, lust or pride, and no law can prevent that, but the standard of purity is the same for everyone. All are called to perfection. Furthermore, it is unrealistic to suppose that politics can avoid concerning itself

with conceptions of human flourishing and well-being. One only needs to think of the moral judgments implicit in family law to see that.

The second possibility is that the duality is epistemic, rooted in a distinction between what can be known generally through human reason and what can only be known individually through divine revelation. But even accepting Greenawalt's argument for the distinct epistemic status of religious experience, Christian ethics does not rest on religious experience. Traditionally it is said to derive from Scripture, reason and tradition. In relying on reason and tradition it is no different from secular ethics, so the only point at issue concerns the epistemic status of Scripture. Calvin argued that this rested on both divine revelation and human reason operating together. Book 1, chapter 7 of his *Institutes* is entitled, 'Scripture must be confirmed by the witness of the Spirit. Thus may its authority be established as certain.' But this is followed by chapter 8: 'So far as human reason goes, sufficiently firm proofs are at hand to establish the credibility of Scripture.' Richard Swinburne distinguishes weak belief which rests on an entirely normal assessment of what is most likely to be true, and the strong faith of conviction where we believe Christianity to be more likely true than not. Unless we thought on accessible and shareable grounds that Scripture is likely to be the Word of God, we wouldn't gain the conviction which comes from the experience of engaging with it over time.

Furthermore, we should question the epistemic status of much of our Western conception of justice anyway. In *God, Locke and Equality*, Jeremy Waldron has recently argued that Locke is much more dependent for his conception of political equality on the Bible than agnostic philosophers care to admit. The references which pepper his *Second Treatise on Government* are not mere window-dressing. In O'Donovan's telling phrase, even our rejection of Christendom has been learned from Christendom.

The best way of understanding the Doctrine of the Two is in terms of a distinction of institutions. An institution is a sphere of human activity which has its own purpose, its own scope of authority, and its own standards. Ronald Dworkin gives a good example: when we distribute prizes in a chess tournament we do not give the money to the poorest player, even if we think as a matter of

abstract justice that poor people should get more money. We give it to the best player. There are, of course, ethical constraints on chess and chess tournaments, but they are not the same ethical constraints as on, say, governments.

The NT would appear to think of law and government in this way. Its primary purpose is to provide civil peace and good order so that the church may be free to be the church (1 Timothy 2:1-4); its mode of operation is coercion (Romans 13:4); we relate to it neither with love, nor fear, but with honour (1 Peter 2:17). So it is good, but not intended to achieve all good. That the duality should be understood institutionally is also borne out by the Christian political tradition. For example, William of Ockham managed to sidestep the debates between imperialists and papalists to argue for a balance of church and government, each with distinctive tasks, with neither superior to the other. And the idea of distinct spheres of authority was brought to its peak by the Dutch neo-Calvinist Abraham Kuyper who thought that there were several such spheres: government, church, family, industry and commerce, education etc.

The point of this way of thinking is that no institution has responsibility for achieving all truth or all goodness. The ideal of law, the good which it seeks to achieve, is not justice, but the Rule of Law, which we can define as the ordered submission of a society to a conception of justice. The point about law is that it is to be owned in common, to be internalised, to be lived by everybody, citizens and officials alike. Augustine put the point with complete clarity: human society will never be fully just, because justice requires giving each person his or her due, and there is no society which gives God his due. But what we can expect is a sort of justice – at least the sort of justice that prevails even among an organised band of thieves.

So when judges decide cases they do so not in accordance with their own ideas of justice, but in accordance with conventionally-recognized sources of law, because that ensures consensus, certainty and stability. It secures the Rule of Law. And when judges have to identify the underlying reasons for laws, in interpreting statutes and developing precedent, they are obliged by the Rule of Law to select reasons which are likely to command maximum support. And when legislators make laws, they must do so with an eye to their general moral intelligibility.

Implications for Christian Engagement

The most important implication is that as Christians we should reject the idea of public reason. There is no identifiable domain of reasons which non-believers can be guaranteed to accept. On the contrary, we should be prepared to give a full account for our ethical judgments, and where that requires an appeal to Scripture we should also be prepared to explain the basis on which we think Scripture authoritative. However, we should bear in mind the fact that law has a work to do which requires the building of moral consensus. So if we would influence policy and law we must learn to speak both the dialect of our faith and the *koiné* of our culture.

Some would argue that the admission of religious arguments in public life would make no practical difference, since an equivalent secular argument will always be at hand. However, at the very least faith can offer a strength of persuasion which secular argument cannot. One suspects, for example, that the Jubilee 2000 campaign to remove world debt would not have achieved as much without considerable religious motivation. And it may be that a culture deviates in some respect from the law of God to such an extent that some moral positions seem defensible by reference to Scripture alone. We may rapidly be reaching that point in the Western world as regards sexual ethics.

Eberle makes the telling point that it was the cardinal moral failing of most German Christians under Hitler's regime that they submitted their intuitive religious opposition to the persecution of minorities to secular argument about the need to preserve the purity of the Volk. Can we be sure that we too, in our own way, would not make the same terrible mistake?

Further Reading:

Robert Audi, *Religious Commitment and Secular Reason*, Cambridge: 2000.

Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square*, Lanham: 1996.

Jonathan Chaplin 'Beyond Liberal Restraint: defending religiously-based arguments in law and public policy' *University of British Columbia Law Review*, special edition, 2000, 617.

Christopher Eberle *Religious Conviction in Liberal Politics*, Cambridge: 2002.

Kent Greenawalt *Private Consciences and Public Reasons*, Oxford: 1995.

Oliver O'Donovan, *The Desire of the Nations*, Cambridge: 1996.

Michael Perry, *Religion in Politics*, Oxford: 1997.

John Rawls, *Political Liberalism*, New York: 1993.

John Rawls, *The idea of public reason revisited*, reprinted in id., *The Law of Peoples*, Cambridge, Mass.: 1999.

Julian Rivers, 'Liberal Constitutionalism and Christian Political Thought' in Paul Beaumont (ed.), *Christian Perspectives on the Limits of Law*, Carlisle: 2002.

David Smolin, 'Review of Michael Perry's Love and Power', 76 *Iowa Law Review* 1067.

Richard Swinburne, *Faith and Reason*, Oxford: 1981.

Ronald Dworkin, *Law's Empire*, London: 1986

Julian Rivers is Senior Lecturer in Law at the University of Bristol and Chairman of the Whitefield Institute Council. Julian studied law at Cambridge and Göttingen Universities before becoming a lecturer at Bristol in 1993. His research interests lie mainly in the area of legal and constitutional theory, with a particular interest in the interplay between law and religion.